

STELLENBOSCH LOCAL MUNICIPALITY

REQUEST FOR PROPOSAL

For the appointment of Independent Power Producers to supply

Energy Output generated from one or more Solar PV Facilities

and/or

**stored Energy Output delivered by one or more Battery Energy
Storage Systems**

TENDER NUMBER: B/SM 89/25

STELLENBOSCH MUNICIPALITY INDEPENDENT POWER

PRODUCER PROCUREMENT PROGRAMME

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GENERAL CONDITIONS OF BIDDING

1. **BID NOTICE**

1.1. INVITATION TO BID

1.1.1. The Stellenbosch Municipality is inviting Bidders to submit Bid Responses for the appointment of IPPs to supply:

1.1.1.1. Energy Output generated from one or more Solar PV Facilities;
and/or

1.1.1.2. stored Energy Output delivered by one or more BESS,

to the Stellenbosch Municipality.

1.1.2. The Stellenbosch Municipality intends to select the Preferred Bidders in accordance with the bid evaluation methodology set out in this RFP, based on an assessment of Bidders' responsiveness to the RFP requirements, including the Functionality Criteria and Evaluation Criteria set out in this RFP.

1.1.3. Appointment of Preferred Bidders will be provisional, subject to the Preferred Bidders meeting all Preferred Bidder conditions, finalisation of the Project Agreements and satisfaction of all conditions precedent thereto.

1.1.4. This RFP is accessible on the Stellenbosch Municipality's website (www.stellenbosch.gov.za).

1.2. DEADLINE FOR SUBMISSION OF BIDS

1.2.1. Bidders must submit their Bid Responses to the Stellenbosch Municipality by no later than 12h00 (midday) on the Bid Submission Date, by depositing the Bid Response in the tender box situated in the Main Hall Entrance of the Stellenbosch Municipality Offices, Town House Complex, 1st Floor, Plein Street, Stellenbosch.¹

1.2.2. The Stellenbosch Municipality shall reject any Bid Response received after 12h00 (midday) on the Bid Submission Date.

1.2.3. Bid Responses received after 12h00 (midday) on the Bid Submission Date shall be returned unopened by the Stellenbosch Municipality to the Bidder

¹ The tender box can be accessed at any time provided the size of the bid submission is such that it can fit in the tender box. If the bid submission cannot fit in the tender box, the bid submission must be delivered by hand to the address stipulated in paragraph 1.2.1 of the RFP, between the hours of 08h00 and 15h30 on week days only.

Representative, marked “Late Bid Response” and with the date and time that the Stellenbosch Municipality received the Bid Response.

1.3. BIDDERS' CONFERENCES

- 1.3.1. An initial non-compulsory Bidders' Conference will be held at 10h00 on 23 April 2025 as reflected in clause 7.2 (*Procurement Schedule*) of this RFP.
- 1.3.2. The initial non-compulsory Bidders' Conference will take place at the Stellenbosch Municipality's Municipal Council Chambers located at Stellenbosch Municipality Offices, Town House Complex, 1st Floor, Plein Street, Stellenbosch.
- 1.3.3. Non-compulsory Bidders' Conference online attendance link: [Non-Compulsory Bidders Conference Link](#)
- 1.3.4. Prospective Bidders who fail to attend the non-compulsory Bidders' Conference will not be regarded as non-compliant and will not be disqualified by the Stellenbosch Municipality from participating in the STMIPPPP, but may be disadvantaged by virtue of not having attended and obtained the information disseminated at the non-compulsory Bidders' Conference.
- 1.3.5. A subsequent **compulsory** Bidders' Conference will take place online, at 10h00 on 31 July 2025 as reflected in clause 7.2 (*Procurement Schedule*) of this RFP. ***Prospective Bidders who fail to attend the compulsory Bidders' Conference will be regarded as non-compliant and will be disqualified by the Stellenbosch Municipality from participating in the STMIPPPP.***
- 1.3.6. Compulsory Bidders' Conference online attendance link: [Compulsory Bidders Conference Link](#)

1.4. RIGHT TO CANCEL

- 1.4.1. The Stellenbosch Municipality does not bind itself, and there is no obligation of any nature whatsoever imposed upon the Stellenbosch Municipality, to respond to or accept any Bid Response or any other submission made by any person in response to this RFP.
- 1.4.2. The Stellenbosch Municipality hereby expressly reserves the right to, at any time, withdraw this RFP or cancel the STMIPPPP and/or this tender process, in whole or in part.

2. **DISCLAIMER**

2.1. **NO CONTRACT**

- 2.1.1. This RFP does not constitute an offer to enter into a contractual relationship with any Bidder, and is merely a solicitation of Bid Responses to enable the Stellenbosch Municipality to select the Preferred Bidders in order to conclude the Project Agreements with the Stellenbosch Municipality and other relevant counterparties at Commercial Close.
- 2.1.2. The Stellenbosch Municipality has prepared and issued this RFP for the purpose of providing Bidders with information in connection with the STMIPPPP, and to assist Bidders in the preparation of their Bid Responses.
- 2.1.3. The information set out in this RFP is not intended, and does not purport, to contain all the information required to enable Bidders to prepare Bid Responses. Bidders are required to conduct and rely upon their own investigations and analysis.
- 2.1.4. Each Bidder, in submitting a Bid Response, is deemed to do so on the basis that it accepts and acknowledges the terms of this RFP. To confirm its acceptance and acknowledgement of the terms of the RFP, the Bidder must submit in its Bid Response a completed Declaration of Bidder, provided in Appendix 13 (*Declaration of Bidder*).
- 2.1.5. Neither the Stellenbosch Municipality, nor any of its directors, officers, employees, consultants, Project Manager, Transaction Advisors, contractors, representatives or agents, nor the WCG, makes any representation or warranty, either express or implied, as to the accuracy, completeness, reliability or reasonableness of the contents of this RFP.
- 2.1.6. The Stellenbosch Municipality is under no obligation to correct, update or revise this RFP or any written or oral communications transmitted to any Bidders.

2.2. **WAIVER**

- 2.2.1. The Stellenbosch Municipality hereby expressly disclaims any and all liability for any costs, damages, liabilities or claims of any nature whatsoever, arising from or relating to the participation by any person in the STMIPPPP or based upon or relating to any information, material, forecasts or estimates contained in this RFP or any written or oral communications by the Stellenbosch Municipality or any of

its directors, officers, employees, consultants, Project Manager, Transaction Advisors, contractors, representatives or agents, or the WCG.

- 2.2.2. As a condition of its participation in the STMIPPPP, each Bidder agrees and confirms that neither it nor any of its Members, nor its Advisors will make any claim or demand, or bring any action, suit or petition against the Stellenbosch Municipality, or any of its directors, officers, employees, consultants, Project Manager, Transaction Advisors, contractors, representatives or agents, or the WCG, for any costs, damages, liabilities or claims of any nature whatsoever relating to its participation in the STMIPPPP or based upon or relating to any information, material, forecasts or estimates contained in this RFP or any written or oral communication by the Stellenbosch Municipality or any of its directors, officers, employees, consultants, Project Manager, Transaction Advisors, contractors, representatives or agents, or the WCG.

3. DEFINITIONS AND INTERPRETATION

In this RFP, except as otherwise defined herein, and except where the context requires otherwise, words and expressions which are defined in the PPA shall have the same meanings when used in this RFP. In this RFP, the following terms shall have the following meanings:

- 3.1. **"AC"** means alternating current;
- 3.2. **"Advisors"** means any advisors to Bidders, Members, Lenders, Contractors or any other participants in a Bid Response;
- 3.3. **"Appendix"** means any appendix attached to this RFP;
- 3.4. **"Base Date"** means 1 July 2025, or such other date as may be notified through a Briefing Note as being the Base Date;
- 3.5. **"B-BBEE Act"** means the Broad-based Black Economic Empowerment Act 53 of 2003;
- 3.6. **"B-BBEE Certificate"** means a B-BBEE rating certificate issued by a B-BBEE Verification Agency in terms of a Sector Code or the B-BBEE Codes, as applicable;
- 3.7. **"B-BBEE Codes"** means the B-BBEE Codes of Good Practice, 2013 (as amended) issued in terms of section 9(1) of the B-BBEE Act;
- 3.8. **"B-BBEE Contributor Status Level"** means the status level of contribution of a Measured Entity, calculated and issued in accordance with the B-BBEE Codes or applicable Sector Code and reflected in the Measured Entity's B-BBEE Certificate;

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- 3.9. **"B-BBEE Verification Agency"** means an entity that has been accredited by the South African National Accreditation System ("**SANAS**") to issue B-BBEE Certificates;
- 3.10. **"BESS"** means Battery Energy Storage System;
- 3.11. **"BESS EA Exemption"** has the meaning given to it in clause 15.1.2.2 of the RFP;
- 3.12. **"Bidder"** means an entity or consortium that submits a Bid Response, which must be either:
 - 3.12.1. in the case of an entity, a Project Company; or
 - 3.12.2. in the case of a consortium, a grouping of legal entities all of which shall become Shareholders in a Project Company, led by a Lead Member;
- 3.13. **"Bidders' Conference"** means the conference detailed in clause 1.3 (*Bidders' Conference*) of the RFP;
- 3.14. **"Bidder Representative"** means a natural person designated as such by a prospective Bidder or Bidder, who has the capacity and legal authority to represent the Bidder and act as its contact with the Stellenbosch Municipality for all matters relating to the STMIPPPP;
- 3.15. **"Bid Guarantee"** means the guarantee, described in clause 8.1 (*Bid Guarantee*) of the RFP, which must be provided by the Bidder to the Stellenbosch Municipality on or by the Bid Submission Date in the form provided in Appendix 11 (*Form of Bid Guarantee*) of the RFP, in order for the Bidder to be eligible to participate in the STMIPPPP;
- 3.16. **"Bid Registration Date"** means the date, set out in clause 7.2 (*Procurement Schedule*) of the RFP, by which a Bidder must submit its completed Registration Form in order to be eligible to participate in the STMIPPPP, as set out in clause 7.4 (*Compulsory Bid Registration*) of the RFP;
- 3.17. **"Bid Response"** means any bid proposal or submission submitted by a Bidder to the Stellenbosch Municipality in response to the invitation contained in this RFP;
- 3.18. **"Bid Submission Date"** means the date, set out in clause 7.2.8 of the RFP, or any subsequent date determined by the Stellenbosch Municipality, by which a Bidder must submit its Bid Response;
- 3.19. **"Bid Validity Period"** means the period identified as the Bid Validity Period in clause 7.8.2 of the RFP;
- 3.20. **"Black People"** refers to Africans, Coloureds and Indians, limited to those who are Citizens;

- 3.21. **"Briefing Note"** means any document issued in writing by the Stellenbosch Municipality that amends or supplements this RFP in any way. These notes shall be consecutively numbered in the order in which they are issued, and published on the Stellenbosch Municipality website;
- 3.22. **"B/SM 60/24 20MW Tender"** means Tender: B/SM 60/24 Request for Proposal from Independent Power Producers to Provide 20MWP Renewable Energy to Stellenbosch Municipality, issued by the Stellenbosch Municipality on 2 February 2024 and which closed on 4 March 2024;
- 3.23. **"Business Day"** has the meaning given to it in section 5(3) of the Companies Act;
- 3.24. **"Buyer"** has the meaning given to it in the PPA;
- 3.25. **"Capacity"** has the meaning given to it in the PPA;
- 3.26. **"Capital Expenditure"** has the meaning given to it in the PPA;
- 3.27. **"Change in Control"** has the meaning given to it in the PPA;
- 3.28. **"Citizens"** has the meaning given to it in the PPA;
- 3.29. **"COD"** means Commercial Operation Date;
- 3.30. **"COIDA"** means the Compensation for Occupational Injuries and Diseases Act 130 of 1993;
- 3.31. **"Commercial Close"** means the Signature Date as defined in the BESS PPA and the Effective Date as defined in the Solar PV PPA;
- 3.32. **"Commercial Energy"** has the meaning given to it in the Solar PV PPA;
- 3.33. **"Commercial Energy Rate"** has the meaning given to it in the Solar PV PPA;
- 3.34. **"Commercial Operation Date"** has the meaning given to it in the PPA;
- 3.35. **"Companies Act"** means the Companies Act 71 of 2008, and where relevant, applicable provisions of the Companies Act 61 of 1973;
- 3.36. **"Company"** means a private company incorporated in the Republic of South Africa in terms of the Companies Act;
- 3.37. **"Competing Compliant Bidders"** has the meaning given to it in clause 9.2.2 of this RFP;
- 3.38. **"Compliant Bid"** means a Bid Response that complies with clause 8 (*Instructions for Submission*) of the RFP, and meets or exceeds the requirements of Stage 1, clause 13 (*Legal*

Criteria) to clause 17 (*Technical Criteria*) (*Functionality Criteria*) of this RFP, and "**Compliant Bidder**" shall have a corresponding meaning;

- 3.39. "**Connection Direct Agreement**" means the direct agreement entered into (or to be entered into) between the Seller, the Distributor, and the Lenders (or their agent) in relation to the Distribution Agreement, a template of which will be made available to prospective bidders prior to the Bid Submission Date, by means of a Briefing Note;
- 3.40. "**Consents**" means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, and licences required to be issued by or made with any Responsible Authority in connection with the performance of any of the Construction, Operation and Maintenance of the Facility by the Project Company;
- 3.41. "**Constitutional Documents**" in respect of any company at any time, means the then current and up-to-date constitutional documents of such company at such time (including, to the extent applicable, memorandum and articles of association, certificate of incorporation, certificate to commence business, certificate of change of name, memorandum of incorporation, notice of incorporation, registration certificate and notice of amendment);
- 3.42. "**Construction**" has the meaning given to it in the PPA;
- 3.43. "**Construction Measurement Period**" has the meaning given to it in the PPA;
- 3.44. "**Contact Person**" has the meaning given to it in clause 7.3 (*Contact Person*) of the RFP;
- 3.45. "**Contracted Capacity**" has the meaning given to it in the Solar PV PPA or the BESS PPA, as applicable;
- 3.46. "**Contractor**" has the meaning given to it in the PPA;
- 3.47. "**Corporate Finance**" means the corporately guaranteed or secured full recourse bank debt or parent company loans provided directly to the Project Company. For the avoidance of doubt, Members' loans are treated as Equity Finance;
- 3.48. "**CPI**" means the Consumer Price Index;
- 3.49. "**CSD**" means the National Treasury's Central Supplier Database;
- 3.50. "**DC**" means direct current;
- 3.51. "**DC/AC Ratio**" means the quotient of the DC Nameplate Capacity of a Facility, and the Contracted Capacity;

- 3.52. **"DC Nameplate Capacity"** means the total DC output of the solar PV modules within a Facility at standard test conditions;
- 3.53. **"Debt"** means any funding for a Project other than Equity Finance;
- 3.54. **"Decommissioning Costs"** means the costs of decommissioning the Project upon termination of the PPA whether prematurely or due to the effluxion of time, or at the end of the life of the Project, whichever shall be the latest, as more fully detailed in clause 13 (*Legal Criteria*) of the RFP;
- 3.55. **"Decommissioning Financial Plan"** has the meaning given to it in the PPA;
- 3.56. **"Decommissioning Plan"** has the meaning given to it in the PPA;
- 3.57. **"Delivery Point"** has the meaning given to it in the PPA;
- 3.58. **"DFFE"** means the Department of Forestry, Fisheries and the Environment of the Government or any successor department designated by the Government from time to time;
- 3.59. **"Direct Agreement"** means the direct agreement entered into (or to be entered into) between the Buyer, the Seller, and the Lenders (or their agent) in relation to the PPA, a template of which is provided in Appendices 17A (*Direct Agreement – Solar PV*) and 17B (*Direct Agreement – BESS*) of the RFP;
- 3.60. **"Distribution Agreement"** means the connection and use-of-system agreement entered into (or to be entered into) between the Distributor and the Seller, in relation to the PPA, a template of which will be made available to prospective bidders prior to the Bid Submission Date, by means of a Briefing Note;
- 3.61. **"Distribution Connection Works"** has the meaning given to it in the PPA;
- 3.62. **"Distribution System"** has the meaning given to it in the PPA;
- 3.63. **"Distributor"** has the meaning given to it in the PPA;
- 3.64. **"DWS"** means the Department of Water and Sanitation of the Government or any successor department designated by the Government from time to time;
- 3.65. **"Electrical Network"** means a distinct electrical distribution network within the Stellenbosch Distribution System, described in clause 4.2.3.11;
- 3.66. **"Employee"** has the meaning given to it in the PPA;
- 3.67. **"Energy Forecast Report"** has the meaning given to it in clause 17.1.4.1 of the RFP;

- 3.68. **"Energy Output"** has the meaning given to it in the PPA;
- 3.69. **"Environmental Consents"** means any consents, licences, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency in terms of any environmental law or heritage law for the development, Construction or Operation of the Facility, and includes the Key Environmental Consents and the Other Environmental Consents as defined in clause 15 (*Environmental Consent Criteria*) of this RFP;
- 3.70. **"EPC Contractor"** means the contractor appointed by the Seller to undertake the whole or any part of the Construction of the Facility;
- 3.71. **"Equipment Supplier"** has the meaning given to it in the PPA;
- 3.72. **"Equity Finance"** means funding to be provided to the Project Company by its Shareholders, either by way of share capital or Members' loans;
- 3.73. **"ERA"** means the Electricity Regulation Act 4 of 2006;
- 3.74. **"Eskom"** means Eskom Holdings SOC Ltd (registration number 2002/015527/30), as incorporated pursuant to the Eskom Conversion Act 13 of 2001;
- 3.75. **"Evaluation Criteria"** means the evaluation criteria which apply in Stage 2, set out at clause 20 (*Points awarded for Price*) and clause 21 (*Points awarded for Specific Goals*) of the RFP;
- 3.76. **"Evaluation Price"** means the price calculated in accordance with clause 16.4.5 of this RFP, for each Compliant Bid, for purposes of evaluation under Stage 2;
- 3.77. **"Facility"** has the meaning given to it in the PPA;
- 3.78. **"Financial Close"**, irrespective of its definition and application in the Financing Agreements (which this RFP does not seek to dictate by this definition), for the purposes of this RFP means the date on which the Seller, as the Borrower under the Financing Agreements, has received confirmation that all suspensive conditions to the Financing Agreements have either been met to the relevant Lenders' satisfaction or have been appropriately waived by the Lenders;
- 3.79. **"Financial Institution"** means an entity that falls within the definition of "financial institution" in the Financial Sector Regulation Act 9 of 2017 and that is regulated pursuant to that Act;
- 3.80. **"Financial Model"** means a financial model(s) submitted by a Bidder, that meets the requirements of clause 16.3 (*Financial Criterion 3 – Financial Model and Forecast Cash Flow Waterfall*) of the RFP;

- 3.81. **"Financing Agreements"** has the meaning given to it in the PPA;
- 3.82. **"Functionality Criteria"** means the functionality criteria which apply in Stage 1, set out at clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) of the RFP, read with the returnable forms and schedules of the RFP;
- 3.83. **"Fund"** means a Financial Institution that combines capital sourced from one or more investors to create a pool of finance to re-invest in a range of asset classes in accordance with an agreed investment strategy;
- 3.84. **"Government"** means the government of the Republic;
- 3.85. **"Grid Codes"** means as applicable, any code in respect of electricity generation, dispatch, scheduling, communications, distribution or transmission as published by NERSA or its equivalent or any Responsible Authority from time to time;
- 3.86. **"IDP"** has the meaning given to it in the PPA;
- 3.87. **"Independent Engineer Agreement"** means the agreement entered into (or to be entered into) by the Seller, the Buyer and a mutually agreed independent engineer for the Project, a template of which is provided in Appendices 20A (Independent Engineer Agreement – Solar PV) and 20B (Independent Engineer Agreement – BESS) of the RFP;
- 3.88. **"IPP"** means independent power producer;
- 3.89. **"IRR"** means the Rand-based nominal post-tax internal rate of return which a Member is forecast in the Financial Model applicable at the Base Date to achieve, on its investment in Equity Finance over the term of the PPA;
- 3.90. **"Job Creation"** has the meaning given to it in the PPA;
- 3.91. **"Key Environmental Consents"** has the meaning given to it in clause 15 (*Environmental Consent Criteria*) of the RFP;
- 3.92. **"Key Equipment"** has the meaning given to it in the PPA;
- 3.93. **"kW"** means kilowatt;
- 3.94. **"kWh"** means kilowatt hour;
- 3.95. **"Land Use Consents"** means any consents, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency required in terms of any land use law for the development, Construction or Operation of the Facility;

