

21 August 2013

TENDER NO: 004/13/14

The Republic of South Africa

Department of Energy

REQUEST FOR QUALIFICATION AND PROPOSALS FOR NEW GENERATION
CAPACITY UNDER THE SMALL PROJECTS IPP PROCUREMENT PROGRAMME

PART A: GENERAL REQUIREMENTS, RULES AND PROVISIONS



energy

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 Small Projects 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 Small Projects 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 Small Projects 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 Small Projects 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 Small Projects IPP Procurement Programme and this RFP, who are acting solely as advisors to the Department to assist the Department in the Small Projects 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 Small Projects IPP Procurement Programme. The Transaction Advisors shall not nor shall any legal advisor, or advisor to the Department in relation to the Small Projects 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 Small Projects 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 **"Amendment Agreement to the Electricity Supply Agreement"** - the agreement which amends the Electricity Supply Agreement entered into between Eskom and the relevant municipal Distributor in order to provide for the sale of electrical energy generated by the Facility in addition to the electricity supplied by Eskom to the municipal Distributor in terms of the Electricity Supply Agreement and to regulate the reconciliation of payments associated therewith, which agreement must be entered into between Eskom and the relevant municipal Distributor prior to signature of the PPA by Eskom;
- 2.1.4 **"BBBEE Recognition Levels"** - the Contributor Status Level of a Measured Entity, as defined in the Economic Development Requirements in Volume 5;
- 2.1.5 **"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;

- 2.1.6 **"Bid Notice"** - the notice published by the Department inviting potential bidders to acquire the RFP and submit Bid Responses under this Small Projects IPP Procurement Programme, included in this RFP as Schedule 1 (*Bid Notice*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*);
- 2.1.7 **"Bid Response"** - any bid submitted by a Bidder in response to the invitation contained in this RFP, comprising a Stage 1 Bid Submission and or a Stage 2 Bid Submission, as the case may be;
- 2.1.8 **"Bid Registration Date"** the date by which the Department must be notified that a Bidder intends submitting a Bid Submission for a particular Bid Submission Date, which date is set out in clause 10 (*Timetable for IPP Procurement Programme*);
- 2.1.9 **"Bid Response"** - any bid submitted by a Bidder in response to the invitation contained in this RFP, comprising a Stage 1 Bid Submission and or a Stage 2 Bid Submission, as the case may be;
- 2.1.10 **"Bid Submission Date "** - the date identified as the bid submission date for a Bid Submission Phase in accordance with clauses 10 (*Timetable for Small Projects IPP Procurement Programme*) and 34 (*Submission of Bid Response*) of this RFP or by Briefing Note for all Bid Submission Phases;
- 2.1.11 **"Bid Submission Phase"** - a period identified as a bid submission phase in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) of this RFP being

- either a Stage 1 Bid Submission Phase, or a Stage 2 Bid Submission Phase;
- 2.1.12 **"Bid Validity Period"** - the period identified as the Bid Validity Period in clause 38 (*Bid Validity*) of this RFP;
- 2.1.13 **"Black Enterprise"** - a legal entity with 50.1% or more of its equity owned by Black People and which is Controlled by Black People;
- 2.1.14 **"Black People"** - refers to natural persons who are Africans, Coloureds and Indians, limited to those who are Citizens;
- 2.1.15 **"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;
- 2.1.16 **"Business Day"** - any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 2.1.17 **"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 Small Projects IPP Procurement Programme;
- 2.1.18 **"Change in Control"** - means any change whatsoever in Control (as defined in the Implementation Agreement), whether effected directly or indirectly;
- 2.1.19 **"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;

- 2.1.20 **"Companies Acts"** - the Companies Act, 61 of 1973, as amended from time to time and, the Companies Act, 71 of 2008, as amended from time to time;
- 2.1.21 **"Company"** - a private company incorporated in the Republic of South Africa in terms of the Companies Acts;
- 2.1.22 **"Connection Agreements"** - the Distribution Agreement and the Connection Direct Agreement (excluding the Municipal Distribution Agreement and the Municipal Direct Agreement);
- 2.1.23 **"Connection Direct Agreement"** - the direct agreement entered into (or to be entered into) between the Seller, the Distributor and the Lenders (or their agent) in relation to the Distribution Agreement provided in Volume 2 (*Legal Agreements*) of this RFP;
- 2.1.24 **"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;
- 2.1.25 **"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);
2.1.26	"Contributor Status Level"	-	as the term is defined in the Implementation Agreement provided in Appendix C (<i>Implementation Agreement</i>) in Volume 2 (<i>Legal Agreements</i>) of this RFP;
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, collectively;
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 23.4 (<i>Development Fee</i>) of this Part A (<i>General Requirements, Rules and Provisions</i>);
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 B (<i>Direct Agreement</i>) of Volume 2 (<i>Legal Agreements</i>) of this RFP;
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 **"DWA"** - the Department of Water Affairs 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;
- 2.1.35 **"Economic Development Elements"** - each of the Job Creation, Local Content, Ownership, Management Control, Preferential Procurement, Enterprise Development, SME Participation and Socio-Economic Development elements of Economic Development (as those terms are defined in Volume 5 (*Economic Development Requirements*));
- 2.1.36 **"Economic Development Scorecard"** - the scorecard containing the targets of the Department in relation to Economic Development, which is annexed to Volume 4 (*Financial Requirements*) as Appendix G5-9 (*Economic Development Scorecard*) of this RFP;
- 2.1.37 **"Economic Development Information Sheet"** - 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 4 (*Financial Requirements*) as Appendix G5-8 (*Economic Development Information Sheet*) of this RFP;
- 2.1.38 **"Equity Finance"** - funding to be provided to the Project Company by its Shareholders either by way of share capital or subordinated debt;
- 2.1.39 **"Electricity Regulation Act"** - the Electricity Regulation Act, 4 of 2006, as amended from time to time;
- 2.1.40 **"Electricity Supply Agreement"** - the agreement entered into or to be entered into between Eskom and the relevant municipal Distributor in whose licensed area of supply the Bidder's Facility will connect to the Municipal Distribution System, which agreement regulates the supply of electricity in bulk for municipal purposes by Eskom to the municipal Distributor for the purpose of distribution of that electricity to consumers within the municipal Distributor's licensed area of supply;
- 2.1.41 **"Enterprise Development"** - initiatives (which include monetary and non-monetary initiatives) carried out by a Measured Entity to assist with a view to accelerate the development and sustainability of other enterprises, financial and operation independence of other enterprises;
- 2.1.42 **"Entities"** - a natural or juristic person conducting a business, trade or profession in the Republic of South Africa;
- 2.1.43 **"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;
- 2.1.44 **"Eskom"** - Eskom Holdings SOC Limited, with registration number 2002/015527/06, as incorporated pursuant to the Eskom Conversion Act, 13 of 2001;
- 2.1.45 **"Eskom Distribution Agreement"** - the agreement to be entered into between the Project Company of a Preferred Bidder and the Eskom in respect of the physical connection of the Units of the Project Company's Facility to the Eskom Distribution System, included in Volume 2 of this RFP (*Legal Agreements*) as Appendix D;
- 2.1.46 **"Eskom Distribution System"** - Eskom's network infrastructure consisting of assets operated at a nominal voltage of 132 kV or less;
- 2.1.47 **"Expected Contracted Capacity"** - the Contracted Capacity that the Bidder expects that its Project will have at the relevant Stage 2 Bid Submission Date based on the Project information available and reasonable assumptions made at the time of the relevant Stage 1 Bid Submission Date;
- 2.1.48 **"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;

- 2.1.49 **"Financial Close"** - the Effective Date of the Implementation Agreement;
- 2.1.50 **"Financial Model"** - the financial model or models that meet the requirements of clause 2.5.4 (*Financial Models*) of Part C (*Stage 2 Qualification Criteria*) of this RFP;
- 2.1.51 **"First Determination"** - the determination made by the Minister on 1 August 2011, pursuant to section 34 of the Electricity Regulation Act, provided in Schedule 3A (*First Determination*) of Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP;
- 2.1.52 **"First Stage 1 Bid Submission Date"** - the date identified as the first Stage 1 Bid Submission Date in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34 (*Submission of Bid Response*) of this RFP, namely 14 October 2013;
- 2.1.53 **"First Stage 2 Bid Submission Date"** - the date identified as the first Stage 2 Bid Submission Date in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34 (*Submission of Bid Response*) of this RFP, namely 14 April 2014;
- 2.1.54 **"Fourth Stage 1 Bid Submission Date"** - the date identified as the fourth Stage 1 Bid Submission Date in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34 (*Submission of Bid Response*) of this RFP, namely 9 February 2015;
- 2.1.55 **"Fourth Stage 2 Bid Submission Date"** - the date provisionally identified as the fourth Stage 2 Bid Submission Date in clause 10 (*Timetable for Small Projects IPP*

Procurement Programme) and clause 34 (*Submission of Bid Response*) of this RFP, namely 21 March 2016;

- 2.1.56 **"Government"** - the Government of the Republic of South Africa, and any of its departments, agencies or other entities that it manages or controls;
- 2.1.57 **"Grid Provider"** - a Distributor, being either Eskom or a municipality;
- 2.1.58 **"IDC"** - the Industrial Development Corporation of South Africa Limited, a corporation established under Section 2 of the Industrial Development Corporation Act, 22 of 1940;
- 2.1.59 **"Implementation Agreement"** - the implementation agreement to be entered into between the Seller and the Department, provided in Appendix C (*Implementation Agreement*) in Volume 2 (*Legal Agreements*) of this RFP;
- 2.1.60 **"IPP Procurement Programme"** - the procurement programme being conducted in terms of the Response for Qualification and Proposals issued by the Department on 3 August 2011 under tender number DOE/001/2011/2012;
- 2.1.61 **"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*);

- 2.1.67 **"Local Community"** - local community, as the term is defined in the Implementation Agreement provided in Appendix C (*Implementation Agreement*) in Volume 2 (*Legal Agreements*) of this RFP;
- 2.1.68 **"Measured Entity"** - an entity, including the Seller and or Contractors, which is subject to measurement in respect of any one or more of the Economic Development Elements;
- 2.1.69 **"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;
- 2.1.70 **"Minister"** - the Minister of the Department, from time to time;
- 2.1.71 **"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 11 (*Pro-forma Municipal Direct Agreement*) of Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP;
- 2.1.72 **"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

2.1.82	"Preferential Procurement Policy Framework Act"	-	the Preferential Procurement Policy Framework Act, 5 of 2000;
2.1.83	"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 Small Projects IPP Procurement Programme;
2.1.84	"Preferred Bidder Guarantee"	-	the guarantee to be provided by a Preferred Bidder to the Department as defined in clause 23.1 (<i>Preferred Bidder Guarantee</i>) of this Part A (<i>General Requirements, Rules and Provisions</i>) of this RFP;
2.1.85	"Price"	-	the Commercial Energy Rate;
2.1.86	"Project Company"	-	the special purpose Company that a Bidder proposes using as the vehicle to undertake the Bidder's Project, that is the subject matter of a Bid Response, and to be the Seller in terms of the PPA;
2.1.87	"Project Officer"	-	the person appointed by the Department as the project officer in respect of the Small Projects IPP Procurement Programme;
2.1.88	"Rand" or "R"	-	South African Rand, the lawful currency of the Republic of South Africa;
2.1.89	"Renewable Energy"	-	the harnessing of naturally occurring non-depletable sources of energy, including solar, wind, biomass, hydro, tidal, wave, ocean current and geothermal, to produce electricity, gaseous and liquid fuels, heat or a combination of these energy types;

2.1.90	"Related"	- a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws); (ii) friendship; (iii) business acquaintance; (iv) professional engagement; or (v) employment;
2.1.91	"RFP"	- this Request for Qualifications and Proposal document and all annexes, schedules and other appendices to it and any Briefing Notes issued in respect of it, from time to time;
2.1.92	"SABS"	- South African Bureau of Standards established pursuant to the Standards Act, 24 of 1945;
2.1.93	"Schedule"	- any schedule attached to this RFP;
2.1.94	"Scheduled Operating Period"	- the period from Scheduled COD until the Expiry Date of the PPA;
2.1.95	"Second Determination"	- determination number 1074, promulgated in the Government Gazette on 19 December 2012, and made by the Minister, in consultation with NERSA, pursuant to section 34 of the Electricity Regulation Act, provided in Schedule 3B (<i>Second Determination</i>) of Volume 1, Part 1 (<i>Legal Notices, Government Policies and Background Documents</i>) of this RFP;
2.1.96	"Second Stage 1 Bid Submission Date"	- the date identified as the second Stage 1 Bid Submission Date in clause 10 (<i>Timetable for Small Projects IPP Procurement Programme</i>) and clause 34 (<i>Submission of Bid Response</i>) of this RFP, namely 10 February 2014;

2.1.102	"Signature Date"	-	the date on which a PPA is signed by the last party to it to sign it, being either the Buyer or a Seller;
2.1.103	"Small Projects"	-	projects using any of the Technologies which have a minimum Contracted Capacity of 1 MW and a maximum Contracted Capacity of 5 MW;
2.1.104	"Small Projects IPP Procurement Programme"	-	the procurement programme being conducted in terms of this RFP;
2.1.105	"Small Projects IPP Website"	-	www.ipp-smallprojects.co.za ;
2.1.106	"SME"	-	Small and Medium business Enterprise and bears the same meaning assigned to this expression in the National Small Business Act 102 of 1996 , with specific reference to Electricity, Gas and Water sector;
2.1.107	"SME Member"	-	a Member that is an SME;
2.1.108	"Socio-Economic Development"	-	the initiatives carried out by a Measured Entity towards the promotion of access to the economy by Black People and communities in need;
2.1.109	"South African Entity Participation"	-	participation by Citizens as direct or indirect Shareholders in the Project Company determined by looking through the structure of the Bidder and its Members to ascertain the ultimate natural Citizens to whom the benefits of Shareholding will accrue;
2.1.110	"Stage 1"	-	the period commencing on a Stage 1 Bid Submission Date and ending on the

- submission by a Selected Bidder of its Stage 2 Bid Submission on a Stage 2 Bid Submission Date;
- 2.1.111 **"Stage 1 Bid Submission"** - a Bidder's response to the Stage 1 Qualification Criteria set out in Part B (*Stage 1 Qualification Criteria*) of the RFP;
- 2.1.112 **"Stage 1 Bid Submission Date"** - a date identified as a Stage 1 bid submission date and set out in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34 (*Submission of Bid Response*) of this RFP;
- 2.1.113 **"Stage 1 Bid Submission Phase"** - a bid submission phase identified as a Stage 1 bid submission phase in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*);
- 2.1.114 **"Stage 1 Compliant Bid Submission"** - a Stage 1 Bid Submission that meets the requirements of Part B (*Stage 1 Qualification Criteria*) of this RFP;
- 2.1.115 **"Stage 1 Qualification Criteria"** - the qualification criteria set out in Part B (*Stage 1 Qualification Criteria*) of this RFP;
- 2.1.116 **"Stage 2"** - the period commencing on a Stage 2 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 Stage 2 Bid Submissions submitted at the relevant Stage 2 Bid Submission Date;

