

Request for Proposal (RFP) reference number	MWP1797CX
Issue date	08 December 2022
Submission date and time	15 December 2022 at 10h00
RFP validity period	18 months from the submission date and time
RFPs are to be delivered to the following address on the stipulated closing date and time	Eskom Holdings SOC Limited Tender Office Megawatt Park (Retail Centre) 1 Maxwell Drive Sunninghill 2157

Dear Sir/Madam

REQUEST FOR PROPOSAL: INVITATION TO SUBMIT A PROPOSAL THAT WILL PROVIDE ESKOM WITH LEGAL SERVICES RELATED TO A SENIOR UNSECURED TERM LOAN FACILITY AGREEMENT.

Please take note that this is a confidential request and all information, including this request for proposal ("RFP"), should be treated as such. You are therefore prohibited from discussing or divulging the existence or contents of this RFP or any other information relating to this RFP to any third party without our prior written consent.

1. DEFINITIONS

"B-BBEE Act"	the Broad-Based Black Economic Empowerment Act No. 53 of 2003
"Tenderer"	any legal entity or consortium that submits responses to this RFP as per procurement procedures
"RFP Response"	any reply submitted by a Tenderer in response to the requirements of this invitation
" Submission Date"	the date identified as the RFP Response Submission Date
"Eskom"	Eskom Holdings SOC Ltd, registration number 2002/015527/30, as incorporated pursuant to the Eskom Conversion Act No. 13 of 2001
"PFMA"	the Public Finance Management Act No. 1 of 1999
"Preferential Procurement Policy Framework Act" or "PPPFA"	the Preferential Procurement Policy Framework Act No. 5 of 2000

2. OBJECTIVE

Eskom's Funding Plan for financial years (FY) 2022/23 to 2026/27 seeks to diversify funding sources and execute cost effective funding at acceptable risk levels. The execution of the Funding Plan requires sizeable funding solutions that can provide diversification and longer tenors at reduced finance costs. Eskom has therefore, assessed the viability of a senior unsecured term loan facility agreement that would enable Eskom to further enhance its Borrowing Plan. The transaction will include the execution of the senior unsecured term loan facility of approximately US\$500 million, as well as a ZAR hedging arrangement to hedge associated foreign exchange and interest rate risks. Both the term loan facility and the ZAR hedging arrangement are expected to be governed by English law and to benefit from an irrevocable and unconditional guarantee from the National Treasury of the Republic of South Africa.

This is an open invitation to tender and the objective of the RFP is to solicit offers from credible Legal institution(s), Firms or companies to provide Legal Services for a senior unsecured term loan facility agreement.

3. ELIGIBLE TENDERERS

Tenderers must be registered legal services institution, offering legal services relating to international and domestic capital markets, corporate and investment banking, advisory, Treasury related international law, South African law, and financial law, capital raising or any other treasury related services.

Tenderers are deemed **ineligible** to submit a proposal if they have the nationality of a country on any international sanctions list. A Tenderer shall be deemed to have the nationality of a country if it has the status of a national or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country.

4. CONFLICT OF INTEREST

A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. Tenderers must submit a form, see Annexure B, stating that none of its personnel have any involvement or interest in Eskom and any of its subsidiaries and likewise no Eskom personnel have any involvement or interest in the Tenderer's business with the response to this document or influence the decisions of Eskom during the bidding process.

A Tenderer may also be considered to have a conflict of interest with one or more parties in the RFP process, if they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the proposal of another Tenderer.

Alternatively, the bidder must disclose **ALL** such information in its response submission containing sufficient disclosure regarding any interests that may result in an actual or potential conflict of interest. Where any potential or actual conflict of interest arises after the submission of the proposal or during the term of the potential mandate, the Tenderer shall be obliged to immediately notify Eskom thereof in writing. Note that Eskom reserves the right to disqualify a Tenderer or terminate the services as service provider if there is, in the opinion of Eskom, any actual or perceived conflict of interest.

5. COSTS OF TENDERING

The Tenderer shall bear all costs related to the preparation and submission of their RFP responses. Eskom shall in no way be responsible or liable for any of these costs regardless of the conduct or outcome of the procurement process.

6. SCOPE OF REQUIREMENT

Eskom is inviting credible Legal institution(s) and companies to provide Eskom with the following scope of work customary to a senior unsecured term loan facility agreement:

- Negotiating and reviewing of financial documentation
- Drafting of all the relevant Transaction Documents
- Delivery of English and / or South African law opinions and coordination with Chief Law Advisor office for delivery of in-house opinion from the guarantor
- Assistance in coordinating and attendance at a telephonic due diligence session
- Ensuring, on South African counsel team side, all relevant internal authorizations and external approvals are in place
- Assistance in preparation and fulfilment of the required Conditions Precedents

7. MANDATORY PROPOSAL RESPONSES

The RFP response should cover all the criteria stipulated in the attached Annexure A and must be a maximum of 20 pages, Arial font size 11. The Tenderer must submit the following:

- one (1) original, and four (4) copies of the original response,
- signed integrity declaration form,
- original or certified copy of B-BBEE verification certificate,

Failure to submit the original response, associated copies and integrity declaration form will disqualify your submission. Failure to submit B-BBEE verification certificates will not result in disqualification but will impact the scoring.

