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The Republic of South Africa

Department of Energy

**REQUEST FOR BIDS FOR SUPPLY OF BASELINE SYSTEMS UNDER THE SUPPLY
PROGRAMME OF THE NATIONAL SOLAR WATER HEATER PROGRAMME**



energy

Department:
Energy
REPUBLIC OF SOUTH AFRICA

LIST OF DOCUMENTS COMPRISING THE RFB

PART I: General Requirements, Rules and Provisions

PART II: Bidding Rules, Compliance and Functionality Criteria

PART III: Competitive and Comparative Evaluation Criteria

Volume 1 Background Documents

- Schedule 1 SANS 1307: Domestic Storage Solar Water Heating Systems (obtainable from SABS)
- Schedule 2 SATS 1286 Technical Specification: Local Goods, Services and Works - Measurement and Verification of Local Content
- Schedule 3 DTI Guidance Document for the Calculation of Local Content
- Schedule 4 DTI Determination in respect of minimum local content thresholds & associated Instruction Note

Volume 2 Legal Requirements

Part 1 Form of Bid and Returnable Legal Appendices

- Appendix 2A Confirmation of acceptance of the terms of the Supply Agreement and the Signatory of the Supply Agreement
- Appendix 2B Tax Clearance Certificate (SBD 2)
- Appendix 2C Declaration of Interest Form (SBD 4)
- Appendix 2D Declaration of Bidder's Past Supply Chain Management Practices (SBD 8)
- Appendix 2E Certificate of Independent Bid Determination (SBD 9)
- Appendix 2F Form of Bid (based on SBD1)

Part 2 Legal Agreements

- Appendix 2G General Conditions of Contract published on 21 July 2010 in terms of section 76(4)(c) of the Public Finance Management Act
- Appendix 2H Special Conditions of Contract for the Supply Agreement for the Supply of Solar Water Heaters

Volume 3 Technical Requirements and Returnable Appendices

- Appendix 3A Baseline System Technical Specification
- Appendix 3B Original Equipment Manufacturer and manufacturing capability Declaration

Volume 4 Financial Requirements and Returnable Appendices

- Appendix 4A Letter of Support Template from Lender

Volume 5 Local Content Returnable Appendices

Appendix 5A Declaration Certificate for Local Production and Content for Designated Sectors (SBD 6.2)

Appendix 5A Declaration Certificate for Local Production and Content for Designated Sectors (SBD 6.2) – Annexure C, D and E

Volume 6 Price and PPPFA Regulations Returnable Appendices

Appendix 6A Preference Points Claim Form in terms of the PPPFA Regulations (SBD 6.1)

TABLE OF CONTENTS FOR PART I, II AND III

	Page No.
PART I: GENERAL REQUIREMENTS, RULES AND PROVISIONS	
1. Disclaimer	6
2. Definitions and Interpretation	8
3. Invitation	22
4. Purpose of this RFB	22
5. Introduction and Background	23
6. Overview of the National Solar Water Heater Programme	24
7. Objectives of the National Solar Water Heater Programme	26
8. Key Features of the Procurement of Baseline Systems in terms of the Supply Programme	26
9. Compliant Bids and appointment as Preferred Bidder	33
10. Timetable for the First Bid Submission Phase of the Supply Agreement	34
11. Governing Law	35
12. General Bid Rules	36
13. Non-Eligible Persons	36
14. Use of Transaction Advisors by the Department and Advisors by the Bidders	38
15. Proprietary nature of the RFB and Confidentiality	39
16. Corrupt Gifts and Payments	41
17. No Contract	42
18. No Collusion	42
19. Disqualification	43
20. Loss of Preferred Bidder status	43
21. Contact Policy	44
22. Time for information requests and clarifications	47
23. Requests and responses to requests	47
24. Information Session	48
25. Bid Validity	48
26. Extension of Bid Validity Period	48
27. Change in Legal Requirements	49
28. Briefing Notes and Changes to Bid Process	49
29. Cost of Bidding	50
30. Inconsistencies	50
31. Incorrect or misleading information	51
32. Opening of Bid Responses	51
33. Bid Response Acceptance / Rejection	51

34. Disputes relating to Bid Process 52
35. Selection of Preferred Bidders 52

PART II BIDDING RULES, COMPLIANCE AND FUNCTIONALITY CRITERIA

36. Format of the Bid Response..... 52
37. Compliance and Functionality Criteria 58

PART III COMPETITIVE AND COMPARATIVE EVALUATION CRITERIA

38. Purpose of this Part III..... 64
39. Price Evaluation Methodology..... 64
40. Contributor Status Level 65

PART I: GENERAL REQUIREMENTS, RULES AND PROVISIONS

1. Disclaimer

- 1.1 While all reasonable care has been taken in preparing this RFB, the information contained in it does not purport to be comprehensive or to have been verified by the Department or any other department of 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 RFB, or in relation to any Briefing Notes issued in relation to this RFB or the National Solar Water Heater Programme and the Supply Programme.
- 1.3 The Department reserves the right to amend, modify or withdraw this RFB or any part of it, or to terminate or amend any of the procedures, procurement processes or requirements detailed in this RFB during the conduct of the National Solar Water Heater Programme and / or the Supply 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 or extend the National Solar Water Heater Programme and / or the Supply Programme, at any time, without prior notice and without liability to compensate or reimburse any Person pursuant to such termination or amendment or extension.
- 1.5 The terms and conditions set out in this RFB 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 RFB at any time and to include such proposal in any documents which may or may not be made available at any stage of the National Solar Water Heater Programme and / or the Supply Programme to any other Persons responding to

this RFB, without the obligation or liability to pay any compensation or reimbursement of any nature to any Person pursuant to such adoption.

- 1.6 This RFB 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. Each Person to whom this RFB is made available must make its own independent assessment of the National Solar Water Heater Programme and / or the Supply Programme, taking such advice (whether professional or otherwise) as it deems necessary.
- 1.7 The Department has engaged Transaction Advisors in respect of the National Solar Water Heater Programme, the Supply Programme and this RFB, who are acting solely as advisors to the Department to assist the Department in the National Solar Water Heater Programme and the Supply Programme and, accordingly, will not be responsible or owe a duty of care to any Person other than the Department in respect of this RFB, the National Solar Water Heater Programme or the Supply Programme. The Transaction Advisors shall not, nor shall any legal advisor, or advisor to the Department in relation to the National Solar Water Heater Programme, the Supply Programme or this RFB, provide any opinion to or for the benefit of any, Bidder or its shareholders in their capacity as advisor to the Department.
- 1.8 No Bidder or its shareholders shall have any claim against the Department, its officers, employees, servants, agents or Transaction Advisors, under any circumstances whatsoever, arising out of any matter relating to the National Solar Water Heater Programme, the Supply Programme or this RFB of any nature whatsoever, including 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, or where 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 RFB, the following terms shall have the following meanings:

- 2.1.1 **"Absorber"**- as defined in SANS 1307;
- 2.1.2 **"Additional Storage Cost"** has the meaning given to it in the Supply Agreement;
- 2.1.3 **"Advisors"**- any advisors to the Bidders or any other participants in any Bid Response;
- 2.1.4 **"Baseline System"**- means a solar water heater system with a capacity ranging from 80 (eighty) litres to 150 (one hundred and fifty) litres, together with any and all associated components and equipment, and that complies with the minimum technical standards, specifications and requirements set out in the Technical Compliance and Functionality Criteria in clause 38.4 of *Part II (Bidding Rules, Compliance and Functionality Criteria)* and which is described more fully in **Appendix 3A (Baseline System Technical Specification)** of Volume 3 (**Technical Requirements and Returnable Appendices**)
- 2.1.5 **"B-BBEE"**- Broad-Based Black Economic Empowerment as defined in section 1 of the B-BBEE Act;
- 2.1.6 **"B-BBEE Act"**- the Broad-Based Black Economic Empowerment Act, 53 of 2003;
- 2.1.7 **"B-BBEE Codes"**- means the Department of Trade and Industry Broad-Based Black Economic Empowerment Codes of Good Practice of

2013 issued in terms of section 9 of the B-BBEE Act;

- 2.1.8 **"B-BBEE Scorecard"**- means the B-BBEE generic scorecard as per the B-BBEE Codes;
- 2.1.9 **"B-BBEE Verification Certificate"**- means a B-BBEE certificate issued by a Verification Agency as measured against the B-BBEE Scorecard or Sector Specific Scorecard, as the case may be;
- 2.1.10 **"Bidder"**- is a Company and the entity that submits a Bid Response and that will enter into the Supply Agreement, if awarded Preferred Bidder status;
- 2.1.11 **"Bid Categories"** the categories specifying quantities and delivery dates for Baseline Systems set out in clause 8.6 of this RFB;
- 2.1.12 **"Bid Response"**- a bid submitted by a Bidder in response to the invitation contained in this RFB;
- 2.1.13 **"Bid Submission Date"**- the date identified as the bid submission date as set out in clause 10 (*Timetable for the National Solar Water Heater Programme*) of Part I (*General Requirements, Rules and Provisions*) of this RFB or by Briefing Note;
- 2.1.14 **"Bid Submission Notification Form"**- the online form to be completed by Bidders who intend to submit a Bid Response, which is available on the NSWHP Website;
- 2.1.15 **"Bid Validity Period"**- the period identified as the bid validity period in clause 25 (*Bid Validity*) of Part I

(General Requirements, Rules and Provisions) of this RFB;

- 2.1.16 "**Briefing Note**"- any document issued in writing by the Department that amends or supplements this RFB in any way. These briefing notes shall be consecutively numbered in the order in which they are issued;
- 2.1.17 "**Business Day**"- a day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.1.18 "**Citizen**" or "**Citizens**"- people who have obtained citizenship of the Republic of South Africa by birth, descent or naturalisation in terms of the South African Citizenship Act No. 88 of 1995;
- 2.1.19 "**Collector**"- as defined in SANS 1307;
- 2.1.20 "**Companies Act**"- the Companies Act No. 71 of 2008;
- 2.1.21 "**Company**"- a private or public (whether or not listed) company, incorporated in the Republic of South Africa in terms of the Companies Act;
- 2.1.22 "**Compliance and Functionality Criteria**"- the compliance and functionality criteria set out in clauses 37.3 (*Legal Compliance and Functionality Criteria*), 37.4 (*Technical Compliance and Functionality Criteria*), 37.5) (*Financial Compliance and Functionality Criteria*) and 37.6 (*Local Content Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB;