- 2.1.117 **"Stage 2 Bid Submission"** - a Bidder's response to the Stage 2 Qualification and Evaluation Criteria set out in Part C (*Stage 2 Qualification Criteria*) and Part D (*Stage 2 Evaluation Criteria*) of the RFP;
- 2.1.118 **"Stage 2 Bid Submission Date"** - a date identified as a Stage 2 bid submission date and set out in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34 (*Submission of Bid Response*) of this RFP;
- 2.1.119 **"Stage 2 Bid Submission Phase"** - a bid submission phase identified as a Stage 2 bid submission phase in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*);
- 2.1.120 **"Stage 2 Compliant Bid Submission"** - a Stage 2 Bid Submission that meets the requirements of clause 3 (*Stage 2 Qualification Criteria*) of Part C (*Stage 2 Qualification Criteria*) of this RFP and "**Compliant Bidder**" shall have a corresponding meaning;
- 2.1.121 **"Stage 2 Evaluation Criteria"** - the evaluation criteria set out in Part D (*Stage 2 Evaluation Criteria*) of this RFP;
- 2.1.122 **"Stage 2 Qualification Criteria"** - the qualification criteria set out in clause 2 (*Stage 2 Qualification Criteria*) of Part C (*Stage 2 Qualification Criteria*) of this RFP;
- 2.1.123 **"Success Payments"** - all developers' fees, success fees, incentive fees, participation fees, premia that are predicated on achieving financial close or

being appointed preferred bidder in respect of the Project, and similar fees or premia paid to any person by any person, whether or not the payer or payee is a member of the consortium that formed the Seller; a developer of the Project; a Shareholder; a Contractor or a third party, as well as all monies or fees or premia paid by way of dividend sharing, upside sharing or return sharing paid by Shareholders to any other person (regardless of who they are), or any payments of any similar nature or purpose, excluding any arranging fees, underwriting fees and participation fees payable or paid to the Lenders directly in respect of the Debt, and any success fees or arranging fees payable or paid to advisors in respect of the Project, provided such fees paid to Lenders or advisors are within the current market range of such fees;

- 2.1.124 **"Technologies"** - has the meaning given to it in clause 5.1.1.3 of this Part A (*General Requirements, Rules and Provisions*);
- 2.1.125 **"Third Stage 1 Bid Submission Date"** - the date identified as the third Stage 1 Bid Submission Date in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34 (*Submission of Bid Response*) of this RFP, namely 14 July 2014;
- 2.1.126 **"Third Stage 2 Bid Submission Date"** - the date provisionally identified as the third Stage 2 Bid Submission Date in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) and clause 34

(Submission of Bid Response) of this RFP, namely 1 June 2015;

- 2.1.127 **"Transaction Advisors"** - the firms advising the Department in respect of this RFP and the Small Projects IPP Procurement Programme, being Ledwaba Mazwai, Mott MacDonald, Novadays, PriceWaterhouse Coopers; SPP Project Solutions (Pty) Limited, Tony Wheeler Consulting Limited, Webber Wentzel, Linklaters LLP, Bowman Gilfillan, Edward Nathan Sonnenbergs and Ernst & Young;
- 2.1.128 **"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;
- 2.1.129 **"Ultimate Provider of Equity Finance"** - a legal entity such as a Member, a parent company, a guarantor, the IDC, the DBSA or a similar institution from whom all or a portion of a Member's committed Equity Finance will be sourced;
- 2.1.130 **"Value for Money"** - "value for money" as defined in the New Gen Regulations and as described in clause 5.1.6 of this Part A (*General Requirements, Rules and Provisions*); and
- 2.1.131 **"VAT"** - value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended.

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 (ie 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 which have a Contracted Capacity between 1 (one) MW and 5 (five) MW, following the Determinations. Copies of the Determinations and the published and circulated Bid Notice are enclosed in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP.

4. **Background to the Small Projects IPP Procurement Programme**

4.1 In the First Determination, the Minister indicated that new generation capacity is necessary to ensure the continued uninterrupted supply of electricity and determined that 3725 (three thousand seven hundred and twenty five) MW of power was to be generated from Renewable Energy sources. In that Determination, the Minister allocated 100 (one hundred) MW of the 3725 (three thousand seven hundred and twenty five) MW to the procurement of Small Projects which individually have a maximum Contracted Capacity of 5 (five) MW.

4.2 In the Second Determination, which amended the First Determination, the Minister determined that 3200 (three thousand two hundred) MW of power be generated from Renewable Energy sources. In terms of the Second Determination a further 100 (one hundred) MW of the 3200 (three thousand two hundred) MW was allocated to the procurement of Small Projects which individually have a maximum Contracted Capacity of 5 (five) MW.

4.3 It is important to note that, despite the fact that the Second Determination amended the First Determination and that a target of 200 (two hundred) MW has been set for Small Projects by the Minister in terms of the Determinations, the Department will initially only procure a total of 100 (one hundred) MW in terms of

the First Determination under the Small Projects IPP Procurement Programme. Depending on numerous factors, including the responsiveness of the public to the Small Projects IPP Procurement Programme, the Department intends to include the additional 100 (one hundred) MW allocated to Small Projects in terms of the Second Determination at a later stage of the Small Projects IPP Procurement Programme and to allocate the 100 (one hundred) MW to the Third and Fourth Stage 2 Bid Submission Phases.

- 4.4 Accordingly, this Small Projects IPP Procurement Programme has been designed to procure the target of 100 (one hundred) MW determined by the Minister in the First Determination and to contribute towards socio-economic and environmentally sustainable growth, and to start and stimulate the Small Projects Renewable Energy industry in South Africa.
- 4.5 During the course of 2009, NERSA published two documents relating to Renewable energy Feed-In Tariffs ("**REFIT**").¹ The REFIT Guideline contains the REFIT Phase 1 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 Small Projects IPP Procurement Programme is not structured or intended to be a REFIT procurement programme as contemplated in the REFIT Consultation Paper.
- 4.6 The overreaching objectives of the Small Projects IPP Procurement Programme are the following:
- 4.6.1 to allow South African citizens who are, or who own or control, SMEs and or emerging, smaller power developers an opportunity to participate in the Renewable Energy generation sector;

¹ 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 1 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*.

- 4.6.2 to give South African power generation equipment manufacturers, who may not have international certification, the opportunity to supply equipment for the Projects procured under the Small Projects IPP Procurement Programme; and
- 4.6.3 limit the cost-at-risk incurred by Bidders by participating in the Small Projects IPP Procurement Programme by conducting the procurement in 2 stages.
- 4.7 In light of the objectives of the Small Projects IPP Procurement Programme, SME participation, which focuses on the involvement and development of SMEs and new developers in the Renewable Energy sector, has been included as an Economic Development objective of the Small Projects IPP Procurement Programme.
- 4.8 Although the equipment to be used in respect of the Facility does not have to be internationally certified and may be manufactured locally, the Facility and the equipment is still required to comply with the standards imposed by SABS and the Codes and to satisfy all the technical criteria set out in clause 2.4 of Part B (*Stage 1 Qualification Criteria*) and clause 2.6 of Part C (*Stage 2 Qualification Criteria*). The Department recommends that Bidders, who propose using equipment that is not internationally certified, engage with prospective lenders as early as possible in the procurement process to obtain the approval of the prospective lenders to such equipment.
- 4.9 In accordance with the Determinations, Projects under the Small Projects IPP Procurement Programme must have a minimum Contracted Capacity of 1 (one) MW and a maximum Contracted Capacity of 5 (five) MW.
- 4.10 In terms of this Small Projects IPP Procurement Programme, the Bidders will be required to bid the Price which will be payable by the Buyer pursuant to the PPA to be entered into between the Buyer and the Project Company of a Preferred Bidder. Bidders are required to offer two Prices, the first, based upon full CPI indexation of the Price (the fully Indexed Price), and the second, based on applying the CPI rate to a 30% (thirty percent) portion of the Price with the remaining portion of the Price held constant (partial indexation in respect of CPI) (the partially Indexed Price). The fully-indexed Price bid should not exceed the cap allocated for each Technology set out in the table under clause 5.1.5.4 of this

Part A (*General Requirements, Rules and Provisions*). The fully-indexed Price will be included as an evaluation criterion to be taken into account in an evaluation pursuant to Part D (*Stage 2 Evaluation Criteria*) of this RFP.

4.11 Due to the unique elements of the Projects envisaged under this RFP, a specific Scheduled Operating Period has not been prescribed for the PPA. Bidders are therefore required to propose a Scheduled Operating Period that must be between 5 (five) years and 20 (twenty) years. For instance, it may be necessary for a Project that is financed by external debt finance to have a longer Scheduled Operating Period in order to repay the loan than a Project that is funded by a related party or is corporate financed. In addition, it may be more viable for Bidders that are developing Projects that do not have a dependable fuel source to select a shorter Scheduled Operating Period that corresponds with the anticipated fuel supply available to the Project. Generally, Bidders will be able to offer a more competitive Price to the Department if they select a longer Scheduled Operating Period.

4.12 **Distinction between the Small Projects IPP Procurement Programme and the Cogeneration Procurement Programme**

4.12.1 **Small Projects IPP Procurement Programme**

4.12.1.1 As set out above, this Small Projects IPP Procurement Programme has been designed to initially procure the target of 100 (one hundred) MW determined by the Minister in the First Determination and to start and stimulate the Small Projects Renewable Energy industry in South Africa. This Small Projects IPP Procurement Programme will be used to procure projects that utilise Renewable Energy Technologies and will not relate to the procurement of cogeneration projects. Projects that are cogeneration projects in terms of the concept detailed in clause 4.12.2.2 will not be entitled to be the subject matter of Bid Responses pursuant to this Small Projects IPP Procurement Programme.

4.12.2 **Cogeneration IPP Procurement Programme**

4.12.2.1 The cogeneration IPP procurement programme is intended to be introduced by the Department in the future, in order to procure cogeneration projects.

- 4.12.2.2 Cogeneration is the simultaneous generation of electricity and useful thermal energy from a common fuel and energy source. In the South African context, cogeneration also refers to the production of electricity and useful heat from a fuel or energy source which is a co-product, by-product, waste product or residual product of some underlying industrial process. It differs from conventional generation in that it is coupled to an industrial process of the host plant.
- 4.12.2.3 The generation capacity to be delivered by cogeneration projects will be on the basis of the determination made by the Minister on 19 December 2012. It is intended that NERSA will licence cogeneration projects pursuant to the cogeneration IPP procurement programme.
- 4.12.3 The Small Projects IPP Procurement Programme and the cogeneration IPP procurement programme identified above will run independently of each other, and each programme will be subject to its own rules, criteria and conditions.
- 4.13 **Small Hydro as a Technology under this Programme and a Different Procurement Programme to procure Small Hydro Projects using DWA Assets**
- 4.13.1 Small hydro was included as a technology for Small Projects in the Second Determination, but the Department has elected to initially exclude small hydro as a technology in respect of which Bidders may submit Bid Responses under the Small Projects IPP Procurement Programme. The Department intends to introduce small hydro as a qualifying technology at a later stage of the Small Projects IPP Procurement Programme.
- 4.13.2 The Department also intends to introduce, and is in the process of developing, a procurement programme to procure small hydro projects to be developed on dams or weir sites owned by the DWA. Projects developed on dam or weir sites owned by the DWA will not be procured under this Small Projects IPP Procurement Programme and will not be eligible to be the subject matter of Bid Responses submitted under this Small Projects IPP Procurement Programme. These small hydro projects will be procured under a separate procurement process, and will be subject

to different requirements and criteria than the small hydro projects developed on privately owned dams and rivers that the Department intends to procure under this Small Projects IPP Procurement Programme in the future.

4.14 Participation in the IPP Procurement Programme and this Small Projects IPP Procurement Programme

4.14.1 A Bidder that:

4.14.1.1 registered to submit a bid response in respect of a project under the IPP Procurement Programme and which then did not (or will not, as the case may be) submit a bid response on a bid submission date; or

4.14.1.2 a bidder that submitted a bid response in respect of a project under the IPP Procurement Programme and who was unsuccessful and accordingly, was not appointed as preferred bidder in respect of that project,

may participate in, and submit a Bid Response in respect of the same project in response to this Small Projects IPP Procurement Programme, to the extent that the project and the Bidder meet the goals and requirements of this Small Projects IPP Procurement Programme, including those of South African Entity Participation and shareholding by SMEs.

4.14.2 However, a Bidder may not register or submit a bid response in respect of a project under the IPP Procurement Programme in conjunction with the submission or registration of the same project under this Small Projects IPP Procurement Programme. A Bidder may also not split the contracted capacity of a project that was previously registered and or submitted, or is currently registered and or will be submitted under the IPP Procurement Programme into two or more Projects in order to comply with the requirement of this Small Projects IPP Procurement Programme that a Project must have a Contracted Capacity between 1 (one) MW and 5 (five) MW. This prohibition does not restrict a Bidder from reducing the contracted capacity of a project to between 1 (one) MW and 5 (five) MW.

4.14.3 Bidders and or Members of a Bidder that submit a Bid Response in respect of a Project under this Small Projects IPP Procurement Programme and

who are unsuccessful and who are not appointed as Selected Bidders and or Preferred Bidders in respect of that Project, may participate in and may submit a Bid Response in response to the IPP Procurement Programme in respect of the same Project or a different Project if the Project meets the requirements of the IPP Procurement Programme, provided that such Bidder does not participate in Small Projects IPP Procurement Programme and the IPP Procurement Programme at the same time in respect of the same Project.

- 4.14.4 Bidders and their Members will be required to disclose to the Department if their Project was previously registered under the IPP Procurement Programme and or the subject of a bid response under the IPP Procurement Programme on registration of their Stage 1 Bid Submissions. Bidders will also be required to provide an undertaking to the Department in Schedule 14 (*Declaration of Bidder*) in Volume 1, Part 2 (*Stage 1 Returnable Schedules*) that the disclosure made in this regard is true and correct in all respects. A Bidder may, in the sole discretion of the Department, be disqualified from participating under the Small Projects IPP Procurement Programme where the Department discovers that a Bidder made a false, misleading or incorrect disclosure in relation to its participation or registration under the IPP Procurement Programme.

5. **Small Projects IPP Procurement Programme Description**

5.1 **Key features of this Small Projects IPP Procurement Programme**

In this section, several key features of this Small Projects 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 Small Projects 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 certain Renewable Energy technologies in respect of Small Projects and the Department has designed the Small Projects IPP Procurement Programme and published this RFP to procure this Energy Output.

5.1.1.2 As set out in clause 4.13, the Department has elected to initially exclude small hydro as a technology in respect of which Bidders may submit Bid Responses under the Small Projects IPP Procurement Programme even though it was included as a technology for Small Projects in the Second Determination. The Department intends to introduce small hydro as a qualifying technology at a later stage of the Small Projects IPP Procurement Programme.

5.1.1.3 Pursuant to the above, the following technologies shall initially be considered as qualifying technologies for selection under this Small Projects IPP Procurement Programme:

5.1.1.3.1 onshore wind;

5.1.1.3.2 solar photovoltaic,

5.1.1.3.3 biomass;

5.1.1.3.4 biogas; and

5.1.1.3.5 landfill gas.

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

5.1.1.4 Following each Stage 1 Bid Submission Date, the Department will determine how the total MW available at the next Stage 2 Bid Submission Date will be allocated amongst the Technologies set out in clause 5.1.1.3 above. The Department will advise the Bidders of the MW allocation per Technology for each Stage 2 Bid Submission Phase within a reasonable period of time before the relevant Stage 2 Bid Submission Date.

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

5.1.1.6 Projects submitted in respect of any Bid Submission Date and that utilise any of the Technologies must be capable of beginning commercial operation before the end of December 2017.

5.1.1.7 Projects in respect of all Technologies must have a Contracted Capacity within the range of 1 (one) MW to 5 (five) MW.

5.1.1.8 The Department of Water Affairs has declared South Africa a water scarce country² and, as such, the Government is mindful of the impact that this Small Projects IPP Procurement Programme will have on the water resources of the country.

5.1.1.9 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. The Department is closely monitoring technological advances in water efficiency within Technologies and may impose specific water efficiency Qualification Criteria in clause 2.6 (*Technical Criteria*) of Part C (*Stage 2 Qualification Criteria*) of this RFP for purposes of future Bid Submission Phases.

