

# **MFMA SECTION 33 PROCESS - INFORMATION STATEMENT**

**ENTERING INTO A PROJECT PREPARATORY AGREEMENT, SERVICE LEVEL AGREEMENT, LAND AVAILABILITY AGREEMENT AND POWER PURCHASE AGREEMENT WITH TRIVIRON PROJECT MANAGEMENT (PTY) LTD; BHAMBATHA PROJECTS (PTY) LTD; AND SKY77 (PTY) LTD WITH THE VISION TO “ENHANCE THE MUNICIPALITY’S SUSTAINABLE RENEWABLE ENERGY GOALS, REVENUE ENHANCEMENT, TRANSPARENT ENERGY METERING, AND THE WEL-BEING OF COMMUNITY MEMBERS THROUGH INTEGRATED ELECTRICITY REVENUE MANAGEMENT”.**

**PREPARED BY THE TRANSACTION ADVISOR - KGORA AFRIKA FUND (PTY) LTD**

**12 JANUARY 2026**

**THIS DOCUMENT IS PREPARED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 33 OF THE MFMA TO ENTER INTO A SERVICE LEVEL AGREEMENT AND POWER PURCHASE AGREEMENT BETWEEN TRIVIRON PROJECT MANAGEMENT (PTY) LTD; BHAMBATHA PROJECTS (PTY) LTD; AND SKY77 (PTY) LTD AND MARULENG LOCAL MUNICIPALITY**

## Contents

1. BACKGROUND: .....	3
2. SECTION 33 PROCESS: .....	3
3. PROJECT BACKGROUND AND PROPOSED AGREEMENTS: .....	4
4. WHY THESE AGREEMENT IS PROPOSED TO EXTEND BEYOND 3 FINANCIAL YEAR:.....	7
5. FINANCIAL IMPLICATIONS FOR THE MUNICIPALITY:.....	8
6. ACCES TO INFORMATION REGARDING THE MFMA S33 PROCESS: .....	8
7. WHERE TO SUBMIT COMMENTS:.....	8
8. NEXT STEPS: .....	9

## 1. BACKGROUND:

Section 33 of the MFMA prescribes that public participation is required whenever a local authority intends signing an agreement or contract beyond the three (3) municipal financial years in length. In such instance the MFMA also requires the Municipality to provide background information and to write to the relevant sector departments to obtain their comments.

The Maruleng Local Municipality issued a public tenders MLM/SCM/82/2024 and MLM/SCM/31/2022 in respect of renewable energy solutions for the Municipality. The Municipality has noted the proposals of each proponent and has adjudicated them in line with the Maruleng Local Municipality's internal Supply Chain Management (SCM) policies the Municipal Finance Management Act, No 56 of 2003 (MFMA).

## 2. SECTION 33 PROCESS:

Where a contract or agreement is intended to span more than three (3) municipal financial years, Section 33 of the MFMA requires the municipality to provide background information and to invite written comments from the local community and effected parties or persons and to write to government departments to obtain their comments. Maruleng Local Municipality is required to initiate the public information process by advertising the matter at least 60 days prior to approving the agreement.

The public invitation to comment on the draft **Project Preparatory Agreement, Service Level Agreement, Land Availability Agreement and Power Purchase Agreement** is planned to be published on 16 January 2026 in the local media and on the municipal website.

The purpose of this document is to inform the public and certain government departments and affected stakeholders, parties or persons, as required by the MFMA, of the intention of the Maruleng Local Municipality to enter into an agreement with the identified bidders for more than three municipal financial years.

Where a municipality intends to have an agreement with a service provider and the financial obligations span over more than three municipal financial years, it must follow procedure as set out under Sec 33 of the MFMA. This **Information Statement** sets out the requirements of Sec 33 and outlines the content, scope and objectives of the agreement involved.

Section 33 of the MFMA requires as follow:

- Section 33 (1)(a) that the Municipal Manager must, at least 60 days before the Council meeting where an agreement or contract is to be approved, inform certain parties of the intention to enter in an agreement by:
  - Section 33 (1)(a)(i) issuing an Information Statement summarizing the municipalities obligation and draft agreement documents to the public and invite 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 responsibilities related to the service being delivered.

- Section 33 (1)(b) Council must prior to the approval of the agreement, consider:
  - Section 33 (1)(b)(i) the financial obligations for each financial year of the agreement
  - Section 33 (1)(b)(ii) the impact 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 above.
- Section 33 (1)(c) Council must adopt a resolution in which it:
  - Determines that it will have sufficient budget or revenue to pay for the agreement.
  - Approves the entire agreement and
  - Authorizes the Municipal Manager to sign the agreement.