- 2.1.23 **"Compliant Bid"**- a Bid Response that satisfies the Compliance and Functionality Criteria, and "Compliant Bidder" shall have a corresponding meaning;
- 2.1.24 **"Consents"**- any licences, permits, permissions, approvals, consents or other authorisations issued or granted by a Relevant Authority;
- 2.1.25 **"Contributor Status Level"** has the meaning ascribed to the definition of " B-BBEE Status Level of Contributor" in the PPPFA Regulations;
- 2.1.26 **"Delivery"** Has the meaning given to it in the Supply Agreement;
- 2.1.27 **"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;
- 2.1.28 **"Designated Installation Area"**- means a residential area that is identified by the municipality and approved by the Department for purposes of undertaking or procuring the undertaking of the supply, Installation and maintenance of Baseline Systems, in respect of Participating Residential Dwellings;
- 2.1.29 **"Eskom"**- means Eskom SOC Limited, a state owned company, duly established in accordance with the laws of the Republic of South Africa;
- 2.1.30 **"Evaluation Criteria"**- the evaluation criteria set out in Part III (Comparative and Competitive Evaluation

Criteria) of this RFB;

- 2.1.31 **“Financial Year”**- a period of 12 (twelve) months commencing on 1 April of a given calendar year and ending on 31 March of the following calendar year;
- 2.1.32 **“Fixed Storage Cost”** has the meaning given to it in the Supply Agreement;
- 2.1.33 **“Government”**- the Government of the Republic of South Africa, and any of its departments, agencies or other entities that it manages or controls;
- 2.1.34 **“Index”** Consumer Price Index
- 2.1.35 **“Information Session”**- the information session detailed in clause 24 (Information Session) of Part I (*General Requirements, Rules and Provisions*) of this RFB;
- 2.1.36 **“Initial Storage Period”** has the meaning given to it in the Supply Agreement;
- 2.1.37 **“Installation”**-
- 2.1.37.1 the disconnection of an existing electric geyser if necessary;
- 2.1.37.2 the installation, commissioning and testing of a Baseline System at a Participating Residential Dwelling; and
- 2.1.37.3 the issuance of the Certificate of Compliance;
- and **“Installed”** shall have the corresponding meaning;

- 2.1.38 **“Installation Contractor”**- an installation company, close corporation and/or sole proprietor selected and appointed by the Department pursuant to a separate procurement process undertaken by the Department, to undertake the management of the Installation of Baseline Systems for purposes of the Social Programme of the National Water Heater Programme;
- 2.1.39 **“Installation Plan”** the plan that shall be developed by the Department setting out the Designated Installation Areas and the parameters within which the Installation Contractor should carry out its activities;
- 2.1.40 **“Installation Programme”**- the separate procurement process of the Social Programme to appoint Installation Contractors to manage the Installation of Baseline Systems in terms of an Installation Plan in the Participating Residential Dwellings throughout one or more Designated Installation Areas by Installers appointed and managed by the participating municipality;
- 2.1.41 **“Installation Services Agreement”**- means the agreement to be concluded between an Installation Contractor and the Department, to undertake the management activities necessary to carry out an Installation Plan within one or more Designated Installation Areas, which shall form the subject matter of the separate Installation Programme;
- 2.1.42 **“Installer”**- an individual selected and managed by a Municipality and used by an Installation

- Contractor to carry out Installation activities;
- 2.1.43 **“Insurance Programme”** - the stream or programme forming part of the National Solar Water Heater Programme, comprising re-active replacements and pro-active replacements;
- 2.1.44 **“Lawfully Authorised Occupant”**- an adult Person who is the owner or lessee duly authorised by the owner of a Participating Residential Dwelling;
- 2.1.45 **“Law”** all local, provincial and national statutes, provincial ordinances, regulations made in respect of national and provincial statutes, municipal by-laws, as well as all standards, specifications, rules, directives, decrees, decisions, determinations, rulings, rules, judgements, orders and other instruments made, granted or issued by any competent court, tribunal, or Relevant Authority, which have the force of law in the Republic of South Africa, and the South African common law;
- 2.1.46 **“Local Content”**- has the meaning ascribed to the term “local content” in the PPPFA Regulations;
- 2.1.47 **“Minister”**- the Minister of Energy, from time to time;
- 2.1.48 **“National Call Centre”** the national call centre to be established and operated by or on behalf of the Department for the purpose of enabling Lawfully Authorised Occupants to log complaints including but not limited to complaints in respect of Baseline Systems, and/or Installations, notify and report faults and defects, make requests for service

calls, and for the purposes of enabling the Department to manage and monitor the performance of the Supplier and its contracted Installation Contractors of their respective obligations;

2.1.49 “National Solar Water Heater Programme” the national solar water heater programme initiated and implemented by or on behalf of the Department pursuant to (amongst other things) the South African National Energy Efficiency Strategy and the 1998 White Paper, for the supply, installation and maintenance of solar water heater systems in residential homes throughout South Africa, including the Installation of Baseline Systems through the Social Programme;

2.1.50 “NSWHP Website”- the official website of the National Solar Water Heater Programme being www.energy.gov.za;

2.1.51 “Participating Residential Dwelling”- a residential dwelling that is located within a residential area in respect of which the Installation and operation of Baseline Systems has been determined to be technically feasible having regard to the technical, structural, operational and safety requirements for the proper and safe installation and operation of Baseline Systems, and in respect of which the Lawfully Authorised Occupant has confirmed his/her express desire and willingness to have a Baseline System Installed in or upon such residential dwelling;

- 2.1.52 "**Person**"- a natural person, partnership, firm, corporation, joint stock company, trust, unincorporated association, joint venture, government body, limited liability company, close corporation, any sphere of government (including national, provincial, regional and local government, or organ of state) or any other legal entity which is considered a legal entity under the laws of South Africa or the country in which such an entity has been formed;
- 2.1.53 "**PFMA**"- the Public Finance Management Act No. 1 of 1999;
- 2.1.54 "**PPPFA Regulations**"- the PPPFA Regulations published under GN R502 in Government Gazette 34350 of 8 June 2011, in terms of section 5 of the Preferential Procurement Policy Framework Act;
- 2.1.55 "**Preferential Procurement Policy Framework Act**"- the Preferential Procurement Policy Framework Act No. 5 of 2000;
- 2.1.56 "**Preferred Bidder**"- any Bidder that is selected pursuant to clause 40.6.2 of Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB by the Department as such and which, upon acceptance of such appointment, subject to the provisions of clause 20 (*Loss of Preferred Bidder Status*) of this Part I (*General Requirements, Rules and Provisions*) of this RFB, shall, possibly conclude a Supply Agreement, pursuant to the National Solar Water Heater Programme;

- 2.1.57 "**Price**"- the price offered by the Bidder in respect of the full cost of supply of Baseline Systems as per the Supply Agreement which also covers, *inter alia*, cost of warranty, 03 months of storage, insurance, and product-specific installation training and supervision obligations on 5% of Baseline Systems supplied, in respect of each Bid Category, as provided in the Pricing Schedule (Schedule 4 to the Supply provided in **Appendix 2H** of Volume 2 Part 2 of this RFB)
- 2.1.58 "**Project Officer**"- the Person appointed by the Department as the project officer in respect of the National Solar Water Heater Programme;
- 2.1.59 "**Rand**" or "**R**"- South African Rand, the lawful currency of the Republic of South Africa;
- 2.1.60 "**Relevant Authority**"- any ministry, agency, authority or organ of state at any level of government or any other government or any other public authority, body, entity or natural Person which has legal jurisdiction under over a Party and/or the National Water Heater Programme;
- 2.1.61 "**Related**"- a relationship formed on the basis of any one (1) or more of (i) family (including spouses and in-laws), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment;
- 2.1.62 "**RFB**"- this Request for Bid document for the Supply Programme and all annexures, schedules and other appendices to it and

any Briefing Notes issued in respect of it, from time to time;

- 2.1.63 **“SABS Mark Approval certificate”** a certificate issued by SABS confirming that the Baseline System offered in terms of the Bid Response has passed performance and quality assurance tests, among others, as stipulated in SANS 1307.
- 2.1.64 **“SABS”** The South African Bureau of Standards, which was established by section 2 of the Standards Act No, 24 of 1945 and which continues to exist in terms of section 3 of the Standards Act No.8 of 2008;
- 2.1.65 **“SANS 1307” -** edition 5.1 of the technical standard issued and published by the SABS Standards Division in July 2014 and titled, “Domestic storage solar water heating systems”; at Volume 1 (*Background Documents*), Schedule 2;
- 2.1.66 **“SATS 1286”-** edition 1 of the technical specification issued and published by the SABS Standards Division in November 2011 and titled, “Local goods, services and works Measurement and verification of local content”; at Volume 1 (*Background Documents*), Schedule 2;
- 2.1.67 **“Sector Scorecard”-** **Specific** means those codes of good practice that have the same status as the B-BBEE Codes and are fully binding between and among businesses operating in a specific industry, gazetted under section 9(1) of the B-BBEE Act;

- 2.1.68 “**Social Programme**”- the large scale roll-out, supply, Installation and maintenance in terms of the National Solar Water Heater Programme of Baseline Systems to Participating Residential Dwellings on a free-issue basis and which are located within municipal residential areas that are selected and identified by participating municipalities and approved by the Department and after having been determined to be technically feasible;
- 2.1.69 “**Stipulated Minimum Threshold**”- has the meaning ascribed to the term “stipulated minimum threshold” in the PPPFA Regulations;
- 2.1.70 “**Storage Tank**”- a container or vessel of a Baseline System that stores potable water and which consists of, *inter alia*, an inner tank, thermal insulation, an outer cover, anodes, heat exchangers, temperature safety valves and pressure safety valves, where applicable;
- 2.1.71 “**Supplier**” any Company that is selected as a Preferred Bidder and that enters into a Supply Agreement to supply Baseline Systems pursuant to the Social Programme of the National Solar Water Heater Programme;
- 2.1.72 “**Supply Agreement**”- the supply agreement to be entered into between a Company selected as a Preferred Bidder, as the Supplier and the Department pursuant to the Social Programme of the National Solar Water Heater Programme, in the form attached in **Annexure 2H** (*Special Conditions of Contract for the Supply Agreement for the*

Supply of Solar Water Heater Panels) of Volume 2 of this RFB;

- 2.1.73 **"Supply Programme"** this procurement process to procure Baseline Systems by the Department in terms of the Social Programme of the National Solar Water Heater Programme;
- 2.1.74 **"Transaction Advisors"**- the firms advising the Department in respect of this RFB and the National Solar Water Heater Programme including those firms which are listed as such on the National Solar Water Heater;
- 2.1.75 **"Treasury Regulations"**- the Treasury Regulations published under GN R225 in Government Gazette 27388, of 15 March 2005, in terms of section 76(1) of the PFMA;
- 2.1.76 **"VAT"**- value-added tax levied in terms of the Value-Added Tax Act No. 89 of 1991;
- 2.1.77 **"Verification Agency"**- shall have the meaning ascribed to the term "verification body" in SATS1286; and
- 2.1.78 **"Warranty"** [align definition with Supply Agreement]
- 2.1.79 **"Warranty Period"**- means a period of 5 (five) years commencing on the date on which a Baseline System is Installed at a Participating Residential Dwelling.