5.1.2 **Key Role Players in the Small Projects 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 Small Projects 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 Small Projects 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**

²Department of Water Affairs, National Water Resource Strategy: Introduction, First Edition, September 2004, p2

The Department, as the custodian of the energy resources in the Republic of South Africa, is undertaking the Small Projects IPP Procurement Programme, following the Determinations issued by the Minister. The Department will evaluate the Stage 1 Bid Submissions and select Selected Bidders who will be given the opportunity to submit Stage 2 Bid Submissions at any Stage 2 Bid Submission Date. The Department will evaluate the Stage 2 Bid Submissions of the Selected Bidders and select Preferred Bidders. The Department will also play 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 Small Projects 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. Under the Electricity Regulation Act, a generation licence must be obtained from NERSA for the lawful operation of a Facility. The responsibility for applying for, and obtaining, such generation licence rests with the Bidder. A Preferred Bidder will be required to apply for a generation licence from NERSA on the basis of its Bid Response and in the name of its Project Company. The Bidder must submit evidence to the Department that the application with all the required supporting documentation for a generation licence has been submitted and received by NERSA within 14 (fourteen) days of being appointed as Preferred Bidder.

5.1.2.6

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 Eskom Distribution Agreement attached to this RFP as Appendix D (*Eskom Distribution Agreement*) in Volume 2 (*Legal Agreements*). 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 10 (*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 Small Projects IPP Procurement Programme has been designed on the basis of Bid Submission Phases.

5.1.3.2

As at the date of issue of this RFP, it is anticipated that there will be 4 (four) Stage 1 Bid Submission Phases and 4 (four) Stage 2 Bid Submission Phases in respect of this Small Projects IPP Procurement Programme. The total allocation of 100 (one hundred) MW pursuant to the First Determination will be split between the first 2 (two) distinct Stage 2 Bid Submission Phases. The table below sets out the number of MW allocated to the first 2 (two) Stage 2 Bid Submission Phases. After each Stage 1 Bid Submission Date, the Department will determine how the total MW available at the next Stage 2 Bid

Submission Date will be allocated amongst the Technologies and advise the Bidders accordingly.

Stage 2 Bid Submission Phase	No. of MW
First Stage 2 Bid Submission Phase	50 (fifty) MW
Second Stage 2 Bid Submission Phase	50 (fifty) MW

5.1.3.3 The total allocation of 100 (one hundred) MW pursuant to the Second Determination will be allocated to the Third and Fourth Stage 2 Bid Submission Phases. At the time that the Department includes the 100 (one hundred) MW pursuant to the Second Determination under this Small Projects IPP Procurement Programme, the Department will advise Bidders on the specific allocation of MW to each of the Third and Fourth Stage 2 Bid Submission Phases.

5.1.3.4 The phasing will work on the basis that the total allocation of MW per Technology is made available during the Stage 2 Bid Submission Phase, but if it is undersubscribed (having regard to all Stage 2 Compliant Bid Submissions submitted for each Technology) and subject to any MW allocation limitation which the Department may impose for any specific Bid Submission Phase, the remaining MW will be added to the MW available at the next Stage 2 Bid Submission Date. If there are any MW remaining after the last Stage 2 Bid Submission Phase the Department may, in its sole discretion, extend the Small Projects IPP Procurement Programme by introducing a further Stage 2 Bid Submission Phase. The Department may also, in addition to the First and Second Determinations, in its sole discretion, elect to motivate for a further determination from the Minister to seek an increase in the MW allocation for the Small Projects IPP Procurement Programme at any stage of the Small Projects IPP Procurement Programme.

5.1.4 **The 2 Stage Approach**

- 5.1.4.1 The Small Projects IPP Procurement Programme will be conducted in 2 (two) stages, Stage 1 and then Stage 2. A Bidder will only be permitted to submit its Stage 1 Bid Submission at the relevant Stage 1 Bid Submission Date, and only if a Bidder fulfils the requirements of the Stage 1 Qualification Criteria and is awarded Selected Bidder status, will the Bidder have the opportunity to prepare its Stage 2 Bid Submission to be submitted at a Stage 2 Bid Submission Date subsequent to the Bidder being awarded Selected Bidder status.
- 5.1.4.2 The Department recognises that the Projects submitted under the Small Projects IPP Procurement Programme may be at different stages of readiness and that some Projects may require more time in order to satisfy the criteria for a Stage 2 Bid Submission after selection of Selected Bidders pursuant to a Stage 1 Bid Submission. Therefore, once a Bidder has submitted a Stage 1 Bid Submission and has been awarded Selected Bidder status, the Selected Bidder may elect on which Stage 2 Bid Submission Date it will submit its Stage 2 Bid Submission. For example, a Selected Bidder that submits a Stage 1 Bid Submission on the First Stage 1 Bid Submission Date will not be obliged to submit its Stage 2 Bid Submission on the First Stage 2 Bid Submission Date, but may do so on the second Stage 2 Bid Submission Date when the Selected Bidder is in a position to comply with and satisfy the requirements of Part C (*Stage 2 Qualification Criteria*) and Part D (*Stage 2 Evaluation Criteria*) of the RFP. Accordingly, a Bidder will only be considered by the Department for appointment as a Preferred Bidder, once that Bidder has submitted a Stage 1 Bid Submission on a Stage 1 Bid Submission Date and been selected as a Selected Bidder, and it has submitted a Stage 2 Bid Submission on a Stage 2 Bid Submission Date.
- 5.1.4.3 In the first stage, using Part B of this RFP (*Stage 1 Qualification Criteria*), all Stage 1 Bid Submissions will be assessed in order to determine whether they are Stage 1 Compliant Bid Submissions. A Stage 1 Compliant Bid Submission is a complete Stage 1 Bid Submission that is in the format set out in clause 52 (*Format of the Bid Responses*) of this Part A of the RFP and meets or exceeds the

threshold requirement in respect of every applicable Stage 1 Qualification Criterion set out in Part B (*Stage 1 Qualification Criteria*), including in respect of sub-criteria which are set out under an umbrella category of Stage 1 Qualification Criteria. The Stage 1 Qualification Criteria contemplate the provision of basic information about the Bidder and the Project in order to provide the Department with sufficient information for the Department to assess whether the Project is properly conceived and whether the Bidder has the technical and commercial capacity to implement and operate the Project.

5.1.4.4 Sub-criteria are set out under categories of Stage 1 Qualification Criteria. The Stage 1 Qualification Criteria are divided into the following categories in Part B (*Stage 1 Qualification Criteria*):

5.1.4.4.1 Legal Criteria and Evaluation;

5.1.4.4.2 Land Acquisition and Land Use Criteria and Evaluation;

5.1.4.4.3 Environmental Criteria and Evaluation;

5.1.4.4.4 Technical Criteria and Evaluation; and

5.1.4.4.5 Economic Development Criteria and Evaluation.

5.1.4.5 In the second stage, using Part C of this RFP (*Stage 2 Qualification Criteria*), all Bid Responses will be assessed in order to determine whether they are Stage 2 Compliant Bid Submissions. A Stage 2 Compliant Bid Submission is a complete Stage 2 Bid Submission that is in the format set out in clause 52 (*Format of the Bid Responses*) of this Part A of the RFP and meets or exceeds the threshold requirement in respect of every applicable Stage 2 Qualification Criterion set out in Part C (*Stage 2 Qualification Criteria*), including in respect of sub-criteria which are set out under an umbrella category of Stage 2 Qualification Criteria.

5.1.4.6 The Stage 2 Qualification Criteria entail detailed legal, financial, technical, Economic Development and commercial information about the Bidder and the Project, divided into the following categories:

- 5.1.4.6.1 Structure of the Project;
 - 5.1.4.6.2 Stage 2 Legal Criteria and Evaluation;
 - 5.1.4.6.3 Stage 2 Land Acquisition and Land Use Criteria and Evaluation;
 - 5.1.4.6.4 Stage 2 Environmental Consent Criteria and Evaluation;
 - 5.1.4.6.5 Stage 2 Financial Criteria and Evaluation;
 - 5.1.4.6.6 Stage 2 Technical Criteria and Evaluation;
 - 5.1.4.6.7 Stage 2 Economic Development Criteria and Evaluation; and
 - 5.1.4.6.8 Value for Money.
- 5.1.4.7 The threshold requirement in respect of each Stage 1 or Stage 2 Qualification Criterion is described in the applicable provision of Part B (*Stage 1 Qualification Criteria*) or Part C (*Stage 2 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 C assessment can be found at clause 1 (*The Purpose of this Part C*) of Part C (*Stage 2 Qualification Criteria*).
- 5.1.4.8 In the second stage, using Part D (*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*), Stage 2 Compliant Bid Submissions will be evaluated on a comparative basis, per Technology, in relation to Price and Economic Development only. More detail on the Part D evaluation can be found at clause 1 (*Purpose of this Part D*) of Part D (*Evaluation Criteria*).
- 5.1.4.9 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 (*Stage 1 Qualification Criteria*), Part C (*Stage 2 Qualification Criteria*) of this RFP or in the application or the evaluation of the Stage 2 Evaluation Criteria under Part D (*Evaluation Criteria*) of this RFP.

5.1.4.10

If, at a Stage 2 Bid Submission Date, there are insufficient Stage 2 Compliant Bid Submissions to provide the maximum MW allocated to a Technology at the relevant Stage 2 Bid Submission Phase of the Small Projects IPP Procurement Programme, all the Bidders that have submitted Stage 2 Compliant Bid Submissions may, in the Department's sole discretion, be appointed as Preferred Bidders by the Department and might not be required to undergo a comparative evaluation of the Stage 2 Compliant Bid Submissions as provided for in Part D (*Stage 2 Evaluation Criteria*) of this RFP. If the total allocation of MW made available during the relevant Stage 2 Bid Submission Phase is less than the amount of MW offered by the Stage 2 Bid Submissions submitted with the result that such Stage 2 is oversubscribed following the assessment of the Stage 2 Bid Submissions, subject to the relevant provisions of clause 9 (*Structure of the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*), Stage 2 Compliant Bid Submissions will be evaluated on a comparative basis, per Technology, in relation to Price and Economic Development only, in accordance with Part D (*Stage 2 Evaluation Criteria*). More detail on the Part D evaluation can be found at clause 1 (*Purpose of this Part D*) of Part D (*Stage 2 Evaluation Criteria*).

5.1.5

Electricity tariffs

5.1.5.1

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

5.1.5.2

As detailed in clause 4.5 above, this Small Projects 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.

5.1.5.3

Under the Electricity Regulation Act, a generation licence must be obtained from NERSA for the lawful operation of a Facility, by each Preferred Bidder in the name of its Project Company. The responsibility for applying for, and obtaining, such generation licence rests with the Bidder. Each Bidder will be required to apply for a generation licence on the basis of its Bid Response from NERSA and to submit evidence to the Department that the application for a generation licence has been submitted and received by NERSA within 14 (fourteen) days of the Bidder being appointed as Preferred Bidder by the Department.

5.1.5.4

In this Small Projects IPP Procurement Programme, the fully-indexed Price to be proposed by Bidders in their Bid Responses at the relevant Bid Submission Date, cannot exceed the cap for each Technology set out in the table below:

Technology	Unit	Commercial Energy Rate
Onshore Wind	R/MWh	R1 000 (one thousand rand)/MWh
Solar Photovoltaic	R/MWh	R1 400 (one thousand four hundred rand)/MWh
Biomass	R/MWh	R1 400 (one thousand four hundred rand)/MWh
Biogas	R/MWh	R900 (nine hundred rand)/MWh
Landfill gas	R/MWh	R940 (nine hundred and forty rand)/MWh

5.1.5.5

As set out in more detail in clause 2.5.2 (*Criterion 1 - Price*) of Part C (*Stage 2 Qualification 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 Small Projects IPP Procurement Programme. It is a requirement for a Stage 2 Compliant Bid Submission that a Bidder's offered fully-indexed Price does not exceed the applicable cap set out in the table under clause 5.1.5.4 above. For purposes of Part D (*Stage 2 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 Small Projects IPP Procurement Programme, see clause 2 (*Price*) of Part D (*Stage 2 Evaluation Criteria*) of this RFP.

5.1.5.6 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 foreign exchange spot rates between those rates assumed in the Financial Models and the equivalent rates at Financial Close, to the extent provided for in this RFP. The Department will advise Bidders of the foreign exchange rate assumptions for the purposes of preparing their Financial Models before the First Stage 2 Bid Submission Date and in the manner set out in any information or documentation request, or any protocol for Financial Close for the relevant Bid Submission Phase.

5.1.5.6.1 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 Models.

5.1.5.6.2 Each of the Preferred Bidder's Financial Models 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 relevant Stage 2 Bid Submission Date to Financial Close, so that the Preferred Bidder's IRR is unchanged from that shown in the Financial Models prior to such adjustment. After Financial Close, there will be no further adjustment for exchange rates. For the avoidance of any doubt, no

adjustments 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.

5.1.5.6.3 The Department has decided to place a cap on the level of foreign currency exposure it would accept for the period between the relevant Stage 2 Bid Submission Date and Financial Close. The Price offered in a successful Bid Response will be adjusted at Financial Close as a result of movement in the foreign exchange spot rates between those rates assumed in the Financial Models and the equivalent rates at Financial Close, subject to an upper limit of foreign exchange exposure of either 60% (sixty percent) 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.

5.1.5.6.4 No change will be made to this upper limit of foreign exchange exposure and any changes for subsequent Bid Submission Phases will be communicated to Bidders by Briefing Note.

5.1.6 **Value for Money**

5.1.6.1 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".

5.1.6.2 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 more dominant or pre-eminent than 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 C (*Stage 2 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 is in the best interests of and delivers the best 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).

5.1.6.3 In order for a Bidder to pass the Qualification Criterion contemplated in clause 2.8 (*Value for Money*) of Part C (*Stage 2 Qualification Criteria*) of the RFP, its Bid Response must, in the opinion of the Department, demonstrate Value for Money to the Buyer and Government.

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

5.1.7.1 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 clauses 5.2.2 of this Part A (*General Requirements, Rules and Provisions*) and clause 2.2 (*Legal Criteria and Evaluation*) of Part C (*Qualification Criteria*).

5.1.7.2 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 Small Projects IPP Procurement Programme.

5.1.8 **Economic Development Requirements**

5.1.8.1 The achievement of the Department's Economic Development objectives through the Small Projects IPP Procurement Programme is a crucial indicator of success of the Small Projects IPP Procurement Programme. For purposes of a Stage 1 Bid Submission, Bidders are required to indicate the anticipated extent or level of South African Entity Participation, SME Participation and the Contributor Status Level in respect of each of the Shareholders of the Project Company as well as the Project Company itself.

5.1.8.2 For purposes of Part C (*Stage 2 Qualification Criteria*) of this RFP, it is a requirement for a Stage 2 Compliant Bid Submission that a Bidder's Economic Development proposal meets the threshold targets set out in clause 2.7 (*Stage 2 Economic Development Criteria and Evaluation*) of Part C (*Stage 2 Qualification Criteria*) of this RFP. For purposes of Part D (*Stage 2 Evaluation Criteria*) of this RFP, the Economic Development proposals in Stage 2 Bid Submissions relating to a particular Technology will be comparatively scored and ranked. The Economic Development commitments are evaluated in Part D (*Evaluation Criteria*) out of a maximum of 30 (thirty) points using the Economic Development Scorecard developed for the purposes of this Small Projects IPP Procurement Programme. For more information on this aspect of the Small Projects IPP Procurement Programme, see clause 9 (*Structure of the Small Projects IPP Procurement Programme*) of Part A (*General Requirements, Rules and Provisions*) of this RFP.

