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Reference:

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Datum: 26 June 2020
Date:

OFFICE OF THE MUNICIPAL MANAGER

NOTICE LETTER TO DEPARTMENT OF MINERAL RESOURCES AND ENERGY

TO: THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL
AFFAIRS (COGTA)

The Honourable NC Dlamini-Zuma

info@cogta.gov.za

CONSIDERATION OF THE APPOINTMENT OF INOVASURE (PTY) LTD FOR THE PROCUREMENT
OF ITS ENERGY VAULT PRODUCT AS AN UNSOLICITED BID, OVER A PERIOD OF 25-YEARS

PURPOSE

1. To remind you of my letter of 20 November 2018 on the matter, addressed to the Honourable Dr Z Mkhize, to inform you of the above intention of the Kannaland Municipality and to solicit your views and recommendations in compliance with the following prescripts:
 - i. Municipal Finance Management Act, 2003 (Act 56 of 2003) – [MFMA], section 33(1), as the intended contract will exceed 3 financial years, i.e. 25 years.
 - ii. MFMA section 120(6)(c)(iii) read with Public Private Partnership Regulations of 1 April 2005 – [PPPR], Regulation 4, in consideration of the public private partnership agreement.
2. To provide you with the reasons for the intention as prescribed.
3. To explain how this process is aligned with the Public Private Partnership processes underway.
4. To give you access to the necessary documents.

BACKGROUND

5. With the intermittent and endemic shortage of lifegiving energy to the municipal area for which the Council approved a very innovative but simple, paid-for by-the-supplier, renewable energy storage and generation solution, being called the InovaSure Energy Vault project, on 9 October 2018.
6. The project entails the linking of the substation/s to the InovaSure 'Energy Vault', at InovaSure's own cost, which creates the real and substantial value for the Municipality in that, amongst other benefits, an approximate 33% increase in capacity will immediately occur. In addition, the equipment value for this process (approximately R1.2 billion per Energy Vault) will be passed onto the Municipality's balance sheet after a period of 25 years (Build Operate Transfer ['BOT']). After conversion of the relevant substation/s to include the InovaSure Energy Vault, the referenced substation/s will no longer be under pressure in terms of performance during peak periods and will be in a position to act in concert with the other InovaSure Energy Vaults and so very significantly increase their efficiency and performance capabilities. In addition, the InovaSure Energy Vault proposal further allow for the enhancing of the capabilities of the distribution network.
7. The intention is for the project to be executed as a Public Private Partnership with the support from the DBSA. The project is registered at NT under M180 and the GTAC under TASM 180.
8. For the past 19-months the Municipality embarked on extensive consultation processes inclusive of various community participation sessions to announce the intention and the project and to solicit support. The various feasibility studies were also available on the municipal website since November 2018.
9. The Municipality has now reached the point of project implementation and needs to formally procure the services.
10. As the renewable energy solution adopted by the Council is a patented product of InovaSure (Pty) Ltd, it is the intention to adopt their product solution which was submitted as an unsolicited bid.
11. Additionally, to ensure a sustainable and financially viable product solution as recommended and supported by the various feasibility studies, the project duration will be at least 25-years.
12. The following is therefore submitted in compliance with the relevant legal prescripts.

25-YEAR CONTRACT COMPLIANCE REQUIREMENTS - MFMA SECTION 33

13. MFMA, section 33(1)(a) prescribes the processes to be followed by a municipality should it enters into a contract that will impose financial obligations on the municipality beyond the three financial

years, requiring from the Municipal Manager to make public the draft contract and an information statement summarising the Municipality's obligations and invite the public to comment.

