



NEC3 Engineering & Construction Contract

Between **ESKOM HOLDINGS SOC Ltd**
(Reg No. 2002/015527/30)

and **[Insert at award stage]**
(Reg No. _____)

for **Electrification within Distribution Gauteng Cluster**

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CONTRACT No. [Insert at award stage]

Part C1: Agreements & Contract Data

Contents:	No of pages
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C1.1 Form of Offer & Acceptance

Offer

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

Electrification within Distribution Gauteng Cluster

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

Options B	The offered total of the Prices exclusive of VAT is	Rate based contract
	Value Added Tax @ 15% is	Rate based contract
	The offered total of the amount due inclusive of VAT is ¹	Rate based contract
	(in words)	

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s) _____

Capacity _____

For the tenderer:

(Insert name and address of organisation)

Name & signature of witness

Date

Tenderer's CIDB registration number (if applicable)

¹ This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy signed between them of this document, including the Schedule of Deviations (if any).

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

**for the
Employer**

Eskom Holdings SOC Limited

(Insert name and address of organisation)

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

Schedule of Deviations to be completed by the Employer prior to contract award

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject (standard condition)	Details (Revised/replacement clause to be inserted in full)
1	<p>26.1 If the Contractor subcontracts work, he is responsible for Providing the Service as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the Contractor's</p>	<p>26.4 The Subcontractor may not further subcontract any portion of the works that they have been subcontracted to perform.</p> <p>Should the Subcontractor require to further subcontract any portion of the works that they have been subcontracted to perform, they will be deemed to be incapable of providing the subcontracted service.</p> <p>The Contractor is responsible to verify that the Subcontractor will not further subcontract any portion of the works.</p> <p>The Project Manager may then reject the proposed subcontractor should they be deemed incapable of providing the proposed subcontracted service.</p>
2	<p>26.3 The Contractor submits the proposed conditions of contract for each subcontract to the Service Manager for acceptance unless</p> <ul style="list-style-type: none"> • an NEC contract is proposed or • the Service Manager has agreed that no submission is required. <p>The Contractor does not appoint a Subcontractor on the proposed subcontract conditions submitted until the Service Manager has accepted them. A reason for not accepting them is that.</p> <ul style="list-style-type: none"> • they will not allow the Contractor to Provide the Service or • they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation. 	<p>26.5 Should it be found that after the appointment of the Subcontractor that they are further subcontracting the subcontracted works, the Project Manager is to issue an instruction to the Contractor to immediately terminate the services of the Subcontractor and appoint a capable Subcontractor within 4 weeks of the instruction. No extension for delay will be awarded to the Contractor. The amount due to the Subcontractor by the Contractor will be for the work done to date.</p> <p>26.6 The Contractor may be required to appoint a Named Subcontractor and is defined as a sub-contractor who is named by the employer in the specification, or employer's requirements or later identified as required. The contractor bears the risk of the named sub-contractor's procurement, design and works as required.</p> <p>SMME's from local communities will be deemed to be Named Subcontractors.</p>

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature

.....

.....

Name

.....

.....

Capacity

.....

.....

On behalf
of

(Insert name and address of organisation)

Eskom Holdings SOC Limited

Name &
signature
of witness

.....

.....

.....

.....

Date

.....

.....

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<p>B: Priced contract with bill of quantities</p> <p>W1: Dispute resolution procedure</p> <p>X2 Changes in the law</p> <p>X4: Parent company guarantee</p> <p>X5: Sectional Completion</p> <p>X7: Delay damages</p> <p>X13 Performance Bond</p> <p>X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care</p> <p>X16: Retention</p> <p>X18: Limitation of liability</p> <p>Z: <i>Additional conditions of contract</i></p>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Project Manager</i> is: (Name)	It will be stated on the project specific agreement
	Address	[•]
	Tel	[•]
	Fax	[•]
	e-mail	[•]
10.1	The <i>Supervisor</i> is: (Name)	The supervisor will be the Clerk of Works appointed for a particular project and will be

