

## **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**

## **DISCLAIMER**

The Department of Energy (DOE) has prepared this information document to provide parties interested in submitting proposals to provide services as transaction advisors or reviewers.

While the DOE has taken due care in the preparation of information contained herein, neither the DOE, its staff, or its advisors or any other organ of state providing assistance to the DOE gives any warranty or makes any representations, express or implied, as to the completeness for purpose or accuracy of the information contained in this document or any information which may be provided in connection therewith.

The information contained herein is not intended to be exhaustive. Interested parties are required to make their own enquiries and bidders must, confirm in writing that they have done so and that they do not rely on the information provided in this Terms of Reference document in submitting their response. The information is provided on the basis that it is non-binding on the DOE, its staff, and its advisors or any other organ of state providing assistance to the DOE. The DOE reserves the right not to proceed with the initiative as well as the right not to discuss the initiative further with any bidder.

No reimbursement of costs or expenses of any type whatsoever will be paid to bidders or any other persons, or entities expressing interest in the initiative for purposes of submitting a response to this Terms of Reference and to this end, no bidder shall have a claim against the DOE, its staff or its advisors, or any other organ of state providing assistance to the DOE, arising out of any matter relating to this Terms of Reference document or the REFIT initiative, of any nature whatsoever whether or not any circumstances arising as a result of, such claim is based on any act or omission by the DOE or any organ of state providing assistance to the DOE whatsoever and/or the content of this RFI.

## 1. PURPOSE

The Government of South Africa through the Department of Energy (the DOE), is planning a procurement process for the purchase of renewable energy from experienced independent power producers (IPPs) under the Renewable Energy Feed-In Tariff (REFIT) program. The IPPs will be invited to select and secure their specific sites, collect data, conduct all the necessary environmental studies and approvals and to design, build, finance, own and operate their plants under a 20-year (maximum) power purchase agreement (PPA).

By releasing this Terms of Reference, the DOE seeks potential transaction advisors (legal, financial, technical, environmental, and empowerment specialists) in the renewable energy environment to indicate their interest in providing advisory services to the DOE to achieve the above. The DOE wants to procure the services of experienced local and international transaction advisors to: (1) design a transparent, fair, open and competitive procurement process as well as to develop procurement documentation i.e. the request for pre-qualification (RFQ), the request for proposals (RFP) inclusive of the selection and evaluation criteria, and technology specific power purchase agreements; (2) support the DOE during the competitive bidding process, i.e. the management of a open, fair and transparent process and providing the DOE with administrative support, communication and clarification with the short listed bidders, (3) support and advise the DOE re the design and management of a fair and transparent evaluation process according to the evaluation criteria, as well as the drafting of the evaluation reports for final decision-making; and (4) support the DOE with the negotiations and contract closure with the preferred candidates and the close-out reports.

The REFIT program, Phase I and II, as announced by the National Energy Regulator of South Africa (NERSA), includes the following technologies:

- on-shore wind;
- concentrated solar power (CSP) trough with and without storage ( $\geq 1$  MW);
- CSP tower with storage of six hours per day ( $\geq 1$  MW);
- large scale grid connected photovoltaic systems ( $\geq 1$  MW);
- biomass solid ( $\geq 1$  MW);
- biogas ( $\geq 1$  MW);

- small hydropower; and
- landfill gas.

The DOE is committed to an independent, fair, transparent, open and competitive procurement and evaluation process and a quick and successful negotiation with potential investors in renewable energy generation projects.

**This Terms of Reference is providing the potential transaction advisors and reviewers with the opportunity to familiarise themselves with the background information and the requirements. An update on the bid technical evaluation criteria, bid submission requirements and the bidding rules as well as the draft contract will be made available Tuesday 28 September 2010 at 14h00 South African time. The DOE will post information on the identified websites and potential advisors should visit the websites on a regular basis to ensure they stay informed.**

**Please note enquiries addressed to the National Treasury should come through the following e-mail address:**

**IPPprocurement@treasury.gov.za**

## **2. BACKGROUND INFORMATION**

Significant expansion of the South African economy during the past few decades resulted in consequent and (substantial) increased growth in electricity demand without the necessary growth in the supply side. The South African Government has decided to embark, as an immediate priority, on the creation of a conducive enabling environment for private sector investment in energy generation, with a very specific focus on renewable energy from independent power producers (IPPs) in the short term.

