energy

Department:
Energy
REPUBLIC OF SOUTH AFRICA

# TERMS OF REFERENCE

## TRANSACTION ADVISORS TO THE GOVERNMENT OF SOUTH AFRICA FOR THE PROCUREMENT OF INDEPENDENT POWER PRODUCERS UNDER THE RENEWABLE ENERGY FEED-IN TARIFF (REFIT) PROGRAM

## CLARIFICATION NOTICE NR2

**Date 05 October 2010**

## Issued to

## Potential Transaction Advisors to the Government of South Africa under the REFIT programme in South Africa

## (on-shore wind, solar, biomass, biogas, small hydropower and landfill gas)

# CLARIFICATION NOTICE TO BIDDERS

## Number 2

Due to requests from respondents it was decided to:

1. change the submission date to Thursday 7 October at 14h00; and
2. make available the answers to questions received via e-mail attached hereto as Annexure1

Please take note of the following change to the date on which the responses are due:

**Responses are due by 14h00 (South African time) on Thursday, 7 October 2010**

**ANNEXURE 1**

**TERMS OF REFERENCE**

**TRANSACTION ADVISORS TO THE GOVERNMENT OF SOUTH AFRICA FOR THE PROCUREMENT OF INDEPENDENT POWER PRODUCERS UNDER THE RENEWABLE ENERGY FEED-IN TARIFF (REFIT) PROGRAM**

**CLARIFICATION NOTICE NR 2: Q & A**

THE DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) IS THE CONTRACTING PARTY

**PLEASE NOTE:** Submissions can be emailed (if less than 10MB) and hand delivered (if larger than 10MB). Three (3) hard copies and three (3) on storage devices (CDs etc) should be delivered to the DBSA offices at Headway Hill, Midrand, South Africa.

If submissions are great than 10MB, the documentation may be broken up into separate e-mails and the DBSA must be informed accordingly .

| A. ADMINISTRATIVE QUERIES | | |
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| | QUESTIONS | ANSWERS |
| 1 | Can we have a Word version of the contract? | Yes, provided on the website as of 29 September 2010 |
| 2 | Can we have a time extension? | Yes, extension granted to 14h00 (South African Time) October 2010 |
| 3 | Are there any DBSA or commercial tender documents that need to be filled in by the bidders? | Not at this stage of the process |
| 4 | How many copies of proposals need to be submitted? | Submissions can be emailed (if less than 10MB) and hand delivered (if larger than 10MB. 3 hard copies and 3 on storage devices (CDs etc) should be delivered. |
| 5 | Is a tax clearance certificate the only required documentation that should accompany the proposal? | Yes |
| 6 | Do international companies (without a South African presence) need to submit a tax clearance certificate? | No. However, should you be successful further documentation will be required. |
| 7 | New companies may not yet have a tax clearance certificate, how do we comply with this requirement? Should the company be a joint venture between an established South African close corporation (in possession of a tax clearance certificate) and a British “plc” company (not requiring a SARS tax clearance), what is required? | Proof of application for tax clearance should be provided. The certificate of the close corporation should also be provided. Should the certificate be expiring within the 6 month period requested proof of renewal application should be provided. |
| 8 | In case of project extension not due to Advisor's responsibility how will remuneration work? Pro-rata of the fixed fee | If an extension proves necessary it will be negotiated and agreed. |

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| | proposed for that workstream? | |
| 9 | Is it possible to have access to the already prepared information referred to in the TOR? | No it is not available but as soon as the DOE has a preferred group of advisors it will be available to them immediately |
| 10 | How will disbursements incurred in the work performed by the Advisor be reimbursed? At cost? A percentage of the fixed fees? Will it cover all the costs (travel including international travel, accommodation, meals)? | Please note that according to DBSA rules, all such disbursements will be pre-approved, incurred and reclaimed at cost. |
| 11 | Will the appointment as TA for the REFIT programme prohibit a company from tendering for IPPs in the future? | No, if the company could provide comfort that the teams will be properly ring-fenced and that there will be no sharing of staff nor of information. |
| 12 | The Remuneration table under clause 11 does not distinguish between components offered. Please confirm that it is acceptable to submit a "Cost per Deliverable" per Component. | The table refers to a fixed fee, but please also refer to 12.4 in 'Rules of Bidding' in the supplemental material. |
| 13 | Do bidders need to submit a marked up version of the contract or will the contract be completed by the DBSA? | A marked up version of the contract should be submitted with the proposal. See Word version posted on the websites. The DBSA will create the TOR for the contract for the selected consultants. |