An electronic copy of your proposal must also be sent to Sincedile Shweni and Sibusiso Mbili by e-mail on ShweniS@eskom.co.za and MbiliS@eskom.co.za before 10:00 am on **the submission date**. Please also note that **hard copies** must also be submitted in the Tender Box for a tender to qualify as a valid proposal on the closing date and NOT only the e-mailed copy.

8. EVALUATION CRITERIA

Responses to cover the criteria in Annexure A will be scored out of 90. B-BBEE status will be scored out of 10 in accordance with PPPFA. Tenderers will be ranked by applying the preferential point scoring based on the 90/10 principle.

What is the depth and experience (years and number of transactions) of the legal team that will assist Eskom with regards to the senior unsecured term loan facility agreement? - Please provide CVs and supporting documentation.

Bidders are expected to demonstrate and illustrate (counts towards 70% of technical score):

1. In depth expertise and specialised knowledge of international and domestic Banking and Finance Law, and specifically to senior unsecured term loan facility agreements and hedging agreements. This is to be illustrated by providing details and specifications of where at least one of the members of the intended team has been the project lead on at least three projects or matters dealing with senior unsecured term loan facility agreements in excess of R6 billion per project and provide detailed information on the extent and depth of the level of services provided (number of transactions).
2. Demonstration of knowledge of structured hedging activities, including but not limited to set-offs, with the value in excess of US\$100million per transaction. Prior experience of at least 3 structured transactions where the underlying debt was linked to the corresponding derivative hedge(s).
3. In depth knowledge of English law and Wales legal system by at least one of the team members and in-depth knowledge of South African law by at least one of the team members (years of experience).

Bidders are expected to provide experience in relation to Government Guaranteed senior unsecured term loan facility agreements in South Africa - Provide list of such transactions undertaken for clients (counts towards 20% of technical score).

Bidders are expected to summarise the legal and documentation timelines and responsible parties (counts towards 10% of technical score).

Failure to provide this information will lead to disqualification and the tenderer will not be evaluated further without any clarification. The minimum percentage to be achieved to proceed to the next stage of evaluation is 70%.

9. LODGING OF PROPOSALS

Your proposal titled “**SENIOR UNSECURED TERM LOAN FACILITY**” must be sent by email to: shwenis@eskom.co.za and MbiliS@eskom.co.za **before 10:00 am on** the submission date.

Please take note that proposals may be submitted before the closing date. Late proposals will not be accepted and will be returned to the sender.

10. DISCUSSIONS

Eskom reserves the right to call upon a prospective Tenderer to discuss its proposal in more detail as and when deemed necessary.

Short listed candidates should expect that on short notice, the core implementation team will be required to attend a one (1) hour clarification meeting during which thirty (30) minutes will be dedicated to the presentation of the proposal followed by a thirty (30) minutes question and answer session.

11. QUERIES/CLARIFICATION

Should there be questions/clarification or queries regarding this RFP please contact at all times the following Eskom representatives listed below. Please note that correspondence should only be in writing by email.

- **Name:** Sincedile Shweni
Email: shwenis@eskom.co.za
- **Name:** Sibusiso Mbili
Email: MbiliS@eskom.co.za

Questions will not be responded to two (2) business days before the Submission Date.

12. IMPORTANT NOTICES

Even though Eskom has exercised all efforts in good faith to prepare the information contained in this document, neither it nor any of its directors, partners, employees, sub-contractors, intermediaries, or agents, provide any assurances or guarantees, explicit or implied, in relation to this RFP. No representation or warranty, express or implied, is given by Eskom, or any of its respective directors, partners, employees, sub-contractors, intermediaries, or agents as to the accuracy or completeness of any of the contents of this RFP.

By issuing this RFP, Eskom does not undertake any obligation to provide any further information, or to correct any inaccuracies in this proposal, or to correct any omissions, which

become known at any time. Any costs and expenses incurred by the persons who replied to this RFP, or by their agents or advisers, will be the sole responsibility of such persons and Eskom does not undertake to cover such costs.

This enquiry may be cancelled by Eskom at any time prior to deciding on it, if it is not deemed necessary to continue with the procurement process due to a substantial change in circumstances, or if public interest and welfare dictate such.

Eskom reserves the right to accept or reject any RFP Response, and to cancel the RFP and reject all replies prior to the announcement of the successful Tenderers.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R. Vaughan', written over a light blue circular stamp.