South Africa has a high level of renewable energy potential and presently has in place a target of 10 000GWh of renewable energy by 2013. To contribute towards this target and towards socio-economic and environmentally friendly, sustainable growth and job creation, a need to stimulate the renewable energy industry in South Africa was identified. During 2009 NERSA announced the South Africa Renewable Energy Feed-in Tariff (REFIT) program, Phases I and II. NERSA also published Regulatory Guidelines, a draft Power Purchase Agreement (PPA) and Rules on Selection Criteria for Renewable Energy

Projects (selection criteria) under the REFIT program for public comment (as per the Electricity Regulations on New Generation Capacity to the Electricity Regulation Act, 2006).

Other initiatives under the leadership of government departments in South Africa have also evolved. One of these initiatives, with high level government involvement and support, is the South African renewable initiative (SARi), a public/private initiative with an objective to stimulate critical mass of demand for renewable energy in South Africa and therefore significantly increase the generation of renewable energy, catalyse green growth through the localisation of the supply side and reduce carbon emissions. The Government of South Africa has committed to a substantial reduction in carbon emissions and a cleaner economy. The intention of the Government is to support the green economy initiative through the establishment of a local market i.e. substantial localisation that could contribute to economic growth and job creation

**Progress to date:** - In preparation for the REFIT program the DOE has initiated a review of the following areas to ensure an investor friendly enabling environment:

- A review and evaluation of the current enabling regulatory and legal environment, including the different roles of the government stakeholders, the cost recovery mechanism, selection criteria and necessary government support to the REFIT program. Consequent to the review, proposals were made regarding amendments to the Electricity Regulations on New Generation Capacity (the NewGen Regulations) as well as proposed new regulations dealing with the licensing functions in the electricity sector i.e. the transmission, generation, distribution and trading functions of electricity supply;
- A review and evaluation of the institutional structures currently in place and recommendations in terms of more independent, efficient and effective decision-making processes in government for the effective and efficient procurement and implementation of independent power projects;
- Development of a draft set of standardised procurement documentation i.e. PPA, a Financier Direct Agreement and Transmission and Connection Agreements (still to be finalised) as part of the procurement documentation.

The South African Government led by the DOE and supported by, *inter alia*, the National Treasury, the Department of Public Enterprises, Department of Environmental Affairs, Departments of Trade and Industry, Planning and Economic Affairs, Eskom, NERSA and

others, is in the process of identifying and making the required amendments, referred to above, to the enabling environment.

The amended NewGen Regulations will be released for public comments during October 2010 and to be promulgated in November, while the DOE is finalising the Regulations dealing with the generation, transmission, distribution and trading functions to be licensed by NERSA, inclusive of a review of a workable cost recovery mechanism. All of these documents will be finalised within the next two to three months.

The draft PPA and Rules on the Selection Criteria for Renewable Energy Projects under the REFIT Programme, as released for public comment by NERSA, have successfully been integrated as an input into the drafting of the standardised procurement documentation, i.e. the PPA and guidance to the drafting of the RFP, as well as the required amendments to the the NewGen Regulations.

According to the amended NewGen Regulations (when promulgated) the Minister of Energy has to make a ministerial determination in terms of Section 34 of the Electricity Regulation Act regarding the Buyer under the REFIT program. This determination will be made before the release of the procurement documentation to the market.

### **3. ROLES AND RESPONSIBILITIES**

To run processes in parallel and save time, the DOE has established a team consisting of the DOE, the National Treasury, Eskom, NERSA and the Development Bank of Southern Africa (DBSA), as well as other government departments, as and when needed, to appoint local and international consultants to develop the procurement documentation and design the procurement process according to international best practice. The DOE in its capacity as the policy department will be leading this initiative, supported by the National Treasury and other departments, Eskom and NERSA. The team will be involved in the procurement, evaluation and negotiations of the program and individual projects to ensure an independent, fair, open and transparent process.

Taking due cognisance of the importance of the REFIT program to the South African Government, as well as the size and complexity thereof, the DOE, the National Treasury and the DBSA have entered into a Memorandum of Agreement which allows the DOE access to the skills and capacity of the DBSA as well as access to the best local and international expertise available. The DBSA will procure and appoint on behalf of the DOE the transaction advisors under this terms of reference. The DBSA will also provide administrative support and technical assistance. Further explicit advisory roles identified

for the DBSA will be arranging support (technical assistance and financial support) to the Black Economic Empowerment partners in the REFIT projects as and where necessary. The advisory role of the DBSA will be ring-fenced from its lending business to prevent conflict of interest and ensure confidentiality and independence.