- 3.96. **"Lead Member"** means a Member (which is a legal entity) of a Bidder that is a consortium, which has been appointed by the other Members to take the lead in the preparation of that Bidder's Bid Response, to submit the Bid Response on behalf of the Bidder and to bind the Bidder to the terms of the Bid Response;
- 3.97. **"Legal Opinion"** means a legal opinion which meets the requirements stipulated for such in clause 12 (*Purpose and Overview*) of the RFP;
- 3.98. **"Lender"** means any Financial Institution that is party to a term sheet submitted by a Bidder as part of its Bid Response, for the provision of Project Finance to a Project;
- 3.99. **"Local Community"** has the meaning given to it in the PPA;
- 3.100. **"Locality"** means that a Bidder or Member has, at the Bid Submission Date, business premises within the area of jurisdiction of the Stellenbosch Municipality;
- 3.101. **"Measured Entity"** has the meaning given to it in the PPA;
- 3.102. **"Member"** in relation to any Bidder, means a legal entity and or natural person which or who will become a Shareholder (either itself or through an intermediary entity) once the Project Company is incorporated, and if the Project Company has already been incorporated, then any Shareholder;
- 3.103. **"MFMA"** means Local Government: Government: Municipal Finance Management Act 56 of 2003;
- 3.104. **"MSCM Regulations"** means the Municipal Supply Chain Management Regulations, 2005, issued in terms of the MFMA;
- 3.105. **"Municipal Structures Act"** means the Local Government: Municipal Structures Act 117 of 1998;
- 3.106. **"Municipal Systems Act"** means the Local Government: Municipal Systems Act 32 of 2000;
- 3.107. **"MV"** means medium voltage;
- 3.108. **"MVA"** means Megavolt-amperes;
- 3.109. **"MW"** means Megawatt;
- 3.110. **"MW_{Ac}"** means MW of alternating current;
- 3.111. **"MWh"** means Megawatt hour;
- 3.112. **"MWp"** means Megawatt peak;

- 3.113. **"National Treasury"** has the meaning ascribed to it in the PFMA;
- 3.114. **"NEMA"** means the National Environmental Management Act 107 of 1998;
- 3.115. **"NERSA"** means the National Energy Regulator of South Africa, established pursuant to section 3 of the National Energy Regulator Act 40 of 2004;
- 3.116. **"NMD"** means notified maximum demand, meaning the maximum contractual electricity demand that a customer requests from a utility under its electricity supply agreement;
- 3.117. **"NPV"** means net present value;
- 3.118. **"Operating Period"** has the meaning given to it in the PPA;
- 3.119. **"Other Environmental Consents"** has the meaning given to it in clause 15 (*Environmental Consent Criteria*) of the RFP;
- 3.120. **"Person Month"** has the meaning given to it in the PPA;
- 3.121. **"PIN"** means personal identification number;
- 3.122. **"PPA"** means the power purchase agreement to be entered into between a Project Company, as the Seller, and the Buyer, pursuant to the STMIPPPP, of which there are two, a Solar PV PPA and a BESS PPA, templates for which are provided in Appendix 15 (*Solar PV PPA*) and Appendix 16 (*BESS PPA*) of this RFP;
- 3.123. **"PPPFA"** means the Preferential Procurement Policy Framework Act 5 of 2000;
- 3.124. **"PPR 2022"** means the Preferential Procurement Regulations published under GN 2721 in Government Gazette 47452 of 04 November 2022, in terms of section 5(1) of the PPPFA;
- 3.125. **"Preferred Bidder"** means a Bidder that is selected by the Stellenbosch Municipality in accordance with the RFP evaluation methodology and notified of its provisional appointment as such;
- 3.126. **"Preferred Bidder Guarantee"** means the guarantee to be provided by a Preferred Bidder to the Stellenbosch Municipality, as detailed in clause 10.2.1 of the RFP;
- 3.127. **"Price"**:
- 3.127.1. in relation to Solar PV, means the Commercial Energy Rate offered by a Bidder, being a rate per kWh applicable to Commercial Energy, expressed in Rand (inclusive of VAT), to be derived from the applicable Financial Model; and

- 3.127.2. in relation to BESS, means the Tariff offered by a Bidder, being a rate per kWh applicable to Energy Output and Deemed Energy, expressed in Rand (inclusive of VAT), to be derived from the applicable Financial Model;
- 3.128. **"Project"** has the meaning given to it in the PPA;
- 3.129. **"Project Activities"** has the meaning given to it in the PPA;
- 3.130. **"Project Agreements"** has the meaning given to it in clause 5.2 (*Overview of Project Agreements*) of the RFP;
- 3.131. **"Project Company"** means the special purpose Company that a Bidder proposes using as the vehicle to undertake the Bidder's Project that is the subject matter of a Bid Response, which will be the Seller in terms of the PPA;
- 3.132. **"Project Finance"** means a limited recourse debt facility provided directly to the Project Company by a bank or other Financial Institution. For the avoidance of doubt, Project Finance excludes Corporate Finance;
- 3.133. **"Project Manager"** means the project manager to the Stellenbosch Municipality in respect of the STMIPPPP, being Pegasys (Pty) Ltd;
- 3.134. **"Project Schedule"** has the meaning given to it in clause 17.1.5.1 of this RFP;
- 3.135. **"Project Site"** has the meaning given to it in the PPA;
- 3.136. **"Public Good"** has the meaning given to it in the PPA;
- 3.137. **"PV"** means Photovoltaic;
- 3.138. **"Rand"** or **"R"** means the South African Rand, the lawful currency of the Republic;
- 3.139. **"Registration Form"** means the form which must be completed by a Bidder for purposes of compliance with the requirements of clause 7.4 (*Compulsory Bid Registration*), which form is provided in Appendix 1 (*Registration Form*);
- 3.140. **"Related"** means a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment;
- 3.141. **"Renewable Energy"** means the harnessing of naturally occurring non-depletable sources of energy, including solar, wind, biomass, hydro, tidal wave, ocean current and geothermal, to produce electricity, gaseous and liquid fuels, heat or a combination of these energy types;

- 3.142. **"Renewable Energy Certificates" or "REC"** means electronic records that verify the origin of energy from registered Renewable Energy generation facilities;
- 3.143. **"Responsible Authority"** has the meaning given to it in the PPA;
- 3.144. **"Revenue"** has the meaning given to it in the PPA;
- 3.145. **"RFP"** means this Request for Proposals;
- 3.146. **"RTE"** has the meaning given to it in the BESS PPA;
- 3.147. **"SANDF"** means the South African National Defence Force;
- 3.148. **"SAWS"** means the South African Weather Service;
- 3.149. **"Scheduled COD"** has the meaning given to it in the PPA;
- 3.150. **"Self-Build Agreement"** has the meaning given to it in the PPA;
- 3.151. **"Seller"** means a Project Company that agrees to sell electricity generated by it or on its behalf, to the Buyer, or agrees to sell stored Energy Output to the Buyer, in terms of a PPA entered into pursuant to the STMIPPPP;
- 3.152. **"Shareholders"** means the shareholders of the Project Company at Commercial Close;
- 3.153. **"Skills Development"** has the meaning given to it in the PPA;
- 3.154. **"Skills Development Contributions"** has the meaning given to it in the PPA;
- 3.155. **"Social Infrastructure"** has the meaning given to it in the PPA;
- 3.156. **"Social Spending"** has the meaning given to it in the PPA;
- 3.157. **"Social Well-Being Programme"** has the meaning given to it in the PPA;
- 3.158. **"Socio-Economic Development Obligations"** has the meaning given to it in the PPA;
- 3.159. **"Solar EA Exemption"** has the meaning given to it in clause 15.1.2.1 of this RFP;
- 3.160. **"Specific Goal"** means B-BBEE Contributor Status Level, being the specific goal, as contemplated in section 2(1)(d) of the PPPFA, selected by the Stellenbosch Municipality for application in the STMIPPPP;
- 3.161. **"State of Charge" or "SoC"** has the meaning given to it in the PPA;

- 3.162. **"Stellenbosch Distribution System"** means the Stellenbosch Municipality's network infrastructure consisting of assets operated at a nominal voltage of 132 (one hundred and thirty-two) kV or less;
- 3.163. **"Stellenbosch Municipality"** means the Stellenbosch Local Municipality, established in terms of the Municipal Structures Act;
- 3.164. **"Stellenbosch Municipality SCMP"** means the Stellenbosch Municipality Supply Chain Management Policy 2024 – 2025;
- 3.165. **"STMIPPPP"** means the Stellenbosch Municipality Independent Power Producer Procurement Programme;
- 3.166. **"TCS"** means tax compliance status;
- 3.167. **"Technology/ies"** has the meaning given to it in clause 4.2.2 of this RFP;
- 3.168. **"Term"** has the meaning given to it in the PPA;
- 3.169. **"ToU"** means time-of-use;
- 3.170. **"Transaction Advisors"** means the firms and/or entities advising or supporting the Stellenbosch Municipality in respect of the STMIPPPP, being Cresco Advisory, Edward Nathan Sonnenbergs Inc, ED Platform, Osmotic Engineering Group, Turner & Townsend, and/or in respect of the B/SM 60/24 20MW Tender, being Lyners Consulting Engineers;
- 3.171. **"Unit"** has the meaning given to it in the PPA;
- 3.172. **"Unskilled"** has the meaning given to it in the PPA;
- 3.173. **"Value for Money"** means that a Project results in a net benefit to the Buyer, having regard to cost, Price, quality, quantity, risk transfer or a combination thereof, but also, where applicable, to the Government's policies in support of Renewable Energy and energy security, as given further effect in clause 9.3 (*Other factors impacting selection of Preferred Bidders: Value for Money*) of the RFP;
- 3.174. **"VAT"** means the value-added tax levied in terms of the Value-added Tax Act 89 of 1991;
- 3.175. **"Verified Resident"** has the meaning given to it in the PPA²; and
- 3.176. **"WCG"** means the Western Cape Government.

² Drafting note: Definition is very onerous to revisit in drafting the PPA

4. INTRODUCTION

4.1. BACKGROUND

4.1.1. The IDP states the following as strategic goals:

4.1.1.1. 'Ensure access to affordable, reliable, sustainable, and modern energy for all' which speaks to the Stellenbosch Municipality's strategy in respect of energy resilience.'

4.1.1.2. 'Take urgent action to combat climate change and its impacts' speaks to the drive towards greener energy sources.'

4.1.1.3. 'Produce sufficient energy to support the industry at competitive prices, ensuring access for poor households, while reducing carbon emissions per unit of power by about one-third.'

4.1.2. The Portfolio Infrastructure Services five-year plan contained within the IDP lists the Directorate: Infrastructure Services and the Department: Electrical Services as being responsible for developing alternative energy supply, the purchasing of electricity from IPPs and the conclusion of IPP tenders as a key priority, with a target of 30% of total energy purchased to be purchased from an IPP by 2027.

4.1.3. In line with the IDP, the Municipal Council of the Stellenbosch Municipality approved a resolution in March 2022 to proceed with the STMIPPPP.

4.1.4. Pursuant to the March 2022 resolution, a feasibility study was conducted and a further Municipal Council resolution was approved in August 2024, to proceed to the procurement phase of the STMIPPPP.

4.2. STMIPPPP SCOPE AND KEY FEATURES

4.2.1. The objective of the STMIPPPP is to contribute to the achievement of the Stellenbosch Municipality's strategic goals, improving the availability of electricity supply, enabling and accelerating private investment in generation capacity, and acceleration of the procurement of new capacity from Renewable Energy sources and BESS, which is aligned with the Government's policies.

4.2.2. Under the STMIPPPP, the Stellenbosch Municipality is introducing this RFP into the open market for purposes of soliciting Bid Responses from IPPs for the establishment of new generation capacity from two Technologies: Solar PV and BESS (each a "**Technology**", and collectively the "**Technologies**").

4.2.3. Key parameters for Solar PV and BESS Projects

- 4.2.3.1. Solar PV and BESS will be procured as separate Projects under the STMIPPPP.
- 4.2.3.2. The total allocated capacity for all Projects that will be procured under the STMIPPPP for each Technology is:
 - 4.2.3.2.1. Solar PV: ~ 41.9 MW_{AC} (total); and
 - 4.2.3.2.2. BESS: ~ 7.4 MW_{AC} / 14.8 MWh (total).
- 4.2.3.3. Bidders may select the most appropriate type of Solar PV, as long as all of the requirements of this RFP and the Solar PV PPA are met. For example, a Solar PV project may be ground-mounted (single-axis tracking or fixed tilt), rooftop-mounted, agrivoltaics, floating, etc.
- 4.2.3.4. Bidders may submit Bid Responses in respect of one or more Solar PV Projects, or one or more BESS Projects, or both.
- 4.2.3.5. Bidders are required to submit a separate Bid Response for each Project, and may not combine Solar PV and BESS in a single Project.
- 4.2.3.6. Each Project shall comprise one Facility.
- 4.2.3.7. A Solar PV Facility or a BESS Facility may comprise multiple Units. Units may have different Delivery Points as long as each Unit has only one Delivery Point, and all Delivery Points for the Units making up a Facility must be within the same Electrical Network.
- 4.2.3.8. Where a Solar PV Facility or a BESS Facility comprises more than one Unit, this needs to be clearly disclosed in the Bid Response. The Units indicated in a Bid Response will be construed as one Facility, and only one PPA will be entered into for such a Project.
- 4.2.3.9. Each Unit must be on one immovable property or on contiguous immovable properties. However, it is not necessary for a Facility to be on one immovable property or on contiguous immovable properties, as long as the Bidder has secured all necessary rights in respect of the relevant properties required for the Project.
- 4.2.3.10. In obtaining any Land Use Consent or Environmental Consent for a Project located on more than one immovable property, the cumulative

impact of the activities on all such properties which constitute the Project Site must be properly considered, and any regulatory thresholds or triggers should take into account the whole Project and not only the activities on one property.

4.2.3.11. The Stellenbosch Distribution System consists of four separate Electrical Networks:

4.2.3.11.1. Stellenbosch Electrical Network;

4.2.3.11.2. Cloetesville Electrical Network;

4.2.3.11.3. Franschhoek Electrical Network; and

4.2.3.11.4. Bien Donne Electrical Network.³

4.2.3.12. Each Electrical Network includes one or more specified Delivery Point options which the Facility / Units (as applicable) is/are allowed to connect to. Bid Responses must reflect that Projects will be connected to the applicable Electrical Network using only the specified Delivery Point options. Each Delivery Point option has an associated Distribution Connection Works which the Bidder shall include in its Price, and which Distribution Connection Works the Seller shall construct and hand over to the Distributor prior to COD. Details of the Electrical Networks, the Delivery Point options, and the Distribution Connection Works per Delivery Point option are provided in Appendix 36 (*Electrical Networks and Distribution Connection Works*).

4.2.3.13. A Solar PV Project must have a Contracted Capacity within the range specified below:

Electrical Network	Minimum Contracted Capacity (MW _{AC})	Maximum Contracted Capacity (MW _{AC})
Stellenbosch	5	22.8
Cloetesville	4.8	9.6
Franschhoek	4	8.0
Bien Donne	1.5	1.5

³ Note: Bien Donne electrical network will replace the current 'Pniel' connection which is connected via the Drakenstein Municipality. A project is underway to connect Pniel directly to Eskom via a new substation, the Bien Donne substation. This will replace the current connection via Drakenstein Municipality.

4.2.3.14. The maximum allowable DC/AC Ratio in respect of any Solar PV Project is 1.21.

4.2.3.15. A BESS Project must have a Contracted Capacity at COD as specified in the table below:

Electrical Network	Contracted Capacity at COD (MW)
Stellenbosch	5.0
Cloetesville	1.2
Franschhoek	1.0
Bien Donne	0.2

4.2.3.16. The required minimum RTE for a BESS Project at COD is 85%.

4.2.3.17. The term of the Solar PV PPA will be 20 (twenty) years commencing on the Scheduled Commercial Operation Date, subject to the provisions of the Solar PV PPA which regulate the potential circumstances of early termination and/or extension of the 20 (twenty) year period.

4.2.3.18. The term of the BESS PPA will be 15 (fifteen) years commencing on the Scheduled Commercial Operation Date, subject to the provisions of the BESS PPA which regulate the potential circumstances of early termination and/or extension of the 15 (fifteen) year period.

4.2.4. Price and Allowable Adjustment to the Price

4.2.4.1. A Bidder is required to offer a Price, as provided for in clause 16.4 (*Financial Criterion 4 – Price*) of this RFP, which will initially be assessed as a Functionality Criterion.

4.2.4.2. Thereafter the Evaluation Price, also provided for in clause 16.4 (*Financial Criterion 4 – Price*) of this RFP, per Technology per Compliant Bid will be evaluated in the manner provided for in clause 20 (*Points awarded for Price*) of the RFP.

4.2.4.3. The only adjustment allowed to the Price offered in the Bid Response of a Preferred Bidder will be at Commercial Close, namely an adjustment for movements in foreign exchange rates (USD, EUR and

CYN) and the three-month JIBAR⁴ between the date at which the rates were extracted for use in the Bid Response Financial Model, and the date of Commercial Close. The adjustment will be made by the goal seeking of the Price such that the Preferred Bidders' IRR is unchanged from that shown in the Financial Model at Bid Submission Date (the "**Price Adjustment Process**").

- 4.2.4.4. After Commercial Close, there will be no adjustments to the Price for movements in foreign exchange rates and interest rates.

4.2.5. Socio-Economic Development

- 4.2.5.1. In order to ensure that the STMIPPPP contributes to the local economy and that the benefits of the STMIPPPP are experienced in the Local Community, a number of Socio-Economic Development Obligations have been provided for in the PPA, the key features of which are described in summary form below. Each Seller will be required to adhere to these obligations and report on the measures taken by it to achieve the objectives reflected in these obligations.
- 4.2.5.2. **Job Creation:** Forty percent (40%) of total RSA-based Employee Person Months during the Construction Measurement Period must be delivered by Verified Residents of the Local Community, fifty percent (50%) of total RSA-based Employee Person Months during the Operating Period must be delivered by Verified Residents of the Local Community, and one hundred percent (100%) of total Unskilled RSA-based Employee Person Months must be delivered by Verified Residents during each of the Construction Measurement Period and the Operating Period.
- 4.2.5.3. **Skills Development Spending:** Zero-point two percent (0.2%) of total Revenue must be spent on internships and bursaries related to post-secondary school education and training of Verified Residents of the Local Community who are Black People, to improve their employability.
- 4.2.5.4. **Social Spending:** Zero-point eight percent (0.8%) of total Revenue must be spent on Social Well-Being Programmes and Social Infrastructure, to improve the quality of life of the Local Community.

⁴ Johannesburg Interbank Average Rate.

- 4.2.5.4.1. Social Infrastructure spending, in contrast with spending on Social Well-Being Programmes, may only be made within the area of jurisdiction of the Stellenbosch Municipality. Furthermore, such spending must be allocated towards projects that appear in the approved capital budget of the IDP. In the event no Social Infrastructure projects are listed in the approved capital budget of the IDP, the Seller may direct its spending to Social Infrastructure projects of its choosing.
- 4.2.5.4.2. Social Infrastructure spending is premised on the Stellenbosch Municipality activating a contractual right (which is included in the PPA) to divert a portion of the Seller's Social Spending to IDP-mandated Social Infrastructure projects.
- 4.2.5.4.3. The value of Social Infrastructure spending shall be capped at a maximum of fifty percent (50%) of the total value of the Seller's Social Spending obligations.
- 4.2.5.4.4. The Seller shall retain the right to influence the choice of Social Infrastructure project or refuse a Social Spending diversion by the Stellenbosch Municipality. Notwithstanding the Seller's right to influence its Social Spending, that right does not derogate from its responsibility to spend zero-point eight percent (0.8%) of Revenue on Social Well-Being Programmes and Social Infrastructure.
- 4.2.5.5. In addition, the Seller will be required to establish and maintain an administration office within the area of jurisdiction of the Stellenbosch Municipality, from COD until termination of the PPA.
- 4.2.5.6. The Seller will be responsible for semesterly and annual performance reporting to Stellenbosch Municipality against the above-mentioned socio-economic development obligations, which it shall certify as true and accurate. Furthermore, the Seller will be required to procure an annual independent audit of its reported achievements.

- 4.2.5.7. The detailed terms and conditions of the Socio-Economic Development Obligations described above are included in the PPA.

5. PROJECT STRUCTURE AND AGREEMENTS

5.1. PROJECT STRUCTURE

- 5.1.1. For the purposes of submitting a Bid Response, a Bidder may be either a Project Company or a consortium at the Bid Submission Date.
- 5.1.2. If the Bidder is a Project Company at the Bid Submission Date, that Project Company must:
- 5.1.2.1. be a special purpose Company established with the sole purpose of undertaking the Bidder's Project, including entering into and fulfilling the purposes of the Project Agreements;
 - 5.1.2.2. be a "ring fenced" company in terms of the Companies Act; and
 - 5.1.2.3. have all of its Shareholders as Members of the relevant Bidder.
- 5.1.3. If the Bidder is a consortium at the Bid Submission Date, the Project Company incorporated by the Bidder consortium (once it becomes a Preferred Bidder), to be the Seller, shall have as its Shareholders, in the proportions stated in the Bid Response, the Members of the Bidder consortium, or if any such Member will hold its ownership interest in the Project Company through an intermediary entity which is still to be incorporated, such intermediary entity.
- 5.1.4. The Bidder must include, in its Bid Response:
- 5.1.4.1. a diagram setting out the structure adopted in respect of its Project, which diagram must detail and identify by name:
 - 5.1.4.1.1. its Project Company (even if not yet established at the Bid Submission Date);
 - 5.1.4.1.2. its proposed Members as equity participants, including all Black Enterprise Members;
 - 5.1.4.1.3. its proposed Equipment Suppliers (even if such Equipment Suppliers will not supply services directly to the Project Company);

- 5.1.4.1.4. its proposed Contractors (even if those Contractors will not supply services directly to the Project Company);
 - 5.1.4.1.5. its proposed providers of Project Finance and Corporate Finance; and
 - 5.1.4.2. a written confirmation by the Bidder (represented by the Lead Member where the Bidder is a consortium) confirming that the diagram accurately reflects the Project ownership, funding and contracting structure, and that every person and entity identified in the diagram is aware of and has confirmed its approval of the Project ownership, funding and contracting structure as reflected in the diagram.
- 5.1.5. A template of such written confirmation, which provides for the Project structure diagram to be annexed thereto, is included in Appendix 13 (*Declaration of Bidder*).