2.2 In this RFB:

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 "**subsidiary**" or a "**holding company**" shall be references to a subsidiary or holding company as defined in the Companies Act;

2.2.6 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;

2.2.7 any definition, wherever it appears in this RFB, shall bear the same meaning and apply throughout this RFB unless otherwise stated;

2.2.8 if there is any conflict between any definitions in this RFB then, for purposes of interpreting any clause of this RFB or paragraph of any volume or Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this RFB;

2.2.9 the use of any expression covering a process available under South African law (such as but not limited to a business rescue or winding-up) shall, if any of the Person is subject to the law of any other jurisdiction, be interpreted in relation to that Person as including any equivalent or analogous proceeding under the law of such other jurisdiction;

2.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

2.2.11 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific

examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and

2.2.12 unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa.

2.3 The expiration or termination of this RFB shall not affect such of the provisions of this RFB 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

3.1 This RFB constitutes a formal invitation to Bidders to submit their Bid Responses for the supply of Baseline Systems to the Department for utilisation by the Department in the Social Programme of the National Solar Water Heater Programme.

4. Purpose of this RFB

The purpose of this RFB is:

4.1 to set out the rules of participation in the Supply Programme;

4.2 to provide further information about the National Solar Water Heater Programme in general and the Supply Programme to Bidders and other interested persons so as to allow them to prepare for participation the National Solar Water Heater Programme and to prepare comprehensive and competitive Bid Responses pursuant to the Supply Programme;

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

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

- 4.4.1 satisfy the technical, financial and legal requirements and meet the criteria described in Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB;
- 4.4.2 fulfil the comparative and competitive evaluation criteria and requirements as detailed in Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB; and
- 4.4.3 are able to supply the Baseline Systems as envisaged by the Department;
- 4.5 to enable the Department to select Preferred Bidders.

5. Introduction and Background

- 5.1 In March 2005, the South African National Energy Efficiency Strategy was developed and published to explore the potential for improving energy utilisation in South Africa by, *inter alia*, reducing the country's energy intensity and utilisation patterns. The South African National Energy Efficiency Strategy (which had its foundation in the 1998 White Paper on Energy Policy (the "**White Paper**"), proposed certain energy efficiency targets including:
 - 5.1.1 a final energy demand reduction of 12% by 2015; and
 - 5.1.2 a long term goal of saving 4 255 MW over a period of 20 years.
- 5.2 In June 2009, the South African Government, through the Department, announced its intention to launch a national solar water heater programme. This was done against the backdrop of prevailing national electricity constraints as well as the energy efficiency targets contained in the White Paper and the South African National Energy Efficiency Strategy. At the time, the Minister of Energy set a national target of 1 million installed solar water heaters in the residential and commercial sectors. The national solar water heater programme was subsequently launched in April 2010 and Eskom was appointed as the implementing agent responsible to implement the programme.
- 5.3 In May 2015, the Minister of Energy announced the implementation of the revised National Solar Water Heater Programme described further below.

6. Overview of the National Solar Water Heater Programme

6.1 In this section, several key features of this National Solar Water Heater Programme are introduced.

6.2 In its revised form the National Solar Water Heater Programme envisages the procurement, supply, installation and maintenance of up to 1.25 million solar water heater systems in residential dwellings throughout South Africa, thus resulting in a cumulative total of 1.75 million installations by 2019.

6.3 These systems are to be supplied, installed and maintained through the Social Programme largely on a free-issue basis although provision is also made for such systems to be provided on a partially subsidised basis as described more fully below.

6.4 The National Solar Water Heater Programme comprises 3 (three) broad streams or programmes:

6.4.1 the **Social Programme**, in terms of which:

6.4.1.1 Participating municipalities with guidance from the Department will identify areas which they deem to be a priority and feasible for the Installation of Baseline Systems.

6.4.1.2 A panel of technical consultants procured by the Department will undertake assessments of the areas put forward by the municipalities on the basis of technical feasibility and where the result is in the affirmative, the qualifying areas will be named as Designated Installation Areas. In October 2015 the Department initiated a procurement process to appoint a panel of service providers to undertake these technical feasibility assessments.

6.4.1.3 The Department will procure Baseline Systems for Installation in Participating Residential Dwellings within the Designated Installation Areas, this procurement of the Baseline Systems is the subject matter of the **Supply Programme** and this RFB.

6.4.1.4 The Department will undertake the **Installation Programme** which is a separate procurement process to appoint Installation Contractors to manage the Installation of Baseline Systems in the

Participating Residential Dwellings including by Installers selected and trained from within the Designated Installation Area(s). The Department envisages that it will initiate the procurement process for the Installation Programme for the first Designated Installation Areas in the first half of 2016, once it has completed the process to identify the first Designated Installation Areas.

6.4.2 An **Insurance Programme**, in terms of which Insurers are envisaged to actively promote the replacement of conventional (electric) geysers with compliant solar water heater systems. The Insurance Programme, will comprise 2 (two) schemes:

6.4.2.1 *Reactive*: where the replacement arises in response to an insurance claim by an insured client of an Insurer, a subsidy provided by the Department will cover the difference in the replacement cost of an installed conventional geyser (the conventional geyser cost will be borne by the relevant insurer) and the cost of the solar water heater system which will have capacity equal to or greater than the conventional geyser that is to be replaced pursuant to such insurance claim.

6.4.2.2 *Proactive*: where the replacement arises as a result of the active marketing campaign implemented by the insurers, the insured client will receive from the Department the same subsidy offered under the reactive scheme as contribution towards the cost of the replacement system that the insured client selects with the difference in cost being borne by such insured clients.

6.4.3 The Department envisages that it will commence with the Insurance Programme upon the conclusion of contractual arrangements with participating insurers in late 2015/early 2016.

6.4.4 A **Voluntary Programme**, in terms of which South Africans who wish to have solar water heater systems installed in their homes and who may not reside in Designated Installation Areas, are able to request such installation by independently contacting the National Call Centre. The same rules applicable to the proactive aspect of the Insurance Programme should apply to such South Africans.

- 6.4.5 The Department envisages that it will commence with the Voluntary Programme in mid-2016.

7. Objectives of the National Solar Water Heater Programme

The objectives of the National Solar Water Heater Programme include, but are not limited to:

- 7.1 the promotion of energy efficiency inter alia through the use of sustainable alternative energy sources such as solar energy;
- 7.2 demand side management both by means of differed future demand for energy as well as reduced demand for grid supplied electricity, in both instances through the use of solar water heaters; and
- 7.3 the promotion of broader socio-economic benefits for South Africans including the promotion and development of local manufacturing and the associated implementation of local content requirements, the promotion of small and medium enterprises, job creation and access to hot water for residential dwellings.

8. Key Features of the Procurement of Baseline Systems in terms of the Supply Programme

- 8.1 Suppliers are invited to submit Bid Responses to supply Baseline Systems to the Department for installation pursuant to the Social Programme.
- 8.2 The Supply Programme is envisaged to be a rolling programme in terms of which 1.25 million Baseline Systems are targeted to be procured by the Department and installed in terms of the Installation Programme. The Department is however only able to commit to procure those Baseline Systems that it has an existing budgetary allocation for. It also needs to align its procurement of Baseline Systems with the Installation Plans for participating municipalities under the Installation Programme.
- 8.3 Accordingly, separate Bid Submission Dates and therefore, separate Bid Submission Phases will be conducted for the procurement of Baseline Systems

under this Supply Programme. The Department may distinguish in subsequent Bid Submission Phases according to technical specification or region or any other distinguishing feature in order to align its procurement of Baseline Systems with the specific needs of the Installation Programme.

8.4 For the MTEF aligned the Department has targeted the procurement of 100 000 Baseline Systems for Delivery (*ex Works*) at the following intervals:

8.4.1 50 000 Baseline Systems for Delivery by 1 October 2016; and

8.4.2 50 000 Baseline Systems for Delivery by 1 September 2017.

8.5 The Department may choose to appoint more than one Preferred Bidder in each Bid Submission Phase, this is (amongst other things) to meet the strategic needs of the Supply Programme and to enable it to limit its exposure to a particular Supplier, to obtain an appropriate spread of regional Suppliers, to ensure the timing and technology needs of a particular Designated Installation Area are met and to encourage a range of potential Suppliers to participate in the Supply Programme including small and medium sized enterprises.

8.6 The Department also understands that Bidders will have different supply capabilities which will enable them to commit to different supply quantities. Accordingly, the Department will require bids from Bidders for various different quantities of Baseline System in each Bid Submission Phase. For this First Bid Submission Phase the Department seeks bids for the Bid Categories listed below, Bidders may choose which of the quantities and delivery dates they wish to bid for and are not obliged to bid in all Bid Categories:

8.6.1 Bid Category A1: ten thousand (10 000) Baseline Systems for Delivery by 1 March 2016;

8.6.2 Bid Category A2: thirty thousand (30 000) Baseline Systems for Delivery by 1 June 2016; and

8.6.3 Bid Category A3: fifty thousand (50 000) Baseline Systems for Delivery by 1 October 2016;

8.6.4 Bid Category B1: ten thousand (10 000) Baseline Systems for Delivery by 1 March 2016;

- 8.6.5 Bid Category B2: fifty thousand (50 000) Baseline Systems for Delivery by 1 October 2016;
- 8.6.6 Bid Category B3: seventy thousand (70 000) Baseline Systems for Delivery by 1 April 2017; and
- 8.6.7 Bid Category B4: one hundred thousand (100 000) Baseline Systems for delivery by 1 September 2017.
- 8.7 The above Bid Categories provide for a maximum quantity of 1 500 Baseline Systems because this is the maximum quantity that the Department will order per Purchase Order placed under the Supply Agreement.
- 8.8 However, as is set out above, the Department has targeted the procurement of 100 000 Baseline Systems with this RFB and accordingly the Department may place more than one Purchase Order with a particular Supplier following their appointment.
- 8.9 The role of Suppliers under the Supply Programme will be:
- 8.9.1 to supply the Baseline Systems as part of the Social Programme, in accordance with the Supply Agreement;
- 8.9.2 to store the Baseline Systems for the Initial Storage Period in accordance with the Supply Agreement;
- 8.9.3 to undertake such additional storage as the Department may request in writing under the Supply Agreement from the Supplier, which storage will be provided at the Additional Storage Cost which is stipulated on the Pricing Schedule in Schedule 4 of **Appendix 2H** (*Special Conditions of Contract for the Supply Agreement for the Supply of Solar Water Heater Panels*) of Volume 2 Part 2 of this RFB and which is submitted as part of the Bid Response;
- 8.9.4 to replace defective Baseline Systems within the Warranty Period in accordance with the terms of the Warranty included in the Supply Agreement.
- 8.10 **Non-negotiability of the Supply Agreement**

8.10.1 The Supply Agreement issued with this RFB is not negotiable and may not be marked up by Bidders.

8.10.2 The Department reserves the right to issue revised versions of the Supply Agreement at any stage prior to the Bid Submission Date for a particular Bid Submission Phase.