Richard Vaughan

GENERAL MANAGER, TREASURY

Date: 8 December 2022

ANNEXURE A

Evaluation Criteria	Weighting
Firm Capability and Experience	100 %
<p>Summarise the legal and documentation timelines and responsible parties.</p> <ul style="list-style-type: none"> - Nothing provided – 0% of 10% - List provided – 50% of 10% - List and timelines provided – 75% of 10% - List, timelines, and responsible parties provided – 100% of 10% 	10%
<p>What is the depth and experience (years and number of transactions) of the legal team that will assist Eskom with regards to a senior unsecured term loan facility agreement? - Please provide CVs and supporting documentation. Bidders are expected to provide:</p> <ul style="list-style-type: none"> • In depth expert and specialised knowledge of international and domestic Banking and Finance Law, and specifically to senior unsecured term loan facility agreements and hedging agreements illustrated by providing details and specifications of where at least one of the members of the intended team had been the project lead on at least three projects or matters dealing with senior unsecured term loan facility agreements in excess of R6 billion per project and provide detailed information on the extent and depth of the level of services provided (number of transactions). • Demonstration of knowledge of structured hedging activities, including but not limited to set-offs, with the value in excess of US\$100million per transaction. Prior experience of at least 3 structured transactions where the underlying debt was linked to the corresponding derivative hedge(s). Both above criteria count towards 50% <p>Number of projects for the term loan facility (in excess of R6 billion per project) and the hedging agreements (in excess of US\$100million per transaction)</p> <ul style="list-style-type: none"> - 3 projects – 70% of 50% - 4 – 6 projects – 80% of 50% - 7 – 9 projects – 90% of 50% - 10 and more projects – 100% of 50% <ul style="list-style-type: none"> • Bidders are required to illustrate an in-depth knowledge by at least one of the team members of English law and Wales legal system, in 	70%

addition to South African law (years of experience). Counts towards 20%.	
<p>Experience in relation to Government Guaranteed senior unsecured term loan facility agreements in South Africa – Provide list of such transaction undertaken for clients.</p> <p>Number of projects</p> <ul style="list-style-type: none"> - 1 project – 20% of 20% - 2 projects 40% of 20% - 3 projects 60% of 20% - 4 projects 80% of 20% - 5 and more projects 100% of 20% 	20%

Table 1: Indicative Fees of team composition

Fees	Amount (ZAR & USD)
Partner/Director (Hourly rate)	
Senior Associate (Hourly rate)	
Associate (Hourly rate)	

ANNEXURE B

INTEGRITY DECLARATION FORM

(Form to be completed and signed by tenderer as Invitation to RFP returnable)

1. DECLARATION OF INTEREST

I/We understand that any natural/legal person, including employees of the State and/or those related to an Eskom employee/director (as per the definition of “related” set out hereunder), may tender to Eskom. However, in view of possible allegations of favouritism (the practice of showing favour to, or giving preference to some person/group, to the detriment of, or at the expense of another that is entitled to equal treatment or an equal opportunity), should the resulting tender, or part thereof, be awarded to such natural/legal person, as described herein, it is required that the *tenderer/s* declare such interest/relationship where: -

- the *tenderer/s* employees/directors are also employees/contractors/consultants/directors in the state or a state-owned entity.
- the *tenderer/s* employees/directors are also employees/contractors/consultants/directors of Eskom
- the *tenderer/s* employees/directors are also employees/contractors/consultants or directors in another entity together with Eskom employees/consultants/contractors/directors
- the *legal person/s (including its employees/contractors/directors/members/shareholders)* on whose behalf the tender documents are signed, is in some other way “related” to an Eskom employee/contractor/consultant/director involved in the tender evaluation/tender adjudication/tender negotiation. “Related” meaning that: -
 - an individual is related to another individual or they are married, or live together in a relationship similar to marriage;
 - or are separated by no more than two degrees of natural or adopted consanguinity or affinity;
 - an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with the definition of “control” (as per Companies Act section 2(1)); and

• **a juristic person is “related” to another juristic person if: -**

- (1) either of them directly/indirectly controls the other, or the business of the other, as determined in accordance with the definition of “control” (as per Companies Act section 2(1));
 - (2) either is a subsidiary of the other; or
 - (3) a person directly/indirectly controls each of them, or the business of each of them, as determined in accordance with the definition of “control”
- the *tenderer/s* and one or more of the *tenderers* in this tendering/RFP process have a controlling partner in common, or a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender/proposal of another tenderer, or influence the decisions of Eskom regarding this bidding process;

To give effect to the provisions above, please complete the table hereunder with all required information.

Full Name & Capacity/ Position within tenderer (e.g. employee/Director/member/ owner/shareholder)	Confirm and provide details (including employee number) if you are a State/State owned entity employee/contractor/ director	Full Names & Capacity/Position of Eskom employee/ director/ consultant and details of the relationship or interest (marital/ familial/personal/ financial etc.)	To your knowledge is this person involved in the evaluation/ adjudication/ negotiation of tenders

1. If any employee/director/member/shareholder/owner of Tenderer/s is also currently employed by Eskom, state whether this has been declared and whether there is authorisation(Y/N) to undertake remunerative work outside public sector employment, and attach proof to this declaration. _____
2. Do the tenderer/s and other tenderer in this tendering/RFP process share a controlling partner or have any relationship with each other, directly or through common third parties? (Y/N) If yes, attach proof to this declaration. _____

I declare that I have read and understood the provisions of the Integrity declaration form, that all information furnished herein is correct, that it is understood that the Tenderer's proposal may be rejected, and that Eskom will act against the Tenderer should any aspect of this declaration prove to be false.

Signature:	
Designation and capacity in which signing:	
Date:	

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