

Date: 10 November 2020

BID NUMBER - PROJ/2020/21/01

DESCRIPTION OF BID: THE INSETA CALLS FOR A SUITABLY QUALIFIED SERVICE PROVIDER FOR THE PROVISION OF AN OFF THE SHELF ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM, SUPPORTED & MAINTAINED OVER FOR A PERIOD OF FIVE (5) YEARS

CONSOLIDATED QUESTION AND ANSWER DOCUMENT

1. QUESTION:

Clause 10 of the Terms of Reference (Pre-Qualification Criteria)

Under 10.2 it states that the bidder must provide proof and must be an EME or QSE only (level 1 or level 2 BBBEE contributor status) will be considered (no generic companies will be considered).

In the briefing session it was said that INSETA targets EME or QSE companies with only Level 1 and Level 2 BBBEE contributor statuses, does this then indicate that EME or QSE companies with level 3 BBBEE contributor statuses and higher will be disqualified?

We are aware that under the PPPFA Regulations of 2017, INSETA are permitted to set pre-qualified criteria, but after a court ruling (3rd of November 2020 - THE SUPREME COURT OF APPEAL RULING ON THE VALIDITY OF THE PPPFA REGULATIONS OF 2017 HAS NO EFFECT ON THE B-BBEE ACT AND ITS REQUIREMENTS) this is not the case anymore.

ANSWER:

1.1 As referenced in section 47 (C) of the said judgement:

(b) It is declared that the Preferential Procurement Regulations, 2017 are inconsistent with the Preferential Procurement Policy Framework Act 5 of 2000 and are invalid.

(c) The declaration of invalidity referred to in para (b) above is suspended for a period of 12 months from the date of this order.'

1.2 Therefore, procurement processes may continue using the Preferential Procurement Regulations, 2017 until further notice.