8.11 **Preferential Procurement Requirements and the Evaluation Process**

8.11.1 The Supply Programme will be undertaken in accordance with the provisions of the Preferential Procurement Policy Framework Act and the PPPFA Regulations.

8.11.2 In accordance with the provisions of Regulation 4 (*Evaluation of tenders on functionality*) of the PPPFA Regulations, the Department has determined the objective Compliance and Functionality Criteria to be complied with by Bidders for the purposes of determining whether a Bid Response meets the minimum requirements for functionality and are, therefore, Compliant Bids.

8.11.3 Accordingly, all Bid Responses shall first be evaluated on the basis of the Compliance and Functionality Criteria provided for in Part II (*Bidding Rules, Compliance and Functionality Criteria*) of the RFB in order to determine whether such Bid Responses are Compliant Bids.

8.11.4 A Compliant Bid is a complete Bid Response that is in the format set out in clause 36 (*Format of the Bid Response*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB and meets the absolute compliance (i.e. 100%) for each of:

- 8.11.4.1 Legal Compliance and Functionality Criteria, contained in clause 37.3 (*Legal Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB;
- 8.11.4.2 Technical Compliance and Functionality Criteria, contained in clause 37.4 (*Technical Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB;
- 8.11.4.3 Financial Compliance and Functionality Criteria, contained in clause 37.5 (*Financial Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB; and
- 8.11.4.4 Local Content Compliance and Functionality Criteria, contained in clause 37.6 (*Local Content Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.
- 8.11.5 Thereafter, the Compliant Bids in each Bid Category will be evaluated on the requirements of Price and Contributor Status Level on the basis of the Preferential Procurement Policy Framework Act 90/10 preference point system as more fully set out in clause 2 (*Price Preference Points*) of Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB and will be considered for selection as Preferred Bidder in accordance with the provisions of the RFB.

8.12 Local Content

- 8.12.1 Local content requirements contained in preferential procurement legislation provide mechanisms for government to promote job creation locally and to ensure that government expenditure is concentrated in products that are locally manufactured. In this regard the PPPFA Regulations make provision for the DTI to designate certain sectors to promote local production in line with national development and industrial policies.
- 8.12.2 A Stipulated Minimum Threshold has been determined by the DTI in respect of the major components of a solar water heater system, namely,

Storage Tank and Solar Collector; see the *DTI Determination in respect of minimum local content thresholds* at Volume 1 (*Background Documents*), Schedule 4 to this RFB.

- 8.12.3 Pursuant to the PPPFA Regulations and associated National Treasury instructions issued to all organs of state including the Department, the Department is required to procure Baseline Systems that comply with the Stipulated Minimum Threshold in respect of Storage Tanks and Solar Collectors, being a Local Content percentage of 70% for each of these major components.
- 8.12.4 **Only locally produced or locally manufactured Baseline Systems, with a minimum threshold for local production and content (local raw material or input) as stipulated above, shall be considered.** Therefore all Bidders are required to offer Baseline Systems that meet the aforementioned Stipulated Minimum Threshold as required in terms of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.
- 8.12.5 In this regard Bidders are referred to the technical specification on the measurement and verification of local content *SATS 12861* at Volume 1 (*Background Documents*), Schedule 2 of the RFB; and the *DTI Guidance Document for the Calculation of Local Content* at Volume 1 (*Background Documents*), Schedule 3 of the RFB.
- 8.12.6 All Bidders will be required to self-assess the local content of their Baseline Systems for the purposes of meeting the Compliance and Functionality Criteria set out in Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB and are further referred to in Volume 5 **Appendix 5A** and use same to provide the Department with **separate** self-declarations, together with the supporting schedules, for each of the two major components required. Accordingly Bidders will bear the cost (as quoted by SABS) associated with such verification.
- 8.12.7 An important aspect of local content is its verification, and SABS has been appointed by the DTI as the government's Independent Verification Agency for local content in South Africa. In this regard, a Bidder will be required to provide verification of the local content of its Baseline Systems for the purposes of meeting the Compliance and Functionality Criteria set

out in Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB and thereafter on an annual basis.

8.12.8 **Technical Solution**

8.12.8.1 Bidders are required to offer Baselines Systems that meet the minimum technical specifications set out in the *Baseline System Technical Specification* at Volume 3 (*Technical Requirements and Returnable Appendices*), **Appendix 3A**, as well as the Local Content requirements.

8.12.8.2 These Minimum Technical Specification are incorporated into Technical Compliance and Functionality Criteria, contained in clause 37.4 (*Technical Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB; and

8.12.9 **Financial Criteria**

8.12.9.1 Bidders are required to offer a Price for the :

8.12.9.1.1 the total cost of supplying the Baseline Systems in terms of the various Bid Categories selected by the Bidder.

8.12.9.1.2 The Price in the various Bid Categories shall include the full costs of supply in terms of the Supply Agreement, including the cost of the Warranty, the Fixed Storage Costs, etc.

8.12.9.2 Bidders are also required to separately indicate the daily price of the Additional Storage Cost for the various Bid Categories which is a discretionary cost to be borne by the Department only if necessary and so is not included in the overall Price evaluation.

8.12.9.3 The Price shall escalate annually at the commencement of the Financial Year in accordance with the Index.

8.12.9.4 The Price per relevant Bid Category is included in the Evaluation

Criteria to be evaluated in an evaluation pursuant to Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB.

9. Compliant Bids and appointment as Preferred Bidder

- 9.1 In order for a Bid Response to be a Compliant Bid, it must satisfy all of the Compliance and Functionality Criteria specified in Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB. After the Bid Submission Date, an assessment of all submitted Bid Responses against the Compliance and Functionality Criteria specified in clauses 37.3 (*Legal Compliance and Functionality Criteria*), 37.4 (*Technical Compliance and Functionality Criteria*) and 37.5 (*Financial Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB will be undertaken by the Department to determine whether each Bid Response is a Compliant Bid.
- 9.2 The Department will score and rank Compliant Bids in each Bid Category in accordance with Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB.
- 9.3 The Department may in its sole discretion consider for appointment as Preferred Bidders on such terms and conditions as the Department may determine the top ranking bids in one or more category in such combination as meets the strategic needs for the Supply Programme, including those set out in clause 8.5 above.
- 9.4 The Department may invite two or more Bidders in any Bid Submission Phase to tender a best and final offer ("**BAFO**") in respect of any supply quantity or delivery date which it chooses, including a supply quantity or delivery date which was not part of the original RFB for the Bid Submission Phase. The Bidders will be under no obligation to revise their Bid Responses, and should no Bidder choose to submit a BAFO, then the original results will stand. Any BAFO Bid Response will be evaluated in accordance with Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB or such other criteria as may be determined by the Department and communicated to participants in the BAFO, in its sole discretion, at the relevant time.

9.5 Preferred Bidders will, at all times, be held to and be required to comply with the Price which the bid for the Bid Category in respect of which they have been appointed a Preferred Bidder. The Supply Agreement will be entered into with a Preferred Bidder on the basis of the Price and the Contributor Status Level offered in the Bidder's Bid Response, subject only to such adjustments as are explicitly provided for in this RFB or the Supply Agreement or which are approved by the Department in writing.

9.6 The Department will notify Bidders of their appointment as Preferred Bidders and of the terms and conditions of the appointment.

9.7 The Department reserves the right to:

9.7.1 select or not to select any one (1) or more of the Bidders as a Preferred Bidder;

9.7.2 terminate the Preferred Bidder status of a Preferred Bidder at any time;

9.7.3 execute a Supply Agreement between itself and each of the relevant Preferred Bidders at a date to be specified by the Department; and

9.7.4 refrain from executing a Supply Agreement with any and/or all of the Preferred Bidders for any reason whatsoever;

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

10. Timetable for the First Bid Submission Phase of the Supply Agreement

Milestone	Anticipated Date
Issue of RFB	04 December 2015
Information Session	14 December 2015
Bidder Clarifications Submission of written questions by Bidders	See clause 22 (<i>Time for information requests and clarifications</i>) Part I (<i>General Requirements, Rules and Provisions</i>) of

Milestone	Anticipated Date
	this RFB
Submission of the Bid Submission Notification Forms	15 December 2015
Bid Submission Date	15 January 2016
Evaluation of Bid Responses	15 February 2016
Announcement of Preferred Bidders	29 February 2016
Signature of the Supply Agreement	15 March 2016

10.1 The Department envisages further Bid Submission Phases approximately every year for the procurement of the total quantity of 1.25 million Baseline Systems by 2019 in accordance with the overall target for the National Solar Water Heater Programme, the Department can however offer no guarantee that any subsequent Bid Submission Phase after the First Bid Submission Phase will in fact be held.

11. **Governing Law**

11.1 The White Paper is the national policy developed by the executive and national legislation which impacts on the authority of the Department to undertake the National Solar Water Heater Programme. The White Paper identifies the need for demand side management and the development and promotion of energy efficiency in South Africa and seeks to clarify government policy on the supply and consumption of energy through the promotion of energy efficiency and energy conservation to stimulate the adoption of energy demand management through inter alia solar water heating. The White Paper therefore constitutes a formal policy framework within which the South African energy sector operates. The Department derives its mandate to implement the National Solar Water Heater Programme from the White Paper as well various statutes which establish a framework for the regulation of energy in South Africa.

11.2 The National Energy Act 34 of 2008 encapsulates the key objectives adopted in the White Paper and translates them into legislative objectives. The Energy Act provides for the Minister to ensure that diverse energy resources are available in sustainable quantities and at affordable prices in the South African economy

in order to support economic growth and poverty alleviation, while also taking into account environmental considerations.