5.2. OVERVIEW OF PROJECT AGREEMENTS

- 5.2.1. A Preferred Bidder which complies with the terms of its appointment as Preferred Bidder and this RFP will, at Commercial Close, be required to enter into the following agreements:
 - 5.2.1.1. a PPA, in respect of either Solar PV or BESS;
 - 5.2.1.2. a Distribution Agreement;
 - 5.2.1.3. the applicable Direct Agreements, namely a Direct Agreement in respect of the PPA and a Connection Direct Agreement in respect of the Distribution Agreement; and
 - 5.2.1.4. an Independent Engineer Agreement.
- 5.2.2. A Solar PV PPA will be entered into between a Project Company of a Preferred Bidder appointed in respect of Solar PV (as Seller) and the Stellenbosch Municipality (as Buyer). A copy of the draft Solar PV PPA is attached to this RFP as Appendix 15 (*Solar PV PPA*).
- 5.2.3. A BESS PPA will be entered into between a Project Company of a Preferred Bidder appointed in respect of BESS (as Seller) and the Stellenbosch Municipality

(as Buyer). A copy of the draft BESS PPA is attached to this RFP as Appendix 16 (*BESS PPA*).

- 5.2.4. A Preferred Bidder will be required, in its capacity as a customer of the Stellenbosch Municipality, to conclude a Distribution Agreement with the Stellenbosch Municipality. The draft Distribution Agreement to be entered into between a Project Company and the Stellenbosch Municipality will be issued to prospective Bidders by way of a Briefing Note prior to the Bid Submission Date.
- 5.2.5. Each Project Company will enter into an Independent Engineer Agreement with the Stellenbosch Municipality and the selected independent engineer. A copy of the draft Independent Engineer Agreement to be entered into between a Project Company, the Stellenbosch Municipality and the selected independent engineer is attached to this RFP as Appendix 20 (*Independent Engineer Agreement*) (Appendix 20A is for Solar PV, and Appendix 20B is for BESS).
- 5.2.6. A Project Company which enters into the aforesaid agreements, may enter into a:
 - 5.2.6.1. Direct Agreement with its Lenders and the Stellenbosch Municipality in respect of the PPA, a copy of which draft Direct Agreement is attached to this RFP as Appendix 17 (*Direct Agreement*) (Appendix 17A is for Solar PV and Appendix 17B is for BESS); and
 - 5.2.6.2. Connection Direct Agreement with its Lenders and the Stellenbosch Municipality in respect of the Distribution Agreement, a draft of which will be issued to prospective Bidders by way of a Briefing Note prior to the Bid Submission Date.
- 5.2.7. The agreements referred to in this clause 5.2 (*Overview of Project Agreements*) shall be referred to collectively as the “**Project Agreements**”.
- 5.2.8. Bidders are invited to submit comments on the draft Project Agreements issued with this RFP, for purposes of optimisation of the RFP and the STMIPPPP, during the period commencing on the issue date of the RFP and ending on 23 May 2025.
- 5.2.9. The Stellenbosch Municipality will consider all comments received from Bidders on the draft Project Agreements and may, at its election, require a Bidder which submitted comments to provide clarification or elaboration of the comments provided.

- 5.2.10. After consideration of all the comments received from Bidders, but prior to the Bid Submission Date, the Stellenbosch Municipality may issue revised versions of the draft Project Agreements.
- 5.2.11. Any amendments made by the Stellenbosch Municipality pursuant to comments received from Bidders will be at the full discretion of Stellenbosch Municipality, which also reserves the right to make any further additions and deletions to, or amendments of, the draft Project Agreements prior to the Bid Submission Date. Any changes will be highlighted in the Project Agreements for ease of reference.
- 5.2.12. All Bidder comments must be:
 - 5.2.12.1. made in one or more MS Word documents, in which the Bidder extracts the relevant clause of the draft Project Agreement at issue, copies over the relevant clause (version issued with this RFP), and tracks all suggested changes (with any comments thereto in footnotes) on the MS Word extract;
 - 5.2.12.2. submitted (in Word and PDF copies) by e-mail to the Contact Person by no later than 23 May 2025.
- 5.2.13. The Stellenbosch Municipality reserves the right to issue revised versions of the Project Agreements at any time during the period between 24 May 2025 and the date which falls 3 (three) weeks before the Bid Submission Date.
- 5.2.14. The Project Agreements issued with or pursuant to this RFP are not negotiable, and may not be marked up or qualified by Bidders in their Bid Responses. The status of the Project Agreements, and the terms and conditions of this RFP relating thereto, are detailed further at clause 13 (*Legal Criteria*) of the RFP.

6. **BIDDERS**

6.1. **BIDDER REPRESENTATIVE**

- 6.1.1. All correspondence from the Stellenbosch Municipality to a prospective Bidder or from a prospective Bidder to the Stellenbosch Municipality will be sent to or from the person identified in the Bidder's Registration Form, which is provided in Appendix 1 (*Registration Form*), as the Bidder Representative authorised to receive information and notices on behalf of the Bidder.
- 6.1.2. Each Bidder, in its completed Invitation to Bid Form, which is provided in Appendix 2 (*Invitation to Bid Form*), will confirm or change the name and contact details of the Bidder Representative. Any subsequent change to any details of

the Bidder Representative must be notified to the Contact Person in writing by the outgoing Bidder Representative.

- 6.1.3. Each Bidder is responsible for ensuring that all contact details of the Bidder Representative are accurate and updated at all times during the STMIPPPP procurement process.
- 6.1.4. Each Bidder (whether a Project Company or a consortium) is responsible for designating its Bidder Representative and, by submitting a Bid Response, warrants that its Bidder Representative has the capacity and legal authority to represent the Bidder and act as its sole contact with the Stellenbosch Municipality for all matters relating to the STMIPPPP.
- 6.1.5. In this regard, each Bidder must submit in its Bid Response a completed Authority to Sign Bid Form, which is provided in Appendix 3 (*Authority to Sign Bid Form*).
- 6.1.6. Bidders may only communicate with the Stellenbosch Municipality through the Bidder Representative, and the Stellenbosch Municipality shall be entitled, at its sole discretion, to disregard any communication from a Bidder that does not come directly from the Bidder Representative, and or that is submitted to the Stellenbosch Municipality other than via the Contact Person in accordance with the requirements of clause 7.3 (*Contact Person*).

6.2. CONFIDENTIALITY

Towards the Bidders, the Stellenbosch Municipality undertakes to treat any information it receives from Bidders as confidential, subject to the qualification that the Stellenbosch Municipality may disclose Bidder information and documentation to its Transaction Advisors, and to any government department or Responsible Authority to which the Stellenbosch Municipality is required to submit details of the STMIPPPP or the Bidders, for purposes of progressing the regulatory approvals that will be required in order to give full effect to the Project Agreements or for any other legally mandated purpose.

6.3. NON-ELIGIBLE PERSONS

Any Bidder and/or Bid Response may, in the sole discretion of the Stellenbosch Municipality, having regard to applicable laws regarding conflicts of interest, be disqualified by the Stellenbosch Municipality from participating in any part or all of the STMIPPPP if a Bidder includes amongst its Members the involvement of any person who:

- 6.3.1. is not tax compliant at the date on which the Stellenbosch Municipality notifies selected Bidders of their appointment as Preferred Bidders;

- 6.3.2. is in the service of the state as contemplated in the Stellenbosch Municipality SCMP.⁵ In this regard, a Bidder must submit in its Bid Response a completed MBD 4: Declaration of Interest Form, which is provided in Appendix 4 (*MBD 4 Declaration of Interest Form*);
- 6.3.3. is presently, or has in the past five years been, involved in a dispute with an organ of state regarding commitments for municipal services and/or non-compliance with its obligations under a public sector contract. In this regard, a Bidder must submit in its Bid Response a completed MBD 5: Declaration for Procurement above R10 Million Form, which is provided in Appendix 5 (*MBD 5 Declaration for Procurement above R10 Million Form*);
- 6.3.4. has abused any public sector supply chain management systems or engaged in bid rigging. In this regard, a Bidder must include, in its Bid Response, a completed:
- 6.3.4.1. MBD 8: Declaration of Bidder's Past Supply Chain Management Practices, which is provided in Appendix 6 (*MBD 8 Declaration of Bidder's Past Supply Chain Management Practices*); and
- 6.3.4.2. MBD 9: Certificate of Independent Bid Determination, which is provided in Appendix 7 (*MBD 9 Certificate of Independent Bid Determination*);
- 6.3.5. has any outstanding municipal rates and taxes or municipal service charges, whether owed by the Bidder, or any of its Members, or their directors or partners, to the Stellenbosch Municipality or to any other municipality or municipal entity and which rates, taxes or charges are in arrears for more than three months. In this regard, a Bidder must submit in its Bid Response a completed MBD 10: Certificate for Payment of Municipal Services, which is provided in Appendix 8 (*MBD 10 Certificate for Payment of Municipal Services*);
- 6.3.6. is listed on the National Treasury's Register for Tender Defaulters, or its List of Restricted Suppliers;

⁵ The term 'in the service of the state' is defined to mean to be-

(a) a member of-

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the National Assembly or the National Council of Provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999);

(e) an executive member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

- 6.3.7. is blacklisted by any relevant professional body (if applicable);
- 6.3.8. has been found guilty in a court of law of fraud, an offence in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, or any other corruption-related crime;
- 6.3.9. appears on the Consolidated List of Individuals and Entities Subject to Measures Imposed by the United Nations Security Council (as updated from time to time and published by the South African Police Service and available at https://www.saps.gov.za/resource_centre/acts/terrorism.php); or
- 6.3.10. is not registered as an employer in terms of COIDA. In this regard, a Bidder must submit in its Bid Response a completed COIDA Form, which is provided in Appendix 9 (*COIDA Form*).

7. PROCUREMENT PROCESS

7.1. PROCUREMENT PROCESS OVERVIEW

The Stellenbosch Municipality will conduct the STMIPPPP procurement process for the selection of one or more Preferred Bidders in each Technology, by:

- 7.1.1. issuing this RFP to market, which requests the submission of registered Bid Responses which comply with clause 8 (*Instructions for Submission*), and which respond to the requirements of Stage 1 (*Functionality Criteria*) and Stage 2 (*Evaluation Criteria*), and include the completed returnable forms and schedules to this RFP;
- 7.1.2. providing Bidders with the opportunity to seek clarification and submit questions regarding the STMIPPPP and the RFP, including the Project Agreements, to the Stellenbosch Municipality on a confidential basis in accordance with clause 7.5 (*Questions and Answers*). The Stellenbosch Municipality reserves the right, however, to elect to not respond to any enquiry or question;
- 7.1.3. evaluating the Bid Responses, and to the extent appropriate, engaging further with all or certain Bidders in accordance with the RFP;
- 7.1.4. subject to the outcome of the Bid Response evaluation process, selecting one or more Preferred Bidders in each Technology; and
- 7.1.5. finalising the Project Agreements with the Preferred Bidders, to become Sellers.

7.2. PROCUREMENT SCHEDULE

The key milestones in the STMIPPPP procurement process and the currently anticipated schedule for its completion are, subject to internal and third party approvals, set out in the table below. The Stellenbosch Municipality reserves the right to extend the Bid Submission Date, and to amend any other dates or milestones applicable to the STMIPPPP and reflected in the Procurement Schedule or otherwise notified to the Bidders, by issuing a Briefing Note in accordance with clause 7.6 (*Clarification and Verification by the Stellenbosch Municipality*), in which case, all rights and obligations of the Stellenbosch Municipality and the Bidder that were previously applicable to the original deadline shall be applicable to the amended deadline.

7.2.1.	Issue RFP (including Project Agreements)	22 March 2025
7.2.2.	Bidders' preparation period	22 March 2025 – 22 September 2025
7.2.3.	Period during which Bidders may submit comments on the draft Project Agreements	22 March 2025 – 23 May 2025
7.2.4.	Initial non-compulsory Bidders' Conference	23 April 2025
7.2.5.	Compulsory Bidders' Conference	31 July 2025
7.2.6.	Last date for submission of Bidder clarification questions to the Stellenbosch Municipality	1 August 2025
7.2.7.	Bid Registration Date	22 August 2025
7.2.8.	Bid Submission Date	22 September 2025
7.2.9.	Bidder post-submission clarification process / engagements, if applicable and Bid Response evaluation	September 2025 – November 2025
7.2.10.	Issue Preferred Bidder appointment and or regret letters (subject to below)	November - December 2025
7.2.11.	Commencement of MFMA section 33 approval process	November – December 2025
7.2.12.	Council meeting to make decision on MFMA section 33 approvals	Calendar quarter 2 2026
7.2.13.	Finalisation of Project Agreements (on finalisation of MFMA section 33 approval)	Calendar quarter 2 2026
7.2.14.	Commercial Close – Solar PV (including signature of Project Agreements)	June 2026
7.2.15.	Commercial Close – BESS (including signature of Project Agreements)	June 2026
7.2.16.	Commercial Operation Date – Solar PV	No later than 20 (twenty) months post Commercial Close

7.2.17.	Commercial Operation Date - BESS	No later than 18 (eighteen) months post Commercial Close
7.2.18.	PPA Operating Period – Solar PV	20 (twenty) years from Scheduled Commercial Operation Date
7.2.19.	PPA Operating Period – BESS	15 (fifteen) ⁶ years from Scheduled Commercial Operation Date

7.3. CONTACT PERSON

- 7.3.1. The Stellenbosch Municipality shall manage the STMIPPPP procurement process and shall be the single point of contact for all Bidders.
- 7.3.2. During the RFP phase of the STMIPPPP procurement process (i.e. up to appointment of Preferred Bidders), prospective Bidders and Bidders shall contact the Stellenbosch Municipality only through their Bidder Representative.
- 7.3.3. All communications addressed to Stellenbosch Municipality in relation to the STMIPPPP must be made directly to the Contact Person.
- 7.3.4. The details of the Contact Person are:
- Name: Project Officer
Email: stelmippp@stellenbosch.gov.za
- 7.3.5. Prospective Bidders and Bidders must submit all clarification questions and other communications regarding the RFP or the procurement process to the Contact Person electronically at the address listed in clause 7.3.4 above. Clarification questions must be submitted in accordance with the requirements of clause 7.5 (*Questions and Answers*) of this RFP.
- 7.3.6. During the period between the Bid Submission Date and the date of appointment of Preferred Bidders, Bidders may, through their Bidder Representatives, communicate with Stellenbosch Municipality via the Contact Person on any matter relating to Bid Responses or the procurement process, and must not communicate with Stellenbosch Municipality on those matters via any other person or media.

⁶ Subject to the terms and conditions of the BESS PPA.

- 7.3.7. No communications may be addressed by a prospective Bidder, Bidder, its Members, Contractors nor any of their agents, Lenders or Advisors or any other person participating in a Bid Response, to any councillor or official of the Stellenbosch Municipality, the WCG, or any member of the Transaction Advisors, the Project Manager, or the Distributor (save in its capacity as Distributor), without the prior written consent of the Contact Person.
- 7.3.8. If a prospective Bidder, Bidder, its Members, Contractors or any of their agents, Lenders, other person participating in the relevant Bid Response or Advisors makes any such prohibited contact, the Stellenbosch Municipality reserves the right, in its sole discretion, to disqualify the Bidder, its Members, Lenders, Contractors, other person participating in that Bid Response or Advisors, from any further participation in the STMIPPPP.
- 7.3.9. A prospective Bidder, Bidder, its Members, Contractors or any of their Advisors, Lenders or agents shall not be entitled to rely on any statements, information or correspondence in respect of this RFP or the STMIPPPP that is not contained in a Briefing Note or made, given or issued by the Contact Person in writing and addressed to the Bidder Representative.

7.4. COMPULSORY BID REGISTRATION

- 7.4.1. Any entity or organisation which intends to submit a Bid Response, and is not ineligible as provided in clause 6.3 (*Non-eligible persons*), is required to notify the Stellenbosch Municipality in writing on or before the Bid Registration Date of its intention to participate, by completing and submitting the Registration Form, which is provided in Appendix 1 (*Registration Form*).
- 7.4.2. The Registration Form requires a prospective Bidder to provide the following pre-requisite information:
- 7.4.2.1. the name and contact details of the Bidder Representative;
 - 7.4.2.2. the name of the Project;
 - 7.4.2.3. the Technology of the Project (either Solar PV or BESS);
 - 7.4.2.4. the envisaged Contracted Capacity of the Project (MW);
 - 7.4.2.5. the location and co-ordinates (in decimal degrees) of the Project Site;
 - 7.4.2.6. the Delivery Point/s which the Bidder expects to connect to; and

7.4.2.7. the identity of all participants (including Members, Lenders, Contractors, Equipment Suppliers) in the Project and all Advisors to such participants, to enable a conflict of interest check to be undertaken.

7.4.3. Completed Registration Forms must be submitted to the Stellenbosch Municipality by no later than the date stipulated in clause 7.2.7, by email addressed to the Contact Person.

7.4.4. A Bidder which has completed and submitted the Registration Form must notify the Stellenbosch Municipality of any subsequent amendments to the information previously provided, prior to the Bid Submission Date. Any such notification must be made by email addressed by the Bidder Representative to the Contact Person.

7.5. QUESTIONS AND ANSWERS

7.5.1. Bidders may request clarification on any aspect of this RFP, by no later than the date provided for in clause 7.2.6 (*Project Schedule*).

7.5.2. All requests for clarification on the RFP and other queries from Bidders must be in writing and sent to the Contact Person by way of email. Oral requests and queries will not be entertained, and will not receive a response.

7.5.3. The Stellenbosch Municipality will endeavour in good faith to respond to all reasonable written queries and requests for clarification timeously raised by the Bidders, by way of Briefing Notes. The Stellenbosch Municipality reserves the right not to answer or respond to any particular question, query or request, and to limit distribution of responses as appropriate.

7.5.4. No response given to a question or request for clarification will have any official status or impact on / amend the RFP, save to the extent that such response is reflected in a Briefing Note to the RFP.

7.5.5. It is the responsibility of a Bidder to identify in its query or request for clarification, which information if any it deems to be confidential to its Bid Response and which it does not wish to have communicated to other Bidders. The Bidder must give written reasons for requesting that such information be treated as confidential. The Bidders' attention is drawn to the requirements of the Constitution of the Republic of South Africa, 1996; the PFMA; the Promotion of Access to Information Act 2 of 2000 and the Promotion of Administrative Justice Act 3 of 2000, all of which are relevant to a determination as to whether the Stellenbosch Municipality shall be entitled to respect the Bidder's request for confidentiality.

7.6. CLARIFICATION AND VERIFICATION BY THE STELLENBOSCH MUNICIPALITY

- 7.6.1. The Stellenbosch Municipality 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 RFP by the issue of Briefing Notes. All Briefing Notes will be communicated to prospective Bidders through publication on the Stellenbosch Municipality website.
- 7.6.2. The Stellenbosch Municipality may issue additional information regarding the RFP on an *ad hoc* basis, which information shall be provided in the form of Briefing Notes.
- 7.6.3. Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of the RFP.
- 7.6.4. Bidders shall be obliged to accept any amendments specified in Briefing Notes. All Briefing Notes shall be deemed to be part of the RFP. Bidders must ensure that their Bid Responses are prepared taking into account all Briefing Notes issued by the Stellenbosch Municipality prior to the Bid Submission Date, and every Bidder is responsible for ensuring that it checks the Stellenbosch Municipality website on a regular basis so that it is aware and takes account of the contents of every Briefing Note.
- 7.6.5. The Stellenbosch Municipality reserves the right to ask the Bidders for clarification of information presented in the Bid Response. The Bidder is obliged to cooperate in regard to any such clarification request from the Stellenbosch Municipality.
- 7.6.6. The Stellenbosch Municipality reserves the right to verify the reliability of information presented in the Bid Response, directly with any third party referred to in the Bid Response. The Bidder is obliged to cooperate in regard to any measures taken by the Stellenbosch Municipality for purposes of verification, upon request.

7.7. USE OF ADVISORS

- 7.7.1. It is strictly forbidden for any Bidder, its Members, its Contractors or Lenders to use the Stellenbosch Municipality's Transaction Advisors, or its Project Manager as their Advisors in respect of the STMIPPPP or their participation therein. The Stellenbosch Municipality may disqualify any Bidder that includes, engages or consults with any of the Transaction Advisors, or the Project Manager in relation to its participation in the STMIPPPP.

