

PROJECTS AND INFRASTRUCTURE ALERT

13 June 2013

IPP PROCUREMENT PROGRAMME THIRD PHASE BID SUBMISSION - RFP

EXECUTIVE SUMMARY

This document contains a high-level overview of the revised RFP in respect of the IPP Procurement Programme, as issued by the Department of Energy (DoE) in May 2013, and is not intended to constitute legal advice and remains subject to further review and amendment. The contents of this document are for the exclusive consideration of the recipient and should not be distributed to any person or party not directly associated with, or contracted to, the recipient in regards to the IPP Procurement Programme. Any proposed distribution shall, at all times, require prior written consent of Cliffe Dekker Hofmeyr. Recipients of this document should not seek to rely on it and are encouraged to review the RFP documents independently.

The following executive summary sets out a high level overview of the Request for Qualifications and Proposals for New Generation Capacity under the IPP Procurement Programme, first issued by the Department of Energy on 3 August 2011 and reissued for Third Bid Submission Date in May 2013, in respect of the IPP Procurement Programme.

Bid Submission Phases under the revised RFP for the IPP Procurement Programme

- Programme designed on the basis of phased bid submission windows pending subscription by Bidders of total allocation of MW per technology.

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- If unsuccessful in any Bid Submission Phase, the Bidder may re-submit the same project under a subsequent Bid Submission Phase.
- The DoE expects to run one Bid Submission Phase per year after the Third Bid Submission Phase, however, there is no guarantee of there being subsequent Bid Submission Phases after round three.
- Where compliant Bids connect to a common substation with restricted capacity, Bids will be comparatively evaluated and ranked. If the difference between the two highest ranked Bidders is less than two points, a 'best and final offer' (BAFO) may occur.

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Key milestones dates for the Third Bid Submission Phase

- **19 July 2013** - important information to be furnished to the DoE including:
 - the technology of the Project;
 - Contracted Capacity of the Project;
 - name and coordinates of the Project Site;
 - whether the Bidder intends to connect to the Transmission System, the Eskom Distribution System, or a Municipal Distribution System.
 - co-ordinates of the substation where the Facility will be connected; and
 - information on the identity of all participants and Advisors to the Project.
- **22 July 2013** – last date for Bidders to submit written questions in terms of Clause 1.1 of Part A of the RFP.
- **19 August 2013** – Third Bid Submission Date.
- **20 August 2013** to **28 October 2013** – evaluation of Bid Responses.
- **29 October 2013** – announcement of Preferred Bidders.
- Within two weeks of appointment as Preferred Bidder – application for budget quotation from Grid Provider, application for the NERSA generation licence and payment of the budget quotation fee.
- **29 October 2013** to **29 July 2014** – Preferred Bidders to finalise their contractual arrangements.
- **30 July 2014** – Financial Close and signing and effective dates of PPAs, Direct Agreements, Implementation Agreements and Connection Agreements.

Capacity Target and Technology Allocation

- Total Capacity – 1473.1 MW
- Envisaged MW split applicable to the different renewable energy technologies:
 - On-shore Wind – 653.6 MW
 - Concentrated Solar Power (CSP) - 200 MW
 - Photovoltaic (PV) – 401.3 MW
 - Biomass - 60 MW
 - Biogas -12.5 MW
 - Landfill gas - 25 MW
 - Small Hydro -120.7 MW
- The DoE is entitled reallocate the MW allocation among the different technologies at any stage of the IPP Procurement Programme.

Key Bid Criteria

- Separate Bid Response for each Project:
 - Only one PPA in respect of a Project and a Facility (save for Bids in respect of landfill gas, in which a Bidder may submit one Bid Response relating to a Portfolio of Facilities and enter into one PPA covering the whole Portfolio).
 - The DoE has issued revised versions of the draft PPA, Implementation Agreement, Direct Agreement and the Connection Agreements, which are non-negotiable and may not be marked up by the Bidders.
- Bids must be valid for 365 days from relevant Bid Submission Date (which will be 19 August 2013 for the Third Bid Submission date).
- Project structure detailing all project members, equity participants, Lenders, Contractors, primary equipment suppliers, Black Enterprises, Local Community Members.

continued

- Memorandum of Incorporation (MOI) of the Project Company or draft MOI indicating that the Project Company is a ring-fenced entity must be submitted.
- Fully termed shareholders agreement.
- Heads of terms for all key contractors or equipment suppliers.
- Detailed drafts of annexes to PPA not provided by DoE or responses in respect of annexes to PPA which require responses or input.
- Bidder is required to obtain all environmental and land use consents required for the Project and complete Appendix PA (Environmental and Land Use Consent Returnable):
 - copy of the title deeds evidencing the Project Company's ownership of the Project Site; or
 - copy of notarial lease together with evidence of registration or that it is capable if registration against the title deed of Project Site for term of PPA, together with a copy of the title deed in respect of the Project Site; or
 - an option, lease or sale of land agreement exercisable at the Project Company's instance to acquire the real rights provided for above, together with the relevant title deeds in respect of the Project Site.
- Environmental authorisation, written confirmation of water availability from the Department of Water Affairs (DWA), and consent from the Civil Aviation Authority.
 - DWA will only process Water Use Licences for Preferred Bidders.
- For the purposes of submitting a bid, the Bidder may comprise a Project Company or a consortium.
- The Project Company must be incorporated in South Africa with its sole purpose, object and business of undertaking the Bidders Project and the activities regulated by the Project Documents.
- Any change of the Bid Response is restricted after submission of Bid Response without prior DoE approval.