5.2 **Project structure and contracts**

5.2.1 The 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 19 (*Legal Personality of Bidder and its Members and Changes to Bid Responses*) of this Part A (*General Requirements, Rules and Provisions*), 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 a Selected Bidder or a Preferred Bidder and will not be subject to negotiation with the Department by a 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 a Selected Bidder 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. If a Bidder will be connecting its Facility to a Municipal Distribution System, the entry into an Amendment Agreement to the Electricity Supply Agreement between the municipal Distributor and Eskom will be a condition to signature of the PPA by Eskom;

5.2.2.3 which enters into a PPA, will also enter into a Eskom 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 a Distribution System. The Connection Agreements issued with this RFP in Volume 2 (*Legal Agreements*) may not be marked-up by a Selected Bidder or a Preferred Bidder, and will not be subject to negotiation with 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 10 (*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 a Self-Build Agreement with the relevant Grid Provider if the Bidder intends to undertake the connection works to connect each Unit physically to the relevant System as set out in clause

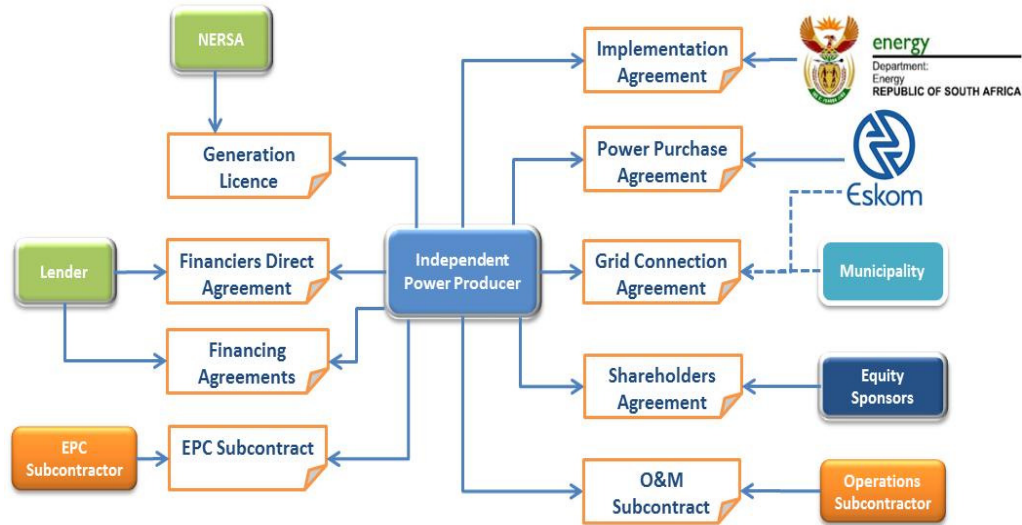
14.8 of this Part A (*General Requirements, Rules and Provisions*). The pro-forma Self-Build Agreement, issued in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP as Schedule 12 (*Pro-forma Self Build Agreement*) has been provided for information purposes only and contains the terms and conditions that could be expected in the agreement to be concluded by the Seller and the relevant Grid Provider;

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

5.2.2.4.3 a Connection Direct Agreement with its Lenders and Eskom in respect of, *inter alia*, the Eskom Distribution Agreement; or

5.2.2.4.4 a 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 11 (*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.

5.2.3 The diagram below reflects the legal and contractual framework of the Small Projects IPP Procurement Programme:



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 of the Bidders as a Selected Bidder;
- 6.1.2 select or not to select any one or more of the Bidders as a Preferred Bidder;
- 6.1.3 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;
- 6.1.4 cancel or suspend procurement of any or all of the Projects pursuant to the Small Projects IPP Procurement Programme;
- 6.1.5 cancel, suspend or change the Small Projects IPP Procurement Programme contained in this RFP at any stage;
- 6.1.6 limit the number of Stage 1 Bid Submission Dates and or Stage 2 Bid Submission Dates or extend the number of Stage 1 Bid Submission Dates and or Stage 2 Bid Submission Dates; and or

6.1.7 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 Small Projects IPP Procurement Programme scope and structure, Small Projects 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 (*Stage 1 Qualification Criteria*) sets out the Stage 1 Qualification Criteria that must be satisfied by the Bidder in order for a Stage 1 Bid Submission to be considered by the Department as a Stage 1 Compliant Bid Submission. This may in the sole discretion of the Department, form the basis for the Bidder to be appointed as a Selected Bidder;

7.1.3 Part C (*Stage 2 Qualification Criteria*) sets out the Stage 2 Qualification Criteria that must be satisfied by a Bidder in order for its Stage 2 Bid Submission to be a Stage 2 Compliant Bid Submission;

7.1.4 Part D (*Stage 2 Evaluation Criteria*) sets out the evaluation procedure and the Stage 2 Evaluation Criteria to be used by the Department, if a Part D evaluation is necessary, in evaluating those Stage 2 Bid Submissions that have fulfilled the Stage 2 Qualification Criteria in Part C (*Stage 2 Qualification Criteria*) and have progressed to Part D (*Stage 2 Evaluation Criteria*) (i.e. Compliant Bids). The purpose of a Part D evaluation is to determine the relative rankings of those Stage 2 Bid Submissions;

7.1.5 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;

- 7.1.6 Volume 1, Part 2 (*Stage 1 Bid Submission Returnable Schedules*) of this RFP, contains the returnable schedules which must be submitted by the Bidders with the Stage 1 Bid Submission. 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;
- 7.1.7 Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*) of this RFP, contains the returnable schedules which must be submitted by the Bidders with the Stage 2 Bid Submission. 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;
- 7.1.8 Volume 2 (*Legal Agreements*) 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, an Eskom Distribution Agreement and a Connection Direct Agreement;
- 7.1.9 Volume 3 (*Technical Requirements*) of this RFP contains the appendices in respect of the Stage 1 and Stage 2 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 Small Projects 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 Small Projects IPP Website where downloadable excel spreadsheets are provided; nor should any fields be added or removed; nor amended in any other way;
- 7.1.10 Volume 4 (*Financial Requirements*) of this RFP contains the appendices in respect of the Stage 2 Financial Qualification Criteria as well as Appendix G5 (*Front Sheet Template for Financial Model, Technical Information and Economic Development Information*) which requires information in respect

of a number of aspects of the Stage 2 Bid Submission to be inputted into a single Bid Returnable. 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 and no fields should be added or removed; or amended in any other way; and

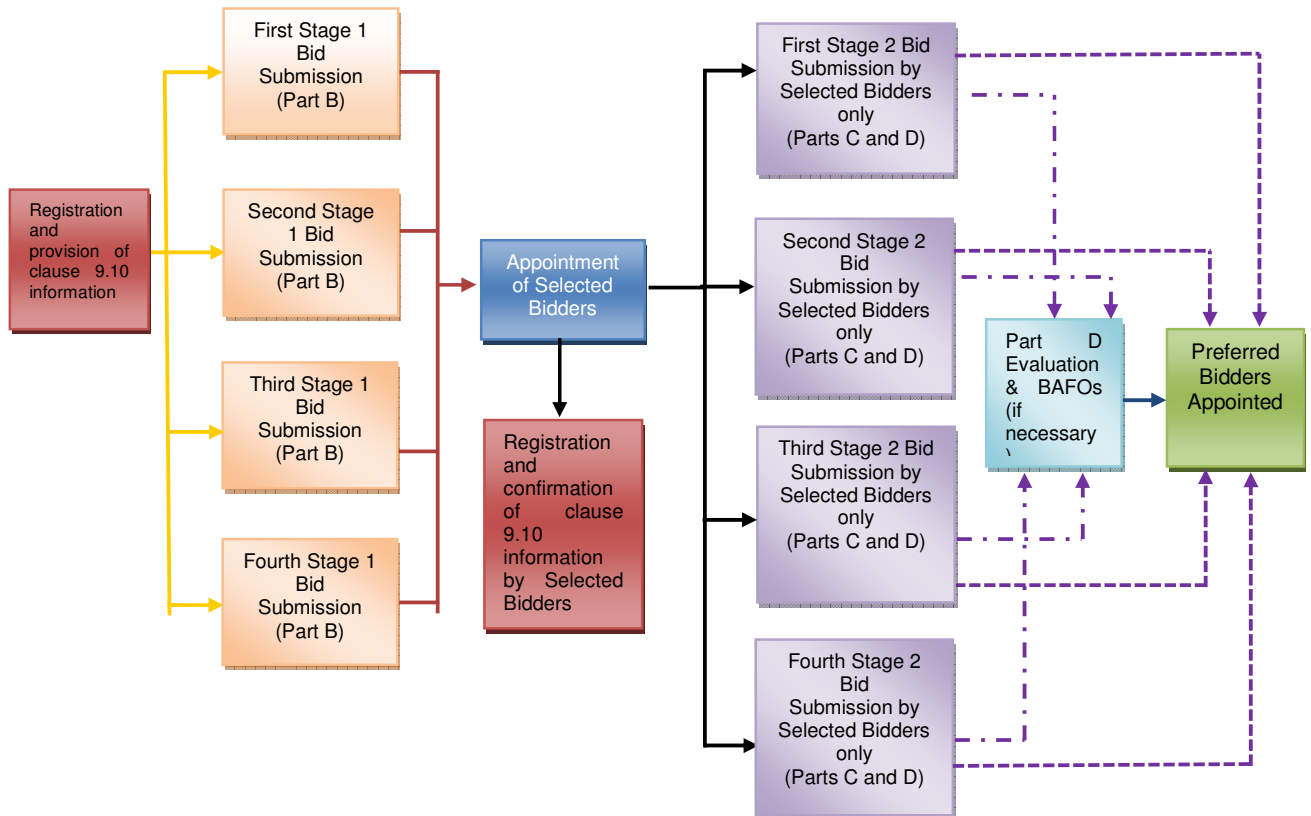
- 7.1.11 Volume 5 (*Economic Development Requirements*) of this RFP describes and explains the elements on which each Bidder's Economic Development proposal must be based.

8. Purpose of RFP

- 8.1 The purpose of this RFP is:
- 8.1.1 to set out the rules of participation in the Small Projects IPP Procurement Programme;
 - 8.1.2 to provide further information about the Small Projects IPP Procurement Programme to the Bidders so as to allow them to prepare comprehensive and competitive Bid Responses pursuant to the Small Projects IPP Procurement Programme in respect of their Projects that they intend entering into the Small Projects 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 (*Stage 1 Qualification Criteria*);
 - 8.1.4.2 have sufficient experience, commitment and resources to meet the criteria of a Stage 1 Compliant Bid Submission in respect of Part B (*Stage 1 Qualification Criteria*);

- 8.1.4.3 have sufficient experience, commitment and resources to meet the criteria of a Stage 2 Compliant Bid Submission in respect of clause 2 (*Stage 2 Qualification Criteria*) of Part C (*Stage 2 Qualification Criteria*);
- 8.1.4.4 fulfil the competitive Stage 2 Evaluation Criteria and requirements as detailed in Part D (*Stage 2 Evaluation Criteria*); and
- 8.1.4.5 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 Small Projects IPP Procurement Programme, including timeframes; and
- 8.1.6 to enable the Department to select Selected Bidders and then Preferred Bidders.

9. Structure of the Small Projects IPP Procurement Programme



9.1 The Small Projects IPP Procurement Programme will be conducted in 2 (two) stages, Stage 1 and Stage 2. The Small Projects IPP Procurement Programme has been structured to consist of 4 (four) separate Stage 1 Bid Submission Dates and 4 (four) separate Stage 2 Bid Submission Dates specified in clause 10 (*Timetable for Small Projects IPP Procurement Programme*). The Department reserves the right to change the number of Stage 2 Bid Submission Dates.

9.2 Bidders are reminded that Stage 1 Bid Submission Phases and Stage 2 Bid Submission Phases are not linked to each other. Once a Bidder has submitted a Stage 1 Bid Submission and has been selected as a Selected Bidder, the Selected Bidder may elect on which Stage 2 Bid Submission Date it will submit its Stage 2 Bid Submission. For example, a Selected Bidder that submits a Stage 1

Bid Submission on the First Stage 1 Bid Submission Date will not be obliged to submit its Stage 2 Bid Submission on the First Stage 2 Bid Submission Date, but may do so on the next Stage 2 Bid Submission Date when the Selected Bidder is in a position to comply with and satisfy the requirements of Part C (*Stage 2 Qualification Criteria*) and Part D (*Stage 2 Evaluation Criteria*) of the RFP. Accordingly, a Bidder will only be considered for appointment as a Preferred Bidder by the Department, once it has submitted a Stage 1 Bid Submission on a Stage 1 Bid Submission Date and been selected as a Selected Bidder and submitted a Stage 2 Bid Submission on any Stage 2 Bid Submission Date subsequent to the Bidder being awarded Selected Bidder status.

- 9.3 If, at any Stage 2 Bid Submission Date, there are insufficient Stage 2 Compliant Bid Submissions to take up all of the available MW allocated to the relevant Stage 2 Bid Submission Phase, the balance of available MW will be added to the MW allocated to the next Stage 2 Bid Submission Phase for allocation to Bidders in the next Stage 2 Bid Submission Phase.
- 9.4 If there are any MW remaining after the last Stage 2 Bid Submission Phase the Department may, in its sole discretion, extend the Small Projects IPP Procurement Programme by introducing a further Stage 2 Bid Submission Phase. The Department may also, in its sole discretion, elect to motivate for a further determination from the Minister to seek an increase in the MW allocation for the Small Projects IPP Procurement Programme at any time during the Small Projects IPP Procurement Programme.
- 9.5 Nevertheless, the overriding philosophy of the Small Projects 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 27 (*Disqualification*) of Part A of this RFP, the loss of Preferred Bidder status in terms of clause 28 (*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 5.1.4 (*The 2 stage Approach*) of this Part A (*General Requirements, Rules and Provisions*), and so on for each Bid Submission Phase.

- 9.6 The Department will issue a public statement on the Small Projects IPP Website notifying the Bidders of the MW available for allocation at the next Stage 2 Bid Submission Date and, if it is necessary, to change the next Stage 1 or Stage 2 Bid Submission Date from the date specified in this RFP.
- 9.7 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 Small Projects IPP Procurement Programme*) of Part A of this RFP) for the specific technologies within the Bid Submission Phase.
- 9.8 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.
- 9.9 In order for a Bidder to submit a Bid Response in respect of any Stage 1 Bid Submission Date and or any Stage 2 Bid Submission Date, a Bidder is required within the time period indicated in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*) to register its Bid Response and to notify the Department in writing of the information specified in clause 9.10 of this Part A (*General Requirements, Rules and Provisions*). Bidders will only be permitted to submit a Bid Response in respect of a Project that corresponds with the bid registration number allocated to that Project and the project information provided in respect of that Project on bid registration.
- 9.10 Pursuant to clause 9.9 of this Part A, a Bidder must notify the Department in writing by the Bid Registration Date for the relevant Stage 1 Bid Submission Date of:
- 9.10.1 the Technology of the Project;
- 9.10.2 the Contracted Capacity of the Project;
- 9.10.3 the name and co-ordinates of the Project Site;

- 9.10.4 whether the Bidder intends to connect its Project to the Eskom Distribution System or a Municipal Distribution System and the specific Municipal Distribution System;
- 9.10.5 the co-ordinates of the substation where the Bidder intends to connect its Facility;
- 9.10.6 whether the Project was previously the subject of a Bid Response registered and or submitted under this Small Projects IPP Procurement Programme and all information in this regard;
- 9.10.7 whether the Project is or was previously the subject of a bid response registered and or submitted under the IPP Procurement Programme and all information in this regard; and
- 9.10.8 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.
- 9.11 A Bidder will be required to notify the Department in respect of which Stage 2 Bid Submission Date it intends to submit its Stage 2 Bid Submission and confirm the information and or notify the Department of any changes to the information provided at Stage 1 pursuant to clause 9.10 of this Part A (*General Requirements, Rules and Provisions*) prior to a Stage 2 Bid Submission Date within the time period indicated in clause 10 (*Timetable for Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*).
- 9.12 A Bidder's Stage 1 Bid Submission will not be considered by the Department if a Bidder fails to provide the Department with the information required by the Department under clause 9.10 of this Part A (*General Requirements, Rules and Provisions*) by the relevant Bid Registration Date.
- 9.13 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.