		specified in the project specific agreement.	
11.2(13)	The <i>works</i> are	Various categories of work on Electrification Projects	
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Cost overruns due to unpredictable surface conditions. • The possibility of existing services which might not be indicated on the wayleave. • Late Free issued material Delivery Date • Theft of un-energised cables • Vandalism of un-energised primary plant • Armed robberies on site 	
11.2(15)	The <i>boundaries of the site</i> are	All projects to be executed in terms of this contract will be executed at various Eskom sites	
11.2(16)	The Site Information is in	Part 4: Site Information	
11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	1(One) week	
2	The <i>Contractor's</i> main responsibilities	Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.	
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	The completion date will be stated on each project specific agreement data	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<i>Condition to be met</i>	<i>key date</i>
		1 Any key date and conditions will be specified in the Project Specific Agreement for any project executed in terms of this contract.	
30.1	The <i>access dates</i> are:	Part of the Site	Date
		1 Access dates will be specified in the Project Specific Agreement for any project executed in terms of this contract	

31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	1 (One) weeks of the Contract Date.
31.2	The <i>starting date</i> is	TBA
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	

4 Testing and Defects

42.2	The <i>defects date</i> is	52 weeks after Completion of the whole of the <i>works</i> or section thereof if sectional completion is applicable.
43.2	The <i>defect correction period</i> is	Within 1 week upon notification of defect

5 Payment

50.1	The <i>assessment interval</i> is	between the 15th and 20th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	30 Days for projects below R50 Million and 60 Days for projects R50 Million and above.
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and

6 Compensation events

60.1(13)	<p>The place where weather is to be recorded is:</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are,</p> <p>The <i>weather measurements</i> are supplied by</p> <p>The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar</p>	<p>The established site</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> <p>the number of days with minimum air temperature less than 0 degrees Celsius</p> <p>the number of days with snow lying at 09:00 hours South African Time</p> <p>and these measurements:</p> <p>The contractor using actual weather readings from the established site</p>
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month which were recorded at:

The nearest weather station of the South African weather service to the Site

and which are available from:

the South African Weather Bureau and included in Annexure A to this Contract Data provided by the *Employer*

7	Title	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	None
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
10	Data for main Option clause	
B	Priced contract with bill of quantities	
60.6	The <i>method of measurement</i> is	as stated in Part C2.1, Pricing Assumptions.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	arbitration.
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Midrand, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option	

clauses		
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
X5	Sectional Completion	
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	The completion date for each section of the work will be specified in the Project Specific Agreement for any project executed in terms of this contract.
X5 & X7	Sectional Completion and delay damages used together	
X7.1 X5.1	Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are:	The delay damage for each section of the work will be specified in the Project Specific Agreement for any project executed in terms of this contract and will be relevant to the specific project being executed.
	Remainder of the <i>works</i>	
	The total delay damages payable by the <i>Contractor</i> does not exceed:	It will be stated on the project specific agreement
X13	Performance bond	
X13.1	The amount of the performance bond is	R
X15	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
X16	Retention (not used with Option F)	
X16.1	The <i>retention free amount</i> is	N/A
	The <i>retention percentage</i> is	5%
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	The sum of the loss as a result of any action arising by any negligent act by any person under the contractor's employ or any person performing work under the direct supervision of the contractor
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	the amount of the deductibles relevant to the event
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	The greater of <ul style="list-style-type: none"> • the total of the Prices at the Contract Date and

		<ul style="list-style-type: none"> the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	<p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> Defects due to his design which arise before the Defects Certificate is issued, Defects due to manufacture and fabrication outside the Site, loss of or damage to property (other than the <i>works</i>, Plant and Materials), death of or injury to a person and infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	<p>(i) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period. If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</p>
Z	The <i>Additional conditions of contract</i> are	Z1 to Z15 always apply.
Z1	Cession delegation and assignment	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.	

Z2 Joint ventures

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.
- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Health, safety and the environment: Add to core clause 27.4

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of *works*; and
- undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

Z7.1 Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

Z9 Employer's limitation of liability

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is

limited to R0.00 (zero Rand)

Z9.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the amount due for the *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z12 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor or the Subcontractor's employees,

Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court

or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.

Z12.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover 84

84.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

84.2 The *Contractor* provides the insurances stated in the Insurance Table A.

84.3 The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract	<u>Loss of or damage to property</u> <u>Employer's property</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance <u>Other property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by applicable law
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out	The amount required by the applicable law

of and in the course of their employment in connection with this contract	law
---	-----

Z 13.2

Replace core clause 87 with the following:

The *Employer* provides the insurances stated in the Insurance Table B.

