



**BUFFALO CITY  
METROPOLITAN MUNICIPALITY**

## **Public Notice**

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**SUPPLY OF BULK PHOTOVOLTAIC SOLAR GENERATED  
ELECTRICITY THROUGH A 20 YEAR POWER PURCHASE  
AGREEMENT**

***MFMA Section 33 Process***

*This document is prepared in accordance with the provisions of s33 of the MFMA for the supply of photovoltaic solar generated electricity to Buffalo City Metropolitan Municipality by Thezi Langa (Pty) Ltd*

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## **1. BACKGROUND**

Section 33 of the Act prescribes that public participation is required whenever a local authority intends signing contracts extending beyond three (3) municipal financial years in length. In such instances the Act also requires the municipality to provide background information and to write to the relevant sector departments to obtain their comments.

## **2. SECTION 33 PROCESS**

Where a contract is intended to span more than three municipal financial years, Section 33 of the Municipal Finance Management Act requires the municipality to provide background information and to invite written comment from the local community, and to write to specific government departments to obtain their comments. The City is required to initiate the public information process by advertising the matter at least 60 days prior to approving the contract.

The public invitation to comment on the Draft Power Purchasing Agreement is planned to be published on 6 July 2020 in the local media and on the metro's website.

The purpose of this document is to inform the public, certain government departments and other stakeholders, as required by the Local Government: Municipal Finance Management Act, 56 of 2003 (MFMA), of the intention of the City to award contracts for a period spanning more than three municipal financial years to the recommended service provider to provide banking services.

Where a municipality intends to award a contract to a service provider and the financial obligations to the contractor span more than three municipal financial years, it must follow a procedure set out under Section 33 of the MFMA. This Information Document sets out the requirements of Section 33 and outlines the content, objectives and estimated costs of the projects involved.

Section 33 requires as follows:

Section 33(1)(a) The municipal manager must, at least 60 days before the Council meeting where a contract is to approved, inform certain parties of the intention to award the contract by:

Section 33(1) (a) (i) Issuing an information statement summarizing the municipality's obligations and draft contract documents to the public and inviting comments and representations; and

Section 33(1)(a)(ii) Soliciting the views of –

- National and Provincial Treasury
- National Department responsible for local government
- National Department having functional responsibility related to the service being delivered.

Section 33(1)(b) The Council must prior to the award by the Municipal Manager of the contract, take into account:

Section 33(1)(b)(i) The financial obligations on the Council for each financial year of the contract;

Section 33(1)(b)(ii) The impacts of these obligations on its revenue;

Section 33(1)(b)(iii) Any comments received from the local community and other interested persons;

Section 33(1)(b)(iv) Written views and recommendations of the National and Provincial departments referred to above.

Section 33(1)(c) The Council must adopt a resolution in which it:

- Determines that it will have sufficient budget or revenue to pay for the contract;
- Approves the entire specific contract document to be awarded; and
- Authorizes the municipal manager to sign the contract.

### **3. PROPOSED POWER PURCHASING AGREEMENT**

In general terms the services to be provided cover the following:

#### **PROJECT SITE AND CONSTRUCTION**

##### **Project Site**

- i. The Facility shall be located at the area generally described as the East London Industrial Development Zone Renewable Energy Park, Berlin Area, Buffalo City Metropolitan Municipality in the Eastern Cape Province of South Africa and shall be identified as the **Thezi-Langa Solar Photovoltaic Power Generation Plant**.
- ii. Details of the Project Site, including a scale map that identifies the location of the Project Site, location of the Facility at the Project Site, diagram setting out the transmission lines and substation, interconnection facility and important ancillary facilities and the Delivery Point, are included.

- iii. All electricity infrastructure affixed to the Project Site shall be deemed the asset of the Seller in accordance with the provisions of section 24 of the Electricity Regulation Act 4 of 2006. The said electricity infrastructure shall not be subject to attachment by a creditor nor constitute security in the form of a landowner's hypothec.

### **General Construction obligations**

The Seller shall procure the construction of the Facility in accordance with:

- (a) the Construction Programme;
- (b) applicable laws, including the Consents;
- (c) any conditions stipulated in the Seller Approvals which relate to the construction of the Facility; and
- (d) the standards of a Reasonable and Prudent Operator.