### 3. PROJECT BACKGROUND AND PROPOSED AGREEMENTS:

3.1. The main objectives of the Municipality's renewable energy goals are:

- 3.1.1. Access to renewable energy:** Securing energy from renewable sources to assist the Municipality reduce its carbon footprint and contribute to a more sustainable future.
- 3.1.2. Energy security:** Securing a reliable and predictable supply of energy, reducing the risk of disruptions caused by fluctuations in the traditional grid.
- 3.1.3. Private Investors:** The Municipality may not have the budgetary requirements for such capital intensive infrastructure developments and private investors would play a pivotal role in assisting the Municipality in attaining its renewable energy goals.
- 3.1.4. Cost predictability:** The lower tariff offering, and its annual escalations allows the municipality to budget more accurately for its energy costs and determine its revenues available for critical municipal services and infrastructure development and maintenance.
- 3.1.5. Potential cost savings:** Renewable energy sources have lower operational costs compared to traditional electricity supplies, potentially contributing to long-term savings for the municipality.
- 3.1.6. Revenue Enhancement:** Renewable energy sources have lower energy costs compared to traditional electricity suppliers, potentially contributing to robust revenue streams for the municipality.
- 3.1.7. Job creation and economic development:** Renewable energy projects can create local jobs and stimulate economic activity within Maruleng Local Municipality.

### 3.2. The Bidders' Offer to the Maruleng Local Municipality

- 3.2.1. Build, Operate, Transfer model and/or Wheeling model which would have no-cost implications on Municipal budgets throughout the various project activity cycles;
- 3.2.2. Project assumption of outstanding electricity debt obligations;

- 3.2.3. A 10% tariff benefit aimed at end Municipal -user affordability and enhancing municipal revenue through improving core revenue processes, systems, data quality, skills, and organisational structures within the investment framework in partnership with the Municipality;
- 3.2.4. The lower tariff offering, its annual escalations, smart metering solutions and revenue management programs, and rates, taxes and leasing fees allows the municipality to enhance municipal revenues.
- 3.2.5. Treasury approved 25-year power purchase agreement (PPA) with Maruleng Local Municipality where the embedded generation facility connects directly to the municipality's electricity network for distribution to municipal end-users;
- 3.2.6. Maruleng Local Municipality becomes the capital asset owner and capital asset custodian of the embedded generation facility once it has progressed through its life cycle linked to the 25-year term PPA without any financial obligation on the municipality.
- 3.2.7. Renewable energy technologies which produce alternative energy that is compatible with and least disruptive to the environment and aligns with South Africa's prioritisation of decarbonized economies to reduce greenhouse gas emissions and reach net zero emissions by 2050. This effort is part of the country's commitment to the Paris Agreement and the United Nations Framework Convention on Climate Change.
- 3.2.8. Innovative technologies that store alternative energy that is compatible with and least disruptive to the environment;
- 3.2.9. The initial renewable energy investment will act as a catalyst towards unlocking second and third-tier local economic and social investments within Maruleng Local Municipality as identified in the respective IDPs.
- 3.2.10. In terms of socio-economic development, the bidders will partner with socio-economic implementing agents to develop and implement socio-economic development high impact programs developed with and for the respective communities. This methodology ensures co-ownership and co-responsibility for the effective implementation of these second and third tier investments.
- 3.2.11. The IIO will ensure Municipal-Level Distribution Service Optimization via complex and Enterprise-Level IoT Solutions which includes:
  - Smart Metering Systems
  - Complex Energy Balancing Initiatives
  - NMD Quantification and Management Initiatives
  - Bulk Supply Validation and Optimization
  - Complex Tariff Assessment, Analysis and Adjustment Programs
  - Electricity Network Element Assessment and Maintenance

3.3. In general terms, the services that will be agreed to between the IIO and the Municipality cover the following:

**3.3.1. SERVICE LEVEL AGREEMENT, PROJECT PREPARATORY AGREEMENT AND LAND AVAILABILITY AGREEMENT**

A contract outlining the specific services the bidders will deliver to the municipality, and the standards IIO must

meet. It defines the obligations of both parties, ensuring clear expectations and performance benchmarks. This agreement is crucial for municipalities seeking to integrate renewable energy sources into their infrastructure, whether through grid integration, small-scale generation, or other renewable energy solutions.

