



Risk Mitigation Independent Power Producer Procurement Programme (RMIPPPP)

Implementation Agreement

25 September 2020

...”it (REIPPPP) has already established a flagship public-private partnership model for South Africa, and indeed the rest of Africa, and in the process is helping alleviate Eskom’s current power crisis while also reducing greenhouse gas emissions.”

- Enabling Renewable Energy in South Africa: Assessing the REIPPPP, WWF, August 2014



mineral resources
& energy
Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA



national treasury
Department:
National Treasury
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IPP Programme - 10 years of Empowering Change



Presentation Outline

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2. Term and Development Fee
3. Government Support
4. Termination for Seller default
5. Variation for Natural Gas or Liquefied Natural Gas
6. Changes in Control and Black Equity
7. Rehabilitation Trust
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10. Economic Development Performance Penalties



Implementation Agreement

- Purpose
- The Department of Mineral Resources and Energy (Department) is the designated Procurer in terms of the Section 34 of ERA Determination made by the Minister.
- The purpose of the Implementation Agreement (IA) is to record the contractual relationship between the Department and a Preferred Bidder which then becomes the Seller.
- The Minister also issues the Guarantee in terms of the PFMA with the concurrence of the Minister of Finance.
- The IA also record the ED Obligations on which the Bidder has been selected as the Preferred Bidder.



Term and Development Fee

- Term of the IA is from Effective / Signature date to the date of termination of the PPA in accordance with its terms (20 years) or termination in terms of Clause 11 of the IA
- Development Fee is 2% of the Total Project Cost as defined in the IA





Government Support

- Government support continues to be applicable for the RMIPPPP
- The Department will stand behind any payments in terms of the PPA by the Buyer which are due and payable and after compliance with the steps set out in the IA remain unpaid, will be paid by the Department



Termination for Seller default

- The Department shall be entitled to terminate this Agreement:
 - for failure by the Seller to comply with its obligations in clause 2 (Development Fee);
 - if the Seller fails to comply with any of its obligations under clause 14.3.2 and or 14.9 (General Seller Undertakings) and or clause 18 (Rehabilitation Trust);
 - if any of the warranties in clause 25.1 (Seller Warranties) fails, at any time during the existence of this Agreement, to be true and correct in all material respects and the Seller fails to remedy, cure or correct that untruth and incorrectness within a period of one hundred and twenty (120) days of such warranty failing to be true and correct in all material respects;
 - if the Seller fails to issue a Commencement of Construction Confirmation Form to the Buyer in accordance with the terms of clause 3.6.1 of the PPA within 30 (thirty) days of the Effective Date of this Agreement;
 - in accordance with the provisions of clause 11.2 of this Agreement where in the reconciliation of the Economic Development Performance Penalties in accordance with paragraph 6 of Schedule 2 (Economic Development Obligations), the Seller incurs Economic Development Performance Penalties, in any Contract Year, which in value are equal to or greater than fifty percent (50%) of the PConstruction Measurement Period or POperating Measurement Period, as the case may be, in the formula referred to in paragraph 6.1 of Schedule 2 (Economic Development Obligations).



Variation for Natural Gas or Liquefied Natural Gas

- If natural gas or liquefied natural gas (**LNG**) becomes available or is reasonably likely to become available for utilisation in the Project, the Department shall have the right to propose a variation to this Agreement and the PPA by serving a written notice on the Seller indicating which natural gas or LNG sources the Department requires the Seller to consider for utilisation as a fuel source for the Project (**Department Variation Proposal**)
- Procedure in terms of Clause 15 of the IA must be followed and the Parties must agree on the variation
- Variation can also be initiated by the Seller



Changes in Control and Black Equity

- Changes in Control will require the approval of the Department
- Any changes in equity within 3 years requires Departmental approval
- Any changes to equity held by Black People always requires approval of the Department
- Provision made in the secondary market (5 years of COD) for Recognised Acquirer which includes:
 - a Black Enterprise;
 - a private equity fund whose structure and ownership meet the relevant criteria for treatment as ownership by Black People in terms of the B-BBEE Codes;
 - a pension fund that is established for the benefit of Government employees or employees of state-owned entities or other statutory bodies;
 - a fund that is established or exists in terms of legislation for general public benefit; and
 - any other entity or category of entities designated as a Recognised Acquirer in writing by the Department.



Rehabilitation Trust

- Rehabilitation Trust or Rehabilitation Bank Guarantee required to ensure decommissioning at the end of the term
- All regulatory and environmental requirements must be covered and sufficient funds must be available to cover all activities required to decommission and rehabilitate the facility sites, together the project site





Schedule 2

- Recordal of Economic Development Proposal submitted by the Preferred Bidder/Seller
- Monitoring and reporting will be done at “Project” level
- Commitment will be recorded based on proposal pursuant to Part B Volume 5 of the RFP



Notable Inclusions

- Stringent and improved reporting requirements to monitor compliance effectively
- Accumulation of Enterprise Development and Socio-Economic Development Contributions
- Recognition of Enterprise Development, Socio-Economic Development and Skills Development contributions in the Construction Measurement Period
- Recognition of Administration cost:
 - Seller 10% of Enterprise Development, Socio-Economic Development and Skills Development Contributions.
 - Department 5% of Enterprise Development, Socio-Economic Development and Skills Development Contributions for contract management and monitoring.
- Economic Development Monitoring Notes



Economic Development Performance Penalties

- Monetary penalty based on calculation in accordance with formulas
 - End of Construction Measurement Period,
 - End of each Contract Year in Operating Measurement Period.
- Time bars for referral to dispute resolution (10 Business Days after Notice)
- All termination thresholds set at 80% translating into calculation of penalties
- Failure to make payment of penalties will result in termination



Thank You