- 9.14 As set out in clause 5.1.4, the Small Projects IPP Procurement Programme will be conducted in 2 (two) stages, Stage 1 and then Stage 2. The 2 (two) stage approach allows the Department to evaluate comparatively only those Bid Responses that are technically and commercially viable at Stage 2, therefore, making the evaluation of Bid Responses more efficient, and saving the Department and the Bidders time and costs.
- 9.15 A Bidder, that submits a Stage 1 Bid Submission at the relevant Bid Submission Date, will only have the opportunity to prepare and submit its Stage 2 Bid Submission if that Bidder fulfils all the requirements of the Stage 1 Qualification Criteria and if that Bidder is awarded Selected Bidder status by the Department.
- 9.16 A Selected Bidder, may prepare and submit its Stage 2 Bid Submission in respect of the Stage 2 Qualification Criteria set out in Part C (*Stage 2 Qualification Criteria*) and the Stage 2 Evaluation Criteria set out in Part D (*Stage 2 Evaluation Criteria*) of the RFP on any Stage 2 Bid Submission Date subsequent to the Bidder being awarded Selected Bidder status.
- 9.17 In order for a Stage 1 Bid Submission to be a Stage 1 Compliant Bid Submission, it must satisfy all of the Stage 1 Qualification Criteria specified in Part B (*Stage 1 Qualification Criteria*) of this RFP. After each Stage 1 Bid Submission Date, an assessment of all submitted Stage 1 Bid Submissions against the Stage 1 Qualification Criteria specified in Part B (*Stage 1 Qualification Criteria*) will be undertaken by the Department to determine whether or not each Stage 1 Bid Submission is a Stage 1 Compliant Bid Submission. If a Bidder submits a Stage 1 Compliant Bid Submission, the Department may, in its sole discretion, and on such terms and conditions as the Department may determine, select that Bidder as a Selected Bidder. Bidders who are not appointed as Selected Bidders may submit a revised Stage 1 Bid Submission in respect of the same Project, which was the subject matter of a previous unsuccessful Stage 1 Bid Submission, by a subsequent Stage 1 Bid Submission Date, or may submit a new Stage 1 Bid Submission in respect of a different Project, by a subsequent Stage 1 Bid Submission Date.
- 9.18 In Stage 2, the Stage 2 Bid Submissions of the Selected Bidders will be assessed in order to determine whether they are Stage 2 Compliant Bid Submissions. A Stage 2 Compliant Bid Submission is one that meets or exceeds the

requirements in respect of every applicable Stage 2 Qualification Criterion set out in Part C (*Stage 2 Qualification Criteria*).

- 9.19 If at any Stage 2 Bid Submission Date, there are insufficient Stage 2 Compliant Bid Submissions to provide the maximum MW allocated to the relevant Stage 2 Bid Submission Phase, all the Bidders that have submitted Stage 2 Compliant Bid Submissions 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 Stage 2 Compliant Bid Submissions as provided for in Part D (*Stage 2 Evaluation Criteria*) of this RFP. The balance of available MW will be added to the MW available for allocation to Bidders on the next Stage 2 Bid Submission Date.
- 9.20 If the Department receives more Stage 2 Compliant Bid Submissions than are required to provide the maximum MW allocated to any Technology, a comparative evaluation will be done in accordance with the Stage 2 Evaluation Criteria set out in Part D (*Stage 2 Evaluation Criteria*) of the RFP in respect of each Technology in order to score and rank the Stage 2 Compliant Bid Submissions submitted in respect of each Technology.
- 9.21 The Selected 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. Selected Bidders who are not appointed as Preferred Bidders may submit a revised Stage 2 Bid Submission in respect of the same Project, which was the subject matter of a previous unsuccessful Stage 2 Bid Submission, by a subsequent Stage 2 Bid Submission Date, but they may not submit a new Stage 2 Bid Submission in respect of a different Project.

- 9.22 If, at the relevant Bid Submission Date, there are Stage 2 Compliant Bid Submissions relating to a number of Projects all intending to connect to a common substation:
- 9.22.1 which Stage 2 Compliant Bid Submissions:
- 9.22.1.1 would fall to be considered for appointment as Preferred Bidders; or
- 9.22.1.2 having undergone a comparative evaluation as provided for in Part D (*Stage 2 Evaluation Criteria*) of the RFP, would fall to be considered for appointment as Preferred Bidders, as contemplated in clause 9.21 of this Part A (*General Requirements, Rules and Provisions*) of the RFP; and
- 9.22.2 where the available capacity of such substation, or the distribution lines associated with that substation, is insufficient to accommodate all of the affected Projects,
- 9.22.3 then the Department, having consulted with the Eskom Grid Access Unit or the relevant municipality, as applicable, to confirm the non-availability of such capacity, may, in its sole discretion, comparatively evaluate the affected Stage 2 Compliant Bid Submissions 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 Stage 2 Evaluation Criteria specified in Part D (*Stage 2 Evaluation Criteria*) of this RFP in order to score and rank those Competing Compliant Bid Submissions relative to each other. Competing Compliant Bidders whose Stage 2 Compliant Bid Submissions 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 Stage 2 Compliant Bid Submissions rank lower than those which take up the available substation or associated grid-line capacity.
- 9.22.4 If the points difference between two Competing Compliant Bid Submissions after the Part D evaluation undertaken in accordance with clause 9.20 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 Stage 2 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.

- 9.23 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.
- 9.24 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 Stage 2 Bid Submissions, even if there is no Part D (*Stage 2 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 clause 19 of Part A of this RFP.
- 9.25 The Department will notify Bidders of their appointment as Preferred Bidders per Technology, or otherwise, as and when the Department selects Bidders as Preferred Bidders.

10. **Timetable for Small Projects IPP Procurement Programme**

The dates included in the timetable in respect of Third and Fourth Stage 2 Bid Submission Phases are indicative in nature and will be confirmed by the Department by the issue of a Briefing Note after the Second Stage 2 Bid Submission Phase.

Milestone	Anticipated Date
Department to issue final version of RFP	21 August 2013
First Bidders' Conference	To be advised

Stage 1	
Milestone in respect of First Stage 1	Anticipated Date
Bid Registration Date	16 September 2013
Last date for Bidders to submit written questions in terms of clause 30 (<i>Time for requests and clarifications</i>) of this Part A	14 September 2013
Last date for Department to issue Briefing Notes in terms of clause 43 (<i>Briefing Notes and Changes to bid process</i>) of this Part A	30 September 2013
First Stage 1 Bid Submission Phase	
First Stage 1 Bid Submission Date	14 October 2013
Evaluation of Stage 1 Bid Submissions submitted in response to the First Stage 1 Bid Submission Date	15 October 2013 – 11 November 2013
Announcement of Selected Bidders in respect of First Stage 1 Bid Submission Date from	29 November 2013
Selected Bidders to prepare their Stage 2 Bid Submissions in accordance with Part C and Part D of the RFP from	30 November 2013

Milestone in respect of Second Stage 1	Date
Bid Registration Date	13 January 2014

Last date for Bidders to submit written questions in terms of clause 30 (Time for requests and clarifications) of this Part A	10 January 2014
Last date for Department to issue Briefing Notes in terms of clause 43 (Briefing Notes and Changes to bid process) of this Part A	27 January 2014
Second Stage 1 Bid Submission Phase	
Second Stage 1 Bid Submission Date	10 February 2014
Evaluation of Stage 1 Bid Submission submitted in response to the Second Stage 1 Bid Submission Date	11 February 2014 – 10 March 2014
Announcement of Selected Bidders in respect of Second Stage 1 Bid Submission Date from	28 March 2014
Selected Bidders to prepare their Stage 2 Bid Submissions in accordance with Part C and Part D of the RFP from	29 March 2014

Milestone in respect of Third Stage 1	Date
Bid Registration Date	16 June 2014
Last date for Bidders to submit written questions in terms of clause 30 (Time for requests and clarifications) of this Part A	13 June 2014
Last date for Department to issue Briefing Notes in terms of clause 43 (Briefing Notes and Changes to bid process) of this Part A	30 June 2014
Third Stage 1 Bid Submission Phase	
Third Stage 1 Bid Submission Date	14 July 2014

Evaluation of Stage 1 Bid Submission submitted in response to the Third Stage 1 Bid Submission Date	15 July 2014 – 11 August 2014
Announcement of Selected Bidders in respect of Third Stage 1 Bid Submission Date	29 August 2014
Selected Bidders to prepare their Stage 2 Bid Submissions in accordance with Part C and Part D of the RFP from	30 August 2014

Milestone in respect of Fourth Stage 1	Date
Bid Registration Date	12 January 2015
Last date for Bidders to submit written questions in terms of clause 30 (<i>Time for requests and clarifications</i>) of this Part A	9 January 2015
Last date for Department to issue Briefing Notes in terms of clause 43 (<i>Briefing Notes and Changes to bid process</i>) of this Part A	26 January 2015
Fourth Stage 1 Bid Submission Phase	
Fourth Stage 1 Bid Submission Date	09 February 2015
Evaluation of Stage 1 Bid Submission submitted in response to the Fourth Stage 1 Bid Submission Date	10 February 2015 – 09 March 2015
Announcement of Selected Bidders in respect of Fourth Stage 1 Bid Submission Date from	27 March 2015
Selected Bidders to prepare their Stage 2 Bid Submissions in accordance with Part C and Part D of the RFP from	28 March 2015

STAGE 2	
Bid Registration Date	17 March 2014
First Stage 2 Bid Submission Date	14 April 2014
Evaluation of Stage 2 Bid Submissions submitted in response to the First Stage 2 Bid Submission Date	15 April 2014 – 26 May 2014
Announcement of Preferred Bidders in respect of First Stage 2 Bid Submission Date	17 June 2014
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, and application by the Preferred Bidders to obtain a budget quotation from a Grid Provider and a generation licence from NERSA	18 June 2014 – 21 January 2015
Signing and effective date of PPAs, Direct Agreements, Implementation Agreements, and Connection Agreements and Financial Close not later than	21 January 2015

Second Stage 2 Bid Submission Phase	
Bid Registration Date	23 February 2015
Second Stage 2 Bid Submission Date	23 March 2015
Evaluation of Stage 2 Bid Submissions submitted in response to the Second Stage 2 Bid Submission Date	24 March 2015 – 04 May 2015

Announcement of Preferred Bidders in respect of Second Stage 2 Bid Submission Date	25 May 2015
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, and application by the Preferred Bidders to obtain a budget quotation from a Grid Provider and a generation licence from NERSA	26 May 2015 – 08 December 2015
Signing and effective date of PPAs, Direct Agreements, Implementation Agreements, and Connection Agreements and Financial Close not later than	08 December 2015

Indicative Third Stage 2 Bid Submission Phase	
Bid Registration Date	4 May 2015
Third Stage 2 Bid Submission Date	01 June 2015
Evaluation of Stage 2 Bid Submissions submitted in response to the Third Stage 2 Bid Submission Date	02 June 2015 – 13 July 2015
Announcement of Preferred Bidders in respect of Third Stage 2 Bid Submission Date	03 August 2015
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	04 August 2015 – 09 March 2016

Provider, and application by the Preferred Bidders to obtain a budget quotation from a Grid Provider and a generation licence from NERSA	
Signing and effective date of PPAs, Direct Agreements, Implementation Agreements, and Connection Agreements and Financial Close not later than	09 March 2016
Indicative Fourth Stage 2 Bid Submission Phase	
Bid Registration Date	29 February 2016
Fourth Stage 2 Bid Submission Date	21 March 2016
Evaluation of Stage 2 Bid Submissions submitted in response to the Fourth Stage 2 Bid Submission Date	22 March 2016 – 02 May 2016
Announcement of Preferred Bidders in respect of Fourth Stage 2 Bid Submission Date	23 May 2016
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, and application by the Preferred Bidders to obtain a budget quotation from a Grid Provider and a generation licence from NERSA	24 May 2016 – 07 December 2016
Signing and effective date of PPAs, Direct Agreements, Implementation Agreements, and Connection Agreements and Financial Close not later than	07 December 2016

11. Governing Law, Competition and other Statutory Requirements

11.1 Governing Law

- 11.1.1 The primary enabling legislation for the Small Projects 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 regulates and creates the competency of the Department to procure and implement the Small Projects IPP Procurement Programme, and the manner in which it may conduct the Small Projects 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, 108 of 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 Small Projects IPP Procurement Programme. A copy of such exemption is provided in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) as Schedule 5 (*Exemption from the Preferential Procurement Policy Framework Act*).

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.

11.3 **Other statutory requirements**

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. **Small Projects IPP Procurement Programme Economic Development Objectives and Requirements**

12.1 **Background to the Formulation of the Department's Objectives for the Small Projects IPP Procurement Programme**

12.1.1 The Department recognises that the Small Projects IPP Procurement Programme is inherently excellent for achieving socio-economic objectives. Economic Development is one of the imperatives of the Department in the Small Projects IPP Procurement Programme.

12.1.2 Renewable Energy is recognised internationally as a major contributor in protecting our climate, nature and the environment as well as providing a wide range of environmental, economic and social benefits that will contribute towards long term global sustainability. For this reason, the Department has developed the Economic Development objectives aimed at maximising the achievement of the socio-economic objectives from the Small Projects IPP Procurement Programme.

12.1.3 In developing the Economic Development objectives, the Department has considered the following legislation and policy instruments of Government, relevant to Economic Development:

No.	Legislation / Policy(ies)	Imperative(s)
1.	Constitution of the Republic of South Africa, 108 of 1996 (" Constitution ")	<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>
2.	Broad-based Black Economic Empowerment Act, 53 of 2003 (" BBBEE Act ")	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 issued in terms of the BBBEE Act in developing criteria for entering into partnerships with the private sector.
3.	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"> • ownership; • management control; • preferential procurement; • enterprise development; and • socio-economic development.
4.	National Small Enterprise Act 102 of 1996 (" National Small Enterprise Act ")	<p>This Act aims to, amongst other things, provide guidelines for organs of state in order to promote SME's in the Republic. This Act not only defines SME's but also, in it's Schedule, sets out the classifications of SME's into:</p> <ul style="list-style-type: none"> • micro enterprises; • small enterprises; and • medium enterprises.
5.	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.</p> <p>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</p>

No.	Legislation / Policy(ies)	Imperative(s)
		renewable energy technologies are labour intensive.
6.	<p>NERSA Application for an Electricity Generation Licence in terms of the Electricity Regulation Act, 2006</p> <p>("Application for an Electricity Generation Licence")</p>	<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"> • black ownership; • black management, black female management and skilled Black People; • skills development and employment equity; • preferential procurement; • enterprise development; and • industry specific initiatives to facilitate the inclusion of Black People in the sector.
7.	<p>New Growth Path published by the Department of Economic Development ("NGP")</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"> • substantial public investment in infrastructure both to create employment directly in construction, operation and maintenance; • targeting more labour-absorbing activities across the main economic sectors, which include manufacturing and services; and • taking advantage of new opportunities in the knowledge and green economies. <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>
8.	<p>Accelerated Shared Growth Initiative of South Africa ("ASGI-SA")</p>	<p>ASGI-SA aims to create sustainable economic growth, where the wealth is shared</p>

No.	Legislation / Policy(ies)	Imperative(s)
9.	National Industrial Policy Framework ("NIPF")	<p>The NIPF aims to provide strategic direction to the 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 industrialisation path characterised by greater participation at all levels by historically disadvantaged citizens and marginalised regions in the mainstream of the industrial economy.</p>
10.	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 capitalise 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>
11.	The National Development Plan	<p>The National Development Plan:</p> <ul style="list-style-type: none"> • proposes the promotion of employment in labour-absorbing industries and promote manufacturing in areas of competitive advantage; • seeks to reduce the unemployment rate from 27% to 14% in 2020 and to 6% by 2030; and • seeks the leveraging of public procurement to promote localisation and industrial diversification.
12.	Local Procurement Accord	<p>The objective of the Local Procurement Accord is to accelerate the creation of 5 million new jobs by 2020 as well as achieve the goals of IPAP. The Local Procurement Accord commits the social partners to achieving 75% localisation in the procurement of goods and services by both the public and private sectors.</p>

12.1.4 In developing the Economic Development objectives for the Small Projects IPP Procurement Programme, some of the socio-economic challenges facing South Africa were also taken into account. These include, the:

12.1.4.1 high rate of unemployment in South Africa;

12.1.4.2 lack of education of South Africans; and

12.1.4.3 lack of skilled workers.