| B. TECHNICAL QUERIES | | |
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| | QUESTIONS | ANSWERS |
| 1 | Should the TA bid in consortium or per discipline? | You could bid as a consortium for all areas or choose to bid for selected areas only. You could also bid for the project management (if successful you will then project manage one or more of the work streams). |
| 2 | Is it a requirement for the international bidder to bid in the form of a consortium i.e. legal together with technical and financial? In the event that the international adviser bids in the form of a consortium, will the contracting authority only accept the consortium as a whole or does it reserve the right to appoint individual members of the consortium i.e. only appoint the legal member of the team (without appointing the other team members – technical or financial)? | No, it is not a requirement to bid as a consortium- advisors could bid as individual firms. The DBSA reserves the right to appoint individual members without appointing the consortium. |
| 3 | What governance model will be followed for management of the initiative? | There will be a Project Steering Committee (PSC) comprising representatives of government as well as the DBSA, Eskom and NERSA. Please refer to section 3, page 5 of the TOR. |
| 4 | The timing for RFP development seems short. Is there room for extension? | No, unless unforeseen circumstances arise. |
| 5 | Will there be both an RFQ and an RFP? | The decision whether there will be an RFQ |

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| | | will be taken as soon as the Request for Information responses are assessed. It may be that there is no need for a RFQ (a two staged RFP might suffice). However, if the decision is to release an RFQ there will be enough time allowed for RFQ responses. |
| 6 | In the pricing matrix under paragraph 11, we would like to increase our understanding of what are the contents of each Phase 1 module (review and analysis, design of process etc) | Phase 1 is the Review and Analysis of the information that has come back from the Request for Information (RFI) process Phase 2: Design of the procurement documentation (RFQ and RFP, evaluation and negotiation process to be fair, open, transparent and competitive) and Market engagement to understand the South African market if necessary, RFQ documentation RFQ process management and evaluation and report (if so decided to go the RFQ route) and RFP documentation and delivery to the market. Phase 3: Negotiation and close-out.<br>The bid assumption should be that you will evaluate **10 RFQ bids** and write a report. Please indicate your ZAR quote for the RFQ process so if the decision is not to go RFQ we'll be able to review your proposal. If you have to evaluate more than 10 RFQ proposals the price will be re-negotiated. |
| 7 | The overall objective of this assignment is to procure at least 1.025 MW using different technologies. Has the DOE or any other entity made any decision regarding the technology mix to use or would that also be a topic to tackle during the project? | No, it would not be a topic for development. The decision has been made and NERSA has allowed an allocation in the tariff which corresponds with the decision. However it may be that the response from the RFI process would indicate differently. |
| 8 | Regarding the infrastructure needed for the development of the projects, who would be the investor? Would the Government ensure the connection between the projects and the grid, or would that be part of the IPP projects as well? | The developers (IPPs) will have to provide the infrastructure needed and no, the Government will not take responsibility for it. The DOE may have an interest in knowing where there is a need for Government interventions to make the project work. The transaction advisors will have to provide that type of information after analysis of the RFI responses. |
| 9 | Is international best practice and experience being sought to perform the review function, as opposed to the transaction advisory role (legal)? | We expect the review team to be an international team that will be hands-on, available at all times and will provide |

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| | | the necessary advice in terms of international best practice and experience, as well as input on legal issues where required. |
| 10 | It seems that the TOR sees the international legal role as a review role whilst the technical and financial roles are transactional. Is that the case? If so, it seems to us that a consortium bid for work outside that legal role may be unhelpful. Could you please clarify the requirement? | The intention is to have review teams both for legal and technical, but no review role for the financial advice. However, you could bid with a South African firm as part of the local transaction advisors. |
| 11 | Will there be any scope for the review team's role to overlap with that of the legal transaction advisors or for the review team to supplement the services provided by the legal transaction advisory team? If so, should we bid on the assumption that that is not the case? | This is not the case. There will be a lot of overlaps and areas where the review team will supplement the transaction advisory team's work and therefore we also need the hourly rates to ensure you are remunerated fairly. |
| 12 | Please could you advise whether it is a requirement for the international bidder to bid in the form of a consortium i.e. legal together with technical and financial. | No, it is not necessary - advisors could bid as individual firms. |
| 13 | It is stated that "IRP 1" was published in January 2010 and that "IRP2010" will be published in November 2010 – were there any in between, and/or will IRP2010 supersede IRP1? | There was nothing inbetween. IRP2010 will replace IRP1. |
| 14 | Bidders have to accept the Terms of Reference, bid evaluation criteria, etc., yet there is a request for Proposal 2 to contain improvements to the Terms of Reference. Is it acceptable to accept subject to our improvements being accepted by the Department? We would not want to be disqualified for conditional acceptance when we were in fact asked for input on this point. | The further documents put out by the DOE are to provide clarity to bidders and the DOE does not see it as prejudicial but rather as providing guidance to the bidders and in this regard, improving their understanding of the requirements/needs of the DOE and consequently, quality of bids submitted. This information is being provided to all bidders and does not better or prefer one bidder over another. |

