

	Eskom Holdings Ltd's Standard Conditions of Tender	Unique Identifier	240-62044728
		Revision	Rev. 8
		Revision Date	July 2021
		Procurement & Supply Chain Management (P&SCM)	

1. General

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| Parties | 1.1 | The <i>Employer</i> , the Eskom <i>Representative</i> and each <i>eligible</i> tenderer submitting a tender shall act timeously, ethically and in a manner which is fair, equitable, transparent, competitive and cost-effective. |
| Interpretation | 1.2 | Terms shown in italics vary for each tender and the details of each term in italics are identified in the Tender Data. |
| | 1.3 | The Invitation to Tender documents issued by Eskom comprises of the <i>enquiry documents</i> (including any annexures thereto) and/or any <i>additional requirements</i> as stated in the Tender Data. Documents to be provided by the tenderer may form part of any contract arising from this Invitation to Tender, if so stated in the Tender Data, however, these Standard Conditions of Tender and the Tender Data shall not form part of any contract arising from this Invitation to Tender. |
| | 1.4 | An <i>open Invitation to Tender</i> will be advertised on Eskom's Tender Bulletin and National Treasury (NT) e-Tender Portal and/or any other media if so required. A <i>closed Invitation to Tender</i> will be sent directly to a limited number of known tenderers. A sole source is regarded as a tenderer who meets the requirements as stated in the Eskom Procurement and Supply Chain Management Procedure 32-1034. Any addenda to the Invitation to Tender, will be published or issued in the same way as the Invitation to Tender was, and will form part of the enquiry documents. |
| Communication | 1.5 | Each communication between Eskom and a tenderer shall be to or from the Eskom <i>Representative</i> only, in writing, and in a format that can be read, copied and recorded. For this purpose, 'in writing' means hand-written, type-written, printed or electronically made, and resulting in a permanent record. Communication shall be in the English language. Eskom takes no responsibility for non-receipt of communications from or by a tenderer |
| Eskom's rights to accept or reject any tender | 1.6.1 | Eskom may accept or reject any variation, deviation or <i>alternative tender</i> and reserves the right to accept the whole or any part of the tender. Eskom may cancel the tender process at any time prior to the formation of a contract and will give written reasons for the cancellation upon written request to do so. After the cancellation of the tender process or the rejection of all tenders due to non-compliance with the thresholds, Eskom may abandon the proposed work and services, have it performed in any other manner, or re-issue a similar invitation to tender at any time. Eskom, its subsidiaries, shareholders, advisors, directors, employees, representatives including the Eskom <i>Representative</i> shall not be liable for any losses, claims or damages of whatsoever nature or howsoever arising which may be sustained by a tenderer or any other person as a result of its participation or any amendment, termination or suspension of the process set out in this Invitation to Tender or its exclusion from participating in the tender process at any point. |



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Tender Bulletin and NT e-Tender Portal regularly in the case of an open tender to ensure they are informed of any changes in either the *deadline for submission* or any other amendments relating to the Invitation to tender,

- 2.5 Any tenders not in the tender box or received by Eskom as stipulated in the Tender Data at the *deadline for tender submission* will be considered late. No late tender will be accepted. Accept that Eskom will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed and the *address* and *references* are marked incorrectly. Without limitation, Eskom takes no responsibility for any delays in any courier or postal system or any delays in transit of tenders or for tenders delivered to a location other than the tender box at the tender office stated in the Tender Data.

Where it is permissible for tenders to be received by facsimile, Eskom takes no responsibility for difficulties in transmission caused by line or equipment faults. Completed tenders not received at the designated facsimile machine by the *deadline for tender submission* will be considered late. The time print on both the sending and receiving facsimile machines will be disregarded, as the Telkom time signal as available over the telephone determines the closing time, by which the completed tender must be received.

Eskom employees are not permitted to deposit a tender into the Eskom tender box on behalf of a tenderer.

Cost of tendering

- 2.6 Accept that Eskom will not compensate the tenderer for any costs incurred in the preparation and submission of a tender, or the negotiation of any contract, including the costs of any testing necessary to demonstrate that aspects of the tender satisfy the evaluation criteria.

Submitting a tender

- 2.7 Check the *enquiry documents* on receipt and notify the Eskom representative of any discrepancy or omissions of documents. The Acknowledgement Form must be completed as required and submitted with the tender and must clearly state if the tender is for the whole or part of the works, services or supply identified in the specification and/or works information by Eskom
- 2.8 Return the *mandatory tender returnables* to Eskom for evaluation purposes by tender submission deadline, and *other tender returnables* that are required for contract award, before contract award, completing without exception; all the forms, data and schedules included therein. Where any certificate, document, proof of registration or the like is required to be submitted as a *mandatory* or *other tender returnable*, the tenderer must ensure that Eskom is in possession of a valid, current and where stipulated, an original certificate/document for the duration of the *tender validity* period and, if the tender is successful, up to contract award.
- 2.9 Submit the tender as a complete original tender, plus one (1) complete hard copy of the original tender. These tenders must be submitted in