- 7.7.2. Each Bidder, before appointing any Advisor, must obtain confirmation from such Advisor that it is not a Transaction Advisor to the Stellenbosch Municipality, nor the Project Manager, and that the individual professionals included in any Advisor team have not acted as Transaction Advisors or Project Manager to the Stellenbosch Municipality in relation to the STMIPPPP.

7.8. BID VALIDITY

- 7.8.1. All Bid Responses constitute an irrevocable binding offer by the Bidder to the Stellenbosch Municipality.
- 7.8.2. Bid Responses must remain valid and binding for 270 (two hundred and seventy) calendar days from the Bid Submission Date ("**Bid Validity Period**").
- 7.8.3. On appointment as Preferred Bidder, the Bid Validity Period for all Preferred Bidders will be deemed to be extended until Commercial Close, and all Bid Responses of Preferred Bidders must remain valid and binding for such period.
- 7.8.4. If the Stellenbosch Municipality notifies the Bidder of an extension of the Bid Validity Period for any reason, prior to the date of appointment as a Preferred Bidder, the Bidder must notify the Stellenbosch Municipality in writing within the time-period specified in the applicable letter of request from the Stellenbosch Municipality, of any objection to an extension of the Bid Validity Period for its Bid Response.
- 7.8.5. Bidders who object to the extension of the Bid Validity Period will be considered to have withdrawn their Bid Responses and will thereby forfeit any entitlement to have their Bid Responses considered by the Stellenbosch Municipality, along with any fees paid by them in respect of the STMIPPPP procurement process.

7.9. MEDIA RELEASES

Media releases, public statements, promotional communications and advertising pertaining to the STMIPPPP must not be made by any Bidder, Member, Contractor, Lender or any other participant in a Bid Response, without prior written approval from the Stellenbosch Municipality.

8. INSTRUCTIONS FOR SUBMISSION

8.1. BID GUARANTEE

- 8.1.1. Each Bidder shall be required to provide the Stellenbosch Municipality with a single Bid Guarantee (in Rands):

- 8.1.1.1. in respect of a Solar PV Project, in an amount equal to R10 000 (ten thousand Rand) per MW of the Contracted Capacity of the proposed Facility for the Project in respect of which the Bidder submits that Bid Response; or
- 8.1.1.2. in respect of a BESS Project, in an amount equal to R10 000 (ten thousand Rand) per MW of the Contracted Capacity of the proposed Facility for the Project in respect of which the Bidder submits that Bid Response;

(the "**Bid Guarantee**").

8.1.2. The Bid Guarantee shall be:

- 8.1.2.1. an original, unconditional and irrevocable guarantee in the form set out in Appendix 11 (*Form of Bid Guarantee*);
- 8.1.2.2. lodged with the Stellenbosch Municipality with the Bidder's Bid Response on the relevant Bid Submission Date;
- 8.1.2.3. issued by a Financial Institution which has a South African rating of BBB or better by Standard & Poor's or equivalent;
- 8.1.2.4. valid and effective for the period from the date of its issue until the expiry of the relevant Bid Validity Period or, in the case of a Preferred Bidder, the date on which the Preferred Bidder Guarantee is duly received by the Stellenbosch Municipality as required in terms of clause 10.2 (*Preferred Bidder Guarantee*) and shall remain valid during that period notwithstanding the insolvency, winding up, liquidation, judicial management, dissolution, business rescue or de-registration, whether provisionally or finally, of any Member of the Bidder or the Bidder itself (if it is a legal entity) or any other person.

8.1.3. If a Bidder fails to lodge such Bid Guarantee, the Stellenbosch Municipality may, in its sole discretion:

- 8.1.3.1. reject the Bid Response without further consideration;
- 8.1.3.2. require the Bidder to submit a compliant Bid Guarantee within a specified period, failing which its Bid Response shall be rejected from further consideration;

- 8.1.3.3. notify the Bidder that it has submitted a Bid Response that is not a Compliant Bid; and/or
- 8.1.3.4. disqualify the Bidder and/or any Member of the Bidder from participating in the STMIPPPP procurement process.
- 8.1.4. The Stellenbosch Municipality shall be entitled to call up a Bidder Guarantee in any of the circumstances provided for in the form of guarantee set out at Appendix 11 (*Form of Bid Guarantee*).
- 8.1.5. The Stellenbosch Municipality may call on a Bid Guarantee more than once (provided that the aggregate amount payable there under shall not exceed the maximum amount of the Bid Guarantee in question) without notice or legal process, in any of the circumstances referred to in the form of guarantee at Appendix 11 (*Form of Bid Guarantee*) including but not limited to those listed below:
 - 8.1.5.1. the Bidder is in breach of any law relating to the STMIPPPP or has been disqualified from the STMIPPPP as a result of its actions;
 - 8.1.5.2. the Bidder submits a Bid Response which is not a Compliant Bid;
 - 8.1.5.3. the Bidder fails to extend the term of a Bid Guarantee after agreeing to the Stellenbosch Municipality's request to extend the Bid Validity Period as permitted in the RFP; and
 - 8.1.5.4. a Bidder which is provisionally appointed as Preferred Bidder fails to issue the required Preferred Bidder Guarantee to the Stellenbosch Municipality within the stipulated time-period.
- 8.2. **FORMAT OF BID RESPONSE**
 - 8.2.1. Each Bid Response is required to be delivered to the Stellenbosch Municipality in one hard copy (original) and one soft copy on a USB flash drive, provided that **no hard copy of the Financial Model** should be included in the hard copy (original) of the Bid Response.
 - 8.2.2. Each Bid Response must be accompanied by a full index and a completed checklist, which is provided in Appendix 10 (*Bid Response Checklist*) of this RFP.
 - 8.2.3. The Bidder's response to the Functionality Criteria in clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) of this RFP must be organised in the order in which the headings appear. The documents and or information submitted in response

to each category of Functionality Criteria (for example, clause 13 (*Legal Criteria*)) must be filed together, separately from the documents and or information submitted in response to each other category of Functionality Criteria.

- 8.2.4. The Bidder's response to the Evaluation Criteria in clause 20 (*Points awarded for Price*) and clause 21 (*Points awarded for Specific Goals*) of this RFP must be filed separately, and in a separate folder from the response to the Functionality Criteria, and must be clearly identified.
- 8.2.5. The Bid Response must include the original Bid Guarantee filed back-to-back in plastic sheet/s so that all the contents are clear and readable. The original Bid Guarantee should be packed in a separately sealed and clearly marked envelope.
- 8.2.6. The returnable forms in Appendix 1 (*Registration Form*) to Appendix 9 (*COIDA Form*) and Appendix 31 (*MBD 6.1 Preference Points Claim Form*), Appendix 34 (*Pricing Schedule Solar PV*) and Appendix 35 (*Pricing Schedule BESS*) of this RFP, which are to be completed by Bidders and included in the Bid Response, must be completed in writing, in non-erasable black ink, on the official forms supplied and may not be re-typed.
- 8.2.7. The remaining returnable schedules of this RFP, which are to be completed by Bidders and included in the Bid Response, are templates and therefore may be copied or retyped, and completed for submission.
- 8.2.8. The returnable schedules provided in response to the Functionality Criteria in clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) and in response to the Evaluation Criteria in clause 20 (*Points awarded for Price*) and clause 21 (*Points awarded for Specific Goals*) must be filed together with the information submitted in response to the other Functionality Criteria in that category, and/or with the response to the applicable Evaluation Criterion. For example, the Technical returnable schedules must be submitted with the rest of the response to the Technical Criteria, and the Financial returnable schedules with the response to the Financial Criteria.
- 8.2.9. The complete Bid Response shall be submitted without alterations, deletions or omissions, except those to accord with instructions issued by the Stellenbosch Municipality, 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.

- 8.2.10. Alterations or deletions on a returnable form completed in ink which are not initialled by the Bidder may render the Bid Response non-compliant, at the discretion of the Stellenbosch Municipality.
- 8.2.11. 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.
- 8.2.12. All monetary amounts referred to in a Bid Response shall be in South African Rands inclusive of VAT, unless expressly stated otherwise in this RFP.

8.3. SUBMISSION OF BID RESPONSE

- 8.3.1. Bid Responses must be submitted to the Stellenbosch Municipality by no later than 12h00 on the Bid Submission Date.
- 8.3.2. The hard copy of, and USB containing the soft copy Bid Response, must be enclosed in a sealed envelope or box, with the "Tender Number and Title" clearly endorsed on the envelope or box.
- 8.3.3. The envelope or box containing the Bid Response must be deposited in or delivered to the tender box in the Main Hall Entrance of the Stellenbosch Municipality Offices, Town House Complex, 1st Floor, Plein Street, Stellenbosch. Bid Responses that are delivered to any other location, or deposited in the incorrect box, will not be considered.
- 8.3.4. Mailed, emailed and faxed Bid Responses will not be accepted.
- 8.3.5. Bid Responses reaching the Stellenbosch Municipality later than the specified cut-off time on the original Bid Submission Date provided in clause 7.2.8 of this RFP or any extended Bid Submission Date will be rejected without further consideration.

8.4. SUBMISSION COSTS AND LIABILITY

- 8.4.1. A Bidder shall bear all of its costs (of whatsoever nature) associated with the preparation of its Bid Response and the development of the Project.
- 8.4.2. No Bidder (including any Preferred Bidder) shall have any claim against the Stellenbosch Municipality (including any claim for the costs of bidding) as a result of:

- 8.4.2.1. not being selected as a Preferred Bidder;
- 8.4.2.2. not entering into a PPA; and/or
- 8.4.2.3. the Stellenbosch Municipality altering, terminating or abandoning any part or all of the STMIPPPP.

9. FUNCTIONALITY ASSESSMENT AND EVALUATION OF PREFERRED BIDDERS

9.1. FUNCTIONALITY AND EVALUATION CRITERIA

- 9.1.1. The evaluation of Bid Responses will be conducted in two stages.
- 9.1.2. Stage 1: Functionality Criteria (clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) of the RFP)
 - 9.1.2.1. All Bid Responses will be assessed for compliance with the Functionality Criteria, to determine whether they are Compliant Bids.
 - 9.1.2.2. A Compliant Bid is a complete Bid Response that complies with clause 8 (*Instructions for Submission*) of the RFP, and meets or exceeds all of the Functionality Criteria requirements in Stage 1.
 - 9.1.2.3. The Functionality Criteria are divided into the following categories, and the requirements for each are described under the corresponding headings in clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) of the RFP:
 - 9.1.2.3.1. Legal Criteria (clause 13 of the RFP);
 - 9.1.2.3.2. Land Acquisition and Land Use Criteria (clause 14 of the RFP);
 - 9.1.2.3.3. Environmental Consent Criteria (clause 15 of the RFP);
 - 9.1.2.3.4. Financial Criteria (clause 16 of the RFP); and
 - 9.1.2.3.5. Technical Criteria (clause 17 of the RFP).
- 9.1.3. Stage 2: Evaluation Criteria (clause 20 (*Points awarded for Price*) to clause 21 (*Points awarded for Specific Goals*) of the RFP)
 - 9.1.3.1. If, at the Bid Submission Date, the Stellenbosch Municipality receives more Compliant Bids than are required to provide the maximum MW

/ MWh allocated to either Technology, a comparative evaluation of Compliant Bids will be done in accordance with the Evaluation Criteria.

9.1.3.2. Such comparative evaluation will be done per Technology, to score and rank the Compliant Bids in each such Technology, against the following Evaluation Criteria, described under the corresponding headings in clause 20 (*Points awarded for Price*) to clause 21 (*Points awarded for Specific Goals*) of the RFP:

9.1.3.2.1. Price (clause 20 of the RFP); and

9.1.3.2.2. Specific Goals (B-BBEE Contributor Status Level) (clause 21 of the RFP).

9.1.3.3. The Bidder/s whose Bid Responses rank the highest in each such Technology may, in the Stellenbosch Municipality's sole discretion and subject to the provisions of clauses 9.2 and 9.3 of the RFP, be considered for appointment as Preferred Bidders on such terms and conditions as the Stellenbosch Municipality may determine.

9.1.4. The Stellenbosch Municipality may appoint as many Preferred Bidders as are required to provide the maximum available allocation of MW / MWh for a Technology, subject to the maximum Contracted Capacity within each Electrical Network. However, and again subject to the maximum Contracted Capacity within each Electrical Network, the Stellenbosch Municipality may elect either to appoint or not to appoint as a Preferred Bidder, a Bidder whose Project is the last ranked Project within the maximum available allocation of MW / MWh for a Technology, if the Project size is such that it goes over the maximum available allocation of MW / MWh for a Technology.

9.2. IMPACT OF GRID CONSTRAINTS ON SELECTION OF PREFERRED BIDDERS

9.2.1. The appointment of any Preferred Bidder will only be made after confirmation from the Stellenbosch Municipality's Electricity Department that there are no grid capacity constraints on the Stellenbosch Distribution System that would hinder connection of the affected Project to the Stellenbosch Distribution System, based on:

9.2.1.1. the existing available capacity; and

9.2.1.2. the capacity committed to other projects or generators; and

9.2.1.3. network operational constraints,

within the applicable Electrical Network and at the affected Delivery Point/s.

9.2.2. If there are two or more Projects assessed by the Stellenbosch Municipality as Compliant Bids and which, all else being equal, would be eligible to be considered for appointment as Preferred Bidders, but those Projects all intend to connect to a common Delivery Point and/or within the same Electrical Network, the Stellenbosch Municipality will consult with its Electricity Department as contemplated in clause 9.2.1 above to ascertain whether any grid constraints exist which would hinder connection of the affected Projects to the Stellenbosch Distribution System.

9.2.3. If the Electricity Department confirms that the available capacity of such Delivery Point and/or within the Electrical Network is insufficient to accommodate all of the affected Projects referred to in clause 9.2.2 above, then the Stellenbosch Municipality may, in its sole discretion, comparatively evaluate the affected Compliant Bids which are competing for the available capacity of the Delivery Point/s or Electrical Network ("**Competing Compliant Bidders**"), on the basis of a methodology similar in substance to that provided in clause 22 (*Overall scoring, objective criteria which may be applied and appointment as Preferred Bidder*) of this RFP in order to score and rank those Competing Compliant Bids relative to each other.

9.2.4. Competing Compliant Bidder/s which rank the highest will be considered for appointment as Preferred Bidders, up to the capacity available at the affected Delivery Point/s and/or within the Electrical Network.

9.3. OTHER FACTORS IMPACTING SELECTION OF PREFERRED BIDDERS: VALUE FOR MONEY

9.3.1. The outcome of an assessment that a Project delivers Value for Money, is a conclusion that the Project is in the best interests of and delivers an acceptable outcome to the Stellenbosch Municipality acting on behalf of and in the best interests of the people of the Stellenbosch Municipality, including its electricity users.

9.3.2. For purposes of this RFP, amongst the factors and considerations that may be taken into account when determining whether a Project presents Value for Money consider the following:

- 9.3.2.1. affordability of the individual Project, which would include the impact of the Project pricing on the Stellenbosch Municipality supply tariffs; and
- 9.3.2.2. affordability of all the Projects up to the maximum MW allocation, as detailed in clause 4.2.3.2 of this RFP.
- 9.3.3. The Stellenbosch Municipality reserves the right, subject to applicable laws, to engage with Bidders which submitted Compliant Bids but whose Projects are determined not to represent Value for Money, for purposes of Price negotiations aimed at achieving a lower Price offer which represents Value for Money for the Stellenbosch Municipality.

10. **PREFERRED BIDDERS**

10.1. APPOINTMENT OF PREFERRED BIDDERS

- 10.1.1. The Stellenbosch Municipality will notify the selected Preferred Bidders in writing, of their provisional award of Preferred Bidder status.
- 10.1.2. In such written notification, each Preferred Bidder will be instructed to submit a Preferred Bidder Guarantee pursuant to clause 10.2 (*Preferred Bidder Guarantee*).
- 10.1.3. Preferred Bidders will also be requested to, *inter alia*, enter into final negotiations to the extent required, with their Members, Contractors, Lenders and Equipment Suppliers, to finalise their contractual arrangements in order to conclude the Project Agreements.
- 10.1.4. A Bidder which has been provisionally informed of its Preferred Bidder status will be considered to have been appointed by the Stellenbosch Municipality as a Preferred Bidder once:
 - 10.1.4.1. the Preferred Bidder has accepted the terms and conditions of appointment as Preferred Bidder, as set out in the letter of provisional appointment as Preferred Bidder; and
 - 10.1.4.2. the Preferred Bidder has provided the Stellenbosch Municipality with the Preferred Bidder Guarantee.
- 10.1.5. A Preferred Bidder shall be required to provide the Stellenbosch Municipality with certified copies of the Constitutional Documents of its Project Company upon request by the Stellenbosch Municipality and within the time-period specified by

the Stellenbosch Municipality, following the establishment and incorporation of such Project Company.

- 10.1.6. A Preferred Bidder will, if necessary, in terms of the ERA, be required to obtain a generation licence in the name of its Project Company from NERSA, or register its Facility with NERSA. Each Bidder will be solely responsible for satisfying itself with respect to all the legal requirements for the issue of a generation licence by or registration of a Facility with NERSA, in terms of the ERA.
- 10.1.7. Upon appointment as a Preferred Bidder, the Stellenbosch Municipality:
 - 10.1.7.1. may request the Bidder, its legal Advisor or the legal practitioner(s) who prepared a Legal Opinion for purposes of the Bid Response, to produce any of the underlying documents referred to in the Legal Opinion and/or relating to the Environmental Consents and/or Land Use Consents;
 - 10.1.7.2. may request the Preferred Bidder to produce copies of the Environmental Consents and/or Land Use Consents; and
 - 10.1.7.3. will require confirmation (and possibly supporting documentation) from the Preferred Bidder that the Key Environmental Consents and any outstanding Other Environmental Consents will be obtained by Commercial Close.
- 10.1.8. After appointment of one or more Preferred Bidders, the Stellenbosch Municipality will, after complying with applicable procedural and stakeholder engagement requirements, seek approval from the municipal Council for the entry into contracts which will impose financial obligations on the Stellenbosch Municipality beyond three years, as required in terms of section 33 of the MFMA. Council approval in terms of section 33 of the MFMA is a precondition to Commercial Close.
- 10.1.9. At Commercial Close, Preferred Bidders will be required to warrant that all of the Environmental Consents and Land Use Consents have been obtained and remain valid, binding and enforceable.
- 10.1.10. The Preferred Bidder shall undertake an audit of the Financial Model (including the iteration versions) from the Bid Submission Date Financial Model to the final version, at its own cost. This model audit shall commence no later than 90 (ninety) Days prior to the estimated date of Commercial Close by an experienced independent auditing firm, which shall have a duty of care to the Buyer, the

Preferred Bidder and the Lenders. The scope of the audit must include those items typical for the audit, including but not limited to the internal calculation and logic of the model, appropriate tax and accounting treatments, reconciling inputs to appropriate source documentation, with specific reference to the ability of the Financial Model to undertake the Price Adjustment Process as described in clause 4.2.4 of this RFP.

10.2. PREFERRED BIDDER GUARANTEE

10.2.1. Each Bidder which is provisionally informed of its Preferred Bidder status will be required to lodge a guarantee with the Stellenbosch Municipality,

10.2.1.1. in respect of a Solar PV Project, in an amount equal to R50 000 (fifty thousand Rand) per MW of the Contracted Capacity of the proposed Project in respect of which that Bidder has been appointed Preferred Bidder; or

10.2.1.2. in respect of a BESS Project, in an amount equal to R50 000 (fifty thousand Rand) per MW of the Contracted Capacity of the proposed Project in respect of which that Bidder has been appointed Preferred Bidder,

(the "**Preferred Bidder Guarantee**").

10.2.2. A Bidder which has been provisionally informed of its Preferred Bidder status will be considered to have been appointed by the Stellenbosch Municipality as a Preferred Bidder once the Preferred Bidder Guarantee has, amongst the other requirements described at clause 10.1.4 above, been submitted to the Stellenbosch Municipality in accordance with this clause 10.2 (*Preferred Bidder Guarantee*).