- 11.3 The processes to be carried out by the Department in the course of procuring and implementing the Supply Programme and National Solar Water Heater Programme shall be undertaken in accordance with *inter alia* the Constitutional principles of public procurement, the PFMA together with the Treasury Regulations promulgated pursuant thereto and Procurement Policy Framework and the PPPFA Regulations. Furthermore, the B-BBEE Act must be applied in the carrying out the National Solar Water Heater Programme.

12. General Bid Rules

- 12.1 This RFB is not restricted to Bidders comprised only of Citizens and South African Companies.
- 12.2 An entity or organisation that wishes to obtain a copy of the RFB must complete the Bid Submission Notification Form for potential participants in the Supply Programme which is available on the NSWHP Website.
- 12.3 An entity or organisation that has completed the Bid Submission Notification Form, as described above, is eligible to submit a Bid Response on the Bid Submission Date.

13. Non-Eligible Persons

- 13.1 Bidders are required to declare if any, of their:
- 13.1.1 Advisors;
- 13.1.2 shareholders of unlisted companies and majority shareholders of publically listed companies, whichever is relevant;
- 13.1.3 individual who is a director or officer;
- is, or is Related to:
- 13.1.4 an employee of the Department.

by completing and submitting the *Declaration of Interest Form* at Volume 2 (*Legal Requirements*) Part 1 (*Form of Bid and Returnable Legal Appendices*), **Appendix 2C** of this RFB.

- 13.2 If any Bidder includes in its Bid Response the involvement of any Person:
 - 13.2.1 blacklisted by the office of National Treasury; or
 - 13.2.2 blacklisted by such Person's professional body (if applicable); or
 - 13.2.3 who is, or is Related to:
 - 13.2.3.1 an employee of the Department.
 - 13.2.4 who is, or is Related to, a Government official or Person who:
 - 13.2.4.1 is directly involved in the Supply Programme or the National Solar Water Heater Programme;
 - 13.2.4.2 may be involved or has been involved with the evaluation of the Bid Responses,
 - 13.2.4.3 is, or who is Related to, any other Government official or Person with the ability to influence or to have influenced the decision of the Department with respect to the appointment of Preferred Bidders; or
 - 13.2.5 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 any part or all of the Supply Programme and / or the National Solar Water Heater Programme.

- 13.3 In respect of any Person or Government official who was involved in the past with any national solar water heater programme, in the manner set out in clause 13.2.4, a Bidder should, before submitting a Bid Response which includes such Person in any capacity set out in clause 13.1 above, obtain written permission from the Department in respect of the involvement of such Person in the National Solar Water Heater Programme. 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 National Solar Water Heater Programme which the Person has; and the time that has elapsed since they had this involvement.

- 13.4 A Person, shareholder, Advisor or other participant in a Bid Response may participate in, advise or be involved (either directly or indirectly) with more than one (1) Bidder at any stage during the Supply Programme and or any other aspect of the National Solar Water Heater Programme without the prior written consent of the Department. It shall be the responsibility of each of the Bidders that involve or utilise the services of the same shareholder 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, shareholder or Advisor participating or involved with more than one (1) Bidder. The Department shall, in its sole discretion, be entitled to disqualify, in terms of clause 19 (*Disqualification*) of Part I (*General Requirements, Rules and Provisions*) of this RFB, any Bidders whose Bid Responses display any anti-competitive or collusive behaviour.

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

- 14.1 Each Bidder, before appointing any Advisor, must consult the list of the Department's Transaction Advisors, which list is available on the NSWHP Website.
- 14.2 A professional firm that is a member of the Transaction Advisors may advise a Bidder, its shareholders, 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 any individual professional who is or has been part of the Transaction Advisor team may not also advise or be a member of a Bidder, shareholder or any other participant involved in any Bid Response unless the Bidder has obtained consent in terms of clause 13.3.
- 14.3 It is the responsibility of each Bidder to ensure that no individual who is part of the Transaction Advisor team also acts as Advisor to or member of any Bidder

or any other participant involved in any Bid Response. In this regard, the Bidder must obtain an assurance from each of its Advisor firms that no individual on the Bidder's Advisor team from that firm has also acted for or advised the Department on this Supply Programme and / or the National Solar Water Heater Programme.

- 14.4 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 14.2, 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 14.2.

15. Proprietary nature of the RFB and Confidentiality

15.1 Proprietary nature of the RFB

- 15.1.1 This RFB constitutes information which is proprietary to the Department.
- 15.1.2 This RFB may only be used by a Bidder, as authorised by the Department. The following uses are hereby authorised without the need to apply for specific permission from the Department for the use of the RFB:
- 15.1.2.1 educational purposes connected with a recognised tertiary or similar institution;
 - 15.1.2.2 discussion in public and private forums, and media reports regarding the RFB and the National Solar Water Heater Programme;
 - 15.1.2.3 consideration of the Supply Programme and / or the National Solar Water Heater Programme by a prospective Bidder; and
 - 15.1.2.4 preparation and submission of a Bid Response, and participation in the Supply Programme and / or the National Solar Water Heater

Programme as a Bidder, a Preferred Bidder or a Supplier.

15.1.3 Subject to clause 15.1.2 above, no Person may sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, or otherwise use this RFB and may not divulge or distribute any information in respect of this RFB or pass on any copies of this RFB without the prior written approval of the Department and must return this RFB together with all copies thereof to the Department promptly upon being requested to do so.

15.1.4 Any unauthorised use of this RFB may violate (amongst others) copyright laws and trademark laws.

15.2 **Confidentiality by the Bidders**

In submitting a Bid Response, each of the Bidders, its shareholders and all other participants in any Bid Response agrees to keep its own Bid Response confidential until the execution of the Supply Agreement.

15.3 **Confidentiality by the Department**

15.3.1 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.

15.3.2 Notwithstanding the provisions of clause 15.3.1:

15.3.2.1 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 and the evaluation of the Bid Responses;

- 15.3.2.2 the Department shall be entitled to disclose all data and details submitted by Bidders to Parliament and other government structures to the extent necessary;
- 15.3.2.3 the Department shall be entitled to disclose to any Person, in any media, the name of any Bidder which has been designated as a Preferred Bidder and, in respect of such Preferred Bidder, the Price indicated in its Bid Response, and the Preferred Bidder's Contributor Level Status; and
- 15.3.2.4 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 shareholders and its Advisors (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.

16. **Corrupt Gifts and Payments**

- 16.1 The attention of Bidders is drawn to the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 (the "**Act**").
- 16.2 None of the Bidders, its shareholders and any other participant in a Bid Response or any of their agents or Advisors shall, commit an offence in terms of the Act, 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 Supply Programme and / or the National Solar Water Heater Programme, or any of the Transaction Advisors, any gift or consideration of any kind as an inducement or reward for appointing any Bidder as a Preferred Bidder, or for showing or omitting to show favour or disfavour to any Bidder in relation to the Supply Programme and / or the National Solar Water Heater Programme .
- 16.3 If any offence in terms of the Act, is committed, the Department shall be entitled to disqualify (in terms of clause 19 (*Disqualification*) of Part I (*General*

Requirements, Rules and Provisions) of this RFB) the Bidder or Preferred Bidder which committed or which is associated with any Person who committed the offence and or to prohibit such Bidder, Preferred Bidder, its shareholders or any other participant in the relevant Bid Response and their agents and Advisors from part or all of the Supply Programme and / or the National Solar Water Heater Programme .

17. **No Contract**

This RFB does not constitute an offer to enter into a contractual relationship with any Bidder, but is merely a solicitation of Bid Responses to enable the Department to select the Preferred Bidders in order to conclude Supply Agreements with the Preferred Bidders by the date specified in the table under clause 10 (*Timetable for National Solar Water Heater Programme*) of Part I (*General Requirements, Rules and Provisions*) of this RFB.

18. **No Collusion**

- 18.1 The attention of each of the Bidders, its shareholders, Advisors and agents is drawn to section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, which prohibits collusive bidding.
- 18.2 In submitting a Bid Response, each of the Bidders, its shareholders and all other participants in any Bid Response certifies that:
- 18.2.1 its Bid Response has been prepared without consultation, communication or agreement for restricting competition with any other Bidder, shareholder of another Bidder or participant in another Bid Response, or any other competitor or potential competitor;
- 18.2.2 its Bid Response has not been disclosed, nor will it be disclosed to any other Bidder, shareholder of another Bidder or participant in another Bid Response, or any competitor or potential competitor;
- 18.2.3 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

18.2.4 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.

18.3 If the Department becomes aware of or is of the opinion that any of the activities detailed in clause 18.2 have been undertaken by any Bidder or any of its shareholders or participant in another Bid Response or any of their Advisors, the Department shall be entitled to disqualify (in terms of clause 19 (*Disqualification*) of Part I (*General Requirements, Rules and Provisions*) of this RFB) such Bidder, its shareholders and their Advisors and to bar any or all of them from participating further in the Supply Programme and / or the National Solar Water Heater Programme.

19. **Disqualification**

Any material failure on the part of a Bidder to comply with any of the terms of this RFB, read together with all Briefing Notes, or any other RFB or similar document issued under the National Solar Water Heater Programme, or any breach by a Bidder under any contract concluded with the Department pursuant the National Solar Water Heater Programme, including any Supply Agreement, may result in the Bidder, and other Persons associated in any relevant way with the Bidder, being disqualified from any part or all of the National Solar Water Heater Programme.

20. **Loss of Preferred Bidder status**

20.1 If a Preferred Bidder:

20.1.1 fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;

20.1.2 fails to sign the Supply Agreement within the time period specified in clause 10 (*Timetable for National Solar Water Heater Programme*) of Part I (*General Requirements, Rules and Provisions*) of this RFB, specified in a Briefing Note or as such time period may be extended by the

Department on written notice to the Preferred Bidder;

20.1.3 fails to comply timeously with a request for information and or documentation by the Department as contemplated in the RFB; or

20.1.4 breaches any law applicable to any aspect of the National Solar Water Heater Programme;

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

21. Contact Policy

21.1 Contact Policy prior to appointment as Preferred Bidder

21.1.1 The Department will communicate on matters related to the RFB and the Supply Programme only with potential Bidders or Bidders which have completed the Bid Submission Notification Form for potential participants in the Supply Programme. In notifying the Department of their intention to submit a Bid Response, each potential Bidder shall have provided the Department with the name and contact details of the Person or Persons whom it appoints to undertake all contact with the Project Officer or the Department.

21.1.2 Each Bidder, in its completed *Form of Bid* at Volume 2 (*Legal Requirements*) Part 1 (*Form of Bid and Returnable Legal Appendices*), **Appendix 2F** of this RFB, will confirm or change the name and contact details of the Person or Persons appointed to undertake all contact with the Project Officer, in terms of clause 21.1.1 of Part I (*General Requirements, Rules and Provisions*) of this RFB. Any change to any details of the contact Person after the submission of the Bid Response must be notified to the Project Officer in writing.