Due to the shortage of skill and experience in the South African advisory market, transaction advisors bidding under these terms of reference will be required to sign confidentiality agreements and appropriately ring-fence the team members involved with the Government team, while other professionals in the same firms would be allowed to participate with developers, lenders and others, relying on the ethics, professionalism and reputation of these individual participants and their firms. This specific arrangement is not only there to ensure independence and manage conflict of interest, but it is a concession made by the Government to enable as many South African professionals as possible to be available to the rest of the market.

#### **4. CONTRACT OBJECTIVES & EXPECTED RESULTS**

Through this initiative, the Government of South Africa expects to meet, among others, the following strategic objectives:

- develop an independent and fair procurement framework which will be standardised for future procurement processes;
- diversify the energy mix so as to be less dependent on fossil fuels;
- significantly increase renewable energy generation i.e. leverage private sector funding from domestic and international sources to unlock South Africa's potential to produce renewable energy and enable a rapid scale-up of investment in renewable energy generation;
- follow the global trend of striving for a pollution free environment by the use of renewable sources to produce electricity;
- reduce carbon emissions;
- minimize impact on water resources in water scarce country;
- catalyse green growth through the localisation of the associated supply chain; and
- introduce private sector participation in the generation of electricity in South Africa, a market historically dominated by the public utility, Eskom.

The overall objective of this assignment is to procure at least 1 025MW (different technologies) of renewable energy generated from independent power producers under the REFIT program, Phases I and II. The transaction advisors are to develop the

procurement documentation and design an efficient, effective and fair procurement, evaluation and negotiation process. It will enable the Government of South Africa to increase the private sector power generation contribution in South Africa.

The design of the process and development of the documentation will be during October and the first half of November. The release of the procurement documentation to the market is planned for mid-November 2010.

It is the intention of the DOE to procure legal, technical (all technologies), financial, environmental, and empowerment experts. The DOE is also intending to appoint advisors who will be project management experts and will lead the different work streams.

Due to the enormous size and complexity of the program as well as the high profile and importance to South Africa, the DOE has decided to have two layers of support i.e. (1) a team of the transaction advisors and (2) a review team. The transaction advisors will be involved in the day-to-day on-going development of the procurement process, while the review team will be available to the transaction advisors for advice and guidance *at any time* during the procurement, evaluation and negotiation processes as well as to review the final products and ensure that the documentation is of the highest quality and standard, equal to international best practice.

It is furthermore important and the intention of the DOE to have two more local experts on the advisory team i.e. a local energy expert who has experience in the electricity environment and would form part of the review team.

The second local expert must be an experienced person in the communication sector and must have a good understanding of the government's management of the media. The communication specialist needs to advise the DOE throughout the process until successful conclusion of the program. An indicative summary of the need for transaction advisory and review teams is as follows:

Technical Skill	Phase RFP	Review Team (international)	Phase Evaluation	Phase Negotiation
Legal	Core + 3 teams	1	4 teams + 1 Int'l Review	4 teams + 1 Int'l Review
Financial	2 local + 1 int'l	0	2 + 1 int'l	2+ 1 int'l
Technical	5 = 1 per technology	1 full house review team	5 +1 Int'l Review	5+1 Int'l Review
BEE/LED	2 local		2	2
Environment	2 local	1 (int'l Equator Principles etc.)	2+	2+
Local expert	1 local	1 local	1	1
Transaction communication specialist	1 local	1	1	1

## 5. OUTPUTS

After taking due cognisance of the information from the market testing report i.e. *Request for Information (RFI)* released to the market on the September, 27, as well as the documentation listed under the paragraph in this Terms of Reference “*Background Documentation and Preparatory Work*”, the specific tasks and outputs of the assignment are as follows:

- 5.1 summarise and assess the information received from the market testing under the Request for Information (RFI);
- 5.2 evaluate the information received from the market testing as per the RFI in respect of the readiness of the market for the REFIT program, as well as availability of infrastructure in support of the projects ready and able to deliver i.e. water, roads, connection to the grid etc.. It will also be expected from the transaction advisors to opine on other infrastructure identified by the transaction advisors as necessary for successful delivery of the different types of technologies. The information would be of absolute necessity to design the evaluation and selection criteria;
- 5.3 assess and understand the relevant legal and regulatory information and documentation guiding the REFIT program and advise on further amendments where necessary;



