



energy

Department:
Energy
REPUBLIC OF SOUTH AFRICA

To: Christopher Aberdein
Longyuan Mulilo Green Energy De Aar 2 North Consortium
chris@mulilo.com

PER EMAIL

Dear Sir / Madam

THE REPUBLIC OF SOUTH AFRICA - DEPARTMENT OF ENERGY

TENDER NO: DOE/003/13/14

FOR: NEW POWER GENERATION FACILITIES UNDER THE IPP PROCUREMENT PROGRAMME

1. We refer to the Request for Qualification and Proposals for New Generation Capacity under the IPP Procurement Programme reissued for the Third Bid Submission Date on 3 May 2013 ("**RFP**") under tender number DOE/003/13/14, as well as your Bid Response submitted on 19 August 2013, and your response to the clarification request issued on 16 September 2013.
2. Capitalised terms not otherwise defined herein will have the meaning given to them in the RFP.
3. **Appointment**
 - 3.1 Following the evaluation of the Bid Responses submitted on the Third Bid Submission Date of the IPP Procurement Programme, we wish to inform you that the Department has selected the Longyuan Mulilo Green Energy De Aar 2 North Consortium comprising Mulilo Wind Enterprises Proprietary Limited, Longyuan South Africa Renewables Proprietary Limited, Mulilo De Aar 2 North Wind Community Proprietary Limited and Mulilo De Aar 2 South

Wind Community Proprietary Limited t/a Ule Energy (the "**Longyuan Mulilo Consortium**") as a Preferred Bidder in respect of the Longyuan Mulilo De Aar 2 North Wind Energy Facility (138.96 MW capacity), located in the Northern Cape Province, for the supply of Onshore Wind Renewable Energy.

- 3.2 The Department accordingly hereby notifies the Longyuan Mulilo Consortium of its appointment as a Preferred Bidder, in respect of the Third Bid Submission Phase of the IPP Procurement Programme.
- 3.3 In order for the appointment of the Longyuan Mulilo Consortium as a Preferred Bidder to take effect, this letter must be returned to the Project Officer, counter-signed by the duly authorised representative of the Lead Member of the Longyuan Mulilo Consortium, by no later than close of business on 5 November 2013.
- 3.4 We draw your attention to the provisions of the RFP which continues to apply to the Longyuan Mulilo Consortium as a Preferred Bidder, notwithstanding anything that may have been stated in the Bid Response of the Longyuan Mulilo Consortium.
- 3.5 In particular, the Department wishes to confirm that:
 - 3.5.1 in terms of paragraph 16.3 of Part A of the RFP, the draft PPA, Implementation Agreement, Direct Agreement, the Connection Agreements and the Connection Direct Agreement issued with the RFP ("Transaction Agreements") are not negotiable, notwithstanding anything stated by any Member, Lender or Contractor of the Longyuan Mulilo Consortium in its Bid Response. In addition, the Longyuan Mulilo Consortium, its Members, Lenders and Contractors may not raise any comments in respect of or negotiate any of the terms and conditions contained in the Transaction Agreements, save for the raising of any comments to address errors or provide information in relation to the execution versions of the Transaction Agreements;
 - 3.5.2 the execution versions of the Transaction Agreements will be provided by the Department on the basis of the information supplied by the Longyuan Mulilo Consortium in its Bid Response, and shall be the basis upon which the Longyuan Mulilo Consortium shall finalise its

Project to Financial Close. In particular, please note that the schedules to the PPA submitted by the Longyuan Mulilo Consortium in its Bid Response (pursuant to paragraph 2.2.3.3.1 of Part B of the RFP), will be used by the Department in order to finalise the PPA to be concluded between the Project Company of the Longyuan Mulilo Consortium and Eskom Holdings SOC Limited prior to Financial Close. The Department accepts no responsibility and assumes no risk for delays which may be occasioned as a result of incorrect or incomplete information provided by the Longyuan Mulilo Consortium in its Bid Response;