12.1.5 In trying to address the legislation, policies and socio-economic conditions in South Africa described above, the Department has determined the following objectives for its specific goals in the Small Projects IPP Procurement Programme:

12.1.5.1 job creation;

12.1.5.2 local content through, *inter alia*, increased local manufacturing;

12.1.5.3 fostering rural development and involving communities in the Small Projects IPP Procurement Programme;

12.1.5.4 education and the development of skills;

12.1.5.5 enterprise development through the promotion of Black Enterprises and empowered enterprises;

12.1.5.6 socio-economic development;

12.1.5.7 participation and shareholding by SMEs; and

12.1.5.8 participation by historically disadvantaged citizens and marginalised regions in the mainstream of the industrial economy.

12.1.6 **Small Projects IPP Procurement Programme Economic Development Policy**

12.1.6.1 The Department developed the IPP Procurement Programme Economic Development Policy, in respect of the IPP Procurement Programme. A similar Economic Development policy has been

prepared for the Small Projects IPP Procurement Programme, taking into regard the specific objectives of the Small Projects IPP Procurement Programme. This is due to the fact that the majority of the objectives and elements of the Department, in relation to Economic Development, remain the same in respect of the Small Projects IPP Procurement Programme as for the IPP Procurement Programme.

12.1.6.2 The Economic Development elements will be evaluated within the maximum 30 (thirty) points, using the scoring matrix developed for this Small Projects IPP Procurement Programme.

12.1.6.3 The Department developed Economic Development elements for the Small Projects IPP Procurement Programme, using as a basis for developing the elements the BBBEE Codes by mainly following the format of such codes in structuring the requirements and identifying 5 (five) of the 7 (seven) Economic Development elements. The rationale behind adopting only 5 (five) of the 7 (seven) elements from the BBBEE Codes is that compliance with employment equity and skills development are required by operation of law in terms of the Employment Equity Act, 55 of 1998 and the Skills Development Act, 97 of 1998.

12.1.6.4 It has been recognised that the BBBEE Codes are structured to verify BBBEE credentials on a historical basis in respect of measured entities. However, the Economic Development elements in the Small Projects IPP Procurement Programme objectives have been structured and adapted to achieve a forward looking approach in addition to historical considerations.

12.1.7 The Small Projects IPP Procurement Programme also requires that the Economic Development commitments of the Bidders be contractually binding and contemplates that they be dealt with in the Implementation Agreement. Bidders must note that there will be reporting and monitoring in relation to Economic Development commitments. **Economic Development Elements**

- 12.1.7.1 The following elements have been formulated to address the objectives of the Department:
- 12.1.7.1.1 job creation, which places emphasis on jobs for South African citizens, South African citizens who are Black People and South African citizens from Local Communities. It must be noted that the Department seeks to incentivise Bidders to make commitments which are as high as possible in relation to this element and, as such, Bidders will be required to indicate the total number of jobs per MW in Person Months;
- 12.1.7.1.2 local content, which requires that a certain percentage of the total value of the Project be spent in South Africa;
- 12.1.7.1.3 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 the Operations Contractor;
- 12.1.7.1.4 black management, which focuses on the involvement of Black People in management;
- 12.1.7.1.5 preferential procurement, which focuses on subcontracting to empowered enterprises, Black Enterprises and enterprises owned by women;
- 12.1.7.1.6 enterprise development, which focuses on the development of emerging enterprises, and those emerging enterprises located in Local Communities;
- 12.1.7.1.7 socio-economic development, which attempts to address the socio-economic needs of Local Communities; and
- 12.1.7.1.8 SME participation, which focuses on the involvement and development of SMEs and new developers in the Renewable Energy sector.

12.1.8 **Structure of Economic Development Requirements**

- 12.1.8.1 The requirements for Economic Development are contained in different parts of the RFP, namely:
- 12.1.8.1.1 Clause 2.5 (*Economic Development Criteria and Evaluation*) of Part B (*Stage 1 Qualification Criteria*) – which requires a Bidder to:
- 12.1.8.1.1.1 indicate the anticipated level of compliance in relation to South African Entity Participation;
- 12.1.8.1.1.2 indicate the anticipated level of compliance in relation to shareholding by SMEs in the Project Company;
- 12.1.8.1.1.3 indicate the Contributor Status Level in respect of each of the Shareholders of the Project Company as well as the Project Company itself, where available; and provide its track record (or that of its Members) in implementing plans and programmes in relation to the following:
- 12.1.8.1.1.3.1 Preferential Procurement;
- 12.1.8.1.1.3.2 Enterprise Development; and
- 12.1.8.1.1.3.3 Socio-Economic Development; and
- 12.1.8.1.1.4 indicate the extent of Local Content anticipated to be achieved in the Programme.
- 12.1.8.1.2 Clause 2.7 (*Economic Development Criteria and Evaluation*) of Part C (*Stage 2 Qualification Criteria*) – which requires a Bidder to:
- 12.1.8.1.2.1 have an initial South African Entity Participation of 40% (forty percent), which after a period of no more than one third of the Scheduled Operating Period of the PPA³ should have increased to 60% (sixty percent);

³ This period to be determined based on the Bid Response of the Bidder

- 12.1.8.1.2.2 have an initial shareholding by SMEs of 10% (ten percent), which after a period of no more than one third of the Scheduled Operating Period of the PPA⁴ should have increased to 30% (thirty percent);
- 12.1.8.1.2.3 have a weighted Contributor Status Level of 5 in respect of the South African Entity Participation; and
- 12.1.8.1.2.4 comply with the minimum thresholds as indicated in the Economic Development Scorecard;
- 12.1.8.1.3 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 of the Department; and
- 12.1.8.1.4 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.

12.1.9 **Implementation Agreement Economic Development Commitments**

- 12.1.9.1 In Schedule 2 (*Economic Development Obligations*) of the Implementation Agreement, the Seller will be held to the levels of Economic Development that it has proposed in its Bid Response. These are dealt with as Economic Development obligations.
- 12.1.9.2 The Seller's obligations are subject to reporting and to a review on a periodic basis and to the extent that it has not met the Economic Development obligations in a contract quarter, it will be subject to penalties in the form of Economic Development Performance Deductions ("**EDPD**"). To the extent that the Seller has exceeded the agreed Economic Development obligations, the Seller will earn credits through Economic Development Performance Credits ("**EDPC**"). At the end of the Construction Measurement Period and

⁴ This period to be determined based on the Bid Response of the Bidder

annually during the Operating Measurement Period, there will be a reconciliation of the EDPD and EDPC to determine whether there are penalties payable by the Seller.

12.1.9.3 In terms of the Implementation Agreement certain excessive levels of non-compliance with Economic Development obligations in a contract quarter will trigger Termination Points, which could ultimately lead to the Department's right of termination of the Implementation Agreement. Each Termination Point is subject to adequate remedy provisions to avoid such termination.

12.1.9.4 The Seller is required to monitor, audit and record in an auditable manner its implementation of and compliance with Schedule 2 (*Economic Development Obligations*) of the Implementation Agreement.

13. Environmental Consents and Land Use Consent Considerations

13.1 The Stage 2 Qualification Criteria in respect of Land Use Consents, land acquisition and Environmental Consents are contained in clauses 2.3 (*Stage 2 Land Acquisition and Land Use Consents Criteria and Evaluation*) and clause 2.4 (*Stage 2 Environmental Consents Criteria and Evaluation*) of Part C (*Stage 2 Qualification Criteria*), respectively. Schedule 6 (*General Overview of Environmental and Land Use Consents*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*), provided to bidders under the IPP Procurement Programme, has been included in Volume 1, Part 1 of this RFP to assist and provide guidance to Bidders under this Small Projects IPP Procurement Programme. Schedule 6 (*General Overview of Environmental and Land Use Consents*) 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 7 (*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*), also used in the IPP Procurement Programme, has been included in Volume 1, Part 1 of this RFP to assist and provide guidance to Bidders under this Small Projects IPP

Procurement Programme. Schedule 7 (*Procedure for obtaining non-binding confirmation by DWA of water availability on request from bidders in the Small Projects IPP Procurement Programme*) 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 7 (*Procedure for obtaining non-binding confirmation by DWA of water availability on request from bidders in the Small Projects IPP Procurement Programme*) or on the inclusion or absence of an Environmental and Land Use Consent from the relevant table in Schedule 6 (*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 8 (*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 9 (*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 Selected Bidders once

Selected 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 Stage 2 Qualification Criteria in terms of clause 2.4 (*Stage 2 Environmental Consent Criteria and Evaluation*) in Part C (Stage 2 Qualification Criteria) to have such a licence) at the date specified for signature of the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements 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 Small Projects 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 Distribution System

- 14.1 A Bidder may not connect its Facility to the Transmission System in respect of the Small Projects IPP Procurement Programme. Therefore, the Grid Provider will either be the “Distribution” business unit of Eskom, or a municipality, depending on the location of the point of connection.
- 14.2 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 an Eskom Distribution Agreement with the Distributor prior to or simultaneously with the conclusion of the PPA. A copy of the Eskom 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 Agreements*) as Appendix D (*Eskom Distribution Agreement*).
- 14.3 In instances where Eskom will buy energy from a Seller under a PPA and that Seller's Facility is located within a municipal supply area, Eskom will purchase the energy from the Seller and then sell it to the municipal Distributor without physically taking delivery of the energy (the energy is delivered directly from the Seller to the Municipal Distribution System). It is therefore necessary to account

for this additional sales transaction in Eskom's invoice to the municipality in respect of electricity supplied by Eskom to the municipality. This is to be regulated by an Amendment Agreement to the Electricity Supply Agreement. The Amendment Agreement to the Electricity Supply Agreement will be based on the pro-forma "*Amendment Agreement to the Electricity Supply Agreement where Eskom has entered into a Power Purchase Agreement with a generator of supply connected to the network of the municipality, ref SC 0401 (GEN Recon)*". Bidders may request a copy of the pro-forma Amendment Agreement to the Electricity Supply Agreement from Eskom. The final Amendment Agreement to the Electricity Supply Agreement will be dependent on the terms contained in the existing Electricity Supply Agreement with the relevant municipality. Bidders are required to take note that the entry into an Amendment Agreement to the Electricity Supply Agreement will be a condition to signature of the PPA by Eskom as the Buyer.

14.4 The Bidder whose Facility is to be connected to the Municipal Distribution System will be required:

14.4.1 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 10 (*Pro-forma Municipal Distribution Agreement*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*);

14.4.2 to provide the Department with proof that an Electricity Supply Agreement has been entered into between Eskom and the relevant municipal Distributor and that the terms of the Amendment Agreement to the Electricity Supply Agreement have been agreed upon by the municipal Distributor and Eskom at the time that the Bidder submits its Stage 2 Bid Submission. This requirement will be fulfilled by the Bidder by submitting, as part of its Stage 2 Bid Submission, the Bidder confirmation and supporting declarations contained in Schedule 31 (*Confirmation of an Electricity Supply Agreement*) of Volume 1, Part 3;

- 14.4.3 prior to signature of that Bidder's PPA, to ensure that an Amendment Agreement to the Electricity Supply Agreement has been entered into between Eskom and the relevant municipal Distributor; and
- 14.4.4 to provide the Department with a declaration from the municipal Distributor in which the municipal Distributor confirms that it has reviewed and that the Distributor accepts the terms of the PPA included as Appendix A (*Power Purchase Agreement*) of Volume 2 (*Legal Agreements*) of the RFP and, in particular, that the municipal Distributor is aware of and accepts Eskom's obligations as the Buyer in respect of system metering installation for the Facility in terms of clause 12 of the PPA, which declaration is included in Schedule 31 (*Confirmation of an Electricity Supply Agreement*) of Volume 1, Part 3.
- 14.5 Connection to the Distribution System is also regulated by the Codes and these must be considered by Bidders in the development of their Projects.
- 14.6 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").
- 14.7 There are three ways in which shallow connection works can be undertaken to connect the Bidder's Facility to the System.
- 14.8 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.
- 14.9 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'. A pro-forma Self-Build Agreement, issued in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP as Schedule 12

(Pro-forma Self Build Agreement), has been provided for information purposes only and contains the terms and conditions that could be expected in the agreement to be concluded by the Project Company and the relevant 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 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 Distribution licence in terms of the Electricity Regulation Act from the relevant Grid Provider in order to operate the shallow connection to the System.
- 14.11 It is important for Bidders to note that Eskom has policies in respect of self-build if Bidders are anticipating the second connection process explained in clause 14.9 of this Part A (*General Requirements, Rules and Provisions*).
- 14.12 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.
- 14.13 The Grid Provider will undertake a portion of the connection works in respect of all 3 (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 Stage 2 Bid Submission.
- 14.14 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).

- 14.15 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. Self-build Projects in municipal areas need to be negotiated and agreed with the respective municipality.
- 14.16 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.
- 14.17 In their interactions with 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 6 (six) months of appointment as a Preferred Bidder, a budget quote which, if accepted, would allow 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.
- 14.18 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. General Bid Rules

- 15.1 The RFP is open to the world wide public and is not restricted to Bidders comprised only of 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.
- 15.2 If a Local Community will participate as a Member or as a shareholder (direct or indirect) in a Member through a trust which has not yet been formed as at the

applicable Bid Submission Date; or any other person or entity will participate as a Member, or as a shareholder in a Member, which is an entity which has not been incorporated as at the applicable Bid Submission Date, then the Lead Member or Project Company, as the case may be, must submit written confirmation (a) that the Local Community trust or the new entity, as the case may be, will be established and registered as contemplated in the Bid Response, and (b) that the Lead Member or Project Company, as the case may be, shall ensure that the Local Community trust or new entity agrees to be bound by the Bid Response to the same extent as it would have done if it were in existence at the Bid Submission Date.

- 15.3 Where one or more equity participants will hold an ownership interest in the Project Company through an intermediary entity which will be a Shareholder, but which Shareholder is not yet incorporated at the Bid Submission Date, the equity participants which will be the direct shareholders in that Shareholder once established must each submit the returnable schedules of the RFP which are applicable to Members, on behalf of that Member to be established.
- 15.4 In order to submit a Bid Response under this Small Projects IPP Procurement Programme, each prospective Bidder will be required to pay a non-refundable fee of R5 000 (five thousand Rand) per Bidder, and to complete a registration form. The electronic registration form will be available for download on the Small Projects IPP Website. The Department will only communicate and accept Bid Responses from Bidders that have completed the electronic registration form and have paid the required fee.
- 15.5 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.
- 15.6 Those Bidders appointed as Selected Bidders and or 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 Small Projects 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 Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*).