The Seller shall provide or procure all plant, equipment, machinery consumables, parts, materials and services whatsoever required for the Construction of the Facility in accordance with the standards set out in this Clause 4.2 (*General Construction obligations*).

### **Use of Contractors and Subcontractors**

- i. Without limiting the Seller's liability or obligations under this Agreement, the Seller may engage Contractors and Subcontractors to perform any of its obligations under this Agreement. Any Contractors and Subcontractors engaged by the Seller to perform any portion of the Seller's obligations under this Agreement shall have all licences and registrations required to perform the services to be performed by such Subcontractor, must maintain insurance as required pursuant to Clause 22 (*Project Insurance*) and shall perform any work in accordance with applicable industry standards.
- ii. In exercising its right under this Clause 4.3 to engage Contractors and Subcontractors, the Seller shall, in accordance with its economic development obligations as stated in the award letter set forth in Schedule 12 (*Economic Development Objectives*) undertake prior consultations with the Buffalo City Development Agency

### **Buyer Inspection Visits**

- i. The Buyer shall have the right, on a recurring basis and upon not less than forty-eight (48) hours' prior written notice to the Seller to designate not more than two (2) of the Buyer's officers, employees, and representatives to visit the construction site at reasonable times for the purposes of viewing the Facility and verifying the Seller's compliance with the Construction Programme.

- ii. The Seller shall comply with all reasonable requests of the Buyer for, and assist in arranging, any such observation visits.
- iii. All persons visiting the Facility or the Site on behalf of the Buyer shall comply with the Seller's and its Contractors' generally applicable safety regulations, standards and procedures made available to such persons, shall comply with the reasonable instructions and directions of the Seller and its Contractors, and shall not interfere with or disrupt the activities of the Seller or its Contractors on the Site, including the Construction and Operation of the Facility.

#### **Progress Reports**

- i. No later than 30 (thirty) days after the expiry of each calendar quarter in the Construction Period, the Seller shall deliver to the Buyer a written report setting out the construction activities undertaken in the preceding period as well as the overall progress in the construction of the Facility with reference to all the milestones.

#### **Commercial Operation Date**

- i. Subject to any extension which may be granted in terms of this Agreement, the Seller shall use all commercially reasonable efforts to achieve the Commercial Operation Date by the Scheduled COD.
- ii. If the Seller becomes aware that, for any reason, the Commercial Operation date will not be achieved by the Scheduled COD, the Seller shall, without any unreasonable delay, notify the Buyer in writing of that fact and the measures that it ((acting as a Reasonable and Prudent Operator) will take to mitigate such delay and of the impact of such measures on its ability to achieve the Scheduled COD, upon implementing such measures.

### **TESTING AND COMMISSIONING**

#### **Connection to the System**

- i. The Seller warrants that it has entered into one Connection Agreements with the Buyer and intends to enter into a further Connection Agreement with Eskom, in the Agreed Form, on or before the Signature Date.
- ii. The Seller shall give the Buyer at least sixty (60) days' advance written notice of the date on which it anticipates it shall require, in terms of the Connection Agreements, the Facility to be connected to the System.
- iii. The Parties acknowledge that it is intended, in the Connection Agreements, that:

- (a) the Distributor shall Construct or procure the Construction of the Connection Works on the grids side of metering point. The Distributor will own and operate the network; and
- (b) the Seller shall Construct the Facility Connection Works to connect the Facility with or to the System and will be responsible for constructing connection works to the metering point.