- 3.5.3 the Department's right to call on the Longyuan Mulilo Consortium's Preferred Bidder Guarantee in terms of and in the circumstances set out in paragraph 24.4.2 of Part A of the RFP, is in no way limited by or subject to any of the conditions contained in the letters of support and/or term sheets submitted by the Lenders, providers of Equity Finance and/or Corporate Finance. Thus, notwithstanding all or any of the conditions to the provision of external debt, Equity Finance or Corporate Finance imposed by relevant financier in the Bid Response; the Department fully reserves its right to call on the Longyuan Mulilo Consortium's Preferred Bidder Guarantee in the event that the Longyuan Mulilo Consortium fails to reach Financial Close within the time period specified in paragraph 10 (Timetable for the IPP Procurement Programme) of Part A of the RFP in respect of the Third Bid Submission Phase, on account of the non-satisfaction of any such conditions;
- 3.5.4 the date by which Financial Close is to be achieved shall be as determined in accordance with paragraph 10 of Part A of the RFP;
- 3.5.5 there will be no upward movement in Price at Financial Close, with the sole exception of an adjustment for foreign exchange rate movements, if applicable and subject to the limits provided for in paragraph 2.5.5.3.2.4 of Part B of the RFP, read with the Longyuan Mulilo Consortium's Bid Response;

- 3.5.6 there will be no upward movement in equity IRR as a result of a movement in foreign exchange rates at Financial Close against the benchmark rates set out in the RFP;
- 3.5.7 if the foreign exchange rate at Financial Close is below the benchmark rates set out in Briefing Note 8 (May 2013 RFP) (issued pursuant to the RFP) then the Price shall be appropriately reduced to take into account the lower foreign exchange rates;
- 3.5.8 subject to clauses 3.5.5, 3.5.6 and 3.5.7 above, any changes to the Financial Model and or the Price resulting from fluctuation in foreign exchange rates must be disclosed to, agreed with and effected in conjunction with the Department;
- 3.5.9 in terms of paragraph 24.5 of Part A of the RFP, the Longyuan Mulilo Consortium will pay a Development Fee calculated as 1% of the Total Project Cost within 10 Business Days of the date of signature of the Implementation Agreement, failing which the Department may call the Longyuan Mulilo Consortium's Preferred Bidder Guarantee;
- 3.5.10 the Longyuan Mulilo Consortium's attention is drawn to the warranties relating to Success Payments in terms of clauses 23.1.14 and 23.1.15 of the Implementation Agreement;
- 3.5.11 any costs relating to interest rate and or foreign exchange hedging are at the Longyuan Mulilo Consortium's risk and there will be no subsequent impact on Price;
- 3.5.12 tax and accounting assumptions are a Preferred Bidder's risk and accordingly, there will be no impact on Price as a result of the adoption of an alternative tax or accounting treatment to that included within the Financial Model submitted as part of the Bid Response;
- 3.5.13 as indicated in paragraph 3.7 of Part C of the RFP, the commitments reflected in the Economic Development Scorecard will be migrated to the relevant portions of Schedule 2 to the Implementation Agreement (*Economic Development Obligations*); and
- 3.5.14 as indicated in paragraph 53.7 of Part A of the RFP, the Department reserves the right to seek additional information from the Longyuan

Mulilo Consortium in respect of its Bid Response as the Department may, in its sole discretion, determine, whether such information has been requested under this RFP or otherwise, and may, amongst other things, require the Bidder to provide the Department with supplementary information in respect of its Bid Response if so required by the Department.

- 3.6 In addition to the general conditions described in clause 3.5 above, the Department hereby imposes the specific conditions listed in Annexure B hereto, as conditions to the appointment of the Longyuan Mulilo Consortium as Preferred Bidder. These conditions must be met by the relevant dates specified in Annexure B, and their fulfilment should be notified to the Department in writing immediately upon completion thereof, accompanied by documentary proof of the fulfilment thereof. Non-fulfilment of any conditions by the relevant dates specified in Annexure B will entitle the Department to terminate the appointment of the Longyuan Mulilo Consortium as a Preferred Bidder and to call its Preferred Bidder Guarantee.
- 3.7 In order to ensure that the requirements of Regulation 9 of the Electricity Regulations on New Generation Capacity of 2011 are satisfied in respect of the Project, the Department reserves the right to negotiate with the Longyuan Mulilo Consortium, and your appointment as a Preferred Bidder, is subject to the Department negotiating with the Longyuan Mulilo Consortium, on whether the Project achieves value for money for the Government and the electricity consumer, as contemplated in paragraph 5.1.5 of Part A of the RFP.
- 3.8 For purposes of finalising and executing the PPA, the Department has a discretion to select either the Preferred Bidder's fully indexed Price or its partially indexed Price (each as described in paragraph 2.5 of Part B of the RFP), and will communicate with the Longyuan Mulilo Consortium in due course regarding its decision in this regard.
- 3.9 Should the Longyuan Mulilo Consortium fail to act in accordance with the requirements set out in clauses 3.5, 3.6 and 3.7 above at any time, the Department reserves the right to terminate the appointment of the Longyuan Mulilo Consortium as a Preferred Bidder and to call its Preferred Bidder Guarantee.