16. **Non-Eligible Persons**

- 16.1 Stage 1 Bid Submissions will only be considered by the Department, in its sole discretion, if the Bidder submitting the relevant Stage 1 Bid Submission has the necessary expertise and relevant experience to carry out the Project that is the subject matter of the relevant Stage 1 Bid Submission, and specifically if the Bidder satisfies the requirements specified in Part B (*Stage 1 Qualification Criteria*) of this RFP.
- 16.2 The Department will only consider the Stage 2 Bid Submissions of those Bidders that have been selected as Selected Bidders by the Department pursuant to the relevant Stage 1 Bid Submission Date. Stage 2 Bid Submissions will only be considered by the Department, in its sole discretion, if the Bidder submitting the relevant Stage 2 Bid Submission has the necessary expertise, relevant experience and or resources (including financial capacity and commitments) to carry out the Project that is the subject matter of the relevant Stage 2 Bid Submission, and specifically if the Bidder satisfies the requirements specified in Part C (*Stage 2 Qualification Criteria*) and Part D (*Stage 2 Evaluation Criteria*) of this RFP.
- 16.3 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.
- 16.4 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 Schedule 19 (*Declaration of Interest, Litigation and*

Past Supply Chain Practices Form) provided in Volume 1, Part 2 (*Stage 1 Bid Submission Returnable Schedules*) of this RFP.

- 16.5 If any Bidder includes in their Bid Response the involvement of any person:
- 16.5.1 blacklisted by the office of National Treasury; or
 - 16.5.2 blacklisted by such person's professional body (if applicable); or
 - 16.5.3 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
 - 16.5.4 who is Related to any other Government official or person directly involved presently or in the past in the Small Projects 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 Selected Bidders and or Preferred Bidders; or
 - 16.5.5 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 Small Projects IPP Procurement Programme.

- 16.6 In respect of any person or Government Official who is or was involved in the past in the IPP Procurement Programme or this Small Projects IPP Procurement Programme, in the manner set out in clause 16.5.4, a Bidder should, to avoid the consequence set out in clause 16.5, before submitting a Bid Response which includes such person in any capacity set out in clause 16.4 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 and or this Small Projects IPP Procurement Programme which the person has, and the time that has elapsed since they had this involvement.

- 16.7 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.
- 16.8 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 (directly or indirectly) of, or Contractor to any Bidder, unless:
- 16.8.1 the participation of that public entity in the Small Projects IPP Procurement Programme has been specifically approved in advance in writing by the applicable Government department or executive authority (as defined in the PFMA) that has responsibility over such public entity, and by the Department;
- 16.8.2 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
- 16.8.3 the provision of services or participation as a Member by such public entity is permitted by law.
- 16.9 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 Small Projects 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 27 (*Disqualification*) of Part A (*General Requirements, Rules and Provisions*) of this RFP, any Bidder whose Bid Response display any anti-competitive or collusive behaviour.

17. Use of Transaction Advisors by the Department and the Bidders

17.1 The Transaction Advisors are as follows:

Firm	Individuals	Role
SPP Project Solutions	Darron Johnson Mark Engelbrecht Paul Wroblicki Mike Fitzpatrick Jonathan Leeb Sandipha Maharaj Adrian Miric Gerhard Johan Tanya Fainstein Hloni Mrwebi Thembi Mrwebi Connie Ploger	Project Management and Financial Transaction Advisors
PriceWaterhouse Coopers	Chris Siewierski 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	Financial Transaction Advisors

Firm	Individuals	Role
	Amy Smylie Thato Tsotetsi Morne Van Deventer Chetana Yalamanchili 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	
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 Shakira Ramithlal Carla Rooseboom Kalveer Salh Shannon Sass Jed Shein Peter Waller Greg Weare	Financial Transaction Advisors

Firm	Individuals	Role
	Bronwen Sian Byton Ndiweni Lefa Mongaula Atul Dama Young Chara Jean Blanckaert Anell Venter Nontle Vika Pierre- Alexandre Griel Ross Botes	
Mott MacDonald	Mark Barnard Christos Kolliatsos Clare Rhodes-James John Porter Iban Vendrell James Dodds 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
Novadays	Jose Ignacio Cases Comyn	Technical Transaction Advisors
Tony Wheeler Consulting	Dr Tony Wheeler	Independent Technical Transaction Advisors
Ledwaba Mazwai	Metja Ledwaba Viola Ngwenya Innocent Khumalo Lee-Ann Botes Thandeka Dlulane Kelebogile Galeforolwe Mmotlana Kgoadi Sbusiso Maseko Lebogang Mathebula Naledi Mosikare Wezi Phiri Tiyani Sithole Mmbhulaheni Sikhavhakhavha	Legal, BBBEE and Socio-Economic Transaction Advisors

Firm	Individuals	Role
Webber Wentzel	Brigette Baillie Glenn Penfold Zunaid Rawoot Alexandra Sourvas Mzukisi Kota Garyn Rapson Maria Kruger Simonne Morley Desiree De Oliveira Kirsty Gilmour Brenda Migwalla Kearebetswe Modingwana Rachel Jiyana Mosidi Sibaya Tess Peacock Dennise Dlamini	Legal Transaction Advisors
Linklaters LLP	Andrew Jones John Pickett Tessa Lee Jack Coleman Jonathan Cook Andrew Reilly Tom Shingler Dominic Toomey	Independent Legal 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	Legal Transaction Advisors

Firm	Individuals	Role
	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	

17.2 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.

17.3 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 17.2, 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 17.2.

18. Acknowledgment of the Law

18.1 The Bidder and each of its Members registered in South Africa are required to submit with the Bid Response as part of its Stage 2 Bid Submission 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 Small Projects IPP Procurement Programme, and that it will comply with such laws.

The declaration required in respect of the Lead Member or Project Company is included in Schedule 22 (*Declaration of Bidder*) of Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*) and the declaration required in respect of each Member is included in Schedule 23 (*Letter of Intent*) of Volume 1, Part 3 (*Stage 2 Bid Submission 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 Small Projects IPP Procurement Programme. The declaration required in respect of the Lead Member is included in Schedule 22 (*Declaration of Selected Bidder*) of Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*) and the declaration required in respect of each Member is included in Schedule 23 (*Letter of Intent*) of Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*).

- 18.2 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.
- 18.3 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.

19. Legal Personality of Bidder and Changes to a Bid Response

- 19.1 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. A Preferred Bidder shall be required to provide the Department with such copies of the Project Company's Constitutional Documents as the Department may request within the time-period specified by the Department, following the date of establishment and incorporation of its Project Company.
- 19.2 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. Bidders will not be permitted to change any aspect of their Bid Response or their Project, except as expressly permitted by the RFP, during the period between a Stage 1 Bid Submission Date and a Stage 2 Bid Submission Date, except for a change to a Bidder's membership or structure and its Members (including but not limited to a Change in Control) which change may only be undertaken with the prior written consent of the Department. A change in any Bidder's membership or structure will include a change to the percentage of membership in the Bidder by each Member or the intended percentage of shareholding in the Project Company by each Shareholder (including but not limited to a Change in Control) or a change in the identity of the Bidder's Members, Contractors or Lenders.
- 19.3 No change by a Bidder to any aspect of a Stage 2 Bid Submission after submission of a Stage 2 Bid Submission in respect of a Stage 2 Bid Submission Date, will be permitted. No change is permitted by a Preferred Bidder to any aspect of a Bid Response after submission of a Bid Response without the prior written approval of the Department.
- 19.4 Any Selected Bidder and or 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 relevant Qualification Criteria in the RFP.

- 19.5 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.
- 19.6 The Department may approve or decline to approve any request by a Selected Bidder or 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 Selected Bidder or 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.
- 19.7 The Department shall not be obliged to consider any extension of time in relation to any stage of the Small Projects IPP Procurement Programme on account of any change to any aspect of a Bid Response. Preferred Bidders are expected to adhere to the Timetable as set out in clause 10 (*Timetable for Small Projects 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 19.3.

20. **Authorisation of the Department and the Buyer**

- 20.1 The Bidder, its Members, Contractors and Lenders and its Advisors are required to satisfy themselves as to the authority of:
- 20.1.1 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;
- 20.1.2 the Department to issue this RFP, undertake the Small Projects IPP Procurement Programme of which this RFP forms part, and to undertake all other actions envisaged by this RFP; and

20.1.3 the Buyer and other relevant parties to enter into the PPA, the Implementation Agreement, the Direct Agreement and the Connection Agreements.

20.2 The Department shall not procure a legal opinion from any of its Transaction Advisors in favour of any Bidder, Selected Bidder, Preferred Bidder, Members, Contractors, Project Company or Lenders in relation to such authority or any other aspect of this RFP or the Small Projects 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.

21. Separate Bid Response for each Project and sharing of infrastructure

21.1 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.

21.2 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.

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

21.3.1 separate Project Companies;

21.3.2 separate notarial leases; and

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

21.4 Subject to clause 21.5, sharing of common infrastructure between Projects is acceptable, provided that:

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

21.4.2 the common infrastructure is clearly defined;

- 21.4.3 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;
 - 21.4.4 a clear contractual allocation, between the Project Companies, of responsibility for operating and maintaining the common infrastructure exists;
 - 21.4.5 a clear contractual allocation, between the Project Companies, of responsibility for funding the operation and maintenance exists; and
 - 21.4.6 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.
- 21.5 However, sharing of common infrastructure downstream (namely export cable and bay at the substation) will not be acceptable.

22. Confidentiality

22.1 Confidentiality by the Bidders

- 22.1.1 This RFP contains confidential information regarding the Small Projects IPP Procurement Programme and or the Department. By collecting this RFP, the Bidders agree that they:
 - 22.1.1.1 will ensure that their Members, directors, officers, employees, agents, Advisors, Lenders, Contractors and representatives use this RFP only to evaluate the Small Projects IPP Procurement Programme and prepare a Bid Response and for no other purpose; and
 - 22.1.1.2 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.

22.1.2 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.

22.1.3 Bidders are required to provide the Department, together with their Stage 1 Bid Submission, with a copy of the Confidentiality Undertaking letter set out in Schedule 16 (*Confidentiality Undertaking*) of Volume 1, Part 2 (*Stage 1 Bid Submission Returnable Schedules*), signed by a duly authorised representative on behalf of the Bidder and each Member of the Bidder.

22.2 **Confidentiality by the Department**

22.2.1 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.

22.2.2 Notwithstanding the provisions of clause 22.2.1:

22.2.2.1 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; and

22.2.2.2 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; and

22.2.2.3 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 C (*Stage 2 Qualification Criteria*) of the RFP, as well as its Economic Development and Price scores calculated pursuant to any evaluation in terms of Part D (*Stage 2 Evaluation Criteria*) of the RFP, as well as that Preferred Bidder's ranking relative to other Preferred Bidders; and

22.2.2.4 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.

23. Bid Security, Development Fee and Limitation on payment of Success Payments

23.1 Preferred Bidder Guarantee

23.1.1 Subsequent to the receipt of Stage 2 Bid Submissions to the RFP 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 R15 000 (fifteen 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.

23.1.2 Each Preferred Bidder Guarantee shall be:

23.1.2.1 an original, unconditional and irrevocable bank guarantee in the form set out at Schedule 26 (*Form of Preferred Bidder Guarantee*);

- 23.1.2.2 lodged with the Department within 15 (fifteen) Business Days of a Bidder being notified of its Preferred Bidder status;
- 23.1.2.3 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
- 23.1.2.4 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).

23.2 **Release of Guarantee**

Unless the Department has notified a Bidder or Preferred Bidder in terms of clause 23.3 that it intends calling on the Preferred Bidder Guarantee, the Department will return a Preferred Bidder Guarantee within 15 (fifteen) Business Days of its expiry.

23.3 **Forfeiture of Guarantee**

- 23.3.1 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:

- 23.3.1.1 fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
- 23.3.1.2 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;
- 23.3.1.3 fails to sign the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements within the time period specified in clause 10 (*Timetable of Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*) in respect of the relevant Stage 2 Bid Submission Phase, as such time period may be extended by the Department on written notice to the Preferred Bidder;
- 23.3.1.4 having signed the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements, fails to pay the Development Fee in accordance with clause 23.4 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;
- 23.3.1.5 fails to extend the term of the Preferred Bidder Guarantee in question as required by the RFP;
- 23.3.1.6 is notified by the Department that its status as Preferred Bidder has been revoked for any reason; or
- 23.3.1.7 breaches any law related to the Small Projects IPP Procurement Programme contemplated by the RFP or is disqualified from the Small Projects IPP Procurement Programme as a result of its actions or omissions.

23.4 **Development Fee**

Each Project Company of a Preferred Bidder will be required to pay a Development Fee to the Department in an amount equal to R230 000 (two hundred and thirty thousand rand) per MW of the Contracted Capacity of the

proposed Facilities for the Project in respect of which that Project Company has signed a PPA. The Project Companies of the Preferred Bidders will be required to pay the Development Fee to the Department within 6 (six) months of the date of signature of the PPA and 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 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.

23.5 Limitation on Success Payments

23.5.1 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 Small Projects IPP Procurement Programme on the South African consumers and the economy.

23.5.2 Accordingly, the payment of Success Payments under and or in connection with Projects developed under the Small Projects IPP Procurement Programme shall be limited to an amount equivalent to 2.5% (two point five percent) of Total Project Cost in aggregate. Bidders are required to disclose and provide, at a Stage 2 Bid Submission Date, a reconciliation of the Success Payments which cannot exceed more than 2.5% (two point five percent) of the Total Project Cost in aggregate. 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.

- 23.5.3 The Development Fee and all Success Payments must be separately identifiable in the Financial Models. The Success Payments payable in respect of the Project may only be the Success Payments detailed in the Financial Models and declared in the Bid Response, and all Success Payments must be detailed in the Financial Models and declared by the Bidder and each of its Members in the Bid Response..
- 23.5.4 If a Bidder fails to satisfy the requirements of clause 23.5.2, or if the Bidder's 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 Part C (*Stage 2 Qualification Criteria*) of this RFP. Each Bidder and each of its Members shall be required to submit, as part of their Stage 2 Bid Submission, a declaration in respect of Success Payments, including that the Success Payments do not equal more than 2.5% (two point five percent) of the Total Project Cost in aggregate, which is attached to the RFP as Schedule 28 (*Declaration in respect of payment of Success Payments*) of Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*), and an appendix detailing the actual Success Payments and specified information relating thereto, which is attached to Schedule 28 (*Declaration in respect of payment of Success Payments*) as Appendix 28A.

24. **Corrupt Gifts and Payments**

- 24.1 The attention of Bidders is drawn to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
- 24.2 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 Small Projects 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 Selected Bidder or 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 Small Projects IPP Procurement Programme.

- 24.3 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 27 (*Disqualification*)) 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 Small Projects IPP Procurement Programme.

25. 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 Selected Bidders and then 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 Small Projects IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*).

26. No Collusion

- 26.1 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.

- 26.2 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:

- 26.2.1 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;

- 26.2.2 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;

- 26.2.3 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
- 26.2.4 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.
- 26.3 If the Department becomes aware of or is of the opinion that any of the activities detailed in clause 26.2 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 27 (*Disqualification*) of this Part A (*General Requirements, Rules and Provisions*) of this RFP) such Bidder, its Members, Lenders, Contractors or Advisors and to bar any or all of them from participating further in the Small Projects IPP Procurement Programme.

27. **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 of the Small Projects IPP Procurement Programme.