Price

- With the exception of biomass and landfill gas, the price caps for each technology have been reduced from the previous Bid Submission Phases.

Prices may not exceed the following cap for each technology:

Technology	Commercial Energy Rate	Approximate change in Commercial Energy Rate from previous Bid Submission Phases
Onshore Wind	R1 000/MWh	13% decrease
Solar PV	R1 400/MWh	50% decrease
CSP	Base Price: R1 650/MWh	42% decrease
Biomass	R1 400/MWh	31% increase
Biogas	R800/MWh	No change
Landfill gas	R940/MWh	12% increase
Small Hydro	R850/MWh	17% decrease

- Price adjustment at Financial Close for foreign exchange movements based on the Financial Model. Two financial models are required: 'Sponsor' and 'Banker' case.
- CSP has a both a base price and a premium component (intended to incentivise delivery of energy onto the grid during peak times) built into it.
- Price based on full CPI rate and Bidders proposed percentage of CPI.
- Base Date for CPI is April 2013 with annual adjustment thereafter on 1 April every year.
- All funding denominated in ZAR.
- Seller restricted on adding to or expanding Facility that increases the Capacity above the Achieved Capacity.
- No change in control in the Seller without DoE approval. No dilution, sale, transfer, exchange, renunciation or other disposal of Equity for three years from Commercial Operation Date in a Conduit Shareholder (entity established to only hold Equity in Seller or in entities undertaking similar projects to the Project).

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- Restrictions on Equity imposed in respect of Ownership Element Obligations and/or Shareholder Loans of any Black Person or Black Enterprises and no dilution below Committed Black Equity.
- Government underpin of PPA Payment obligations under Implementation Agreement.
- Implementation Agreement will be amended to cater for Emission Credits when government policy is established - provided Sellers are not adversely affected.
- Bid Guarantee of R100,000/MW of Contracted Capacity - must be unconditional and irrevocable - issued by licensed South African bank (BBB rating or better by S&P).
- If selected as a Preferred Bidder:
 - furnish a further Guarantee of R200,000/MW of Contracted Capacity within 15 business days of designation (Application must be made to NERSA for a Generation Licence within 14 days of designation as Preferred Bidder);
 - Development Fee - 1% of Total Project Cost payable within 10 Business Days of signature of the Implementation Agreement.
- Refinancing: can refinance or rearrange Debt or Equity during Term provided that amount and tenor of Debt and Equity may not increase above the amount of the Debt and Equity immediately prior to the Refinancing.
- A prescribed Letter of Support dealing with any conditionality, information reviewed, proposed transaction timetable and acceptance of Project Documents.
- Specified corporate finance and external debt criteria, financial standing, robustness and deliverability, preliminary credit approved term sheets including prescribed minimum terms/principles conditional only on final approval of PPA and other contractual documents and due diligence.
- Model audit review opinion required from qualified professional firm.

- DBSA funding package available to optimise the involvement of Black People in the Projects.
- Bidders are also required to show that its Bid Response demonstrates Value for Money to the Buyer and the Government.

Economic development

- 40% South African entity participation, Level 5 contributor status minimum for South African Entity Participation and Bidder to comply with the minimum thresholds as indicated in the Economic Development Scorecard (Appendix JB9).
- Shareholder certificates, constituting documents and shareholders' agreements in respect of the Shareholders and the fully developed and agreed shareholders' agreement between the Shareholders of the Project Company, in respect of South African Entity Participation.
- A valid verification certificate by a South African National Accreditation System and/or an Association for BEE verification agency, in relation to Contributor Status Level.

Evaluation Criteria

- Two stage assessment: Compliance with Qualification Criteria and Price and Economic Development:
 - Evaluation criteria: price 70 points.
 - Economic development: 30 points.

Communication

- Requests and queries to be directed to the Project Officer.
- Briefing notes will be issued by the DoE in respect of requests/queries and distributed to all Bidders via their designated contact officers notified to the Department. Failure to comply/adhere could result in exclusion.

RFP Structure

- Part A: General Requirements, Rules and Provisions
- Part B: Qualification Criteria
- Part C: Evaluation Criteria

continued

Volumes to the RFP

- Volume 1: Part 1 - Legal Notices, Government Policies and Background Documents
- Volume 1: Part 2 - Form of Bid and Returnable Schedules
- Volume 2: Legal Requirements
- Volume 3: Technical Requirements
- Volume 4: Financial Requirements
- Volume 5: Economic Development Requirements.

Cliffe Dekker Hofmeyr is a full service business law firm which is able to provide the entire suite of services at each and every stage of a project under the IPP Procurement Programme. We offer legal services in respect of construction, environmental, property and corporate and commercial aspects relating to a project. Our team is made up of highly experienced projects, construction and finance lawyers dealing with all aspects of

infrastructure, energy and renewable energy projects. We have extensive experience in respect of the understanding of the renewable energy Project Agreements issued by the Department of Energy under the IPP Programme, including the Power Purchase Agreement, Implementation Agreement, Connection Agreements and Direct Agreements and we have readily available toolkits in order to assist you with your Bid Response.

Cliffe Dekker Hofmeyr brings project management skills to each project, offers a single point of responsibility and appreciates the need to ensure the bankability of each project. We have represented both preferred bidders and lenders in respect of the Round One and Round Two projects under the IPP Procurement Programme and were associated with financial close of 18 projects under Round One and 5 projects under Round Two. Our involvement on the previous bid submission phases of the IPP Programme has given us an insight into the market requirements specific to the IPP Programme including developing agreements that have been accepted in the market.

CONTACT US

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