10.2.3. Each Preferred Bidder Guarantee is required to be:

10.2.3.1. an original, unconditional and irrevocable guarantee in the form set out at Appendix 12 (*Form of Preferred Bidder Guarantee*);

10.2.3.2. lodged with the Stellenbosch Municipality within 15 (fifteen) Business Days of a Bidder being notified of its provisional Preferred Bidder status;

10.2.3.3. issued by a Financial Institution which has a South African rating of BBB or better by Standard & Poor's or equivalent; and

- 10.2.3.4. valid and effective for the period from the date of issue of the Preferred Bidder Guarantee, until Financial Close.
- 10.2.4. The Stellenbosch Municipality shall be entitled to call up a Preferred Bidder Guarantee in any of the circumstances provided for in the form of guarantee set out at Appendix 12 (*Form of Preferred Bidder Guarantee*).
- 10.2.5. The Stellenbosch Municipality may call on a Preferred Bidder Guarantee more than once (provided that the aggregate amount payable there under shall not exceed the maximum amount of the Preferred Bidder Guarantee in question) without notice or legal process, in any of the circumstances referred to in the form of guarantee at Appendix 12 (*Form of Preferred Bidder Guarantee*) including but not limited to those listed below:
 - 10.2.5.1. the Preferred Bidder is in breach of any law relating to the STMIPPPP;
 - 10.2.5.2. the Preferred Bidder fails to comply timeously with a request for information and or documentation issued by the Stellenbosch Municipality, as contemplated in the RFP or in the letter of appointment as Preferred Bidder;
 - 10.2.5.3. having been appointed as Preferred Bidder, the Preferred Bidder:
 - 10.2.5.3.1. fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
 - 10.2.5.3.2. fails to obtain confirmation of a grid capacity allocation from the Distributor, within the time-period stipulated in the letter of appointment as Preferred Bidder;
 - 10.2.5.3.3. fails to provide the Stellenbosch Municipality with such Project-specific information as is required in order to finalise the drafting of the PPA, Direct Agreement and the Distribution Agreement;
 - 10.2.5.3.4. fails to sign the PPA, Direct Agreement and the Distribution Agreement within the time-period and on the terms and conditions provided for in this RFP, as such time-periods and terms and conditions may be

amended by the Stellenbosch Municipality in its sole discretion having regard to all relevant circumstances;

- 10.2.5.3.5. fails to extend the term of the Preferred Bidder Guarantee as required by the Stellenbosch Municipality in accordance with the RFP;
- 10.2.5.3.6. withdraws its Project from the STMIPPPP or forfeits its Preferred Bidder status; or
- 10.2.5.3.7. is notified by the Stellenbosch Municipality that its status as Preferred Bidder has been revoked for any reason; or
- 10.2.5.4. having signed the PPA, Direct Agreement and the Distribution Agreement:
 - 10.2.5.4.1. fails to reach Financial Close on or before the last date stipulated for Financial Close in this RFP, as such date may be amended by the letter of appointment as Preferred Bidder, or as provided for in the PPA; or
 - 10.2.5.4.2. fails to comply with the requirements of any information or documentation request, or of any protocol, issued by the Stellenbosch Municipality in relation to Financial Close.

10.3. CHANGES TO BID RESPONSE

- 10.3.1. No change is permitted to any aspect of a Bidder's Project as reflected in its Bid Response, after submission of such Bid Response, without the prior written approval of the Stellenbosch Municipality.
- 10.3.2. Any Preferred Bidder wishing to change its Bid Response prior to Commercial Close must submit to the Stellenbosch Municipality a written request to do so. Such request must set out the facts and circumstances that have arisen since the Bid Submission Date that necessitated the request, together with all documentation, information, data and responses required to fulfil, in respect of such change, the requirements in respect of the relevant Functionality Criteria in the RFP.

- 10.3.3. The Stellenbosch Municipality reserves the right to require the Preferred Bidder to supply such further information as the Stellenbosch Municipality may, in its sole discretion, request with regard to such change so as to enable the Stellenbosch Municipality to consider fully the impact of such change.
- 10.3.4. The Stellenbosch Municipality may approve or decline any request by a Preferred Bidder for a change to any aspect of a Bid Response, in its sole discretion. In exercising such discretion, the Stellenbosch Municipality shall have regard to all relevant factors, including whether the facts and circumstances necessitating the request were, or ought reasonably to have been, foreseen by the Preferred Bidder at the Bid Submission Date, the nature and extent of the change and whether any such approval would be fair to other Bidders who submitted a Bid Response.

10.4. TERMINATION OF PREFERRED BIDDER STATUS

The Stellenbosch Municipality will be entitled to terminate any Preferred Bidder's status as Preferred Bidder, by notice in writing to the Preferred Bidder, if a Preferred Bidder:

- 10.4.1. is discovered to have provided, in its Bid Response or in response to any query or clarification question addressed to the Bidder or Preferred Bidder by the Stellenbosch Municipality, knowingly or unwittingly any incorrect or misleading information whether through or relating to the Bidder or any of its Members, Contractors, Lenders or Advisors or any other participant in the relevant Bid Response and or their agents;
- 10.4.2. fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
- 10.4.3. fails to sign the Project Agreements within the time period specified for Commercial Close in clause 7.2 (*Procurement Schedule*) or as specified in a Briefing Note, as such time period may be extended by the Stellenbosch Municipality on written notice to the Preferred Bidder;
- 10.4.4. fails to extend the term of its Preferred Bidder Guarantee as required by the RFP;
- 10.4.5. fails to produce copies of the Environmental Consents and/or Land Use Consents to the satisfaction of the Stellenbosch Municipality;
- 10.4.6. fails to comply timeously with a request for information and or documentation by the Stellenbosch Municipality as contemplated in the RFP; or
- 10.4.7. breaches any law applicable to any aspect of the STMIPPPP.

11. GENERAL CONDITIONS

11.1. GOVERNING LAW

- 11.1.1. The process of procurement of the Projects, Bid Responses, subsequent documents, and Project Agreements, are and will be governed by and construed according to the laws of the Republic of South Africa.
- 11.1.2. Procurement of the Projects will be carried out in accordance with relevant legislation, by-laws, policies, which includes but is not limited to, the Constitution of the Republic of South Africa, 1996; the MFMA; the Municipal Systems Act; the MSCM Regulations; the ERA; the PPPFA; and the B-BBEE Act, the by-laws and policies of the Stellenbosch Municipality including the Stellenbosch Municipality SCMP, each to the extent applicable and subject to any lawful exemptions from any provision thereof.

11.2. NO COLLUSION

- 11.2.1. Each Bidder must satisfy itself that its Project or any aspect of it is not a notifiable transaction as contemplated under the Competition Act 89 of 1998 and, to the extent that it is a notifiable transaction, that all necessary requirements to comply with the provisions of the Competition Act 89 of 1998 have been complied with or will be complied with by it prior to the signature of the Project Agreements.
- 11.2.2. The attention of Bidders, and their Members, Contractors, Equipment Suppliers, Advisors and agents is drawn to section 4(1)(b)(iii) of the Competition Act 89 of 1998, which prohibits collusive bidding. Collusive bidding is also inconsistent with the constitutional procurement principles and the requirements of this RFP.
- 11.2.3. By submitting a Bid Response, each of the Bidders, its Members, Lenders, Contractors and all other participants in any Bid Response confirms that:
 - 11.2.3.1. its Bid Response has been prepared without consultation, communication or agreement for restricting competition with any other Bidder, Member of another Bidder or participant in another Bid Response, or any other competitor or potential competitor;
 - 11.2.3.2. its Bid Response has not been disclosed, nor will it be disclosed to any other Bidder, Member of another Bidder or participant in another Bid Response, or any competitor or potential competitor;

- 11.2.3.3. 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
 - 11.2.3.4. 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.
 - 11.2.4. In response to the prohibition in section 4(1)(b)(iii) of the Competition Act 89 of 1998, every Bidder must complete and submit, with its Bid Response, the standard form MBD 9: Certificate of Independent Bid Determination, which is included in Appendix 7 of this RFP (*MBD 9 Certificate of Independent Bid Determination*).
 - 11.2.5. If the Stellenbosch Municipality becomes aware of or is of the opinion that any of the activities detailed in this clause 11.2 (*No Collusion*) have been undertaken by any Bidder or its Members, Lenders, Contractors or Advisors, the Stellenbosch Municipality shall be entitled to disqualify such Bidder, its Members, Lenders, Contractors or their Advisors, and to bar any or all of them from participating further in the STMIPPPP.
- 11.3. PROHIBITION ON CORRUPT GIFTS AND PAYMENTS
 - 11.3.1. The attention of Bidders is drawn to the Prevention and Combating of Corrupt Activities Act 12 of 2004.
 - 11.3.2. None of the Bidder, its Members, Contractors, Lenders, any other participant in a Bid Response or any of their agents or Advisors may commit an offence in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, including directly or indirectly offering or giving to any person in the employment of the Stellenbosch Municipality or any other Government official who is involved in the STMIPPPP, 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, its Members, Lenders or Contractors in relation to the STMIPPPP.
 - 11.3.3. If any person referred to in clause 11.3.2 above commits an offence in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 or is reasonably suspected of having committed such an offence, the Stellenbosch Municipality shall be entitled to disqualify the Bidder or Preferred Bidder which committed or which is associated with any person who committed the offence, from the STMIPPPP and/or to prohibit such Bidder, Preferred Bidder, its

Members, Contractors, Lenders, any other participant in the relevant Bid Response and their agents and Advisors from participating further in any part of the STMIPPPP.

11.4. AUTHORISATION

11.4.1. The Bidder, its Members, Contractors and Lenders and its Advisors are required to satisfy themselves as to the authority of:

11.4.1.1. NERSA to issue a generation licence to each of the Project Companies of the Preferred Bidders in accordance with the provisions of the ERA, to the extent such generation licence is required in terms of applicable laws;

11.4.1.2. the Stellenbosch Municipality to issue this RFP, undertake the STMIPPPP of which the RFP forms part, and to undertake all other actions envisaged by this RFP; and

11.4.1.3. the Buyer and other relevant parties to enter into the Project Agreements.

11.4.2. The Stellenbosch Municipality shall not procure a legal opinion from any of its Transaction Advisors in favour of any Bidder, Preferred Bidder, its Members, Contractors, Project Company or Lenders in relation to such authority or any other aspect of this RFP or the STMIPPPP.

11.4.3. Copies of the relevant documents authorising the Buyer to enter into the Project Agreements to which it is a party, will be made available to a Preferred Bidder prior to Commercial or Financial Close, as applicable.

11.5. PROPRIETARY NATURE OF RFP

11.5.1. This RFP constitutes information which is proprietary to the Stellenbosch Municipality and WCG.

11.5.2. This RFP may only be used by any third party, including a Bidder, as permitted in writing by the Stellenbosch Municipality and WCG. The following uses are authorised without the need to apply for specific permission from the Stellenbosch Municipality and WCG for the use of the RFP:

11.5.2.1. educational purposes connected with a recognised tertiary or similar institution;

11.5.2.2. discussion in public and private forums, and media reports regarding the RFP and the STMIPPPP;

11.5.2.3. evaluation of the STMIPPPP by a potential Bidder; and

11.5.2.4. preparation of a Bid Response.

11.5.3. Subject to clause 11.5.2 above, no person may sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, or otherwise use this RFP and may not divulge or distribute any information in respect of this RFP or pass on any copies of this RFP without the prior written approval of the Stellenbosch Municipality and WCG; and must return this RFP together with all copies thereof to the Stellenbosch Municipality promptly upon being requested to do so.

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

11.6. DISQUALIFICATION

11.6.1. Any material failure on the part of a Bidder to comply with any of the terms of this RFP, read together with all Briefing Notes, may result in the Bidder, and other persons associated in any relevant way with the Bidder, being disqualified by the Stellenbosch Municipality from participating in the STMIPPPP.

11.6.2. The Stellenbosch Municipality may disqualify any Bidder who knowingly or unwittingly provides any incorrect or misleading information in response to this RFP or in response to any query or clarification question addressed to the Bidder by the Stellenbosch Municipality, from further participation in the STMIPPPP.

11.6.3. If a Project which is the subject matter of a Bid Response has been selected as a preferred bidder in any other public or private sector IPP procurement programme or procurement process, and that Project has not been withdrawn from that other IPP procurement programme or procurement process, the Stellenbosch Municipality may disqualify the Bidder from further participation in the STMIPPPP.

11.7. CHANGE IN LEGAL REQUIREMENTS

If there is a change in any of the statutes, regulations, by-laws, orders or directives having the force of law or in the law applicable to a Project during the period commencing on the Bid Submission Date and ending at Commercial Close, which materially prevents, hinders or delays the relevant Project Company from undertaking that Project or performing its

obligations in relation to that Project or which results in a material change in that Project Company's anticipated costs and or revenues, the Stellenbosch Municipality, in its sole discretion, may grant the relevant Project Company 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 Project Agreements, and the Stellenbosch Municipality may accept or reject such changes, in its sole discretion.

11.8. THE STELLENBOSCH MUNICIPALITY'S RIGHTS

The Stellenbosch Municipality reserves the right to:

- 11.8.1. seek additional information from any Bidder in respect of its Bid Response, as the Stellenbosch Municipality may, in its sole discretion, determine, whether such information has been requested under this RFP or otherwise;
- 11.8.2. require any Bidder to make oral presentations for clarification purposes or to present supplementary information, in respect of its Bid Response;
- 11.8.3. perform a credit search in respect of a Bidder, its Members, Contractors and participants by accessing any credit bureau's database;
- 11.8.4. take into account all relevant information publicly released by a Bidder, its Members, Contractors and participants;
- 11.8.5. use any information and data obtained from credit bureaux and third parties as contemplated herein, for purposes of evaluation of any Bid Response;
- 11.8.6. accept or reject any Bid Response in accordance with this RFP or applicable laws;
- 11.8.7. waive any failure to comply with any requirements set out in this RFP, at any time, notwithstanding that the requirement may be stated in mandatory terms;
- 11.8.8. select or not select any one or more Bidder/s as a Preferred Bidder;
- 11.8.9. designate any Bidder which submitted a Compliant Bid but was not selected as a Preferred Bidder as a reserve bidder, whose status could be enhanced to Preferred Bidder if any Preferred Bidder withdraws from the STMIPPPP or its status as such is terminated;
- 11.8.10. suspend or change or terminate the STMIPPPP at any stage, in whole or in part;
- 11.8.11. withdraw this RFP and/or cancel this tender process, in whole or in part; and

11.8.12. amend the RFP and/or Project Agreements at any time prior to the execution of those agreements,

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

11.9. DISPUTES

Each Bidder and each Member, Lender, Contractor, Equipment Supplier, Advisor or other person participating in a Bid Response or otherwise in the STMIPPPP, waives the right to bring proceedings in any forum outside of the Republic of South Africa in relation to the STMIPPPP. By participating in the STMIPPPP, the Bidder and each of its Members, Lenders, Contractors, Equipment Suppliers, Advisors and other participants agree not to institute any court proceedings arising out of or in connection with the STMIPPPP in a forum other than the Western Cape Division of the High Court, Cape Town or, if that court is not vested with jurisdiction in terms of applicable laws, any other High Court in South Africa of competent jurisdiction, and the Bidder and each of its Members, Lenders, Contractors, Equipment Suppliers, Advisors and such other participants consents to the exclusive jurisdiction of such court.

STAGE 1: FUNCTIONALITY CRITERIA**12. PURPOSE AND OVERVIEW**

- 12.1. The purpose of this Stage 1 of the RFP is to set out the Functionality Criteria that a Bidder is required to satisfy in order for its Bid Response to be a Compliant Bid, and the process of evaluation against the Functionality Criteria.
- 12.2. The Functionality Criteria are divided into the following categories, and the requirements for each are described under the corresponding headings in clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) of the RFP:
 - 12.2.1. Legal Criteria (clause 13 of the RFP);
 - 12.2.2. Land Acquisition and Land Use Criteria (clause 14 of the RFP);
 - 12.2.3. Environmental Consent Criteria (clause 15 of the RFP);
 - 12.2.4. Financial Criteria (clause 16 of the RFP); and
 - 12.2.5. Technical Criteria (clause 17 of the RFP).
- 12.3. The Bidder must respond to each and every heading in clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) of the RFP (except to the extent not applicable to its Technology, or its commercial, contracting or funding structure) and provide comprehensive responses and information in respect of each heading.
- 12.4. Certain Functionality Criteria require the submission of a Legal Opinion, as part of the Bid Response. Where that is the case, the Bidder is responsible for ensuring that every Legal Opinion submitted meets the criteria stipulated in clauses 12.6 and 12.7 below.
- 12.5. By submitting a Legal Opinion in its Bid Response, the Bidder is considered by the Stellenbosch Municipality to be warranting that all of the factual material referred to in the Legal Opinion is true and correct.
- 12.6. The content of a Legal Opinion (including any qualifications and assumptions contained in the Legal Opinion) submitted in response to the applicable Functionality Criteria must constitute a credible confirmation, to the satisfaction of the Stellenbosch Municipality in its sole discretion, that the Land Acquisition and Land Use Consents and arrangements (referred to in clause 14 (*Land Acquisition and Land Use Criteria*)), and or the Environmental Consents (referred to in clause 15 (*Environmental Consent Criteria*)), have been secured, continue to be valid or are pending (as the case may be).

- 12.7. The legal practitioner(s) responsible for providing the Legal Opinions contemplated in the Functionality Criteria must:
- 12.7.1. be practising attorneys registered with a member association of the Law Society of South Africa;
 - 12.7.2. be external to and independent from the Bidder or any Member;
 - 12.7.3. be in good standing with the Legal Practice Council;
 - 12.7.4. have at least five years' post-admission experience in respect of property law, environmental law, project finance transactions, infrastructure finance transactions or undertaking energy generation feasibility studies, as the case may be. Curricula vitae for the legal practitioner(s) responsible for such Legal Opinions must be provided in the form of the template provided in Appendix 14 (*Key Staff CV*) of the RFP; and
 - 12.7.5. be acceptable to the Stellenbosch Municipality as having the requisite experience, failing which the Stellenbosch Municipality will be entitled in its sole discretion to reject the Legal Opinion concerned.
- 12.8. A Bid Response must meet or exceed the Functionality Criteria in Stage 1 under each heading in clause 13 (*Legal Criteria*) to clause 17 (*Technical Criteria*) in order for a Bidder to be eligible to have its Bid Response evaluated against the Evaluation Criteria in Stage 2 under clause 20 (*Points awarded for Price*) to clause 21 (*Points awarded for Specific Goals*) of this RFP.

13. **LEGAL CRITERIA**

13.1. Legal Criterion 1 – Project Company

- 13.1.1. The Constitutional Documents of the Project Company, when it concludes the Project Agreements, must reflect that of the Project Company:
 - 13.1.1.1. has the sole purpose, object and business of undertaking the Bidder's Project, including entering into and fulfilling the terms and conditions of the Project Agreements; and
 - 13.1.1.2. is a "ring fenced" company in terms of the Companies Act.
- 13.1.2. The Bidder must provide, in its Bid Response, written confirmation that by no later than Commercial Close:

- 13.1.2.1. the Project Company will have been incorporated, with all the Shareholders holding ownership stakes in the Project Company in the proportions stated in the Bid Response;
- 13.1.2.2. the Project Company's memorandum of incorporation will reflect that the Project Company has the sole purpose, object and business of undertaking the Bidder's Project, including entering into and fulfilling the terms and conditions of the Project Agreements;
- 13.1.2.3. the Project Company will have the ability to provide Renewable Energy Certificates and should demonstrate the ability to include the registration, allocation and delivery of the relevant RECs for each MWh delivered to Stellenbosch Municipality, to ensure the unique right of Stellenbosch Municipality to claim the renewable energy attributes of the Project. The costs associated with the registration of RECs will be for the Seller's account; and
- 13.1.2.4. the Project Company will be registered as a "ring fenced" company in terms of the Companies Act, with "(RF)" in its name.

- 13.1.3. A template of the written confirmation referred to above is included in Appendix 13 (*Declaration of Bidder*) of the RFP.

13.2. Legal Criterion 2 – Acceptance of Project Agreements

- 13.2.1. The Bidder must:
 - 13.2.1.1. confirm the Bidder's acceptance of the Project Agreements and all annexes thereto; and
 - 13.2.1.2. confirm that each of its Members and or Shareholders and its Lenders accept the Project Agreements and all annexes thereto.
- 13.2.2. A template of the written confirmation referred to above is included in Appendix 13 (*Declaration of Bidder*) of the RFP.⁷
- 13.2.3. If any person or entity signs any document contemplated in this RFP, including any of the returnable schedules, on behalf of another entity that has been established at the Bid Submission Date, the Stellenbosch Municipality shall be

⁷ The way we have structured this requirement, the Lead Member will confirm on behalf of the whole consortium and the lenders, rather than getting them all to confirm separately. On the basis that it's the bidder's risk to make sure its members and lenders are on board

entitled to assume that the signatory is duly authorised and the Bidder has due authorisation to submit the returnable schedules or other documents on its behalf.

13.2.4. If any person or entity (including a Fund) will participate as a Shareholder, or as a shareholder in a Shareholder, which Shareholder is an entity that has not been established or incorporated by the Bid Submission Date, the Stellenbosch Municipality shall be entitled to assume that the Lead Member or Project Company, as the case may be, shall ensure that the unincorporated Shareholder entity (once established or incorporated) agrees to be bound by the Bid Response to the same extent as it would have done if it were in existence at the Bid Submission Date.

13.2.5. Any mark-up or amendment to the Project Agreements by a Bidder or its Lenders (other than for the purposes of completing the information required by the Stellenbosch Municipality) without the express written consent of the Stellenbosch Municipality, is not permitted and may be treated by Stellenbosch Municipality as the Bidder's non-acceptance of the terms of the Project Agreements, notwithstanding any confirmation given in response to paragraph 13.1.2.1 above.

13.3. Legal Criterion 3 – Completion and Submission of Returnable Schedules

13.3.1. Bidders must complete and provide every document, confirmation and returnable schedule required, in terms of the RFP, to be submitted as part of its Bid Response, in the form and manner provided for in this RFP and, if the manner of submission is not provided for in this RFP, in a detailed, complete and proper form that is considered by the Stellenbosch Municipality to be satisfactory.