21.1.3 Any potential Bidder or Bidder may only communicate with the Department through such contact Person or Persons, as the case may be, and the Department shall be entitled, at its sole discretion, to disregard any communication from a potential Bidder or from a Bidder,

that Departments not come from such contact Person or Persons, and that Departments not go directly to the Project Officer in the manner identified below.

21.1.4 All queries and requests for clarification in respect of this RFB are to be addressed, in writing, to the Project Officer. The contact details of the Project Officer are as follows:

Telephone: +27 12 406 7651

E-mail: khanyiso.zihlangu@energy.gov.za

21.1.5 No information or clarification may be requested by a potential Bidder, a Bidder, its shareholders nor any of its agents or Advisors or any Person participating in the relevant Bid Response from any member of the Transaction Advisors the employees of the Department or any other Government official who may be associated with the National Solar Water Heater Programme, without the prior written consent of the Project Officer.

21.1.6 If a potential Bidder, a Bidder, its shareholders or any of its agents or other Person participating in the relevant Bid Response or Advisors make, or makes (as applicable) any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify (in terms of clause 19 (*Disqualification*) of Part I (*General Requirements, Rules and Provisions*) of this RFB) the Bidder, its shareholders or any other Person participating in that Bid Response or Advisors, from any further participation in part or all of the Supply Programme and / or the National Solar Water Heater Programme.

21.1.7 A potential Bidder, Bidder, its shareholders or any of their Advisors or agents shall not be entitled to rely on any statements, information or correspondence in respect of this RFB or the Supply 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.

21.2 **Contact Policy following appointment as a Preferred Bidder**

21.2.1 Each Preferred Bidder will be given a dedicated NSWHP e-mail address

following appointment as a Preferred Bidder for all communication with the Department. Once the Preferred Bidder is provided with this dedicated NSWHP e-mail address the Preferred Bidder must only correspond with the Department through emails sent to this dedicated NSWHP e-mail address and the Department shall be entitled, at its sole discretion, to disregard any communication from the Preferred Bidder that do not come to the Departments via the dedicated NSWHP e-mail address.

- 21.2.2 Prior to being provided with the dedicated NSWHP e-mail address, the Preferred Bidder should follow the contact policy outlined in clause 21.1 (*Contact Policy prior to appointment as a Preferred Bidder*) of Part I (*General Requirements, Rules and Provisions*) of this RFB above.
- 21.2.3 The Preferred Bidder must maintain such internal protocols as are necessary to ensure that only authorised representatives make use of and communicate with the Department through the dedicated NSWHP e-mail address.
- 21.2.4 The Department shall be entitled to treat all such communications as coming from an authorised representative of the Preferred Bidder and shall be entitled to rely on such communications.
- 21.2.5 The Department shall communicate with Preferred Bidders from the "*Project Office*" e-mail address. A Preferred Bidder shall not be entitled to rely only on communications from the Department which do not emanate from this e-mail address, subject to the reservation of all of the rights of the Department in respect of the Supply Programme, as set out in this RFB.
- 21.2.6 No information or clarification may be requested by the Preferred Bidder, its shareholders or any of its agent, other Person participating in the relevant Bid Response or their Advisors from any member of the Transaction Advisors, the employees of the Department or any other Government official who may be associated with the Supply Programme, other than through emails sent through the dedicated NSWHP e-mail address assigned to the Preferred Bidder to the "*Project Office*" e-mail address.
- 21.2.7 If the Preferred Bidder, its shareholders or any of its agents, other Person

participating in the relevant Bid Response or their Advisors makes any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify (in terms of clause 19 (*Disqualification*) of Part I (*General Requirements, Rules and Provisions*) of this RFB) the Preferred Bidder, its shareholders, other Person participating in that Bid Response or their Advisors, from any further participation in part or all of the Supply Programme and / or the National Solar Water Heater Programme.

22. Time for information requests and clarifications

- 22.1 The Bidder may request clarification on any item contained in this RFB.
- 22.2 However, Bidders are encouraged to ensure the timeous submission of their requests for clarification in this regard, as the Department cannot guarantee that it will be able to provide adequate responses to any requests for clarification that are received fifteen (15) Business Days or less before the Bid Submission Date in sufficient time so as to enable any Bidders to make the necessary changes, amendments or adjustments to their Bid Responses for submission on the Bid Submission Date.

23. Requests and responses to requests

- 23.1 All requests and queries from Bidders must be in writing sent to the Project Officer by way of email. Oral requests and queries will not be entertained and will not receive a response.
- 23.2 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.
- 23.3 No response given to a question or request for clarification will have any status or impact on this RFB, save to the extent that such response is subsequently reflected in Briefing Notes to this RFB.

23.4 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 Departments not wish to have communicated to other Bidders. The Bidder gives its grounds (in writing) for requesting such information to be treated as confidential. The Bidder's attention is drawn to the requirements of the Constitution; the PFMA; the Promotion of Access to Information Act No. 2 of 2000; and the Promotion of Administrative Justice Act No. 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.

24. **Information Session**

24.1 The Department may hold one or more Information Sessions with prospective Bidders prior to the Bid Submission Date. Any such session, if it takes place, will be held in the Republic of South Africa and the date and venue for it, as well as the requirements in relation to the number of Persons that may or must attend it, will be communicated in due course on the NSWHP Website.

24.2 The Department reserves the right, in its sole discretion, to require prospective Bidders to attend any Information Session.

25. **Bid Validity**

All Bid Responses constitute an irrevocable binding offer by the Bidder to the Department. Bid Responses must remain valid and binding for twelve (12) months from the Bid Submission Date ("**Bid Validity Period**").

26. **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.

27. Change in Legal Requirements

- 27.1 Bidders will note, from the Supply Agreement, that they are expected to inform themselves as to the current laws in force (or published in the Government Gazette and in respect of which the date of commencement has also been published) in South Africa.
- 27.2 In addition, they are expected to review all bills, draft 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.
- 27.3 If, during the period between the Bid Submission Date and the date on which the Preferred Bidder is appointed, 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 the Supply Programme which change materially prevents, hinders or delays the a Bidder from participating in the Supply Programme or in the performance of its obligations in relation to the Supply Programme or which results in a material change in a Bidder's anticipated costs and or revenues, the Department, in its sole discretion, will be entitled to grant the relevant Bidder the opportunity to amend its Bid Response in order to deal specifically and only with the change in law as set out above, provided that the Bidder may not mark-up the Supply Agreement the Department may accept or reject any changes made, in its sole discretion.
- 27.4 If a Bidder elects not to amend its Bid Response, but to withdraw its Bid Response, it shall be entitled to do so.

28. Briefing Notes and Changes to Bid Process

The Department may, at any time and 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 RFB by the issue of Briefing Notes.

28.1 Issue of Briefing Notes

- 28.1.1 The Department may issue additional information regarding this RFB, on an *ad hoc* basis, which information shall be provided in the form of

Briefing Notes which are published on the NSWHP Website.

- 28.1.2 Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of this RFB.
- 28.1.3 Bidders shall be obliged to accept any amendments specified in Briefing Notes. All Briefing Notes shall be deemed to be part of this RFB.
- 28.1.4 A Bidder must ensure that its Bid Response is prepared taking into account all Briefing Notes issued by the Department, prior to the Bid Submission Date.

29. **Cost of Bidding**

- 29.1 A Bidder shall bear all of its costs (of whatsoever nature) associated with the preparation of its Bid Response and its participation in the Supply Programme.
- 29.2 No Bidder (including any Preferred Bidder) shall have any claim against the Department (including any claim for the costs of bidding) as a result of:
 - 29.2.1 not being selected as a Preferred Bidder;
 - 29.2.2 not entering into a Supply Agreement; and or
 - 29.2.3 the Department altering or abandoning any part or all of the Supply Programme and / or the National Solar Water Heater Programme.

30. **Inconsistencies**

- 30.1 If a Bidder identifies any errors or inconsistencies between the various portions of this RFB, the Bidder shall notify the Project Officer in writing prior to the date referred to in clause 22 (*Time for information requests and clarifications*) of Part I (*General Requirements, Rules and Provisions*) of this RFB, and the Department will, if necessary, provide clarification to all Bidders by way of a Briefing Note.
- 30.2 To the extent that any inconsistency exists or shall exist between the terms of the Supply Agreement and the provisions of this RFB, the terms of the Supply

Agreement shall prevail.

31. Incorrect or misleading information

The Department may:

- 31.1 disqualify in terms of clause 19 (*Disqualification*) of Part I (*General Requirements, Rules and Provisions*) of this RFB, any Bidder who knowingly or unwittingly provides any incorrect or misleading information in response to this RFB or in response to any query or clarification question addressed to the Bidder by the Department, from further participation in part or all of the Supply Programme and / or the National Solar Water Heater Programme; and or
- 31.2 revoke any decision in respect of the selection of a Preferred Bidder, in accordance with clause 20 (*Loss of Preferred Bidder status*) of Part I (*General Requirements, Rules and Provisions*) of this RFB, if such decision was based on any incorrect or misleading information or representation which the Bidder or its shareholders or Advisors or any other participant in the relevant Bid Response and or agents knowingly or unwittingly provided in response to this RFB or in response to any query or clarification question addressed to the Bidder or Preferred Bidder by the Department.

32. Opening of Bid Responses

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

33. Bid Response Acceptance / Rejection

- 33.1 The Department shall be entitled to accept or reject any Bid Response or to waive any failure to comply with the requirements set out in this RFB at any time.
- 33.2 This discretion afforded to the Department extends to the Compliance and Functionality Criteria in Part II (*Bidding Rules, Compliance and Functionality*

Criteria) of this RFB and Evaluation Criteria in Part III (*Comparative and Competitive Evaluation Criteria*) of this RFB and it affords the discretion to accept or reject discrepancies, deficiencies or any other peculiarities which may emerge during the evaluation of the Compliance and Functionality Criteria in Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB , in order for a Bid Response to be a Compliant Bid, and or the Evaluation Criteria Part III (*Comparative and Competitive Evaluation Criteria*) of this RFB in appointing Preferred Bidders. This discretion will be applied consistently across all Bid Responses in any particular Bid Submission Phase.

34. Disputes relating to Bid Process

Each Bidder and each shareholder or other Person participating in a Bid Response or otherwise in the Supply Programme, waives the right to bring proceedings in any forum outside of the Republic of South Africa in relation to this Supply Programme. This Supply Programme shall be governed by the laws of South Africa and the Bidder and each of its shareholders and any other participant consents and submits to the High Court of South Africa, Gauteng Provincial Division, Pretoria as the court having exclusive jurisdiction in relation to it.