- 5.4 advise and support the DOE with the design of a fair, competitive and transparent procurement process and documentation, taking into account the information and the intentions and objectives of the DOE as described above;
- 5.5 finalise and deliver the procurement documentation i.e. RFQ and RFP, with annexures relevant to the different technologies under the REFIT program to the market;
- 5.6 develop and finalise the evaluation and selection criteria to be used in the procurement documentation taking into account the peculiarities of this REFIT program and also the information from the RFI;
- 5.7 finalise the power purchase agreements (PPAs) relevant to the different technologies;
- 5.8 finalise the financier direct agreement and the transmission and connection agreement;
- 5.9 ensure that the term sheet for the DBSA support to the BEE partners is ready for sign-off and to be included in the RFP;
- 5.10 assess the depth of the ZAR market to handle the REFIT program together with other substantial public private partnership (PPP) initiatives and advise accordingly;
- 5.11 assess the necessity for development finance institution participation and any specific instruments or interventions required;
- 5.12 advise the DOE with regards to the applicability of the Clean Technology Fund (public and private) and the relevance of carbon credits and commercial importance thereof;
- 5.13 advise the DOE with regards to refinancing and the sharing of the refinancing gain;
- 5.14 design a fair, open and transparent evaluation process and support of the DOE with the implementation thereof;
- 5.15 support the DOE with the communication and clarifications to the bidders;
- 5.16 design the necessary evaluation documentation according to the evaluation criteria in the RFP;

- 5.17 draft the evaluation report based on the outcome of the evaluation process for decision-making;
- 5.18 design and support the DOE with the implementation of an efficient and effective negotiation process in the quickest possible time without compromising the DOE and/or the Buyer;
- 5.19 support the DOE to conduct the negotiations with the preferred bidders taking due cognisance of the REFIT program and the impact on the financial and capital markets and the specific South African market circumstances and requirements;
- 5.20 draft a contingent liability report to determine the impact of the program on the contingent liability space of the Country; and
- 5.21 support the DOE to develop a contract management plan and advise on a contract management institutional structure to mitigate some of the risks.

These outputs and some outcomes must be delivered in accordance with the Scope of Work set out below.

## **6. BACKGROUND DOCUMENTATION AND PREPARATORY WORK**

The transaction advisor must familiarize itself with all background documentation and preparatory work conducted to date and shall be responsible for carrying out initial technical, financial and legal framework reviews that are deemed necessary for a successful completion of the transactions, including, but not limited to:

- Relevant existing reports, studies, audits, etc. necessary to become familiar with the electricity sector in South Africa;
- All information pertaining to electricity market structure;
- Existing financial forecasts, historical financial performance and technical operating history for Eskom and existing power generation arrangements in South Africa;
- Existing electricity laws and regulatory functions as well other applicable legislation, including but not limited to, the Electricity Regulation Act, New Gen Regulations (including the proposed amendments), South African Grid Code, Broad-based Black Economic Empowerment Act, Preferential Procurement Framework Act and the Public Finance Management Act; and
- Responsibilities and relationships of the Departments of Energy and Public Enterprises and Eskom with other government entities at different levels.

## 7. SCOPE OF WORK

The DOE has identified, as per the Integrated Resource Plan (IRP1) published in January 2010, the need for procurement of at least 1 025 MW of renewable energy from private sector developers by March to 2013. The projects under IRP1 will be allocated the tariffs as announced by NERSA in REFIT Phase I and II. However, IRP2010, expected to be released by early November 2010, will most probably have an increased requirement for renewable energy. This will necessitate a decreased tariff structure to be announced by NERSA.

It is therefore important for potential transaction advisors to be flexible in the development of the procurement program. The intention is to sign-up projects that are ready and able to put capacity (MW) and energy (GWh) into the system from 2011 up to the end of **March 2016**. It may be that the design of the procurement framework and documentation would deal with different tariffs for the same technologies i.e. wind under REFIT Phase II vs. another tariff for wind under a revised REFIT tariff program to be announced by NERSA.