13.3.2. The general returnable schedules required to be completed and submitted in response to this Legal Criterion 3 are described in turn below. (Submission of the Financial and Technical returnable schedules is required in accordance with the relevant Financial and Technical Functionality Criteria.)

13.3.3. **Invitation to Bid:** Bidders must include in their Bid Response a completed Invitation to Bid Form, which is provided in Appendix 2 (*Invitation to Bid Form*).

13.3.3.1. Bidders are required to be registered on the CSD. Bidders must provide their CSD number in the Invitation to Bid Form.

13.3.3.2. Bidders are required to be tax compliant. Bidders must provide their TCS PIN in the Invitation to Bid Form.

- 13.3.3.3. If the Bidder is a consortium, a CSD number and TCS PIN of each Member of the consortium must be submitted.
- 13.3.4. **Declaration of Bidder**, which is provided in Appendix 13 (*Declaration of Bidder*) and includes, as an annexure, the Project structure diagram;
- 13.3.5. **MBD 4: Declaration of Interest Form**, which is provided in Appendix 4 (*MBD 4 Declaration of Interest Form*);
- 13.3.6. **MBD 5: Declaration for Procurement above R10 Million Form**, which is provided in Appendix 5 (*MBD 5 Declaration for Procurement above R10 Million Form*);
- 13.3.7. **MBD 6.1 Preference Points Claim Form**, which is provided in Appendix 31A (*MBD 6.1 Preference Points Claim Form – Solar PV*) and Appendix 31B (*MBD 6.1 Preference Points Claim Form – BESS*);
- 13.3.8. **MBD 8: Declaration of Bidder's Past Supply Chain Management Practices**, which is provided in Appendix 6 (*MBD 8 Declaration of Bidder's Past Supply Chain Management Practices*);
- 13.3.9. **MBD 9: Certificate of Independent Bid Determination**, which is included in Appendix 7 of this RFP (*MBD 9 Certificate of Independent Bid Determination*); and
- 13.3.10. **MBD 10: Certificate for Payment of Municipal Services**, which is provided in Appendix 8 (*MBD 10 Certificate for Payment of Municipal Services*).
- 13.4. Legal Criterion 4 – Decommissioning
 - 13.4.1. Bidders, and Sellers under the PPA, will be required to make financial provision for the costs of the:
 - 13.4.1.1. decommissioning of the Facility;
 - 13.4.1.2. rehabilitation and closure of the Project Site; and
 - 13.4.1.3. post-closure monitoring of environmental impacts in respect of the Facility.
 - 13.4.2. The Bidder must, in its Bid Response, include:
 - 13.4.2.1. a detailed and comprehensive Decommissioning Plan, which must cover the scope of work and time-frames for the various

decommissioning activities that will be required during the term of the PPA and thereafter, and a detailed estimate of the Decommissioning Costs; and

- 13.4.2.2. a detailed and comprehensive Decommissioning Financial Plan, which must describe the mechanism/s through which the Bidder intends to provide for the Decommissioning Costs in such manner that the full amount of the Decommission Costs is available to the Seller for purposes of decommissioning by no later than the expiry date of the PPA.
- 13.4.3. The Decommissioning Costs must, at a minimum, include the costs of undertaking the following:
 - 13.4.3.1. the rehabilitation of the adverse environmental impacts of the listed or specified activities detailed in the Environmental Consents;
 - 13.4.3.2. engagement with all necessary stakeholders including but not limited to the Stellenbosch Municipality, NERSA, WCG, NTC, the DFFE, the Department of Employment and Labour, the South African National Roads Agency Limited, and the Project Site neighbours;
 - 13.4.3.3. rehabilitation of the impacts of the generation and dispatch of Energy Output and/or Capacity, including polluted or extraneous water;
 - 13.4.3.4. the responsible disposal of equipment, including solar PV panels (if applicable), BESS and/or electronic waste;
 - 13.4.3.5. securing, making safe, decommissioning, isolation and closure of the Facility and supporting infrastructure;
 - 13.4.3.6. remediation of any latent or residual environmental impacts identified in the Environmental Consents;
 - 13.4.3.7. demolition and removal of buildings, structures, plant, equipment and other objects including subsurface foundations and services;
 - 13.4.3.8. rehabilitation of the Project Site, including capping and covering if necessary and landscaping;
 - 13.4.3.9. consideration and management of the heritage requirements of the Facility;

13.4.3.10. compliance with all Laws applicable to the decommissioning, demolition or rehabilitation process;

13.4.3.11. obtaining all necessary permits or approvals for decommissioning, demolition, remediation and rehabilitation; and

13.4.3.12. remediation of any other negative environmental impacts.

13.4.4. Sellers will be committed to the implementation of their Decommissioning Plan and Decommissioning Financial Plan, and reporting to the Stellenbosch Municipality in respect thereof, in accordance with relevant terms and conditions of the PPA.

14. **LAND ACQUISITION AND USE CRITERIA**

14.1. A Bidder must submit a Legal Opinion as part of its Bid Response, issued on instruction of the Bidder by legal practitioner/s who meet the requirements set out in clause 12.4 of the RFP and addressed to the Stellenbosch Municipality, substantiating:

14.1.1. the nature of the land acquisition or land use arrangements entered into by the Bidder in respect of the Project Site to be utilised for purposes of the Project. In this regard the Legal Opinion must confirm that the legal practitioner has satisfied themselves:

14.1.1.1. as to the Project Site's property description, property extent, and title deed number(s) (and where the Project Site consists of multiple properties, those details for each one);

14.1.1.2. that, subject to clause 14.1.4, the Project Company is the registered owner of all of the properties comprising the Project Site; alternatively, that the Project Company has executed one or more registrable notarial leases for the whole of the Project Site for the term of the PPA; alternatively that the Project Company has executed an option, exercisable at the Project Company's instance and unconditional in all significant respects, to lease or purchase all of the properties comprising the Project Site;

14.1.1.3. that the Project Company has submitted application/s, where necessary, to the relevant Responsible Authority, for the right to lawfully use the Project Site for the intended purpose of constructing and operating the Facility/ies and, where such application was required to be made, confirming the nature, necessity and details

thereof, as it may relate, inter alia, to the need for land use change or rezoning, subdivision, or removal of restrictive conditions; and in respect of the latter, confirming that the inhibitive condition is capable of being conformed with and/or that the prohibitory condition is capable of being removed so as not to delay Commercial Close or the implementation of the Project;

- 14.1.1.4. where a Facility will be located on municipality-owned land, that all relevant municipal statutory requirements (identifying applicable statutes and section numbers), where applicable, were fulfilled; attendant authorisations, consents, approvals, resolutions were obtained; and procedures followed, in the conclusion of the land use arrangements and contracts covering the whole of the Project Site and permitting the construction and operating the Facility/ies and all Project-related activities;
- 14.1.2. that the Bidder has identified all land-related rights and Consents that will be required for purposes of the Connection Works, and has taken adequate steps to progress the securing of those rights and Consents, such that the process of finalisation thereof will not delay Commercial Close or COD;
- 14.1.3. that in the legal practitioner's opinion the Bidder will not be hindered from reaching Commercial Close or implementing the Project as a result of insurmountable conditions included in the documentation evidencing the land or resource use arrangements for the Project;
- 14.1.4. that the legal practitioner has satisfied themselves that if the Project Company is not at the date of the Legal Opinion the holder of the applicable land acquisition and land use rights, the holder has undertaken to transfer such rights to the Project Company upon formation of the Project Company, for the whole of the Project; and
- 14.1.5. that the legal practitioner has satisfied themselves that the contracts entered into in respect of such land acquisition and land use arrangements are legal, valid, binding and enforceable on and against all parties to those contracts at the Bid Submission Date, and will continue to be legal, valid, binding and enforceable as between the Project Company and its counterparties, for the period between the Bid Submission Date and Commercial Close, and for the duration of the PPA.
- 14.2. In order to demonstrate compliance with the requirements of this clause 14 (*Land Acquisition and Land Use Criteria*):

- 14.2.1. the Bidder must provide the Legal Opinion referred to above, and such Legal Opinion must constitute a credible confirmation, to the satisfaction of the Stellenbosch Municipality in its sole discretion, that all requisite land acquisition rights have been secured, and land use rights have been applied for, for the Project;
- 14.2.2. the Bidder must provide a statement confirming that the Legal Opinion was obtained from a legal practitioner meeting the criteria stipulated in clause 12.7 of the RFP. Sample wording for such a statement is included in Appendix 13 (*Declaration of Bidder*) of the RFP; and
- 14.2.3. the Bidder must satisfy the Stellenbosch Municipality that if any of the land rights secured for the Project are subject to conditions, the Bidder is in a position to comply with such conditions within the relevant STMIPPPP time-frames. In this regard, the Legal Opinion is required to address the Bidder's arrangements and positions to comply with such conditions and the Stellenbosch Municipality reserves the right to consider these conditions and determine, in its sole discretion, whether the Bidder is in a position to comply with such conditions within the relevant time-frames, and if it determines that the Bidder is not in such position, the Stellenbosch Municipality will consider the Bidder to have failed to achieve compliance with the Land Acquisition and Land Use Criteria.

14.3. The Stellenbosch Municipality reserves the right to:

- 14.3.1. request the Bidder, its legal Advisor or the legal practitioner(s) who prepared the Legal Opinion to submit any of the underlying documents referred to in the Legal Opinion and/or relating to the Land Use Consents, at any stage of its evaluation of the Bid Response; and
- 14.3.2. request clarity from the Bidder's legal Advisors or the legal practitioner(s) who prepared the Legal Opinion on any aspect of the Legal Opinion or the Land Use Consents.

15. **ENVIRONMENTAL CONSENT CRITERIA**

- 15.1. A Bidder, to the extent applicable to its Project, will have to secure the following Environmental Consents by no later than Commercial Close, for the entirety of its Project, and in the name of the Project Company:
 - 15.1.1. an environmental authorisation/s as required by NEMA; or
 - 15.1.2. registration in terms of the exemption which is provided for:

- 15.1.2.1. in respect of Solar PV, in the Solar Exclusion Norm and Exclusion of the Development and Expansion of Solar PV Facilities from the Requirement to obtain an environmental authorisation (GN. 4558 in GG 50388 of 27 March 2024) ("**Solar EA Exemption**")⁸; or
- 15.1.2.2. in respect of BESS, in the Battery Storage Exclusion Norm and exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities from the Requirement to obtain an environmental authorisation (GN. 4557 in GG 50387 of 27 March 2024) ("**BESS EA Exemption**")⁹; and
- 15.1.3. a water use entitlement in terms of the National Water Act 36 of 1998 for water abstraction or a written confirmation(s) of a water allocation for all the water consumption needs of the Project from a water services provider registered as such in terms of the Water Services Act 108 of 1997; and
- 15.1.4. a water use entitlement in terms of the National Water Act 36 of 1998 for any impacts on watercourses or a final verification report that was prepared by a suitably qualified SACNASP professional member confirming that the proposed development will not result in any direct impact or destruction of any watercourses, as referred to in the General Authorisation in terms of section 39 of the National Water Act 36 of 1998 for water uses as defined in section 21(c) or section 21(i) of that Act,¹⁰

(collectively referred to as the "**Key Environmental Consents**").

- 15.2. A Bidder, to the extent applicable to its Project, may also have to secure all or some of the following additional Environmental Consents, by Commercial Close, for the entirety of its Project, and in the name of the Project Company:

⁸ In terms of the Solar EA Exemption, the Norm and rules exclude certain solar PV projects from the requirement to obtain an EA prior to commencement in "low" or "medium" environmental sensitivity areas, with the exception of linear infrastructure integral to the facility which is located in a pre-negotiated corridor, which may be located in areas of "very high", "high", "medium" or "low" environmental sensitivity. The Norm excludes: (i) Activity 1 or 36 of Listing Notice 1; (ii) Activity 1 of Listing Notice 2; and (iii) any associated activity in Listing Notices 1, 2 or 3 necessary for the realisation of such facility. Further, identified activities for the development or expansion of battery storage facilities, associated with or integral to the operation of the solar PV facility, are to be registered under this Norm and not the Norm for the exclusion of identified activities associated with the development and expansion of battery storage facilities in areas of low or medium environmental sensitivity

⁹ In terms of the BESS EA Exemption, the Norm excludes certain development or expansion projects of battery storage facilities associated with energy generation and electricity transmission and distribution infrastructure from the requirement to obtain an EA prior to commencement in "low" or "medium" environmental sensitivity areas, with the exception of linear infrastructure integral to the facility which is located in a pre-negotiated corridor, which may be located in areas of "very high", "high", "medium" or "low" environmental sensitivity. The Norm excludes: (i) Activity 11, 12(ii)(a), 14, 19, 24, 27, 28(ii), 47, 48(i)(a), 51 and 67 of Listing Notice 1; (ii) Activity 4 and 9 of Listing Notice 2; and Activity 3 of Listing Notice 3, including any single activity or several activities combined

¹⁰ GNR 4167 of 8 December 2023.

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- 15.2.1. biodiversity and/or conservation permits in terms of the National Environmental Management: Biodiversity Act 10 of 2004 and any applicable provincial laws, and biodiversity offset programmes;
- 15.2.2. protected tree licences in terms of the National Forests Act 84 of 1998;
- 15.2.3. final comment from the South African Heritage Resources Agency and any approvals in terms of the National Heritage Resources Act 25 of 1999 and any applicable provincial laws;
- 15.2.4. approvals in terms of section 7 and/or section 6 of the Water Services Act 108 of 1997 for use of water outside of the municipal grid or for the provision of sanitation services by a third party;
- 15.2.5. permits in terms of the Conservation of Agricultural Resources Act 43 of 1983;
- 15.2.6. permits and authorisations in terms of locally applicable by-laws;
- 15.2.7. consent of the Civil Aviation Commissioner to erect a potential obstacle to aviation or confirmation from the Civil Aviation Authority that no such consent is necessary;
- 15.2.8. copies of all letters received or applications made in terms of the Electronic Communications Act 36 of 2005 from electronic communications network service licensees;
- 15.2.9. copy of an application or letter of no objection from the SANDF, in which the SANDF indicates that there will be no direct impact on landward activities, communication installations and aviation routes and light safety, in respect of the Project;
- 15.2.10. copy of an application or letter of no objection from the SAWS, in which the SAWS indicates that there will be no direct impact in the SAWS radar stations located in the vicinity, and that the SAWS therefore supports the development thereof in the proposed location, in respect of the Project; and
- 15.2.11. Building Plan Approval in terms of the National Building Regulations and Building Standards Act 103 of 1977,

(collectively referred to as the “**Other Environmental Consents**”).

15.3. Environmental Criterion 1 – Progress on Environmental Consents

15.3.1. Environmental Criterion 1 requires the Bidder to demonstrate, by the Bid Submission Date, that the Bidder has made sufficient progress towards securing those:

15.3.1.1. Key Environmental Consents; and

15.3.1.2. Other Environmental Consents,

which are applicable to the Project, such that the Bidder will be able to obtain all applicable Key Environmental Consents and Other Environmental Consents by Commercial Close.

15.3.2. For purposes of satisfying Environmental Criterion 1, the Bidder must submit, as part of its Bid Response, a Legal Opinion, issued on the instruction of the Bidder, by legal practitioner/s who meet the requirements set out in clause 12.7 and addressed to the Stellenbosch Municipality:

15.3.2.1. describing the Bidder's Key Environmental Consents and indicating the status of applications therefor;

15.3.2.2. confirming that the legal practitioner/s have satisfied themselves that the Bidder has progressed the Key Environmental Consents referred to in clause 15.3.2.1;

15.3.2.3. covering at least the following, in relation to any applicable Key Environmental Consents which have been secured by the Bid Submission Date:

15.3.2.3.1. reference number(s);

15.3.2.3.2. holder's name and details;

15.3.2.3.3. validity period;

15.3.2.3.4. description of the property or properties to which each Key Environmental Consent relates;

15.3.2.3.5. activities authorised;

15.3.2.3.6. description of onerous conditions contained in the authorisation;

15.3.2.3.7. description of amendments to the authorisation;

- 15.3.2.3.8. confirmation that the Key Environmental Consents are sufficient to cover the Facility and all Project-related activities;
 - 15.3.2.3.9. confirmation that the process of finalisation of the Key Environmental Consents will not hinder the Bidder from reaching Commercial Close and Financial Close or implementing the Project within the applicable time-frame; and
 - 15.3.2.3.10. if applicable, the manner in which all appeals and review applications in respect of any Key Environmental Consents have been/will be resolved;
 - 15.3.2.4. confirming that the legal practitioner has satisfied themselves that the Bidder's required Key Environmental Consents not secured by the Bid Submission Date have been identified and applications therefor have been made and/or progressed sufficiently so as not to delay Commercial Close or Financial Close or implementation of the Project;
 - 15.3.2.5. describing the Bidder's required Other Environmental Consents and indicating the status of applications therefor; and
 - 15.3.2.6. confirming that the legal practitioner has satisfied themselves that the Bidder's required Other Environmental Consents referred to in clause 15.3.2.5 have been identified and applications therefor have been made and/or progressed sufficiently so as not to delay Commercial Close or Financial Close or implementation of the Project.
- 15.4. In order to demonstrate compliance with the requirements of Environmental Criterion 1 under this clause 15 (*Environmental Consent Criteria*), the Bidder must:
- 15.4.1. submit the Legal Opinion referred to above, in its Bid Response, and such Legal Opinion must constitute a credible confirmation, to the satisfaction of the Stellenbosch Municipality, that the Key Environmental Consents and the Other Environmental Consents identified in the Legal Opinion are sufficiently progressed by the Bid Submission Date to ensure that upon appointment as Preferred Bidder, finalisation of the outstanding Key Environmental Consents and the Other Environmental Consents will not delay Commercial Close, Financial Close or implementation of the Project;

- 15.4.2. satisfy the Stellenbosch Municipality that if any of the Key Environmental Consents which have been secured by the Bid Submission Date are subject to conditions, the Bidder is in a position to comply with such conditions. In this regard, the Stellenbosch Municipality reserves the right to consider these conditions and determine, in its sole discretion, whether the Bidder is in a position to comply with such conditions within the applicable time-frames, and if it determines that the Bidder is not in such position, the Stellenbosch Municipality will consider the Bidder non-compliant with Environmental Criterion 1; and
- 15.4.3. provide a statement confirming that the Legal Opinion was obtained from a legal practitioner meeting the criteria in clause 12.7. Sample wording for such a statement is included in Appendix 13 (*Declaration of Bidder*) of the RFP.

15.5. The Stellenbosch Municipality reserves the right to:

- 15.5.1. request the Bidder, its legal Advisor or the legal practitioner(s) who prepared the Legal Opinion to submit any of the underlying documents referred to in the Legal Opinion and/or relating to the Environmental Consents, at any stage of its evaluation of the Bid Response or the time-period between appointment as Preferred Bidder and Commercial Close; and
- 15.5.2. request clarity from the Bidder's legal Advisors or the legal practitioner(s) who prepared the Legal Opinion on any aspect of the Legal Opinion or the Environmental Consents.

16. **FINANCIAL CRITERIA**

16.1. Financial Criterion 1 – Experience in raising Debt

- 16.1.1. Where a Bidder proposes funding the Project using Debt, the Bidder is required to provide details of their experience in raising debt, with reference to a minimum of 3 (three) and up to 10 (ten) examples of IPP energy projects where the projects listed have reached Financial Close and are in construction or operation.
- 16.1.2. A Bidder may only detail IPP energy projects where the Bidder or one of the Members of the Bidder consortium:
 - 16.1.2.1. has played a significant role in the project development and a leading role in the debt-raising process to date, and will retain the same role in the Project; or
 - 16.1.2.2. is an owner of the project (or signatory to the project's joint development agreement or equivalent).

16.1.3. In order to demonstrate compliance with the requirements of Financial Criterion 1, a Bidder must:

16.1.3.1. satisfy the Stellenbosch Municipality that it has debt-raising experience in respect of at least 3 (three) IPP energy projects where the projects listed have reached Financial Close and are in construction or operation, and where the Bidder or a Member of the Bidder consortium played a significant role in the project development and a leading role in the debt-raising process, and will retain the same role in the Project, or is an owner of the project (or signatory to the project's joint development agreement or equivalent); and

16.1.3.2. provide the following supporting documents demonstrating its experience in raising Debt:

16.1.3.2.1. a completed Financial Returnable: Raising Debt, the form of which is included as Appendix 21 (*Financial Returnable Schedule F1-F2*) of the RFP; and

16.1.3.2.2. evidence supporting the Bidder's debt-raising experience, which may include copies of letters from the funding institutions the Bidder has named, which provide confirmation of the debt raised and the terms thereof, and/or confirmation letters from third parties that support the Bidder's successful debt-raising experience.

16.1.4. The details of the Bidder's debt-raising experience, referred to in clause 16.1.1 above, must be concise, verifiable and specific.

16.2. Financial Criterion 2 – Experience in raising Equity Finance

16.2.1. Where a Bidder or Member of a Bidder consortium proposes raising Equity Finance from a third-party financier or Financial Institution for the Project, the Bidder or Member is required to provide details of their experience in raising equity finance, with reference to a minimum of three and up to 10 (ten) examples of projects where they have successfully raised equity funding.