35. Selection of Preferred Bidders

The Department will send letters to the selected Preferred Bidders following the evaluation as envisaged in Part III (*Comparative and Competitive Evaluation Criteria*), notifying them provisionally of their status and requesting the Preferred Bidders to, *inter alia*, finalise their contractual arrangements and project documents in order to conclude a Supply Agreement.

PART II BIDDING RULES, COMPLIANCE AND FUNCTIONALITY CRITERIA

36. Format of the Bid Response

36.1 Contents of the Bid Response

36.1.1 The Bid Response must be complete, contain all the information required

by the RFB and address each and every issue and requirement raised in the RFB.

- 36.1.2 All pages of each separately bound section of the Bid Response (for example, the response to the Compliance and Functionality Criteria section (Part II (*Bidding Rules, Compliance and Functionality Criteria*)) of this Part II, must be numbered consecutively from beginning to end and a detailed index to the entire Bid Response, must be included in the Bid Response.
- 36.1.3 The Bid Response must be submitted in two (2) parts, in the order set out below, to aid the evaluation process:
 - 36.1.3.1 response to clause 37 (*Compliance and Functionality Criteria*) of this Part II (*Bidding Rules, Compliance and Functionality Criteria*):
 - 36.1.3.1.1 executive summary (not more than twenty (20) pages);
 - 36.1.3.1.2 separate responses to each of the Compliance and Functionality Criteria, in terms of clauses 37.3 (*Legal Compliance and Functionality Criteria*), 37.4 (*Technical Compliance and Functionality Criteria*) and 37.5 (*Financial Compliance and Functionality Criteria*) and 37.6 (*Local Content Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB and in the form of the Annexures that relate to the headings, if applicable; and
 - 36.1.3.2 response to Part III (*Comparative and Competitive Evaluation Criteria*):
 - 36.1.3.2.1 executive summary (not more than twenty (20) pages);
 - 36.1.3.2.2 Price response; and
 - 36.1.3.2.3 Contributor Status Level, as specified in the B-BBEE Scorecard or Sector Specific Scorecard, as applicable, and evidenced by the Bidder's valid B-BBEE Verification Certificate.

36.1.3.3 The two (2) parts to the Bid Response are those described above, namely, the response in respect of clause 37 (*Compliance and Functionality Criteria*) of this Part II (*Bidding Rules, Compliance and Functionality Criteria*) and the response in respect of Part III (*Comparative and Competitive Evaluation Criteria*).

36.1.3.3.1 In the response to clause 37 (*Compliance and Functionality Criteria*) of this Part II (*Bidding Rules, Compliance and Functionality Criteria*), the executive summary must be bound separately from the responses to each category of the Compliance and Functionality Criteria in clauses 37.3 (*Legal Compliance and Functionality Criteria*), 37.4 (*Technical Compliance and Functionality Criteria*) 37.5 (*Financial Compliance and Functionality Criteria*) and 37.6 (*Local Content Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.

36.1.3.3.2 In response to Part III (*Comparative and Competitive Evaluation Criteria*), the executive summary must be separately bound from the responses to each category of Evaluation Criteria.

36.2 **Language of the Bid Response**

The Bid Response and all documents forming part of the Bid Response shall be in English. Any printed literature submitted with a Bid Response may be in another language so long as it is accompanied by an English translation (made by an accredited translator) of the entire document. For the purpose of interpretation of the Bid Response, the English translation provided shall govern. All correspondence and any other documentation and oral communication exchanged between the Bidder and the Department shall be in English.

36.3 **Currency of the Bid Response**

All monetary amounts referred to in a Bid Response shall be in Rand.

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

- 36.4.1 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:
- 36.4.1.1 tender reference number (**DOE/008/2015/16**);
 - 36.4.1.2 title of tender;
 - 36.4.1.3 name and address of Bidder;
 - 36.4.1.4 master copy or other copy number; and
 - 36.4.1.5 category of document (namely, the heading of the part and clause or Annexure of the RFB to which the document relates).
- 36.4.2 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:
- 36.4.2.1 the Supply Programme of the National Solar Water Heater Programme;
 - 36.4.2.2 tender reference number (**DOE/008/2015/16**);
 - 36.4.2.3 title of tender; and
 - 36.4.2.4 name and address of the Bidder.
- 36.4.3 The master copy of the Bid Response in respect of each of the two (2) 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 Part II (*Bidding Rules, Compliance and Functionality Criteria*)". The copies of the two (2) 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 36.4 (*Identification and Sealing of the Bid Response*) of Part II of this RFB.

36.5 **Copies of the Bid Response**

- 36.5.1 Each Bid Response is required to be delivered by way of:
- 36.5.1.1 two (2) hard copies of the entire Bid Response; and
 - 36.5.1.2 one (1) soft copy of the entire Bid Response, which is contained within a single electronic storage device (other than a laptop or tablet or any similar device), and the documents contained therein must be:
 - 36.5.1.2.1 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; and
 - 36.5.1.2.2 properly indexed, readable and capable of being opened.
- 36.5.2 Each copy of the Bid Response and all the documents contained therein, whether in hard or soft copy form, must be:
- 36.5.2.1 provided and compiled in accordance with the form and structure set out in clause 36 (*Format of the Bid Response*) of this Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB;
 - 36.5.2.2 complete, comprehensive, clear and legible; and
 - 36.5.2.3 identical to and consistent with all other copies of the Bid Response.
- 36.5.3 The Department shall be entitled to consider any copy of the Bid Response as the master version of the Bid Response and the Department will not be obliged to check the hard or soft copies of the Bid Response against each other in order to review or find the correct version of unclear, missing or incomplete information or documents. In addition, if a document contained in the soft copy of the Bid Response is illegible or cannot be opened, or if a document is missing from the soft copy, the Department will be entitled to deem that the relevant document was not submitted and treat that Bid Response as incomplete. As such, any inconsistencies across the copies of the Bid Response will be at a Bidder's risk.

36.6 **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.

36.7 Signing of Bid Response

The Bid Response is to be signed by an authorised representative of the Bidder.

36.8 Further Information

36.8.1 The Department reserves the right to seek additional information from any Bidder regarding its Bid Response and or in accordance with any of the requirements of the RFB, as it may, in its sole discretion, determine, whether such information has been requested under the RFB 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.

36.8.2 Any additional information that is submitted by a Bidder upon request to do so by the Department regarding its Bid Response and or in accordance with any of the requirements of the RFB shall be provided by the Bidder to the satisfaction of the Department, in its sole discretion.

36.8.3 The Department reserves the right to hold one (1) 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.

36.9 Information verification

- 36.9.1 Each Bidder (including where applicable its shareholders, Advisors and other participants), in submitting a Bid Response, is deemed to consent to and agree that the Department is entitled to:
- 36.9.1.1 perform a credit search in respect of such a Bidder, its shareholders, suppliers and participants by accessing any credit bureau's database; and
- 36.9.1.2 verify any information provided by a Bidder (including technical and financial information) with third parties (including banks).
- 36.9.2 The Department shall be entitled to use any information and data obtained from any third party source including any credit bureaux, for purposes of supplementing the information provided in the Bid Response and in the evaluation of the Bidder's Bid Response.

37. Compliance and Functionality Criteria

- 37.1 The purpose of this clause 37 (*Compliance and Functionality Criteria*) of Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB is to set out the requirements relating to:
- 37.1.1 the Compliance and Functionality Criteria to be complied with by the Bidders in order for their Bid Responses to be regarded and evaluated as Compliant Bids; and
- 37.1.2 the adjudication and evaluation by the Department of the Bid Responses, for compliance with the Compliance and Functionality Criteria.
- 37.2 Bidders that do not provide, as part of their Bid Response, all of the requested information in clauses 37.3 (*Legal Compliance and Functionality Criteria*), 37.4 (*Technical Compliance and Functionality Criteria*), 37.5 (*Financial Compliance and Functionality Criteria*), and 37.6 (*Local Content Compliance and Functionality Criteria*), and do not meet or exceed any criterion or requirement stated will have their Bid Response regarded as being non-compliant and will

not proceed to evaluation under Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB.

37.3 **Legal Compliance and Functionality Criteria**

37.3.1 Four key criteria are assessed in the legal evaluation, set out in clause 37.3.3 of this Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.

37.3.2 Each legal criterion has an absolute pass threshold i.e. one hundred percent (100%). Bidders must pass all threshold requirements in order to pass the legal Compliance and Functionality Criteria.

37.3.3 Bidders will be required, in respect of this clause 37.3 (*Legal Compliance and Functionality Criteria*), to provide and or demonstrate the following to the Department:

37.3.3.1 **Legal Criterion 1:** Confirmation of acceptance of the terms of the Supply Agreement and the Signatory of the Supply Agreement

Confirmation that the Bidder accepts the terms of the Supply Agreement (particularly the Warranty Period) and of the party that will be the party signing the Supply Agreement, the form of the said confirmation is attached **Appendix 2A** (*Confirmation of Supply Agreement and Signatory*) of this RFB;

37.3.3.2 **Legal Criterion 2:** Tax Clearance Certificate

A tax clearance certificate that confirms that the tax affairs of the Bidder are in order as set out in **Appendix 2B** (*Tax Clearance Certificate*) of this RFB;

37.3.3.3 **Legal Criterion 3:** Declaration of Interest and other related declarations

A declaration of interest from the Bidder which, if applicable, declares the interest in the Supply Programme of each Person identified in clause 13 (*Non-Eligible Persons*) of Part I (*General Requirements, Rules and Provisions*) of the RFB, the form of such declaration of interest is attached as **Appendix 2C** (*Declaration of*

Interest Form), Bidders must also complete and provide **Appendix 2D** (*Declaration of the Bidders Past Supply Chain Management Practices*) and **Appendix 2E** (*Certificate of Independent Bid Determination*); and

37.3.3.4 **Legal Criterion 4: Form of Bid**

The form of bid provided at Volume 2 (*Legal Requirements*) Part 1 (*Form of Bid and Returnable Legal Appendices*), **Appendix 2F** of this RFB, requires Bidders to provide, inter alia, the contact details of the Person or Persons appointed to undertake all contact with the Project Officer, in terms of clause 21.1.2 of Part I (*General Requirements, Rules and Provisions*) of the RFB;

37.4 **Technical Compliance and Functionality Criteria**

37.4.1 Four key criteria are assessed in the technical evaluation, set out in clause 37.4 of this Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.

37.4.2 Each technical criterion has an absolute pass threshold i.e. one hundred percent (100%). Bidders must pass all threshold requirements in order to pass the Technical Compliance and Functionality Criteria.