All transaction advisors and the review teams appointed under this Terms of Reference are required to work closely as a team and deliver the required outcome within an immensely short time frame. It is therefore important for participants to understand the requirement to staff the teams with the appropriate and necessary skilled and committed people, to present the DOE with necessary resources to achieve success within the tight timeframes. Populating the teams is the responsibility of the bidding advisory firms and it is expected from them, in their professional capacity, to propose the right team members and manage them to enable a successful outcome.

**Project management** – The project management experts will be taking responsibility to lead and manage the different teams of transaction advisors, arrange access to the review teams, deliver reports and ensure the quality of the products.

Advisors interested in the project management could come from the different streams or bid separately for the opportunity.

**Legal** - The DOE has already appointed a South African legal firm, Webber Wentzel (WW), lead by Ms Brigitte Baillie, partner and head of Project Development and Finance, as part of the transaction advisory team. WW has embarked on the drafting of a standardised PPA, a draft framework for an RFP, financier direct agreement and transmission and connection agreement. The DOE wants to solicit the services of three (3) more South African legal firms to support WW and work as a team in the areas as

indicated above in paragraph 4.1 “*Outputs*”. The current DOE thinking is that each of the law firms will take responsibility for a technology team i.e. the team dealing with wind, solar PV, solar CSP, etc. and be the legal support to that specific team in the design and development of the documentation. However, all the legal firms will be involved in the design of the procurement process, the finalisation of the procurement documentation as well as the design and implementation of an independent, fair, open and transparent bidding, evaluation and negotiation process. WW will lead and manage the legal advisory team, unless otherwise decided between the legal team members.

To ensure access to international experience and best practice, the DOE wants to procure the services of a legal review team i.e. an international law firm (or a conglomerate of law firms) with expertise and experience in all of the technologies under the REFIT program. The international review team must provide proof of its involvement in the drafting of procurement and legal documentation i.e. RFQ, RFP, PPAs and relevant annexures and must be experienced in the negotiation of renewable energy IPP projects. The legal review team must have access and allow the transaction advisory team access to information re existing PPAs and annexures that they have worked on as well as existing RFPs done in other jurisdictions.

This legal review team will be working in close collaboration with the transaction advisors, providing advice and allow access to professionals with the relevant experience and skill, as and when requested, as well as to provide inputs to the finalisation of the set of procurement documentation and a final review before the release of the documentation to the market.

**Technical** – the DOE intends to appoint an experienced team of technical experts to advise on the technical input into the procurement documentation and process as collected and assessed from the market testing RFI, support with the management of the bidding process and the clarification and briefing notes to bidders, evaluate the submissions and send clarification questions as and when needed, write the evaluation report for decision-making and negotiate with preferred candidates as well as the close-out report, as described in the paragraph 4.1 “*Outputs*” above. The team of technical experts must be able to provide proof of their involvement in similar procurement processes in South Africa or other jurisdictions and their specific role in each of the teams. The experts can come from one or from different firms, however a lead consultant for the technical team has to be identified or a consultant’s willingness to act as a lead consultant must be indicated.

It will be expected from the international advisors to team-up with local advisors and/or to be physically available in South Africa during October and November or until the procurement documentation will be released to the market and again during the evaluation and negotiation phases. The technical transaction advisors will advise on the infrastructure needs for each technology as well as the readiness of the market.

The technical transaction advisors will have to have access to an international technical review team that will be available on a continuous basis for advice and to ensure quality of the documents before releasing it to the market. The review team will be an experienced international firm with expertise in all technologies or a conglomerate of firms that will provide the full spectrum of advice.

Technical experts must bid their availability at whichever level they'll feel most comfortable to participate.

**Financial** – the DOE is requesting experienced financial advisors to indicate their availability and willingness to participate as transaction advisors. Due to the depth of the skill in the South African market, the DOE has identified the need to appoint two (2) local firms and one (1) international firm. The international advisor is expected to team-up with a local financial advisor not necessarily one of the two independent financial advisors described above. For clarification there will be three (3) local financial advisors and one international advisor linked to one of the three.

The DOE does not foresee that there will be a review team appointed for this financial work stream, however, it will be expected from the different advisors to review all the documentation and to ensure the highest quality of standards. The international expert is expected to bring international best practice from involvement in other international transactions of this kind.