Key Elements of a Renewable Energy SLA includes:

- 3.3.1.1. Scope of Services: Detailed description of the renewable energy services provided, including specific technologies, locations, and capacity.
- 3.3.1.2. Performance Metrics: Measurable indicators to evaluate the IIOs performance.
- 3.3.1.3. Service Levels: Defined levels of service expected from IIO, including response times, resolution times, and availability guarantees.
- 3.3.1.4. Responsibilities: Clearly defined duties and responsibilities of both the municipality and IIO.
- 3.3.1.5. Terms and Conditions: General terms and conditions of the agreement, including duration, termination clauses, and dispute resolution mechanisms.
- 3.3.1.6. Warranties and Guarantees: Information on the warranty for the equipment and the performance guarantees offered by IIO.
- 3.3.1.7. Change Management: Procedures for managing changes or modifications to the agreement.
- 3.3.1.8. Remedies for Breach: Mechanisms for addressing if IIO fails to meet the agreed-upon service levels.

### **3.3.2. POWER PURCHASE AGREEMENT**

- 3.3.2.1. The PPA is combined with a BOT agreement and/or Wheeling agreement: in addition to obligations relating to the sale and purchase of the power generated, the project company is also required to design, construct, operate and maintain the power plant in accordance with agreed specifications.
- 3.3.2.2. Sale of capacity and energy - the PPA may require the project company both to make available to the purchaser an agreed level of capacity at the power plant and deliver the energy generated in accordance with its provisions.
- 3.3.2.3. Pricing – the pricing regime in the PPA typically has two components:
  - 3.3.2.3.1. an availability or capacity charge, which is payable by the offtaker in consideration of the power plant operator making generation capacity available to the offtaker, whether or not it actually offtakes electricity from the power plant. This component is typically designed to provide a revenue floor for the project and is the primary channel through which each project proponent would recover its fixed costs (including its capital investments, financing costs and a return on equity); and
  - 3.3.2.3.2. an output charge – this is usually referenced to the volume of electricity actually delivered and is intended to cover the project company's variable costs.
- 3.3.2.4. The pricing mechanism is the primary mechanism for allocating revenue and market risk in respect of the project between the public and private sectors and is central to the private project proponent's and its lenders' assessment of the commercial viability and bankability of the project. Typically, private project proponents and lenders will require the PPA to run for a long term to guarantee investment recovery.

- 3.3.2.5. Third party sales – The PPA ensures that all capacity is available to purchasers at all times and so the PPA may include an exclusivity period during which all power produced is to be supplied to the purchaser.
- 3.3.2.6. Underperformance and delays by power producer – the PPA provides sanctions or require the project company to pay liquidated damages if it fails to deliver power as promised. Common examples include liquidated delay damages, if the construction of the project is not completed on schedule or tariff abatements where the power plant does not meet agreed performance standards during the operational phase. Private project proponents and their lenders will be concerned to ensure to limit the impact of liquidated damages on their ability to recover their capital investments and earn a return. A common sticking point is whether the project company may be required to pay liquidated damages as a result of disruptions which are not within its control.
- 3.3.2.7. Force majeure or purchaser breach of contract – the project company is typically relieved from complying with its contractual obligations (and liability to damages) for disruptions arising from force majeure events. However, the scope of force majeure relief available can often be a key negotiation point as it is a key contractual mechanism for allocating risk between the public and private sector. One common issue is to what extent a project company can obtain force majeure relief due to inability to obtain relevant government approvals. The force majeure regime is often closely linked to the change in law regime. The scope of force majeure relief may also need to be adapted to different technologies.
- 3.3.2.8. Testing regime – this should be objective and designed to confirm levels of contracted capacity, reliability and fuel efficiency or heat rate. Test results should ideally be certified by an independent engineer.
- 3.3.2.9. Termination – the PPA will need to provide for what happens on termination (whether at the end of the term of the agreement or early termination for default etc), including obligations of the power producer to hand-over assets to the government offtaker, what happens to employees of the power plant if the power plant is transferred to the offtaker on termination. The availability and calculation of an early termination payment (typically for the purchaser to buyout the power plant) will be central to the commercial viability and bankability of the project.
- 3.3.2.10. Project operation – issues typically include scheduled outages and maintenance outages, operation and maintenance, emergencies and keeping of accounts and records.
- 3.3.2.11. Change of law – PPA should address impact on tariff in the event of a change in applicable law and the mechanism for tariff adjustment. Private project proponents and their lenders will be anxious to ensure that the cash flows of the project are appropriately protected against changes in law.