### **Independent Engineer**

- i. The Parties have, in Schedule 8 (*List of Firms – Independent Engineer*), identified up to five (5) firms of independent consulting engineer, every one of which they approve to be appointed as the Independent Engineer for the purposes of this Agreement, and every one of which the Seller warrants:
  - (a) has at least seven (10) years professional experience as an engineer in the renewable energy industry; and
  - (b) as at the Signature Date, has not rendered services to the Seller, any of its shareholders (direct or indirect), Contractors or Lenders or any Affiliate of any of them in respect of the Project.
- ii. The Seller shall, as soon as practically possible, but in any event within twenty (20) Business Days of the Signature Date, engage with any (or all) of such firms with a view to one (1) of them being appointed as the Independent Engineer on terms substantially similar to the terms contained in the agreement set out in Schedule 9 (*Independent Engineer Agreement*).
- iii. The Seller shall keep the Buyer regularly informed of the Seller's progress towards the appointment of the Independent Engineer, and shall be responsible for arranging for the signing of the agreement when it contains all the terms and conditions that have been agreed between the Seller, the Buyer and the Independent Engineer for the appointment; and the Seller and the Buyer undertake to sign such agreement at such time.
- iv. The Independent Engineer shall be appointed at the sole cost and expense of the Seller, but shall act on behalf of, and owe a duty of care to, both the Buyer and Seller equally.
- v. Neither Party shall without the prior written consent of the other Party (such consent not to be unreasonably withheld) at any point during the Term:
  - (a) terminate or seek to amend materially the contract with the Independent Engineer; or
  - (b) appoint any other person to be the Independent Engineer. Any person appointed to replace the existing Independent Engineer, as Independent Engineer, shall be one of the other firms listed in Schedule 8 (*List of Firms – Independent Engineer*) or as agreed between the Buyer and the Seller.

- vi. If, after the Signature Date, the Independent Engineer renders services to the Seller (other than in terms of the Independent Engineer Agreement), any of its shareholders (direct or indirect), Contractors or Lenders or any Affiliate of any of them in respect of the Project, the Seller shall be obliged to notify the Buyer of this occurrence promptly on becoming aware of same and, if the Buyer so elects, the Seller shall terminate the contract with the appointed Engineer.
- vii. If the contract with the Independent Engineer is terminated at any point during the Term, a new Independent Engineer shall be appointed in accordance with this Clause 5.2 (*Independent Engineer*) from one of the firms listed in Schedule 8 (*List of Firms – Independent Engineer*) or as agreed between the Buyer and the Seller, both acting reasonably, on terms substantially similar to the terms contained in the agreement set out in Schedule 9 (*Independent Engineer Agreement*).

#### **Facility completion and commissioning**

- i. The Seller shall use all reasonable efforts to commission the Facility and to procure the issuance of the Facility Completion Form by the Independent Engineer, at its own cost and in each case in accordance with this Clause 5.3 (*Facility Completion and Commissioning*), Schedule 2 Part 1 and 2 (*Completion Milestones and Forms of Notices*), the Codes, the Transmission Agreement or the Distribution Agreement (as the case may be) and the standards of a Reasonable and Prudent Operator, so as to cause the Commercial Operation Date to fall on or before the Scheduled COD.
- ii. The Seller may, but shall not be obliged to, procure the issue of the Facility Completion Form where the resulting Achieved Capacity would be expected to be less than the Contracted Capacity. However, the Seller shall be obliged to procure the issue of the Facility Completion Form in respect of the Facility (regardless of Capacity) in order, inter alia, to achieve the Commercial Operation Date in accordance with Clause 5.5 (*Commercial Operation Date*).
- iii. The Seller shall provide the Buyer on a Monthly basis with relevant information regarding the testing and commissioning undertaken pursuant to Clause 5.3.1.

#### **Early Operating Period**

- i. The Seller may procure the issue of the Unit Completion Form by the Independent Engineer, at its own cost and in each case in accordance with this Clause 5.4 (*Early Operating Period*), in respect of each Unit (if applicable) which the Seller anticipates will generate and deliver Early Operating Energy to the Delivery Point, which notice shall be in the form of Schedule 2 Part 2 (*Unit Completion Form*).



- ii. Pursuant to Clause 5.4.1 and upon the Independent Engineer determining Unit Completion and receipt of the relevant Unit Completion Form, the Seller may in respect of such Unit issue the Notice of Commencement of Unit to the Buyer at least ten (10) Business Days before the Seller anticipates that the relevant Unit or Units will begin generation and delivery of early Operating Energy to the Delivery Point, which notice shall be in the form of Schedule 2 Part 4 (Form of Notice of Commencement of Unit).
- iii. Until 00:00 hours on the Unit Commencement Date in respect of a Unit, the Buyer shall not be obliged to purchase Early Operating Energy generated by that Unit or to pay the Early Operating Energy Price in respect of any Early Operating Energy generated by that Unit.