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- Seek clarification** 2.17 Request clarification of the *enquiry documents*, if necessary, by notifying the Eskom *Representative* earlier than the *closing time for clarification of queries*.
- Insurance** 2.18 Be informed that the extent (if any) of insurance provided by Eskom may not be for the full cover required in terms of the relevant category listed in the *conditions of contract*. The tenderer is advised to seek qualified advice regarding insurance.
- Pricing the tender** 2.19 Include in the rates, prices, and the tendered total of the Prices (if any) all duties, taxes (including VAT), and other levies payable by the successful tenderer. Such duties, taxes and levies are those applicable 14 (fourteen) days prior to the *deadline for tender submission*.
- 2.20 Provide rates and Prices that are fixed for the duration of the contract and not subject to contract price adjustment except as provided for in the *Enquiry*.
- 2.21 State the rates and Prices in South African Rand unless instructed otherwise in the Invitation to Tender. The selected *conditions of contract* may provide for part payment in other currencies. Submit r Prices in accordance with the exchange rate and base date as stipulated in the Invitation to tender.
- Alterations to documents** 2.22 Not make any alterations or additions to the *tender documents*, other than for purposes of complying with instructions issued by the Eskom *Representative* or if necessary to correct errors made by the tenderer. All such alterations shall be initialed by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like.
- Alternative tenders** 2.23 Submit alternative tenders only if a main tender is also submitted, and only if this is permitted in the Invitation to Tender. Accept that an alternative tender may be based only on the *criteria* stated in the Tender Data and as acceptable to Eskom
- Clarification and correction of Prices after tender submission** 2.24 Provide clarification and documents as required by the Eskom *Representative* during the evaluation of tenders, if not submitted. However, mandatory tender returnables (that were required at tender submission deadline) will not be requested and may not be submitted after tender submission deadline. Clarifications may include providing a breakdown of rates or Prices, and may not result in changes to prices or substance of the tender submitted, except as required by the Eskom *Representative* to confirm the *correction of arithmetical errors* discovered in the evaluation of tenders. The total of the Prices as corrected by Eskom with the concurrence of the tenderer, shall be binding upon the tenderer.



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3. Employer's Obligation

The Employer undertakes to:

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| Respond to clarification | 3.1 | Respond to a request for clarification received earlier than the <i>closing time for clarification of queries</i> . The responses will be published to all tenderers in the same manner the <i>enquiry documents</i> were issued and it is the tenderers responsibility to check the Eskom Tender Bulletin and NT e-Tender Portal regularly for updated responses to clarifications by the Eskom <i>Representative</i> . |
| Issue Addenda | 3.2 | If necessary, issue Addenda that may amend, amplify, or add to the <i>Enquiry documents</i> . If a tenderer applies for an extension to the <i>deadline for tender submission</i> , in order to take Addenda into account in preparing a tender, Eskom may grant such an extension and the Eskom <i>Representative</i> shall notify all tenderers of the extension. |
| Return late tenders | 3.3 | Return tenders received after the <i>deadline for tender submission</i> unopened to the tenderer submitting a late tender. Tenders will be deemed late if they are not received at the designated facsimile machine or in the designated tender box at the date and time stipulated as the <i>deadline for tender submission</i> |
| Tender opening | 3.4 | Open the tenders in the presence of the tenderers' representatives who choose to attend at the time and place stated in the Tender Data. Tenders for which an acceptable notice of withdrawal has been submitted will not be opened. |
| | 3.5 | At tender opening, Eskom will announce the names of the tenderers. Prices may be announced if so stated in the Tender Data. |
| Non-disclosure | 3.6 | Unless required to do so by law, not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tenders and recommendations for the award of a contract, until after the award of the contract to the successful tenderer. |
| Grounds for rejection | 3.7 | Reject a tender after the Eskom Supplier Reconsideration Committee has established through the Eskom prescribed processes, that there is proof that the tenderer influenced the processing of tenders or awarding of the contract; that colluding/ bid rigging or any fraudulent activity has taken place in connection with the Invitation to Tender. |
| Clarification of a tender | 3.8 | Obtain from a tenderer clarification of any matter in the tender which may not be clear or could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified. Mandatory documents will not be requested but clarity on it may be required. |
| Basic | 3.9 | Determine before detailed evaluation, whether each tender received meets the <i>basic compliance</i> as stated in the enquiry. A tenderer's failure to |



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- a) the gross misplacement of the decimal point in any unit rate; or
- b) omissions made in completing the pricing schedule or bill of quantities, or
- c) arithmetical errors due to :-line item totals resulting from the product of a unit rate and a quantity in a bill of quantities or schedule of prices; or
- d) the summation of the prices

Eskom will notify the tenderer of all errors/omissions that are identified in the tender offer to either confirm the tender offer as tendered or to accept the corrected total of prices.

Where the tenderer elects to confirm the tender offer as tendered; Eskom will correct the error as follows:-

- d) If a bill of quantities/pricing schedule applies and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern, and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.

- e) Where there is an error in total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer shall be asked to revise the selected item prices (and their rates if bill of quantities apply) to achieve the tendered total of the prices.

Eskom will consider the rejection of a tender offer if the tenderer does not correct or does not accept the correction of errors in the required manner.

Evaluation of B-BBEE

3.17

Score the B-BBEE level as stated on the CSD report or as per certificate/affidavit provided. If the B-BBEE level is a pre-qualification criterion; then the proof of the B-BBEE level (certificate/CSD number/CSD report) must be provided at tender submission deadline; or the tender will be disqualified. If sub-contracting to designated groups pre-qualification criteria are utilized (selected/mandatory) in terms of the PPPFA Regulation, then Eskom will apply the PPPFA requirements for sub-contractors' B-BBEE status and the sub-contractors' CSD number or B-BBEE certificate/affidavit will need to be provided at tender submission deadline. Should the information/documents provided indicate that the level is in dispute (fraudulent/ expired) then the tender will be disqualified. However, for the purposes of PPPFA point allocation: if no B-BBEE certificate/affidavit is provided at Tender closing deadline, or the information/documents provided are fraudulent or have expired; then the tenderer will not be disqualified (if otherwise deemed to be responsive and acceptable in all other aspects) but will score zero under PPPFA point allocation.