#### **4. WHY THESE AGREEMENTS ARE PROPOSED TO EXTEND BEYOND 3 FINANCIAL YEAR:**

- 4.1. Investment Security: Long-term PPAs are crucial for securing financing for large-scale energy projects, especially in the renewable energy sector. Banks and investors need a long-term commitment of income to justify their investment.
- 4.2. Price Stability: Fixed prices within a PPA provide certainty for both buyers and sellers. Buyers know their energy costs in advance, allowing them to plan budgets and reduce financial risk. Sellers, in turn, are guaranteed a steady income stream, making it easier to plan for the long-term operation and maintenance of their energy facilities.
- 4.3. Market Volatility Mitigation: Energy prices can fluctuate, making it difficult for buyers to predict their energy costs. Long-term PPAs lock in a price, protecting buyers from sudden increases in market prices. This also provides sellers with a buffer against potential price drops.

4.4. Renewable Energy Development: Long-term PPAs are particularly important for renewable energy projects, as they provide the long-term certainty needed to develop these technologies, which often have high upfront costs.

4.5. Flexibility and Adaptability: While long-term, PPAs often include provisions to address changing market conditions, regulations, and technological advancements. This allows them to adapt to the dynamic energy landscape while still providing a stable foundation for both parties.

#### **5. FINANCIAL IMPLICATIONS FOR MARULENG MUNICIPALITY:**

By this agreement, Maruleng Local Municipality in partnership with the bidders, will collaborate in the development of renewable energy facilities to generate cheaper, renewable energy for the consumption by the Maruleng Local Municipality, metering solutions for end-users and municipal revenue enhancement programs. Notwithstanding the signature dates, these Agreements will commence from the date of approval by Council and will endure for a period of not exceeding 30 years, it being the date of termination of the power purchase agreement between the Maruleng Local Municipality and IIO.

The SLA has no financial implications for the Municipality.

The PPA will have financial implications for the Municipality to the extent of energy billed in the billing period.

The Renewable Energy Investment by the bidders will not have implications for the Municipality's budget and will not affect the municipality's financial plan or the resources allocated for its operations. In other words, it means that the budget will remain unchanged and there will be no need for adjustments or revisions due to this Investment.

The Municipality will, however, see enhanced revenue due to 10% on the tariff revenue.

The IIO is responsible for the payment of Transaction Advisory fees agreed to 5% of the total value of the project paid in agreed tranches.

The Municipality will see enhanced revenue collection through smart metering and revenue management processes.

#### **6. ACCES TO INFORMATION REGARDING THE MFMA SECTION 33 PROCESS:**

Copies of the Section 33 Explanatory Documents and the **SERVICE LEVEL AGREEMENT, PROJECT PREPARATORY AGREEMENT, LAND AVAILABILITY AGREEMENT AND POWER PURCHASE AGREEMENT** with IIO's will be available during office hours at all offices of the Maruleng Local Municipality from 07h45 to 15h45, Monday to Thursday and 07h45 to 14h30 on Fridays.

A copy of all documentation will also be available on the municipal website.

#### **7. WHERE TO SUBMIT COMMENTS:**

Written comments must be submitted on or before Tuesday 4 August 2026 in a sealed envelope that must be deposited in Tender Box.

All submissions must be addressed to:

The Municipal Manager

Tender Box

Maruleng Municipality

Street Address:

**Submissions must be clearly marked: "SECTION 33 PROCESS – SERVICE LEVEL AGREEMENT, PROJECT PREPARATORY AGREEMENT, LAND AVAILABILITY AGREEMENT AND POWER PURCHASE AGREEMENT MLM/SCM/82/2024 and MLM/SCM/31/2022".**

**8. NEXT STEPS:**

Members of the local communities and other interested parties or persons are invited to present their comments or representations in respect of the proposed agreements.

Maruleng Local Municipality will finalize the agreement with bidders and will solicit the views and recommendations of stakeholders, including National and Provincial Treasuries, National Department responsible for local government (COGTA) and the National Department of Energy.

The agreement and all comments and views received relevant to the proposed agreement will be based and assessed and included in the report to be presented to Council for the final decision as to whether to enter into the agreements with the bidders.

Drafted by the Transaction Advisor and issued by:

The Acting Municipal Manager

Mr Lesley Muroa