37.4.3 The Bidders will be required, in respect of this clause 37.4 (*Technical Compliance and Functionality Criteria*), to provide and or demonstrate the following to the Department:

37.4.4 **Technical Criterion 1: Compliant Baseline System**

37.4.4.1 The Bidder must supply a SABS Mark Approval certificate valid at date of Bid Submission confirms that the Baseline System offered in terms of the Bid Response meets the requirements of SANS 1307.

37.4.4.2 The Bidder must also supply the latest version of the full SABS Test Report for the Baseline System offered in terms of the Bid Response (the **Full SABS Test Report**).

37.4.5 **Technical Criterion 2: Freeze resistance status of Baseline System**

37.4.5.1 For freeze-resistant Baseline Systems, the Baseline System must be confirmed by the SABS to be freeze resistant in accordance with section 4.3.5 of SANS 1307. This must be specified in terms of the Full SABS Test Report provided with the Bid Response.

37.4.5.1.1 For non-freeze resistant Baseline Systems, the Baseline System must be confirmed by the SABS **NOT** to be resistant to freezing in accordance with section 4.3.5 of SANS 1307. This must be specified in terms of the Full SABS Test Report provided with the Bid Response.

37.4.6 **Technical Criterion 3: Thermal rating of the Baseline System**

37.4.6.1 The Baseline System must be confirmed by SABS to have a daily heat output of 9 Megajoules (MJ) and above per 100 litres at 16MJ/m²/day in accordance with section 4.6.1 of SANS 1307. This must be specified in the in terms of the Full SABS Test Report provided with the Bid Response.

37.4.7 **Technical Criterion 4: Original Equipment Manufacturer and manufacturing capability**

37.4.7.1 The Baseline System must be manufactured by the Bidder; in other words the Bidder must be the original equipment manufacturer of either the collector and/or the storage tank of the Baseline System. The Bidder must provide written confirmation of this as provided in Original Equipment Manufacturer and manufacturing capability Declaration at Volume 3 (*Technical Requirements and Returnable*

Appendices) **Appendix 3B** of this RFB. The Department, in its sole discretion, may visit a Bidder's manufacturing facility to confirm the existence of such facility.

37.4.7.2 The Bidder must provide proof to the satisfaction of the Department that it has the manufacturing capability sufficient to supply the Baseline Systems that are offered in the Bid Response within the required time frame. In this regard the Bidder must provide the confirmation required in the Declaration Original Equipment Manufacturer and manufacturing capability Declaration at Volume 3 (*Technical Requirements and Returnable Appendices*) **Appendix 3B** of this RFB.

37.5 **Financial Compliance and Functionality Criteria**

37.5.1 Two key criteria are assessed in the financial evaluation, set out in clause 37.5 of this Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.

37.5.2 The financial criterion has an absolute pass threshold i.e. one hundred percent (100%). Bidders must pass the threshold requirement to pass the Financial Compliance and Functionality Criteria.

37.5.3 Bidders will be required, in respect of this clause 37.5 (*Financial Compliance and Functionality Criteria*), to provide and or demonstrate the following to the Department:

37.5.4 **Financial Criterion 1: Price**

37.5.4.1 The completed Pricing Schedule provided in Schedule 4 of **Appendix 2H** (*Special Conditions of Contract for the Supply Agreement for the Supply of Solar Water Heater Panels*) of Volume 2 Part 2 of this RFB.

37.5.5 **Financial Criterion 2: Financial standing of the Bidder**

37.5.5.1 Audited statutory financial accounts for the latest 3 (three) financial years for the Bidder or for the entity that will guarantee the ability of the Bidder to fulfil its obligations under the Supply Agreement.

37.5.5.2 An analysis of the financial statements submitted will be conducted by the Department to confirm the Bidder's financial viability and ability to meet all of its contractual obligations under the Supply Agreement for the duration of the contract should it be appointed as the Supplier.

37.5.5.2.1 The total quantity of Baseline Systems which a Bidder is contracted for under each Bid Category shall be backed by written undertaking, in the form of a performance bond that financially covers the warranty, provided by a Bidder's lending institution.

37.6 **Local Content Compliance and Functionality Criteria**

37.6.1 Two key criteria are assessed in the local content evaluation, set out in clause 37.4 of this Part II (*Bidding Rules, Compliance and Functionality Criteria*) of this RFB.

37.6.2 Each local content criterion has an absolute pass threshold i.e. one hundred percent (100%). Bidders must pass all threshold requirements in order to pass the *Local Content Compliance and Functionality Criteria*.

37.6.3 Bidders will be required, in respect of this clause 37.4 (*Local Content Compliance and Functionality Criteria*), to provide and or demonstrate the following to the Department:

37.6.4 **Local Content Criterion 1: Declaration Certificate for Local Production and Content for Designated Sectors (SBD6.2)**

37.6.4.1 The *Declaration Certificate for Local Production and Content for Designated Sectors (SBD 6.2)* at Volume 5 (*Local Content Returnable Appendices*), **Appendix 5A** of this RFB, as well as the supporting **Annexures C, D and E**.

37.6.4.2 This Declaration Certificate must demonstrate that the Baseline System offered in terms of the Bid Response meets the Stipulated Minimum Threshold set by the DTI in respect of the Storage Tanks and Collectors, being a local content percentage of 70% each.

PART III COMPETITIVE AND COMPARATIVE EVALUATION CRITERIA

38. Purpose of this Part III

38.1 This Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB contains the requirements for the detailed Bid Response and the evaluation methods, criteria and weighting in respect of those parts of the Bid Response that are subject to evaluation in terms of this Part III (*Competitive and Comparative Evaluation Criteria*). Those parts are:

38.1.1 Price; and

38.1.2 Contributor Status Level, as measured in terms of the Bidder's B-BBEE Scorecard or relevant Sector Specific Scorecard.

38.2 The Department will only consider a Bidder's Bid Response in terms of this Part III (*Competitive and Comparative Evaluation Criteria*) if that Bidder is a Compliant Bidder.

38.3 The Bidder must respond to each and every heading in this Part III (*Competitive and Comparative Evaluation Criteria*), and provide comprehensive responses and information in respect of each heading. Failure of a Bidder to respond adequately to any of the headings of this Part III (*Competitive and Comparative Evaluation Criteria*), shall have an adverse impact on the evaluation of its Bid Response and shall entitle the Department, in its sole discretion, to disregard the Bidder's Bid Response and to disqualify that Bidder from participating further in the National Solar Water Heater Programme.

38.4 The evaluation in terms of this Part III (*Competitive and Comparative Evaluation Criteria*) will be undertaken in accordance with the 90/10 points system as provided for in the Preferential Procurement Policy Framework Act. Price will be scored out of 90 points and the Contributor Status Level will be scored out of 10 points.

39. Price Evaluation Methodology

39.1 For each Compliant Bid received within a particular Bid Category, the Price score shall be calculated in respect of its Price (in 1 April 2015 terms) provided

in accordance with clause 37.5.4 (*Financial Criterion 1: Price*) of Part II (Financial Compliance and Functionality Criteria), of this RFB.

39.2 The Price score a particular Bid Category will be calculated based on the Price (in 1 April 2015 terms) provided by the Bidders in the completed version of the Pricing Schedule in Schedule 4 of **Appendix 2H** (*Special Conditions of Contract for the Supply Agreement for the Supply of Solar Water Heater Panels*) of Volume 2 Part 2 of this RFB.

39.3 The Bidder's Price scores (in respect of Price) will be calculated as follows:

$$Ps = 90 * (1 - ((Pt - Pmin)/Pmin))$$

Where:

Ps = points scored for the Price (in 1 April 2015 terms) of the Bid Response for the Bid Category under consideration;

Pt= Price (in 1 April 2015 terms) of the Bid Response for the Bid Category under consideration;

and

Pmin = the lowest Price (in 1 April 2015 terms) offered for Bid Responses in a particular Bid Category.

39.4 For example, if the lowest Price for Bid Category 1A is R450 000, then in respect of the Price score:

39.4.1 a Bid Response with a Price of R450 000 will score 90 out of 90;

39.4.2 a Bid Response with a Price of R1 000 000 will score $90 * (1 - ((1\ 000\ 000 - 450\ 000) / 450\ 000)) = 19.8$ out of 90;

39.4.3 a Bid Response with a Price of R550 000 will score $90 * (1 - ((R550\ 000 - 450\ 000) / 450\ 000)) = 70.2$ out of 90.

40. Contributor Status Level

40.1 Bidders are required to complete and submit with their Bid Response the

Preference Points Claim Form in terms of the PPPFA Regulations which is in Volume 6, **Appendix 6A** of this RFB (SBD 6.1).

- 40.2 Bidders are also required to submit their valid B-BBEE Verification Certificates in response to this Part III (*Competitive and Comparative Evaluation Criteria*) of this RFB, for purposes of application of the preference points system contemplated in the Preferential Procurement Policy Framework Act.
- 40.3 Points will be awarded to the Bidder for attaining their B-BBEE Scorecard or Sector Specific Scorecard in accordance with the table below:

BEE Contributor Status Level	Number of Points
1	10
2	9
3	8
4	7
5	6
6	5
7	4
8	3
Non-compliant contributor	

- 40.4 Bidders who do not submit their valid B-BBEE Verification Certificates or are non-compliant contributors to B-BBEE, will not qualify for preference points for B-BBEE. Such Bidders will not be disqualified from submitting Bid Responses in respect of this Supply Programme. They will, however, score points out of ninety (90) for Price only and zero (0) points out of ten (10) for Contributor Status Level.
- 40.5 Bidders must note that in terms of the provisions of the Supply Agreement Suppliers are required to commit to the Contributor Status Level which is bid in the Bid Response.
- 40.6 **Overall Scoring and Appointment as Preferred Bidder in each Bid Category**
- 40.6.1 The points scored by a Bidder in a particular Bid Category and Term in respect of its B-BBEE Scorecard (scored out of ten (10)) will be added to the points scored by that Bidder for Price (scored out of ninety (90)) to determine the total points (scored out of one hundred (100)) earned in each relevant Bid Category and to rank bidders accordingly.
- 40.6.2 The Department may decide to appoint one or more Bidders as Preferred

Bidder following the evaluation process or may decide against appointment of any Bidder. Any decision to appoint a particular Bidder as Preferred Bidder will have regard to all relative objective considerations relating to the Bid Response submitted by that Bidder, including any factor listed in clause 8.5 of Part I (*General Requirements, Rules and Provisions*) of this RFB, the overall risk to the Department, the Department's objectives and policy considerations and the requirements of the Department as contained in this RFB, together with the overall scoring achieved by that Bidder.