4. Preferred Bidder Guarantee

In terms of paragraph 24.2 of Part A of the RFP, in order for the Longyuan Mulilo Consortium to continue in the IPP Procurement Programme as a Preferred Bidder, the Longyuan Mulilo Consortium is required to lodge a Preferred Bidder Guarantee (in the form provided in Appendix H of Volume 1, Part 2 of the RFP) with the Department in an amount equal to R27 792 000 (twenty seven million seven hundred and ninety two thousand] Rands) within 15 Business Days of receipt of this letter. The Bid Guarantee of the Longyuan Mulilo Consortium will be returned by the Department within 15 Business Days of delivery by the Longyuan Mulilo Consortium of its Preferred Bidder Guarantee to the Department. Should the Longyuan Mulilo Consortium fail to provide the Preferred Bidder Guarantee in accordance with the requirements in this clause 4, the Department reserves the right to terminate the appointment of the Longyuan Mulilo Consortium as a Preferred Bidder.

5. Proof of Application for Generation Licence

In accordance with paragraph 19.3 of Part A of the RFP, the Longyuan Mulilo Consortium is required to submit evidence to the Department that its generation licence application with all the required supporting documentation has been submitted to and received by NERSA within 14 days of being appointed as Preferred Bidder. The period of 14 days commences on the date on which this letter is returned to the Project Officer, counter-signed by the duly authorised representative of the Lead Member of the Longyuan Mulilo Consortium, as contemplated in clause 3.3 above. Should the Longyuan Mulilo Consortium fail to act in accordance with this clause 5, the Department reserves the right to terminate the appointment of the Longyuan Mulilo Consortium as a Preferred Bidder.

6. Eskom Confirmation

As a condition to the obtaining of Eskom Board approval of the PPA to be concluded between the Project Company of the Longyuan Mulilo Consortium and Eskom Holdings SOC Limited, the Longyuan Mulilo Consortium is required to complete the letter attached hereto as Annexure A (*Confirmation In respect of the Longyuan Mulilo Consortium's Members and Directors regarding interests in Eskom Holdings SOC Limited*), confirming both its and its Members' interests in relation to Eskom Holdings SOC Limited. This letter must be returned to the

Project Officer, signed by the duly authorised representative of the Lead Member of the Longyuan Mulilo Consortium, by no later than close of business on 5 November 2013.

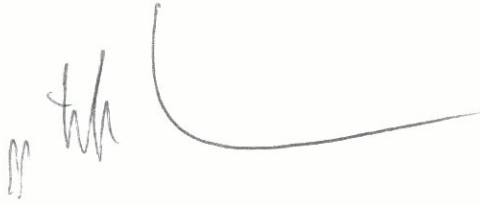
7. Payment of budget quote fee

As indicated in paragraph 10 of Part A of the RFP, the Longyuan Mulilo Consortium is required to apply for a budget quotation from the Grid Provider and to pay the relevant budget quotation fee within 14 days of being appointed as Preferred Bidder. The period of 14 days commences on the date on which this letter is returned to the Project Officer, counter-signed by the duly authorised representative of the Lead Member of the Longyuan Mulilo Consortium, as contemplated in clause 3.3 above. The Longyuan Mulilo Consortium is required to submit evidence to the Department that it has applied for a budget quote and has paid the budget quotation fee within this 14 day period. Failure to comply with this requirement will entitle the Department to terminate the appointment of the Longyuan Mulilo Consortium as a Preferred Bidder and to call its Preferred Bidder Guarantee.

8. Change Requests

- 8.1 The Department draws your attention to paragraphs 20.3 to 20.8 (inclusive) of Part A of the RFP in respect of changes to any aspect of a Bid Response of a Preferred Bidder.
- 8.2 As indicated in paragraph 20.3 of Part A of the RFP, the Longyuan Mulilo Consortium is not permitted to change any aspect of its Bid Response without the prior written approval of the Department.
9. We look forward to the successful conclusion of your Project and to those interactions with the Longyuan Mulilo Consortium that are necessary, and contemplated by the RFP, for that purpose. Please note that the Department may wish to engage with you about achieving Financial Close before 30 July 2014.
10. Please confirm the acceptance by the Longyuan Mulilo Consortium of its appointment as Preferred Bidder on the terms and conditions of this letter by having a copy of it signed and returned to the Project Officer in accordance with clause 3.3 above.