28. **Loss of Selected Bidder and Preferred Bidder status**

- 28.1 If a Selected Bidder fails to comply timeously with any conditions contained in the letter of appointment as a Selected Bidder or breaches any law or requirement applicable to any aspect of the Small Projects IPP Procurement Programme, the Department will be entitled to terminate such Selected Bidder's status as Selected Bidder.
- 28.2 If a Preferred Bidder:
- 28.2.1 fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
- 28.2.2 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;

- 28.2.3 fails to sign the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements within the time period specified in clause 10 (*Timetable of Small Projects 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;
- 28.2.4 fails to extend the term of the Preferred Bidder Guarantee in question as required by the RFP; or
- 28.2.5 breaches any law applicable to any aspect of the Small Projects IPP Procurement Programme;

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

29. **Contact Policy**

29.1 **Contact Policy prior to appointment as a Selected Bidder**

- 29.1.1 Each potential Bidder at the time of first contact with the Department in regard to the Small Projects IPP Procurement Programme, and each Bidder in Schedule 13 (*Stage 1 Bid Submission Covering Letter*) of Volume 1 Part 2 (*Stage 1 Bid Submission Returnable Schedules*), shall give the Project Officer the name and contact details, in writing, of the person whom it appoints to undertake all contact with the Project Officer. Any change to any details of that contact person shall be notified to the Project Officer in writing. The Bidder may only communicate with the Department through such person and the Department shall be entitled, at its sole discretion, to disregard any communication from the Bidder that does not come from such contact person and that does not go directly to the Project Officer in the manner identified below.
- 29.1.2 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: 012 444 4086

E-mail: query@ipp-renewables.co.za

- 29.1.3 For the avoidance of doubt, no information or clarification may be requested by the 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 (save for requests to the Project Officer), Eskom (save in its capacity as the Distributor), the employees of the Department or any other Government official who may be associated with the Project (other than the Project Officer or National Treasury), without the prior written consent of the Project Officer.
- 29.1.4 If a Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or Advisors make any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify the Bidder, its Members, Lenders, Contractors, other person from participating in that Bid Response or Advisors from any further participation in the relevant Bid Submission Phase and or the Small Projects IPP Procurement Programme.
- 29.1.5 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 Small Projects 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.
- 29.2 **Contact Policy following appointment as a Selected Bidder and Preferred Bidder**
- 29.2.1 Each Bidder will be given a dedicated "SIPPID" e-mail address following appointment as a Selected Bidder for all communication with the Department. The same SIPPID e-mail address will apply to the Selected Bidder if it is appointed as a Preferred Bidder. Once the Selected Bidder is provided with this dedicated SIPPID e-mail address the Selected Bidder must only correspond with the Department through this dedicated SIPPID e-mail address and the Department shall be entitled, at its sole discretion, to disregard any communication from the Selected Bidder or Preferred Bidder that does not come to the dedicated SIPPID e-mail address.

- 29.2.1 Prior to being provided with the dedicated SIPPID e-mail address the Selected Bidder or Preferred Bidder should follow the contact policy outlined in clause 29.1 (*Contact Policy prior to appointment as a Selected Bidder*) of Part A (*General Requirements, Rules and Provisions*) of this RFP above.
- 29.2.2 Selected Bidders or Preferred Bidders 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 SIPPID e-mail address, the Department shall be entitled to treat all such communications as coming from an authorised representative of the Selected Bidder or Preferred Bidder, as the case may be, and shall be entitled to rely on such communications.
- 29.2.3 The Department shall communicate with Selected Bidders and Preferred Bidders from the “Project Office” e-mail address, a Selected Bidder and or 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 Small Projects 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.
- 29.2.4 No information or clarification may be requested by a Selected Bidder or a 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 Small Projects IPP Procurement Programme, other through the dedicated IPPID e-mail address and to the “Project Office” e-mail address.
- 29.2.5 If a Selected Bidder or a 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 27 (*Disqualification*) of Part A (*General Requirements, Rules and Provisions*) of this RFP) the Selected Bidder or 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 Small Projects IPP Procurement Programme.

30. Time for requests and clarifications

The Bidder may request clarification on any item contained within this RFP by not later than 20 (twenty) Business Days before the relevant Bid Submission Date, after which date the Department will not be obliged to enter into further correspondence with the Bidder on questions related to that Bid Submission Phase of the Small Projects IPP Procurement Programme.

31. Requests and responses to requests

31.1 All requests and queries from Bidders must be in writing sent to the Project Officer by way of email in the form set out below. Each Bidder will be permitted to send a maximum of 30 (thirty) questions or clarifications in respect of the Small Projects IPP Procurement Programme per Project. Oral requests and queries will not be entertained and will not receive a response.

No.	From	Category	RFP document reference	Clause reference	Query	Response
1.						

31.2 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.

31.3 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.

31.4 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 to be treated as confidential. The Bidder's attention is drawn to the requirements of the Constitution of the Republic of South Africa, 108 of 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. The Department will make that determination based on those requirements.

32. Bidders' Conferences

- 32.1 The Department will hold a conference with the Bidders prior to the First Stage 1 Bid Submission Date, and again before the Fourth Stage 1 Bid Submission Date. These conferences will be held in the Republic of South Africa on the dates set out in the table under clause 10 (*Timetable for Small Projects IPP Procurement Programme*) or as notified to prospective Bidders by Briefing Note. Each Bidders' Conference will be limited to the first 300 (three hundred) prospective Bidders that have registered one or more Projects on the Small Projects IPP Website by the due date for registration as set out in paragraph 9.6 and that have paid the required fee to access the RFP. At the Department's request, Bidders will be asked to submit any written questions in relation to the Small Projects IPP Procurement Programme and to confirm in writing to the Department, details of the number and identity of their attendees.
- 32.2 The Department reserves the right, in its sole discretion, to require prospective Bidders to attend any additional Bidders' Conferences.

33. Status of response

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, but reserve the right not to answer or respond to any question, query or request. 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.

34. Submission of Bid Response

34.1 Bid Responses will be required to be submitted to the Department on the following Bid Submission Dates:

34.1.1 Stage 1 Bid Submissions in relation to the First Stage 1 Bid Submission Date are to be submitted on 14 October 2013 by not later than 18h00.

34.1.2 Stage 1 Bid Submissions in relation to the Second Stage 1 Bid Submission Date are to be submitted on 10 February 2014 by not later than 18h00.

34.1.3 Stage 1 Bid Submissions in relation to the Third Stage 1 Bid Submission Date are to be submitted on 14 July 2014 by not later than 18h00.

34.1.4 Stage 1 Bid Submissions in relation to the Fourth Stage 1 Bid Submission Date are to be submitted on 9 February 2015 by not later than 18h00.

34.1.5 Stage 2 Bid Submissions in relation to the First Stage 2 Bid Submission Date are to be submitted on 14 April 2014 by not later than 18h00.

34.1.6 Stage 2 Bid Submissions in relation to the Second Stage 2 Bid Submission Date are to be submitted on 23 March 2015 by not later than 18h00.

34.1.7 Stage 2 Bid Submissions in relation to the Third Stage 2 Bid Submission Date are to be submitted on 1 June 2015 by not later than 18h00.

34.1.8 Stage 2 Bid Submissions in relation to the Fourth Stage 2 Bid Submission Date are to be submitted on 21 March 2016 by not later than 18h00.

34.2 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.

35. 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 43 (*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.

36. Copies of Bid Response

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

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

36.1.2 a soft copy consisting of one master disc and 6 (six) additional discs, and the documents (with the exception of the Financial Models), 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 Models are to be in Microsoft Excel format, version 2007 or later;

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

36.2 The sections of the Bid Response that respond to each of Part B (*Stage 1 Qualification Criteria*), Part C (*Stage 2 Qualification Criteria*), and Part D (*Stage 2 Evaluation Criteria*) of this RFP must be separate documents and must be separately bound. See further at paragraph 52 (*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.

37. Late and Incomplete 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.

38. 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**").

39. 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 Preferred Bidder Guarantee contemplated under clause 23 (*Bid Security, Development Fee and Limitation on payment of Success Payments*) to match any such extension, may be required.

40. 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 Schedule 14 (*Declaration of Bidder*) of Volume 1, Part 2 (*Stage 1 Bid Submission Returnable Schedules*) in respect of the Stage 1 Bid Submission, and Schedule 22 (*Declaration of Selected Bidder*) of Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*) in respect of the Stage 2 Bid Submission, 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 in the form provided in Schedule 15 (*Letter of Intent*) of Volume 1, Part 2 (*Stage 1 Bid Submission Returnable Schedules*) in respect of the Stage 1 Bid Submission, and Schedule 23 (*Letter of Intent*) of Volume 1, Part 3 (*Stage 2 Bid Submission Returnable Schedules*) in respect of the Stage 2 Bid Submission, certifying that:

- 40.1 the Member has studied the terms and conditions of the RFP; and
- 40.2 the Member has accepted that the terms and conditions of the RFP shall govern the Small Projects IPP Procurement Programme.

41. Acceptance and Revision of the PPA, Implementation Agreement, Direct Agreement and Connection Agreements

- 41.1 As part of a Bidder's Stage 2 Bid Submission, 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.
- 41.2 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 Agreements*) as Appendices A (*PPA for each Technology*), B (*Direct Agreement*), C (*Implementation Agreement*), D (*Eskom Distribution Agreement*) and E (*Connection Direct Agreement*).

42. **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 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 23 (*Bid Security, Development Fee and Limitation on payment of 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.

43. **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.

43.1 Issue of Briefing Notes

43.1.1 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 Small Projects IPP Website.

43.1.2 Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of the RFP.

43.1.3 Bidders shall be obliged to accept any amendments specified in Briefing Notes. All Briefing Notes shall be deemed to be part of the RFP.

43.2 Influence of Briefing Notes

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

44. Cost of Bidding

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

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

44.2.1 not being selected as a Selected Bidder and or Preferred Bidder;

44.2.2 not entering into a PPA;

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

44.2.4 the Department altering or abandoning any part or all of the Small Projects IPP Procurement Programme, including limiting the Small Projects IPP Procurement Programme to the First Bid Submission Date only.

45. 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.

46. Inconsistencies

46.1 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 30 (*Time for requests and clarifications*), and the Department will, if necessary, provide clarification to all Bidders by way of a Briefing Note.

46.2 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.

47. Incorrect or misleading information

47.1 The Department may:

47.1.1 Disqualify, in terms of clause 27 (*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 Small Projects IPP Procurement Programme; and or

47.1.2 terminate any decision in respect of the selection of a Preferred Bidder, in accordance with clause 28 (*Loss of Selected Bidder and 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.

48. Opening of Bid Responses

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

49. Bid Response Rejection

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

50. 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 Small Projects IPP Procurement Programme, waives the right to bring proceedings in any forum outside of the Republic of South Africa in relation to this Small Projects IPP Procurement Programme. This Small Projects 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.

51. 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 the Preferred Bidder Guarantees pursuant to clause 23.1 (*Preferred Bidder Guarantee*) and ,*inter alia*, to 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.

52. Format of the Bid Response

52.1 Contents of the Bid Response

52.1.1 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.

52.1.2 All pages of each separately bound section of each part of the Bid Response, for example, response to Legal Criteria and Evaluation, must be

numbered consecutively from beginning to end and a detailed index to the entire Bid Response, including all pages of each separately bound section or part, must be included in the Bid Response.

52.1.3 The Bid Response must adhere to the order set out below, to aid the evaluation process:

52.1.3.1 In respect of a Stage 1 Bid Submission:

52.1.3.1.1 a copy of the Project information required to be submitted to the Department pursuant to clause 9.8 of this Part A; and

52.1.3.1.2 response to Part B (*Stage 1 Qualification Criteria*) comprising:

52.1.3.1.2.1 an executive summary (not more than 20 (twenty) pages);
and

52.1.3.1.2.2 responses to individual headings in the order in which the headings appear in Part B (*Stage 1 Qualification Criteria*) of this RFP and in the form of the returnable schedules that relate to the headings, if applicable;

52.1.3.2 In respect of a Stage 2 Bid Submission:

52.1.3.2.1 response to Part C (*Stage 2 Qualification Criteria*) comprising:

52.1.3.2.1.1 an executive summary (not more than 20 (twenty) pages);
and

52.1.3.2.1.2 responses under the individual headings in the order in which the headings appear in clause 2 (*Stage 2 Qualification Criteria*) of Part C (*Stage 2 Qualification Criteria*) of this RFP and in the form of the returnable schedules that relate to the headings, if applicable; and

52.1.3.2.2 response to Part D (Stage 2 Evaluation Criteria) comprising:

52.1.3.2.2.1 an executive summary (not more than 20 (twenty) pages);
and

- 52.1.3.2.2.2 responses under the individual headings in the order in which the headings appear in Part D (*Stage 2 Evaluation Criteria*) of this RFP and in the form of the returnable schedules that relate to the headings, if applicable.
- 52.1.4 There are 2 (two) parts to a Stage 1 Bid Submission, namely, the Project information required to be submitted to the Department pursuant to clause 9.10 of this Part A and responses to Part B (*Stage 1 Qualification Criteria*).
- 52.1.4.1 The documents comprising the response to clause 9.10 of this Part A must be bound together and submitted to the Department on registration of the Bid Response in accordance with clause 34 (*Submission of Bid Response*) of this Part A.
- 52.1.4.2 In respect of the response to Part B (*Stage 1 Qualification Criteria*), the executive summary must be separately bound from the documents comprising the responses to each Stage 1 Qualification Criterion. The documents submitted in response to each Stage 1 Qualification Criterion (for example, Legal Criteria and Evaluation) must be bound together. Therefore, each response in respect of a Stage 1 Qualification Criterion must be separately bound. .
- 52.1.5 A Stage 2 Bid Submission will comprise of 2 (two) parts, namely, the response in respect of Part C (*Stage 2 Qualification Criteria*), and the response in respect of Part D (*Stage 2 Evaluation Criteria*).
- 52.1.5.1 In respect of the response to Part C, the executive summary must be separately bound from the documents comprising the responses to each Stage 2 Qualification Criterion. The documents submitted in response to each Stage 2 Qualification Criterion (for example, Stage 2 Legal Criteria and Evaluation) must be bound together. Therefore, each response in respect of a category of Stage 2 Qualification Criterion must be separately bound.
- 52.1.5.2 In respect of the response to Part D (*Stage 2 Evaluation Criteria*), the executive summary must be separately bound from the documents comprising the responses to each Stage 2 Evaluation Criterion. The documents submitted in response to each Stage 2 Evaluation Criterion (for example, Price) must be bound together. Therefore,

each response in respect of a category of Stage 2 Evaluation Criteria must be separately bound.

52.2 **Language of the Bid**

The Bid Response and all documents forming part of the Bid Response shall be in English. Any printed literature submitted by a foreign Bidder or Member 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 52.2 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 C (*Stage 2 Qualification Criteria*) of this RFP.

52.3 **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.

52.4 **Identification and Sealing of the Bid Response**

52.4.1 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:

52.4.1.1 Tender reference number;

52.4.1.2 Name and Address of Bidder;

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

52.4.1.4 Type of Technology to which the Bid Response relates;

52.4.1.5 Original or copy number; and

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

- 52.4.2 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:
- 52.4.2.1 the title of the Small Projects IPP Procurement Programme as detailed on the cover page of the RFP;
 - 52.4.2.2 Tender reference number;
 - 52.4.2.3 Bid Submission Date (namely, to which Bid Submission Phase the Bid Response relates);
 - 52.4.2.4 Name and Address of Bidder;
 - 52.4.2.5 Type of Technology to which the Bid Response relates;
 - 52.4.2.6 Whether the Bid Response relates to a Stage 1 Bid Submission or a Stage 2 Bid Submission.
- 52.4.3 The master copy of the Bid Response in respect of each of the 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 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.

52.5 **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.

52.6 **Signing of Bid**

The Bid Response (in Schedule 13 (*Stage 1 Bid Submission Covering Letter*) to Volume 1 Part 2 (*Stage 1 Bid Submission Returnable Schedules*) and Schedule

21 (*Stage 2 Bid Submission Covering Letter*) to Volume 1, Part 3 (*Stage 2 Bid submission 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.

52.7 **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.

52.8 **Information Verification**

52.8.1 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:

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

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

52.8.2 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.