### **Commercial Operation Date**

- i. The Seller shall give the Buyer no less than sixty (60) days' prior written notice of its intention to issue the Notice of Commencement of Facility in the form of Schedule 2 Part 5 (*Form of Notice of Commencement of Facility*).
- ii. The Seller may not issue the Notice of Commencement of facility:
  - (a) earlier than the day before the Scheduled COD;
  - (b) until the Seller has demonstrated to the Independent Engineer that the Facility is compliant with the Codes;
  - (c) until Seller has obtained written confirmation from the Independent Engineer that the Facility complies with the Codes;
  - (d) until NERSA, or any person nominated by NERSA for such purpose, has issued to the Seller a notification of the Facility's compliance with the Codes; and
  - (e) until the Distributor has provided written confirmation to the Seller certifying that the Facility may be connected to the System for the purposes of delivering Commercial Energy.
- iii. Following compliance with Clause 5.5.1 and Clause 5.5.2 and upon the Independent Engineer ascertaining the Facility Completion and receipt of the relevant Facility Completion Form pursuant to Clause 5.3 (*Facility Completion and Commissioning*), the Seller shall issue the Notice of Commencement of Facility to the Buyer within two (2) Business Days of the delivery of the relevant Facility Completion Form, which notice shall be in the form of Schedule 2 Part 5 (*Notice of Commencement of Facility*).
- iv. If the Facility has achieved Facility Completion in terms of Clause 5.3 (*Facility Completion and Commissioning*) and the Achieved Capacity is equal to or greater than the Contracted Capacity, then:
  - (a) for the purposes of this Agreement, the power output of the Facility shall be limited to the Contracted Capacity, and only Energy Output that is

generated from the Contracted capacity shall be subject to this Agreement;

- (b) the Seller shall deliver to the Buyer a Notice of Commencement of Facility, following which the Commercial Operation Date will be the first day starting at 00:00 hours following the day upon which the Buyer receives from the Seller such Notice of Commencement of Facility; and
- (c) the Seller shall not be entitled to increase the installed Capacity of the Facility beyond the Contracted Capacity installed at the Commercial Operation date at any time in the future.

## **SALE OF ENERGY OUTPUT**

### **Sale of Energy Output**

Subject to and in accordance with the terms and conditions set out in this Agreement, during the Term:

- i. the Seller shall sell all the Early Operating Energy and Commercial Energy generated by a Unit or the Facility (as the case may be) to the Buyer at the Delivery Point, on a self-despatch basis, and subject only to the Codes and the standards of a Reasonable and Prudent Operator;
- ii. the Buyer shall pay the Early Operating Energy Payment for the Early Operating Energy and the Commercial Energy Payment for the Commercial Energy, delivered by the Seller to the Delivery Point;
- iii. the Buyer (in its capacity as system operator) or Eskom (as the case may be) shall ensure that the System is subject to the relevant Codes and the applicable Connection Agreement, in such a way that the Facility can self-despatch. The operation of the System by the System Operator or the Eskom (as the case may be) in a manner not required or permitted by the relevant Codes and/or the relevant Connection Agreement shall be dealt with as a Curtailment in terms of Clause 15 (*Consequences of a System Event*) to the extent that the Facility is prevented or hindered from being self-despatched, unless this is caused by any natural force or event or an act or omission of the Seller or a Contractor; and
- iv. Subject to Clause 15 (*Consequences of a System Event*) and Clause 16 (*Consequences of a Compensation Event*), the Buyer (in its capacity as system operator) shall pay the Deemed Energy Payment that is payable in respect of the Deemed Energy in accordance with Schedule 7 (*Deemed Energy Payment*).
- v. The Seller shall be responsible for the costs of all infrastructure to connect the generation plant to the distribution network up to the metering point of the Buyer

## **TARIFF AND OTHER CHARGES**

### **Early Operating Energy Payments**

- i. The Buyer shall pay to the Seller the Early Operating Energy Payment for all Early Operating Energy sold by the Seller and purchased by the Buyer during each Billing Period during the Early Operating Period at the Early Operating Energy Tariff.
- ii. The Early Operating Energy Price shall be R1,02 (excluding VAT) for each kWh measured at the PUC and delivered to the Delivery Point.