| | **C. SELECTION CRITERIA QUERIES** | |
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| | **QUESTIONS** | **ANSWERS** |
| 1 | Are international firms held to the BEE criteria which count for 10 points? | No, to the extent that non-South African based firms cannot comply, points will not be allocated. |
| 2 | If an international firm ties up with a local firm would it lose its status as the international firm then i.e. can it apply, with such a consortium, for the designated international financial or technical positions? | Yes, it can apply. |
| 3 | Clause 14 (Bid Evaluation Criteria) provides in Clause 14.4 (Financial Criteria) that the bidder must obtain the minimum threshold of 70% for the technical qualification AND meet the | In respect of non-South African based bidders points will not be allocated for BEE (to the extent of their non-compliance) |

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| | BEE requirement, before being considered for further evaluation. Please clarify – Will the international bidder merely receive zero out of 10 for BEE and will this disqualify the international bidder? | and the evaluation of the bid of such bidders will take this into account i.e. the international bidder will not be disqualified. |
| 4 | Is the threshold score for qualifying 70%, technical and BEE score **combined** or is there a **separate threshold for BEE** that must be met? What are the "minimum BEE requirements" that a bidder must meet and (ii) how does this apply to an international bidder, bidding for the role of international legal advisor? | See the answer to the question above |
| 5 | Do the specified criteria for evaluation of the proposal remain the same for firms applying for different roles in the project? | The score will be adjusted for firms applying for a specific role so that firms are not measured for something they are not applying for. |
| 6 | Please can you clarify if local professionals will be evaluated on their general expertise and experience or only on IPP and REFIT-type project related experience | Each bid will be assessed on its own merits based on the criteria set out. |
| 7 | Scope of Work: Law firms will be paired with a technology team and provide legal support thereto. We view this statement to mean that in our proposal, our firm is to identify the technology field and team it would prefer to provide legal support to. Kindly clarify whether once a firm has chosen a technology team to be paired with whether you may re-allocate the relevant legal firm to another technology field depending on issues such as suitability of the firm based on information furnished in its proposal and whether there would be any prejudice suffered thereto. | Bidders should indicate which technology they have preference and experience in to make the pairing easier. There would be no prejudice - the DOE wants the best team it can procure but reserves the right to re-allocate. |
| 8 | Kindly furnish us with the legal evaluation criteria and/or clarify the criteria that will be employed for law firms. | Legal evaluation falls under the technical criteria. Please refer to clauses 5, 7 and 14. |
| 9 | Few South African small-medium sized law firms have any IPP and PPA experience, but they do have an understanding and knowledge of the fields. Kindly clarify whether a lack of the relevant experience will prejudice the weighting provided to a proposal which fails to show extensive experience and knowledge in these fields for South African firms. | While the DOE will not discriminate on the basis of size of firm, the DOE will consider the experience the firm has. The selection criteria will be applied. We are mindful of lack of experience in the South African market and are looking to consider experience in project finance, PPPs as well as experience in the energy sector. |
| 10 | For South African based international firms, should we partner with advisers in our international network, would we qualify as international advisers, local advisers, or potentially both? | Should you bid from the South African office you will be viewed as the local advisors supported by your international colleagues. |

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| | Do we indicate in the proposal whether we are proposing for the international or local advisory role, or can we merely submit our credentials and allow the adjudicators to assess whether we would qualify as local or international advisers? | Should you bid from the South African office you will be viewed as the local advisors supported by your international colleagues. |