16.2.2. A Bidder or Member of a Bidder consortium which does not propose to use Equity Finance from a third party financier or Financial Institutions for the Project is not required to provide details of its experience in this regard.

- 16.2.3. A Bidder may only provide details of projects where the Bidder or Member which proposes to raise Equity Finance from such third parties or Financial Institutions for the Project:
 - 16.2.3.1. has successfully raised equity funding for capital investments; and
 - 16.2.3.2. was the beneficiary and primary fund-raiser of the equity funding raised in the listed projects.
- 16.2.4. In order to demonstrate compliance with the requirements of Financial Criterion 2, a Bidder must:
 - 16.2.4.1. satisfy the Stellenbosch Municipality that the Bidder or Member of a Bidder consortium which proposes to raise Equity Finance from third parties or Financial Institutions for the Project has experience in successfully raising equity finance, in respect of at least 3 (three) projects, for capital investments and was the beneficiary and primary fund-raiser of the equity funding raised in the listed projects; and
 - 16.2.4.2. provide the following supporting documents demonstrating their experience in raising funding of a similar nature to the Equity Finance required for the Project:
 - 16.2.4.2.1. a completed Financial Returnable: Raising Equity, the form of which is included as Appendix 21 (*Financial Returnable Schedule F1-F2*) of the RFP; and
 - 16.2.4.2.2. evidence supporting the Bidder's equity funding experience, which may include copies of letters from the funding institutions the Bidder has named, which provide confirmation of the equity funding actually raised and the terms thereof, and/or confirmation letters from third parties that support the Bidder's successful fund-raising experience.
- 16.2.5. The details of the Bidder's equity funding experience, referred to in clause 16.2.1 above, must be concise, verifiable and specific.

16.3. Financial Criterion 3 – Financial Model and Forecast Cash Flow Waterfall

- 16.3.1. A Bidder is required to prepare a Financial Model for the Project, in order to demonstrate the methodology applied to calculate the Price.
- 16.3.2. A Bidder is further required to complete Appendix 22 (*Financial Returnable Schedule F3 - Template 1a and Template 1b*) of the RFP, linked to, and as an output of, the Bidder's Financial Model. Appendix 22 (*Financial Returnable Schedule F3 - Template 1a and Template 1b*) must:
 - 16.3.2.1. be denominated in Rand millions, in nominal terms;
 - 16.3.2.2. be at an annual resolution (each period must be one year, though not necessarily a calendar year);
 - 16.3.2.3. include both the Construction Measurement Period and the Operating Period, to the end of the term of the PPA;
 - 16.3.2.4. in the case of Template 1a (for Solar PV) show the nominal Price and the MWhs sold in each period, at the top of the sheet;
 - 16.3.2.5. in the case of Template 1b (for BESS) show the nominal Price, the Energy Output in kWh sold, the Contracted Capacity and the RTE in each period;
 - 16.3.2.6. show the IRR;
 - 16.3.2.7. show the estimated total funding requirement for the Project, including the total construction cost and other Project costs (such as interest during construction and/or other finance costs), in Rands as at Financial Close;
 - 16.3.2.8. provide a simple average total annual cost of operations and maintenance of the Facility (Rand terms), including but not limited to the cost of an operations and/or maintenance contract and those costs that are not related to or included in an operations and/or maintenance contract, such as insurance and overheads;
 - 16.3.2.9. show the start and end dates of each 12 (twelve) month period;
 - 16.3.2.10. include all estimated key Project cash flows, such as:
 - 16.3.2.10.1. revenues;

- 16.3.2.10.2. operating expenses;
- 16.3.2.10.3. working capital adjustments;
- 16.3.2.10.4. Capital Expenditure;
- 16.3.2.10.5. funding (Debt);
- 16.3.2.10.6. funding (Equity Finance, broken down by Shareholder);
- 16.3.2.10.7. taxation;
- 16.3.2.10.8. reserve accounts;
- 16.3.2.10.9. interest payments;
- 16.3.2.10.10. Debt repayments; and
- 16.3.2.10.11. cash flows to Shareholders;
- 16.3.2.11. for each Shareholder whose shareholding is financed by another person, a breakdown per period of:
 - 16.3.2.11.1. cash flows used to fund the Project Capital Expenditure;
 - 16.3.2.11.2. cash flows received from the Project;
 - 16.3.2.11.3. interest (or equivalent) payments made;
 - 16.3.2.11.4. Debt repayments (or equivalent) made;
 - 16.3.2.11.5. remaining Debt balance (or equivalent); and
 - 16.3.2.11.6. cash flows received by the Shareholder.
- 16.3.3. A Bidder is also required to complete Appendix 22 (*Financial Returnable Schedule F3 – Templates 2, 3, 4, 5 and 7*), which includes information pertaining to Capital Expenditure, Debt funding arrangements, technical information, intended B-BBEE funding arrangements and Issues.
- 16.3.4. Appendix 22 (*Financial Returnable Schedule F3 – Templates 6, 8, and 9*) is used for calculation purposes and should not be altered.

- 16.3.5. A Bidder is required to submit its fully functional Financial Model in Excel, unlocked format.
- 16.3.6. A Bidder is required to insert and link the completed Appendix 22 (*Financial Returnable Schedule F3*), where specified in Appendix 22 (*Financial Returnable Schedule F3*), to its Financial Model.
- 16.3.7. In order to demonstrate compliance with the requirements of Financial Criterion 3, a Bidder must submit, in its Bid Response, a Financial Model which meets all of the requirements set out in paragraphs 16.3.2 to 16.3.6 above.

16.4. Financial Criterion 4 – Price

- 16.4.1. Bidders are required to provide their proposed Price for Commercial Energy or Energy Output / Deemed Energy, as the case may be, to be delivered through the applicable Technology, as outlined below:
 - 16.4.1.1. Solar PV - the Bidder must provide the Price as at the Base Date, on the basis of a single tariff in Rand per kWh for Commercial Energy;
 - 16.4.1.2. BESS - the Bidder must provide the Price as at the Base Date, on the basis of a single tariff in Rand per kWh for Energy Output and Deemed Energy.
- 16.4.2. Bidders are required to submit their Price in Appendix 34 (*Pricing Schedule Solar PV*) for Solar PV, and in Appendix 35 (*Pricing Schedule BESS*) for BESS. The Price submitted in Appendix 34 (*Pricing Schedule Solar PV*) or Appendix 35 (*Pricing Schedule BESS*), as applicable, must agree to the Price specified in Appendix 22 (*Financial Returnable Schedule F3 - Template 1a and Template 1b*), where the Solar PV Price is identified in cell H31 of Appendix 22 (*Financial Returnable Schedule F3 - Template 1a*) and the BESS Price is identified in cell H29 of Appendix 22 (*Financial Returnable Schedule F3 - Template 1b*). In the event that the Price stated in Appendix 34 (*Pricing Schedule Solar PV*) or Appendix 35 (*Pricing Schedule BESS*), as applicable, does not agree to the Price specified in Appendix 22 (*Financial Returnable Schedule F3 - Template 1a and Template 1b*), the Price specified in Appendix 22 (*Financial Returnable Schedule F3 - Template 1a and Template 1b*) will be taken as the Price offered by the Bidder, for purposes of evaluation by the Stellenbosch Municipality.
- 16.4.3. The Price must be all inclusive of the Bidder's costs, and include the Bidder's cost of connection of the Unit/s and/or Facility (as applicable) to the Distribution System, which cost must be separately shown in the Financial Model.

16.4.4. In order to calculate the Price, a Bidder must use the following assumptions:

16.4.4.1. Timing

16.4.4.1.1. Financial Close shall be achieved, and the Project execution shall start, on the Financial Close date. The Bidder should provide the Scheduled COD for the Facility, and take account of the Scheduled COD timing.

16.4.4.2. In respect of Solar PV - Curtailment

16.4.4.2.1. The Buyer will purchase Energy Output up to the Contracted Capacity.

16.4.4.2.2. The Buyer will retain the option to purchase Energy Output in excess of the Contracted Capacity, but will not be obliged to purchase such.

16.4.4.3. Indexation

16.4.4.3.1. A Bidder's Price will escalate annually at CPI, on the anniversary of the Base Date. For purposes of submitting the Bidder's Price in the Bid Response, escalation must be assumed to be 5%, calculated on 1 July each year.

16.4.4.3.2. The first Price escalation date is assumed to be 1 July 2026, or 1 July in the year following the Base Date.

16.4.4.4. For the avoidance of doubt, the Price should not consider time of use, season or any other variable.

16.4.4.5. The only adjustment made to the Price shall be the annual escalation as described above, which adjustment shall take place on 1 July each year during the Term.

16.4.4.6. Foreign Exchange Rates

16.4.4.6.1. A Bidder is required to utilise the foreign exchange rates provided in Appendix 22 (*Financial Returnable*

Schedule F3 – Template 7), and these are not to be altered by the Bidder for Bid Response purposes.

- 16.4.4.6.2. These rates are, for the purpose of calculating the Price, to be assumed as constant from the date of RFP issue, onwards.
- 16.4.4.6.3. Bidders must not consider foreign exchange rate movement risk (between the date on which the rates provided in accordance with clause 16.4.4.6.1 were extracted, and the date of Commercial Close) when calculating the Price.
- 16.4.4.7. Interest forward curves
 - 16.4.4.7.1. A Bidder is required to utilise the interest rate data provided in Appendix 22 (*Financial Returnable Schedule F3 – Template 7*) without alteration, for Bid Response purposes.
- 16.4.4.8. Taxation
 - 16.4.4.8.1. The Bidder is responsible for obtaining their own advice on applicable taxes, customs, duties, etc, and must take account of these in its Financial Model.
- 16.4.4.9. All Inclusive
 - 16.4.4.9.1. All Project costs (including maintenance, site security, etc) will be recovered through the Price and not in terms of any additional charges or levies.
 - 16.4.4.9.2. For the avoidance of doubt, the Bidder's Price must include all of the costs of and associated with grid connection.
- 16.4.4.10. Decommissioning
 - 16.4.4.10.1. The Decommissioning Costs will be for the sole account of the Bidder, and the Decommissioning Costs in the Financial Model must be aligned to the Bidder's Decommissioning Financial Plan submitted in response to Legal Criterion 4 - Decommissioning.

- 16.4.5. Bidders are required to submit their Evaluation Price calculated in Appendix 22 (*Financial Returnable Schedule F3 - Template 1a and Template 1b*), where the Solar PV Evaluation Price is identified in cell H31 of Appendix 22 (*Financial Returnable Schedule F3 - Template 1a*) and the BESS Evaluation Price is identified in cell H75 of Appendix 22 (*Financial Returnable Schedule F3 - Template 1b*), which Evaluation Price should be determined in accordance with the methodology set out in clause 16.4.6 for Solar PV, and clause 16.4.7 for BESS.
- 16.4.6. In respect of Solar PV, the Evaluation Price will be the Price as at the Base Date, on the basis of a single tariff in Rand per kWh for Commercial Energy, as submitted by the Bidder in response to clause 16.4.2 of this RFP.
- 16.4.7. In respect of BESS, the Evaluation Price will be calculated using the information submitted by the Bidder in Appendix 22 (*Financial Returnable Schedule F3 - Template 1b*), and will be determined as per the methodology below:
- 16.4.7.1. The methodology for calculation of the BESS Evaluation Price is based on the payment structure described in Schedule 9 (*Calculation of Payments*) of Appendix 16 (*BESS PPA*).
- 16.4.7.2. The impact of a Bidder's RTE will be fully taken into account for the purposes of determining the BESS Evaluation Price.
- 16.4.7.3. Annual Cycles equal to **624** will be used for the purposes of determining the BESS Evaluation Price.
- 16.4.7.4. A 10% Eskom tariff escalation per annum in respect of the Energy Input cost is assumed, for purposes of determining the BESS Evaluation Price.
- 16.4.7.5. A Bidder is required to populate the Price, Contracted Capacity and RTE in each Contract Year, in Appendix 22 (*Financial Returnable Schedule F3 - Template 1b*), which will calculate the cost to the Buyer. The NPV of the cost will be divided by the total projected BESS Energy Output over the PPA term to arrive at a unitised Evaluation Price (Rand per kWh; rounded to four decimals).
- 16.4.7.6. The RTE and Contracted Capacity specified in Appendix 22 (*Financial Returnable Schedule F3 - Template 1b*) must agree to the completed Appendix 27 (*BR1 - Technical Information*), provided in

response to the requirements of clause 17 (*Technical Criteria*) and completed Appendix 35 (*Pricing Schedule BESS*) of this RFP.

16.5. Financial Criterion 5 – Project Funding Arrangements

16.5.1. Funding Plan

16.5.1.1. A Bidder must provide a detailed funding plan for raising the required Equity Finance and Debt (including mezzanine facilities), for the Project to achieve Financial Close.

16.5.1.2. The funding plan must to the extent applicable provide evidence of existing funding to advance the Project, including all permitting and grid connection requirements.

16.5.2. Debt considerations

16.5.2.1. Bidders are not restricted in how they fund the Project, however, any Debt raised may not have recourse to the Stellenbosch Municipality except to the extent allowed for in the PPA and Direct Agreement.

16.5.2.2. Bidders are strongly encouraged to optimise their funding structure for the Project. However, the RFP does not require firm commitments from Lenders at the Bid Submission Date; rather, it is anticipated that Preferred Bidders will finalise their capital structure in the period leading up to Financial Close.

16.5.2.3. In this respect, Lenders' term sheets and the identification of Lender(s) in the Bid Response will not be binding upon Preferred Bidders. For the avoidance of doubt, however, there will be no adjustment to the Price in the event of a change in Debt and Equity Finance terms or Lenders after the Bid Submission Date.

16.5.2.4. A Bidder must specify in the funding plan whether the Debt required for the Project will comprise Project Finance or Corporate Finance.

16.5.2.5. For each provider of Project Finance as specified in the Bidder's Financial Model, a Bidder must provide the relevant preliminary credit approved Project Finance term sheets as issued by the Lender, on the Lender's letterhead. For avoidance of doubt, the Financial Model must accurately reflect the term sheets.

16.5.2.6. At a minimum, the preliminary credit approved Project Finance term sheets must include:

- 16.5.2.6.1. maximum Debt size and gearing ratio;
- 16.5.2.6.2. seniority and drawdown order;
- 16.5.2.6.3. repayment period;
- 16.5.2.6.4. interest rates, and margins (including statutory cost, etc), together with interest hedging requirements;
- 16.5.2.6.5. fees;
- 16.5.2.6.6. required minimum coverage ratios (and the energy generation basis for those, such as P50/75/90); and
- 16.5.2.6.7. other Lender requirements, such as, but not limited to, reserve accounts.

16.5.2.7. Bidders which anticipate re-financing the Project during the PPA term should note in their funding plan the key expected terms of such re-financing.

16.5.2.8. For each provider of Corporate Finance as specified in the Bidder's Financial Model, a Bidder must provide the relevant terms anticipated, together with a short rationale for the terms.

16.5.2.9. For avoidance of doubt, the Financial Model must accurately reflect the Corporate Finance terms.

16.5.3. Equity Finance considerations

16.5.3.1. Bidders must provide a clear written explanation of their intended approach to raise the required Equity Finance for the Project.

16.5.3.2. Bidders must clearly name the ultimate sources of the Equity Finance (which must be congruent with the Project structure diagram submitted in the Bid Response), and their ability to raise such Equity Finance.

16.5.3.3. Bidders must provide approved Equity Finance term sheets with the Bid Response. A single common term sheet for and signed by all

Members is acceptable, or individual term sheets from and signed by each Member are also acceptable.

- 16.5.4. In order to demonstrate compliance with the requirements of Financial Criterion 5, a Bidder must submit, in its Bid Response, a funding plan, and preliminary credit approved Project Finance term sheets and Equity Finance term sheets which meet all of the requirements set out in clauses 16.5.1 to 16.5.3 above.

17. TECHNICAL CRITERIA

17.1. Solar PV

17.1.1. Technical Criterion 1 – Technical Information

- 17.1.1.1. The Bidder is required to submit a completed Appendix 23 (*TR1 - Technical Information*) providing the required technical information in respect of the proposed Solar PV Project.
- 17.1.1.2. If the Bidder's Solar PV Project comprises multiple Units, the Bidder is required to submit a completed Appendix 23 (*TR1 - Technical Information*) for each Unit.

17.1.2. Technical Criterion 2 – IPP Experience

- 17.1.2.1. The Bidder is required to demonstrate experience in developing and/or constructing Solar PV projects, providing a minimum of three Solar PV reference projects that have reached commercial operation. The minimum project size for each of the reference projects is 3 MWp.
- 17.1.2.2. The Bidder must only detail projects where the Bidder or one of the Bidder's consortium Members is either:
- 17.1.2.2.1. an owner of the project (or signatory to the project's joint development agreement or equivalent); or
 - 17.1.2.2.2. the primary EPC contractor responsible for the construction of the project. To demonstrate compliance with the requirements of Technical Criterion 2, the Bidder must provide a completed Appendix 24 (*TR2 - IPP Experience*), indicating that it has the requisite project experience.

17.1.3. Technical Criterion 3 – Technical Compliance

- 17.1.3.1. The Bidder's DC/AC Ratio and Contracted Capacity as submitted in Appendix 23 (*TR1 - Technical Information*) (including for multiple TR1 submissions) must fall within the maximum and minimum limits stated in clause 4.2 (*STMIPPPP Scope and Key Features*) of the RFP.
- 17.1.3.2. The Bidder must submit a signed letter as part of the technical returnables in its Bid Response, which states that the Project will comply with the technical codes and standards as provided in Schedule 1 (*Details of Project and Facility*) of the Solar PV PPA.

17.1.4. Technical Criterion 4 – P50 and P90 Energy Forecasts

- 17.1.4.1. The Bidder is required to submit:
 - 17.1.4.1.1. a detailed energy forecast report that must clearly state and justify all assumptions made to estimate the P50 and P90 energy forecasts at the Delivery Point/s (**"Energy Forecast Report"**); and
 - 17.1.4.1.2. completed P50 and P90 energy forecasts at the Delivery Point/s, showing an hourly and monthly distribution for Year 1, as well as the 20 Year energy forecast, in the templates provided in Appendix 25 (*TR4 - Energy Forecast*) to the RFP.
- 17.1.4.2. Where a Bidder intends to evacuate power at more than one Delivery Point, the Bidder is required to submit a completed Appendix 25 (*TR4 - Energy Forecast*) for each of the Delivery Points.
- 17.1.4.3. The Energy Forecast Report must include a simulation of the proposed design using a suitable and reputable software package such as PVsyst, and provide details of the simulated production of the Solar PV plant.
- 17.1.4.4. The Energy Forecast Report must clearly state and justify all assumptions made to estimate energy sales at the Delivery Point, including but not limited to:
 - 17.1.4.4.1. horizontal and in plane irradiation;
 - 17.1.4.4.2. performance ratio;

- 17.1.4.4.3. temperature losses;
 - 17.1.4.4.4. low irradiance behaviour;
 - 17.1.4.4.5. inverter losses;
 - 17.1.4.4.6. DC, AC and evacuation line cable losses;
 - 17.1.4.4.7. transformer losses;
 - 17.1.4.4.8. dust and shading losses;
 - 17.1.4.4.9. availability of the Facility;
 - 17.1.4.4.10. grid availability (must not be lower than 98% per annum unless an acceptable justification is given);
and
 - 17.1.4.4.11. solar module degradation.
- 17.1.4.5. The Bidder must, for purposes of preparation of the Energy Forecast Report, use at least 10 (ten) years of solar data taken from 1 (one) or more of the following sources, noting that where a weighted combination of sources is used, each source must cover a period of at least 10 (ten) years:
- 17.1.4.5.1. Meteonorm v7 or updated version;
 - 17.1.4.5.2. IrSOLaV;
 - 17.1.4.5.3. 3TIER-Vaisala;
 - 17.1.4.5.4. SolarGIS;
 - 17.1.4.5.5. HelioClim-3; and
 - 17.1.4.5.6. any other source of long-term satellite derived data, subject to the provision of a validation study that acknowledges that it utilises local ground measurements from adequately maintained meteorological stations.
- 17.1.4.6. The Bidder must acknowledge in the Energy Forecast Report that the P50 and P90 energy forecasts have taken into account the

Contracted Capacity and that it will curtail power export above the Contracted Capacity.

- 17.1.4.7. The Energy Forecast Report must be based on the same technical solution (same manufacturer, model, number and ratings of modules and inverters) as presented in Appendix 23 (*TR1 - Technical Information*).

17.1.5. Technical Criterion 5 – Project Schedule to Commercial Operation Date

- 17.1.5.1. The Bidder is required to provide a Project schedule at a weekly resolution, showing key activities, lead times, dependencies and milestones from the Project development phase up to the Commercial Operation Date ("**Project Schedule**"). The Project Schedule is to be submitted in .pdf format.

- 17.1.5.2. The Project Schedule must also include:

17.1.5.2.1. any Environmental Consents and other permits required for the Project including timelines to obtain such Environmental Consents or other permits that are required for the Project and not already granted by the Bid Submission Date; and

17.1.5.2.2. lead times for the procurement and delivery of Key Equipment, such as modules, inverters and transformers.