The work of the financial advisor is linked to the work specified in the paragraph 4.1 “Outputs” above. The financial advisor is expected to work closely with the empowerment and/or local economic development expert as well as with the expertise available from the DBSA. Advisors should indicate their experience and preference regarding specific technologies. As said, it will be expected from the international advisors to team-up with local advisors and be physically present and available in South Africa during October and November or until the procurement documentation will be released to the market and again during the evaluation and negotiation phases.

***Empowerment and local economic development*** – the DOE requires the advisory services of an empowerment and/or local economic development expert. It is foreseen that it will be one or two South African advisor/s contributing to the different models for black economic empowerment and/or local economic development and providing input into the procurement process etc. as described above in paragraph 4.1 referred to as “Outputs”. It will be expected that the empowerment consultant will be closely linked with the financial and legal advisors to ensure the correct structuring and legal, financial and technical support to the empowerment partners. The empowerment expert would also have to be in close liaison with the experts from the DBSA.

***Environmental expert*** – the DOE needs the advisory services of an excellent environmental expert to advise on the applicability of the environmental laws in South Africa. The expert will work closely with the DBSA and the legal teams to ensure compliance and enable the team to take the right decisions. It is foreseen that it will be one or two South African advisor/s contributing to and providing input into the procurement process, evaluation and negotiation etc. as described above in paragraph 4.1 referred to as “Outputs”.

***Local expert*** – the DOE is intending to appoint a local expert to review the work done by the transaction advisors and to ensure guidance from a South African perspective. This expert must understand the local and international energy sectors and will bring local content to this assignment. He/she must be an experienced person, understanding the South African electricity environment in the context of the latest international developments; must have a recognised international track record and must be able to prove years of involvement in South Africa’s energy sector at different levels of involvement. The Government of South Africa would prefer to “South Africanize” the inputs from the advisors and to have a program tailor-made for the South Africa market, replicable in future programs.

***Transaction communication specialist*** – the DOE intends to appoint a local communication specialist who has worked extensively with government. This is to enable the DOE to communicate through the media. The expert will have to develop a communication strategy and interact with the different communication units in the Government for the release of information. The expert will be involved until the end of the program to ensure that the market is updated of developments and informed re progress on the REFIT program.

## 8. SKILLS AND EXPERIENCE REQUIRED

The Transaction Advisor will comprise of different teams, managed by a single lead advisor/project manager, the members of which have the *skill and experience, commitment and availability* necessary to undertake the range of tasks set out in this Terms of Reference. Each individual on the team must be personally available to do the work as and when required to do so. The lead advisor will be held accountable, in terms of the delivery, i.e. ensuring project deliverables on time and of extremely high quality. If the lead advisor is appointed as part of a proposed team, he/she will be responsible for the professional conduct and integrity of the team. If the Department so decides to appoint the members of the team on an individual basis, the lead advisor will still be asked to co-ordinate the team and their inputs. The skills and experience required in the transaction advisor team must be relevant to a team of international experts advising on the procurement of renewable energy IPPs and as also described above. Some of the skills are as follows:

- Financial analysis, project structuring and modelling in context and with relevant IPP in renewable energy;
- Limited recourse project finance and the structuring and modelling of such transactions;
- General IPP procurement and structuring;
- Knowledge of and experience of the South African legislation and enabling environment for IPPs;
- Knowledge and experience in design of a procurement process and preparing procurement documentation;
- Knowledge and experience in the technologies under the REFIT program;
- Knowledge, skills and experience in structuring IPP projects;
- Expertise and experience in the environmental requirements for these specific transactions;
- Expertise and experience in environmental impact assessments and planning;
- Legal experience and expertise relating to PPAs in these specific technologies;
- Expertise and experience in developing transactions that promote black economic empowerment and local economic development;
- Project management experience and expertise;

- Administrative support;
- Review to comply with international best practice and standards and align with South African environment; and
- Contract management.

All members of the Transaction Advisory team must be in good standing in all respects including ethically and professionally and should provide proof of registration where required in respect of professional registration as well as proof of good standing with such professional bodies.

## **9. CONTRACTING AUTHORITY, MANAGEMENT AND REPORTING**

The DBSA will be the contracting authority for all the Advisors (transaction advisors and review teams) on behalf of the DOE. The process will be managed by an active Steering Committee under the leadership of the DOE and with the support from the National Treasury through its PPP Unit. There may be one or more project managers assigned from the DOE to the different work streams and the Advisors under the leadership of the lead advisors/project managers will form part of the Steering Committee.