14. Attention is directed to the fact that as per the feasibility studies and confirmed commitment from Inovasure, the majority of the project risk will be carried by it and it will also take responsibility for securing funding for the majority infrastructure and capital investments for this multi-billion project.
15. The municipality's financial risk is limited to the same or less than its current exposure to ESKOM.
16. The relevant draft contract is found hereto, and your attention is specifically directed to the following clauses which deals with the responsibilities, obligations, and rights of the Municipality:

<u>2.</u>	<u>THE EMPLOYER</u>	23
<u>2.1</u>	<u>Right of Access to the Site</u>	23
<u>2.2</u>	<u>Permits, Licences or Approvals</u>	24
<u>2.3</u>	<u>Employer's Personnel</u>	Error! Bookmark not defined.
<u>2.4</u>	<u>Employer Obligations</u>	Error! Bookmark not defined.
<u>3.</u>	<u>THE EMPLOYER'S ADMINISTRATION</u>	ERROR! BOOKMARK NOT DEFINED.
<u>3.1</u>	<u>The Employer's Representative</u>	Error! Bookmark not defined.
<u>3.2</u>	<u>Other Employer's Personnel</u>	Error! Bookmark not defined.
<u>3.3</u>	<u>Delegated Persons</u>	Error! Bookmark not defined.
<u>3.4</u>	<u>Instructions</u>	Error! Bookmark not defined.
<u>3.5</u>	<u>Determinations</u>	Error! Bookmark not defined.
<u>10.</u>	<u>EMPLOYER'S TAKING OVER</u>	ERROR! BOOKMARK NOT DEFINED.
<u>10.1</u>	<u>Taking Over of the Works and Sections</u>	Error! Bookmark not defined.
<u>10.2</u>	<u>Taking Over of Parts of the Works</u>	Error! Bookmark not defined.
<u>10.3</u>	<u>Interference with Tests on Completion</u>	Error! Bookmark not defined.
<u>20.</u>	<u>TERMINATION BY EMPLOYER</u>	61
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<u>22.</u>	<u>RISK AND RESPONSIBILITY</u>	65
<u>22.1</u>	<u>Indemnities</u>	65
<u>22.2</u>	<u>Contractor's Care of the Works</u>	Error! Bookmark not defined.
<u>22.3</u>	<u>Employer's Risks</u>	Error! Bookmark not defined.

22.4 Consequences of Employer's Risks

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22.5 Intellectual and Industrial Property Rights

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22.6 Limitation of Liability

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PUBLIC PRIVATE PARTNERSHIP [PPP] ALIGNMENT

17. From the beginning it was the intention to formally register the product solution as a Public Private Partnership, and if successful, the benefit of this solution may also be shared with neighbouring municipalities.
18. On 18 April 2019 the NT GTAC team confirmed that it has no objection with the intended project and on 21 November 2019 the NT GTAC team provided the municipality with a project reference number TASM 180, which was confirmed by the National Treasury on 26 November 2019.
19. The contract attached to this notification as per MFMA section 33, is therefore the same contract provided to the relevant NT PPP-unit and GTAC on 22 March 2019 and serves as compliance with the PPPR 4(3).

RELEVANT DOCUMENTS

20. The following relevant documentation is available for perusal by visiting the municipal website at <https://www.kannaland.gov.za/inovasure-energy-project-kannaland-municipality>

and you can open the documents by clicking on the relevant link:


- (i) Project specific requirements.
- (ii) Council Resolution of 9 October 2018.
- (iii) Feasibility study of 1 November 2018 – Executive Summary.
- (iv) Feasibility study of 1 November 2018 – Part A: Introduction and interventions.
- (v) Feasibility study of 1 November 2018 – PART B: Feasibility of interventions.
- (vi) Feasibility study of 1 November 2018 – PART C: Investment and finance.
- (vii) Draft Public Private Partnership Agreement.
- (viii) Municipal advert as prescribed.
- (ix) Municipal notice as prescribed.

WAY FORWARD ACTIONS

21. Enquiries may be directed to Ms Wilmie Viljoen at email - wilmie@kannaland.gov.za or telephone - 028 551 8000.

22. Your views and recommendations within the next 30 days as from date of this correspondence will be greatly appreciated and, in the absence, thereof, we will accept that you have no objection.

Kind regards

A handwritten signature in black ink, appearing to read 'R. Stevens', with a stylized, flowing script.

Signed:
Municipal Manager: R Stevens