Yours faithfully

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Director-General: Department of Energy

Date: 25 OCTOBER 2013

The Longyuan Mulilo Consortium hereby accepts its appointment as a Preferred Bidder in respect of the Third Bid Submission Date of the IPP Procurement Programme, and confirms its acceptance of the terms and conditions of this letter.

Signature of duly authorised
representative of THE
LONGYUAN MULILO
CONSORTIUM

Date

Name

Designation

ANNEXURE A

**CONFIRMATION IN RESPECT OF THE LONGYUAN MULILO CONSORTIUM'S
MEMBERS AND DIRECTORS REGARDING INTERESTS IN ESKOM HOLDINGS
SOC LIMITED**

Date: [●]

Department of Energy
192 Visagie Street (corner Visagie Street and Paul Kruger Street)
Pretoria
0001
South Africa

THE REPUBLIC OF SOUTH AFRICA - DEPARTMENT OF ENERGY

TENDER NO: DOE/003/13/14

**FOR: NEW POWER GENERATION FACILITIES UNDER THE IPP PROCUREMENT
PROGRAMME**

Dear Sirs

1. Being duly authorised to represent and act on behalf of [insert name of Preferred Bidder] (the "Preferred Bidder"), hereby confirms the following:
 - 1.1 No director of the Preferred Bidder is currently, nor will be at the time of signature of the PPA, a director of Eskom Holdings SOC Limited or any of its subsidiary companies, other than as detailed below:
 - 1.1.1 [insert]
 - 1.2 No director of any Member of the Preferred Bidder is currently, nor will be at the time of signature of the PPA, a director of Eskom Holdings SOC Limited or any of its subsidiary companies, other than as detailed below:
 - 1.2.1 [insert]

1.3 No director of Eskom Holdings SOC Limited nor any of its subsidiary companies currently have, nor will have at the time of signature of the PPA, a direct or indirect interest in the Preferred Bidder, other than as detailed below:

1.3.1 [insert]

Yours faithfully

Signed: _____

Name: _____

For and on behalf of [Lead Member of the Bidder or the authorised representative of a Bidder which is a Project Company]

ANNEXURE B

CONDITIONS TO APPOINTMENT

Category	RFP Reference	Condition to appointment
Environmental	Paragraphs 2.4.1.3.2, 2.4.1.3.3 and 2.4.1.3.4 of Part B Schedule 9 <i>(General Overview of Environmental and Land Use Consents)</i>	<p>The Department has noted that the circumstances in which an Integrated Water Use Licence or General Authorisation may be required (for example - without being limited to - crossing of or impact on water resources by infrastructure such as roads or cabling and impacts on wetlands, drainage lines or other pans) may not have been correctly identified in the Bid Response and/or Clarification Response.</p> <p>The Department requires the Preferred Bidder to attend a meeting, to be convened by the Department shortly, to discuss this and will thereafter require the Preferred Bidder to present the Department with a plan acceptable to the Department for dealing with these issues before Financial Close.</p>
Financial	Paragraph 2.5.2.7.2 of Part B	<p>The Preferred Bidder is advised that only the relevant portion of its proposed partially indexed Price (20%) may be indexed at the CPI rate. The remainder of the Price must stay constant. Preferred Bidder is required to resubmit its Financial Model to allow for the correct calculation of the partially indexed Price in accordance with the requirements of the RFP. Preferred Bidder is also required to submit revised Letters of Support confirming support for the Project at the adjusted nominal post tax Project IRR.</p> <p>Date by which this condition is to be fulfilled: 29 November 2013</p>
	Paragraph 5.1.4.7.2 of Part A Paragraph 2.5.5.1.4 of	<p>The Preferred Bidder is advised that at Financial Close, each Preferred Bidder's Financial Model will be adjusted to take account of changes in Capital Expenditure (excluding contingencies) resulting only from movements in applicable foreign exchange spot rates between the Bid Submission</p>

Category	RFP Reference	Condition to appointment
	Part B Paragraph 3.4.3 of Appendix R5	Date and Financial Close. The Preferred Bidder is required to resubmit its Financial Model which is updated to allow the adjustment of the Price at Financial Close to the extent permitted in the RFP. Date by which this condition is to be fulfilled: 29 November 2013