- 17.1.5.3. Additionally, in order to ensure consistency and to allow for easier recording of key dates, it is required that all key dates be specified in the table provided in Appendix 26 (*TR5 - Project Schedule*). The following key dates are to be included:

17.1.5.3.1. Commercial Close;

17.1.5.3.2. Financial Close;

17.1.5.3.3. grid connection date;

17.1.5.3.4. testing completion; and

17.1.5.3.5. Commercial Operation Date.

17.1.5.4. The Commercial Operation Date for the Project, as stated in the Project Schedule, shall be no later than the date specified in the table in clause 7.2 (*Procurement Schedule*) of the RFP.

17.1.5.5. To demonstrate compliance with the requirements of Technical Criterion 5, a Bidder must provide a Project Schedule and a completed Appendix 26 (*TR5 - Project Schedule*) which both meet the requirements as stipulated in this Technical Criterion 5.

17.1.6. Technical Criterion 6 – Grid Connection

17.1.6.1. The Bidder is required, in Appendix 23 (*TR1 - Technical Information*) to state the Delivery Point for the Facility (in the case of a Facility comprising only one Unit), or for each Unit (in the case of a Facility comprising more than one Unit).

17.1.6.2. Bidders can only elect to connect their Facility and/or Unit (as applicable) to the nominated Delivery Point options provided in Appendix 36 (*Electrical Networks and Distribution Connection Works*).

17.1.6.3. The Bidder must submit a signed letter as part of the technical returnables in its Bid Response, stating that it acknowledges that it will Construct, and upon completion hand over to the Distributor, the Distribution Connection Works (as detailed in Appendix 36 (*Electrical Networks and Distribution Connection Works*)), which are required to connect the Facility and/or Unit (as applicable) at each of the nominated Delivery Points, at its sole risk and cost.

17.1.6.4. The Bidder must submit a signed letter as part of the technical returnables in its Bid Response, stating that the Project is able to comply with the applicable Grid Codes. Any deviation in terms of compliance, should be clearly stated in the Bid Response, and the Bidder must provide signed confirmation for any exemptions granted by the relevant Responsible Authority.

17.2. BESS

17.2.1. Technical Criterion 1 – Technical Information

- 17.2.1.1. The Bidder is required to submit a completed Appendix 27 (*BR1 - Technical Information*) providing the required technical information in respect of the proposed BESS Project.

17.2.2. Technical Criterion 2 – IPP Experience

- 17.2.2.1. The Bidder is required to demonstrate experience in developing and/or constructing BESS projects, providing a minimum of two BESS reference projects that have reached commercial operation. The minimum project size for each of the reference projects is 0.5MW/1MWh.
- 17.2.2.2. The Bidder must only detail projects where the Bidder or one of the Bidder's consortium Members is either:
 - 17.2.2.2.1. an owner of the project (or signatory to the project's joint development agreement or equivalent); or
 - 17.2.2.2.2. the primary EPC contractor responsible for the construction of the project.
- 17.2.2.3. To demonstrate compliance with the requirements of Technical Criterion 2, the Bidder must provide a completed Appendix 28 (*BR2 - IPP Experience*).

17.2.3. Technical Criterion 3 – EPC Contractor Experience

- 17.2.3.1. The Bidder is required to provide details and the experience record of the EPC Contractor which will be employed to engineer, procure, construct and commission the BESS Project. Noting that the Bidder may not have made its final selection of the EPC Contractor at the Bid Submission Date, Bidders shall provide details of a minimum of one and a maximum of three EPC Contractors in their Bid Response.
- 17.2.3.2. The Bidder shall demonstrate the proposed EPC Contractors' experience in engineering, procuring, constructing and commissioning BESS projects, by providing a minimum of two BESS project references that have reached commercial operation. The minimum project size for each of the reference projects must be 0.5MW/1MWh.
- 17.2.3.3. The Bidder and the EPC Contractor may be the same entity, e.g. in the case of vertically integrated IPP/EPC Contractor entities.

- 17.2.3.4. A Preferred Bidder may request the Stellenbosch Municipality to employ an alternative EPC Contractor, following designation as Preferred Bidder. Any alternative EPC Contractor proposed by the Preferred Bidder must meet the same experience requirements as set out in clause 17.2.3.2, and the change in Bidder structure will have to be approved by the Stellenbosch Municipality.
- 17.2.3.5. To demonstrate compliance with the requirements of Technical Criterion 3, the Bidder must provide a completed Appendix 29 (*BR3 - EPC Experience*).

17.2.4. Technical Criterion 4 – Technical Compliance

- 17.2.4.1. The Bidder's Contracted Capacity at COD, and RTE at COD, as submitted in Appendix 27 (*BR1 - Technical Information*) must comply with the requirements stated in clause 4.2 (*STMIPPPP Scope and Key Features*) of the RFP.
- 17.2.4.2. The Bidder must submit a signed letter as part of the technical returnables in its Bid Response, which states that the Project will comply with the Performance Requirements as detailed in Appendix 16 (*BESS PPA*), at Schedule 11 (*Performance Requirements*).

17.2.5. Technical Criterion 5 – Project Schedule to Commercial Operation

- 17.2.5.1. The Bidder is required to provide a Project Schedule at a weekly resolution, showing key activities, lead times, dependencies and milestones from the Project development phase up to Commercial Operation Date. The Project Schedule is to be submitted in .pdf format.
- 17.2.5.2. The Project Schedule must include:
 - 17.2.5.2.1. any Environmental Consents and other permits required for the Project, including expected timelines to obtain such Environmental Consents or other permits that are required for the Project and not already granted by the Bid Submission Date;
 - 17.2.5.2.2. lead times for the procurement and delivery of Key Equipment; and

17.2.5.2.3. key dates, including but not limited to those specified in clause 17.2.5.3 below.

17.2.5.3. Additionally, in order to ensure consistency and to allow for easier recording of key dates, it is required that all key dates be specified by the Bidder in the table provided in Appendix 30 (*BR5 - Project Schedule*). The following key dates are to be included:

17.2.5.3.1. Commercial Close;

17.2.5.3.2. Financial Close;

17.2.5.3.3. grid connection date;

17.2.5.3.4. testing completion; and

17.2.5.3.5. Commercial Operation Date.

17.2.5.4. The Commercial Operation Date for the Project, as stated in the Project Schedule, shall be no later than the date specified in the table in clause 7.2 (*Procurement Schedule*) of the RFP.

17.2.5.5. To demonstrate compliance with the requirements of Technical Criterion 5, a Bidder must provide a completed Project Schedule and a completed Appendix 30 (*BR5 - Project Schedule*).

17.2.6. Technical Criterion 6 – Grid Connection

17.2.6.1. The Bidder is required in Appendix 27 (*BR1 - Technical Information*) to state the Delivery Point for the Facility (in the case of a Facility comprising only one Unit), or for each Unit (in the case of a Facility comprising more than one Unit).

17.2.6.2. Bidders can only elect to connect their Facility and/or Unit (as applicable) to the nominated Delivery Point options provided in Appendix 36 (*Electrical Networks and Distribution Connection Works*).

17.2.6.3. The Bidder must submit a signed letter as part of the technical returnables in its Bid Response, stating that it acknowledges that it will Construct, and upon completion hand over to the Distributor, the Distribution Connection Works (as detailed in Appendix 36 (*Electrical Networks and Distribution Connection Works*)), which are required to

connect the Facility and/or Unit (as applicable) at each of the nominated Delivery Points, at its sole risk and cost.

- 17.2.6.4. The Bidder must submit a signed letter as part of the technical returnables in its Bid Response, stating that the Project is able to comply with the applicable Grid Codes. Any deviation in terms of compliance, should be clearly stated in the Bid Response, and the Bidder must provide signed confirmation for any exemptions granted by the relevant Responsible Authority.

18. **FUNCTIONALITY EVALUATION**

- 18.1. The Stellenbosch Municipality's evaluation of the Bidders' responses to the Functionality Criteria will be on the basis of whether or not the relevant Bidder has responded satisfactorily, in the Stellenbosch Municipality's sole discretion, to the requirements of each Functionality Criterion applicable to the Technology, as stipulated in clauses 13 (*Legal Criteria*), 14 (*Land Acquisition and Use Criteria*), 15 (*Environmental Consent Criteria*), 16 (*Financial Criteria*), and 17 (*Technical Criteria*).
- 18.2. Accordingly, the evaluation shall be on the basis that the relevant Bidder has either passed or failed the requirements of each Functionality Criterion applicable to the Technology.
- 18.3. A Bidder is required to pass the requirements of every Functionality Criterion applicable to the Technology, in order for its Bid Response to be deemed to be a Compliant Bid by the Stellenbosch Municipality.

STAGE 2: EVALUATION CRITERIA

19. PURPOSE AND OVERVIEW

- 19.1. The purpose of this Stage 2 of the RFP is to set out the Evaluation Criteria against which Compliant Bids will be comparatively evaluated per Technology, in the event that the Stellenbosch Municipality receives more Compliant Bids than are required to provide the maximum MW / MWh allocated to either Technology.
- 19.2. The Stellenbosch Municipality will only evaluate a Bid Response in accordance with this Stage 2 of the RFP if that Bid Response complies with clause 8 (*Instructions for Submission*) of the RFP, and meets or exceeds all of the requirements of Stage 1 of the RFP to the Stellenbosch Municipality's satisfaction, and is accordingly considered to be a Compliant Bid.
- 19.3. In the Stage 2 comparative evaluation, Compliant Bids will be scored, per Technology, in accordance with the 90:10 preference points system provided for in the PPPFA read with applicable regulations, against the following Evaluation Criteria:
 - 19.3.1. Price (clause 20 (*Points awarded for Price*) of the RFP), for which the maximum score will be 90 (ninety) points;
 - 19.3.2. for BESS only, Specific Goals (B-BBEE Contributor Status Level) (clause 21 of the RFP), for which the maximum score will be 10 (ten) points; and
 - 19.3.3. for Solar PV only, Specific Goals (B-BBEE Contributor Status Level and Locality) (clause 21 (*Points awarded for Specific Goals*) of the RFP), for which the maximum score for each will be 5 (five) points.
- 19.4. The Evaluation Criteria in this Stage 2 require the completion and submission of the following returnable forms and/or schedules, as part of the Bid Response:
 - 19.4.1. the Stellenbosch Municipality's Preference Points Claim Form provided in Appendix 31A (*MBD 6.1 Preference Points Claim Form – Solar PV*) and Appendix 31B (*MBD 6.1 Preference Points Claim Form – BESS*) of the RFP; and
 - 19.4.2. a valid B-BBEE Certificate issued by a B-BBEE Verification Agency, in respect of the Bidder; and
 - 19.4.3. a B-BBEE Verification Agency letter as referred to in clause 21.2.4 below, a template of which is provided in Appendix 32 (*B-BBEE Verification Agency letter*) of the RFP; and
 - 19.4.4. for Solar PV only, if the Bidder intends to claim points for Locality:

- 19.4.4.1. a certified copy of a municipal services or rates account from the Stellenbosch Municipality in the name of the Bidder or applicable Member, dated within 3 months prior to the Bid Submission Date; or
- 19.4.4.2. a certified copy of a currently valid lease agreement in the name of the Bidder or applicable Member; or
- 19.4.4.3. a sworn affidavit confirming that the Bidder or applicable Member has business premises within the area of jurisdiction of the Stellenbosch Municipality, and explaining why the Bidder cannot produce a municipal account or lease agreement as proof thereof; and
- 19.4.5. Job Creation declaration for the Construction Measurement Period and the Operating Period, respectively, the form of which is provided at Appendix 33 (*Job Creation Returnable*) of the RFP; and
- 19.4.6. the Pricing Schedule provided in Appendix 34 (*Pricing Schedule: Solar PV*) or Appendix 35 (*Pricing Schedule: BESS*) (as applicable) of the RFP.
- 19.5. Compliant Bids will, after being scored for Price and Specific Goals, then be ranked according to score, in each Technology. The Bidders whose Bid Responses rank the highest in each Technology may, in the Stellenbosch Municipality's sole discretion and subject to the provisions of clauses 9.1.4, 9.2 and 9.3 of the RFP, be considered for appointment as Preferred Bidders on such terms and conditions as the Stellenbosch Municipality may determine.
- 19.6. Bidders must respond to each and every relevant requirement in this Stage 2, and submit the accompanying forms and schedules, and provide comprehensive responses and information in respect of each such requirement, in order to be eligible to score points for Price and Specific Goals.

20. POINTS AWARDED FOR PRICE

- 20.1. Compliant Bids will be scored for Price, out of 90 (ninety) points.
- 20.2. For each Compliant Bid received, the points for Price shall be calculated with reference to the Bidder's Evaluation Price, as provided in its Bid Response in accordance with the requirements of clause 16.4 (*Functionality Criterion 4 – Price*) under Stage 1 of the RFP.
- 20.3. The Bidder's Price score will be determined as follows:

$$P_s = 90 * (1 - ((P_t - P_{min})/P_{min}))$$

Where:

Ps = points scored for the Bid Response under consideration;

Pt = Evaluation Price of Bid Response under consideration;

Pmin = the lowest Evaluation Price offered for Bid Responses in the relevant Technology.

20.4. For example, if the lowest Evaluation Price offered in the relevant Technology is R1.100/kWh, then in respect of the Price score:

20.4.1. a Bid Response with an Evaluation Price of R1.100/kWh will score 90 out of 90;

20.4.2. a Bid Response with an Evaluation Price of R1.400/kWh will score $90 * (1 - ((1.400 - 1.100)/1.100)) = 65,45$ out of 90;

20.4.3. a Bid Response with an Evaluation Price of R2.200/kWh will score $90 * (1 - ((2.200 - 1.100)/1.100)) = 0$ out of 90.

21. POINTS AWARDED FOR SPECIFIC GOALS

21.1. Compliant Bids will be scored for Specific Goals out of 10 (ten) points.

21.2. A valid B-BBEE Certificate issued by a B-BBEE Verification Agency is required as evidence of the B-BBEE Contributor Status Level of the Bidder. In this regard Bidders must take note as follows:

21.2.1. A B-BBEE Exempted Micro Enterprise (EME) / Qualifying Small Enterprise (QSE) sworn affidavit will not be accepted as compliance with the requirement to supply a valid B-BBEE Certificate.

21.2.2. Bidders must refer to the B-BBEE Codes of Good Practice, 2013 (as amended) for the measurement framework for unincorporated consortia / joint ventures.

21.2.3. Preferred Bidders are required to reach Financial Close with the same Black People ownership structure as declared in their Bid Responses, except to the extent otherwise approved in writing by the Stellenbosch Municipality in accordance with this RFP and applicable Laws.

21.2.4. Bidders are required to submit a letter from a B-BBEE Verification Agency, which tabulates the Black People shareholding in the Bidder, and in which the name and percentage ownership of each Shareholder is declared, to the ultimate natural person shareholder or beneficiary, as the case may be. A template B-

BBEE Verification Agency letter is provided in Appendix 32 (*B-BBEE Verification Agency letter*).

- 21.3. A Bidder's failure to submit proof of B-BBEE Contributor Status Level in its Bid Response will be interpreted to mean that preference points for B-BBEE Contributor Status Level are not claimed.
- 21.4. For Solar PV only, supporting evidence that the business premises of the Bidder or a Member is situated in the area of jurisdiction of the Stellenbosch Municipality, in the form described in clause 19.4.4 of this RFP, must also be submitted in order to claim preference points for Locality.
- 21.5. A Bidder's failure to submit proof of Locality in its Bid Response, will be interpreted to mean that preference points for Locality are not claimed.

22. **OVERALL SCORING, OBJECTIVE CRITERIA WHICH MAY BE APPLIED AND APPOINTMENT AS PREFERRED BIDDER**

- 22.1. Within each Technology, the points scored by a Bidder for Price (out of 90 (ninety)) will be added to the points scored by that Bidder for Specific Goals (out of 10 (ten)), to determine the total points (scored out of 100 (one hundred)) earned by a Bidder in respect of a Bid Response.
- 22.2. Bidders will, for each Technology, be ranked based on the total points scored in respect of their Bid Response, calculated in accordance with clause 22.1 above.
- 22.3. Stellenbosch Municipality reserves the right to apply the objective criterion described below, to justify appointment of one or more Bidders which are not the highest scoring Bidders as Preferred Bidders, provided that all Bidders appointed as Preferred Bidders meet the Stellenbosch Municipality's requirements regarding Value for Money.
- 22.4. The objective criterion which may be applied by the Stellenbosch Municipality relates to the status of the Bidder's required Key Environmental Consents and Other Environmental Consents, at the Bid Submission Date or at such later date, prior to appointment of Preferred Bidders, as the Stellenbosch Municipality may determine by notice to all Bidders. To this end, the Stellenbosch Municipality may elect to select as Preferred Bidders, above those which scored higher, Compliant Bids which:
 - 22.4.1. do not require an environmental authorisation for their Project, in terms of NEMA; or
 - 22.4.2. have secured registration of their Project, in terms of the Solar EA Exemption or the BESS EA Exemption; or

- 22.4.3. are likely to secure registration of their Project, in terms of the Solar EA Exemption or the BESS EA Exemption, on the basis that they have obtained a final site sensitivity verification report in terms of either of the Solar EA Exemption or the BESS EA Exemption, confirming that the proposed Project is located entirely in areas of low or medium environmental sensitivity,¹¹ which report was prepared by a registered environmental assessment practitioner or a registered environmental scientist and signed off by the relevant specialists, all of whom must meet the requirement of regulation 13(1) of the Environmental Impact Assessment Regulations.¹²
- 22.5. The decision to appoint a particular Bidder as a Preferred Bidder will have regard to with the overall scoring achieved by that Bidder, as well as the provisions of –
- 22.5.1. clause 22.4 of the RFP describing the objective criterion which may be applied by the Stellenbosch Municipality;
- 22.5.2. clause 9.2 (*Impact of grid constraints on selection of Preferred Bidders*) of the RFP regarding the grid capacity available at the respective Delivery Points; and
- 22.5.3. clause 9.3 (*Other factors impacting selection of Preferred Bidders: Value for Money*) of the RFP regarding whether the Prices offered by the Bidders which submitted Compliant Bids offer Value for Money to the Stellenbosch Municipality.

¹¹ In determining the environmental sensitivity, the environmental specialist must consider the plant species, animal species, terrestrial biodiversity, aquatic biodiversity and agriculture.

¹² GNR. 982 of 4 December 2014.

RETURNABLE FORMS AND SCHEDULES - INDEX**GENERAL CONDITIONS OF BIDDING**

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2. Appendix 2: Invitation to Bid
3. Appendix 3: Authority to Sign Bid Form
4. Appendix 4: MBD 4 Declaration of Interest Form
5. Appendix 5: MBD 5 Declaration for Procurement above R10 Million Form
6. Appendix 6: MBD 8 Declaration of Bidder's Past Supply Chain Management Practices
7. Appendix 7: MBD 9 Certificate of Independent Bid Determination
8. Appendix 8: MBD 10 Certificate for Payment of Municipal Services
9. Appendix 9: COIDA Form
10. Appendix 10: Bid Response Checklist
11. Appendix 11: Form of Bid Guarantee
12. Appendix 12: Form of Preferred Bidder Guarantee

FUNCTIONALITY CRITERIA**Legal Criteria**

13. Appendix 13: Declaration of Bidder
14. Appendix 14: Key Staff CV
15. Appendix 15: Solar PV PPA
16. Appendix 16: BESS PPA
17. Appendix 17A: Direct Agreement – Solar PV; Appendix 17B: Direct Agreement - BESS
20. Appendix 20A: Independent Engineer Agreement – Solar PV; Appendix 20B: Independent Engineer Agreement - BESS

Financial Criteria

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- 21. Appendix 21: Financial Returnable Schedule F1-F2
- 22. Appendix 22: Financial Returnable Schedule F3
 - 22.1. Template 1a – PV Cashflow AFS FI
 - 22.2. Template 1b – BESS Cashflow AFS FI
 - 22.3. Template 2 – Capex appendix
 - 22.4. Template 3 – Debt funding appendix
 - 22.5. Template 4 – Technical appendix
 - 22.6. Template 5 – BEE appendix
 - 22.7. Template 6 – Macro-economic inputs
 - 22.8. Template 7 - Issues
 - 22.9. Template 8 – Megaflex Gen NLA
 - 22.10. Template 9 – Megaflex LA

Technical Criteria

- 23. Appendix 23: TR1 – Technical Information
- 24. Appendix 24: TR2 – IPP Experience
- 25. Appendix 25: TR4 – Energy Forecast
- 26. Appendix 26: TR5 – Project Schedule
- 27. Appendix 27: BR1 – Technical Information
- 28. Appendix 28: BR2 – IPP Experience
- 29. Appendix 29: BR3 – EPC Experience

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30. Appendix 30: BR5 – Project Schedule

EVALUATION CRITERIA

31. Appendix 31A: MBD 6.1 – Preference Points Claim Form – Solar PV; Appendix 31B: MBD 6.1 – Preference Points Claim Form – BESS
32. Appendix 32: B-BBEE Verification Agency letter
33. Appendix 33: Job Creation Returnable
34. Appendix 34: Pricing Schedule Solar PV
35. Appendix 35: Pricing Schedule BESS

OTHER

36. Appendix 36: Electrical Networks and Distribution Connection Works