### **Commercial Energy Payments**

- i. The Buyer shall pay to the Seller the Commercial Energy Payment for all Commercial Energy sold by the Seller and purchased by the Buyer during each Billing Period after the Commercial Operation Date at the Commercial Energy Tariff.
- ii. The Commercial Energy Price during the first year of the Operating Period shall be R1,02 (excluding VAT) for each kWh measured at the PUC and delivered to the Delivery Point.
- iii. The price paid by the Buyer for the Commercial Energy shall escalate annually on the anniversary of the Commercial Operation Date. Such escalation shall be calculated in accordance with the Consumer Price Index as set forth in Schedule 1 Part 3 (*Energy Rates and Indexation*) or, in the event that the Consumer Price Index becomes unavailable or is discontinued or is re-based, re-weighted or re-classified, in accordance with such other index or rate as the Parties shall agree.

### **Deemed Energy Payments**

- i. The Buyer shall pay to the Seller the Deemed Energy Payment for all Deemed Energy accruing in each Billing Period calculated in terms of Clause 15 (*Consequences of a System Event*), Clause 16 (*Consequences of a Compensation Event*) and Schedule 7 (*Deemed Energy Payment*).

## **4. WHY THE CONTRACT IS PROPOSED TO EXTEND FOR TWENTY (20) YEARS**

The proposed Power Purchasing Agreement is for twenty (20) years due to the following reasons:

- The project development and construction will take between eighteen (18) and twenty-five (25) months
- The decommissioning of the project takes between nine (9) and twelve (12) months.

- The scale of investment on the project is about R1.3 billion and the project has a tenor of fourteen (14) years.
- The project life span by design is twenty (20) years.

## 5. FINANCIAL IMPLICATIONS FOR BUFFALO CITY METROPOLITAN MUNICIPALITY

Section 33 of the MFMA requires that the City's Council must be assured that contracts to be concluded for a period spanning more than three financial years will, once awarded, be financially sustainable and affordable to the City for the full period of the contracts. This implies that the services delivered by these contracts must generate sufficient income to cover costs, or alternatively, the City must make provision for deficits expected to be incurred by the contracts to be funded through other funding sources, such as from its own revenue or grants from National and Provincial spheres of government.

The financial impacts of this contract will be managed as follows:

- The contract will be funded from the operational budget and provision does exist in the current and proposed MTEF (3 year) budget for these costs.
- The proposed tariff at R1.02 kw/h is lower than the prevailing Eskom tariff to BCMM
- The proposed tariff escalation is inflationary linked
- There is a significant margin trading revenue for the BCMM in electricity for the duration of the PPA
- The PPA provides a significant new source of revenue for the BCMM
- The BCMM, through this PPA will be able to meet the auto-industry (MBSA) mandatory green energy requirements as from 1<sup>st</sup> January, 2022.

## 6. HOW TO ACCESS INFORMATION REGARDING THE MFMA S33 PROCESS

Copies of **Section 33 Explanatory Documents** and the **Draft Power Purchasing Agreement** for the proposed services are available as follows: Customer Care Centre, Ground Floor, Trust Center, Corner of Oxford and North Street, East London. From 8:00 to 16:30, Monday to Friday.

The above documents will also be available at the following Municipal and Constituency Offices and Libraries: East London Central Library, Mdantsane Library: NU2, Gonubie

Library, Cambridge Library, Greenfields Library, Beacon Bay Library and Civic Centre: King Williams Town, Constituency Offices: Gonubie Office, 24 no.5, Main Road, Gonubie- East London Office, 1<sup>st</sup> Floor, Sanlam Building, Oxford Street – Mdantsane Office, Mdantsane Mall, Highway and KWT Office, 154 Alexander Rd, KWT.

Members of the community may also access the documents on the Buffalo City website as follows:

[www.buffalocity.gov.za](http://www.buffalocity.gov.za)


## 7. WHERE TO SUBMIT YOUR COMMENTS

Written comments must be submitted on or before **6 September 2020** to:

The City Manager  
Buffalo City Metropolitan Municipality  
P. O. Box 134  
East London  
5200

<b>Hand delivered comments to:</b>  City Manager's Office 10 <sup>th</sup> Floor Trust Centre Cnr Oxford/ North End Streets East London	<b>E-mailed comments to:</b>  <b>Attention: City Manager</b>  AmandaQ@buffalocity.gov.za
<b>Faxed comments to:</b> 043 722 6126	

**ISSUED BY:**

  
A SIHLAHLA  
CITY MANAGER

**Date:** 6 July 2020