The individual Advisors appointed to carry out the work in this Terms of Reference are expected to be employees (broadly defined to include partners, directors, owners etc) of companies and the appointment will be made in the name of the employing company. However, the DOE requires that the individual experts be dedicated to the REFIT program, form the single point of communication between the DOE and their company and provide the necessary experience, expertise, availability and commitment to meet the requirements of this RFP.

Due cognisance should be taken of the expected intensity of the work and that the Advisors will most probably be occupied on a fulltime basis during October and November. Other staff from the company of each individual expert may provide back-up and support services. Where this is the case, the proposal from prospective consultants must indicate the details of such support service individuals and the intended extent of such services. The DOE intends to contract on the basis that the individual expert's availability is a key performance indicator.

The Department also reserves the right to appoint individual Advisors under separate contracts but where this is done such Advisors will be expected to work closely together as an Advisory team to prepare and finalise the studies identified in the sections above. The



above tasks are expected primarily by (and therefore be the responsibility of) the indicate advisors. This allocation is not to imply that the other advisors will not be involved in such activity but rather to indicate which advisor is to take primary responsibility for the activity. All advisors are required to prepare those parts of the studies indicated in the Scope of Work and to review the entire set of studies so that a comprehensive whole is created by the Advisors.

## **10. FACILITIES AND INFORMATION TO BE PROVIDED**

Consultants will be based at the DBSA in Midrand. Offices and admin support will be rendered.

### **Timing**

***Commencement date and period of execution*** - The assumed commencement date will be the week of the 10th October 2010. Advisors will be expected to be in South Africa mid-October. The first phase of the work (the assessment and population of the information received from the RFI market testing, design of the procurement process and development of the procurement documentation is expected to be completed by mid-November but cannot be later than end of November. Thereafter the bidding phase will start, based on the information from the RFI and/or the RFQ process.

## **11. REMUNERATION**

The Advisors will be paid a fixed fee in ZAR, including VAT, but excluding disbursements, unless otherwise agreed with the DBSA and the Steering Committee. Bidders should bid for the work packages interested in and expected to deliver.

***Phase 1*** will be the review and design procurement process and preparation of the procurement documentation. Phase 1 will end at the release of the RFP to the market. Disbursements will be paid at cost with the exception of all travel in the Gauteng area for which no payment will be made. Bidders will be expected to be available on a full time basis during October to mid-November i.e. until the release of the procurement documentation.

***Phase 2*** will be the bidding and evaluation phase and will end at the announcement of the preferred bidders. The DOE understands that this is a phase with a lot of uncertainty and would therefore expect the bidders to bid as if they have to evaluate a maximum of 3

participants in the bidding and evaluation process. In the event of more bidders the fees will be negotiated accordingly and before further engaging the Advisors on this phase.

**Phase 3** will be the negotiation phase and will end with delivery of the close-out report. A similar arrangement will be made for this phase.

Bidders are required to fill in the table below in amounts including VAT. Where a particular service is not part of the proposal then the cell should be marked N/A. All costs must include the costs of cooperating with other Advisors appointed by the DOE.

Deliverable	Cost Per Deliverable (ZAR incl VAT)		
	ZAR	VAT	TOTAL
Phase 1			
Review and Analysis			
Design of process			
Market Engagement Stage			
RF9273Q documentation			
RFP documentation			
Phase 2			
Phase 3			

The following remuneration schedule is proposed for each Part of the Contract. Prospective Transaction Advisors are invited and can make alternative proposals in this regard.

The Transaction Advisor will be remunerated as follows:

**Phase 1:**

- Mobilization fee: 10% of the Phase I fee, payable 1 calendar month from the date of the commencement of Phase I;
- 45% of the fee with the delivery of the RFQ and accepted by the Steering Committee;
- 45% of the fee with the delivery of the RFP to the market.
- In the event of no RFQ the full fee will be paid with the delivery of the RFP to the market.

**Phase 2 and 3:**

- As determined during the fee negotiations

The Department will be the beneficiary of any success fee recovered from the successful bidder.

Deliverables completed per remuneration schedule will be approved by the Steering Committee, where after invoices may be submitted to the DBSA for payment. Disbursements will be paid 30 days after approval by the DBSA.

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