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z14 Nuclear Liability

- Z14.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

For the purposes of this Z-clause, the following definitions apply:

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

- Z15.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z15.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

Annexure A: One-in-ten-year-return weather data obtained from SA Weather Bureau for [weather station]

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the *works* and at the place stated in this Contract Data is shown to be more adverse than the amount stated below then the *Contractor* may notify a compensation event.

Month	Weather measurement				
	Cumulative rainfall (mm)	Number of days with rain more than 10mm	Number of days with min air temp < 0 deg.C	Number of days with snow lying at 08:00 CAT	[Other measurements if applicable]
January	[•]	[•]	[•]	[•]	
February	[•]	[•]	[•]	[•]	
March	[•]	[•]	[•]	[•]	
April	[•]	[•]	[•]	[•]	
May	[•]	[•]	[•]	[•]	
June	[•]	[•]	[•]	[•]	
July	[•]	[•]	[•]	[•]	
August	[•]	[•]	[•]	[•]	
September	[•]	[•]	[•]	[•]	
October	[•]	[•]	[•]	[•]	
November	[•]	[•]	[•]	[•]	
December	[•]	[•]	[•]	[•]	

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column it denotes this data is optional. If not required select and delete the whole row, otherwise insert the required Data.]

Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 (April 2013) Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	5% 5%
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	

² Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see www.ecs.co.za

		CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .		
11.2(3)	The <i>completion date</i> for the whole of the works is			
11.2(14)	The following matters will be included in the Risk Register			
11.2(19)	The Works Information for the <i>Contractor's</i> design is in:			
31.1	The programme identified in the Contract Data is			
B	Priced contract with bill of quantities			
11.2(21)	The <i>bill of quantities</i> is in	(in figures) (in words), excluding VAT		
11.2(31)	The tendered total of the Prices is			
	Data for Schedules of Cost Components	<i>Note "SCC" means Schedule of Cost Components starting on page 60, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).</i>		
B	Priced contract with bill of quantities	Data for the Shorter Schedule of Cost Components		
41 in SSCC	The percentage for people overheads is:	5%		
21 in SSCC	The published list of Equipment is the last edition of the list published by The percentage for adjustment for Equipment in the published list is	Plant Hire Association of South Africa Minus 2%		
22 in SSCC	The rates of other Equipment are:	Equipment	Size or capacity	Rate
61 in SSCC	The hourly rates for Defined Cost of design outside the Working Areas are Note: Hourly rates are estimated 'cost to company of the employee' and not selling rates. Please insert another schedule if foreign resources may also be used	Category of employee		Hourly rate

62 in SSCC	The percentage for design overheads is	5%
63 in SSCC	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:	

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract

[Note to contract compiler:

Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

- Option X4: Parent company guarantee
- Option X13: Performance Bond
- Option X14: Advanced payment to the *Contractor*

Each of these secondary Options requires a bond or guarantee "in the form set out in the Works Information". Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Works Information.

Option X16: Retention (not used with Option F)

The *Contractor* may provide a Retention Money Guarantee in the form stated here. When the *Employer* receives and accepts a Retention Money Guarantee exactly in the form stated he will instruct the *Project Manager* not to assess any amount be retained in terms of secondary Option X16.

The *Contractor* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

[Note to contract compiler: If there are no ASGI-SA Obligations in this contract, delete the above statement]

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Contractor's Parent Company)

**Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg**

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd

(the *Employer*) and

{Insert registered name and address of the Contractor}

(the *Contractor*), for

{Insert details of the works from the Contract Data}

(the *works*).

I/We the undersigned

on behalf of the *Contractor's*
parent company

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Employer* that the *Contractor* shall Provide the Works in accordance with the above numbered Contract.

1. If for any reason the *Contractor* fails to Provide the Works, we hereby agree to cause to Provide the Works at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Contractor* and the *Employer* and/or between us and *Contractor*; nor any alteration in the obligations undertaken by the *Contractor* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Contractor*.
4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Contractor* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Contractor*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Contractor's Parent Company)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

Reference No. [●] [Drafting Note: Bank reference number to be inserted]

Performance Bond – Demand Guarantee: [Drafting Note: Name of Contractor to be inserted]

Project [] Contract Reference: [Drafting Note: Contractor contract reference number to be inserted]

1. In this Guarantee the following words and expressions shall have the following meanings:-
 - 1.1 “Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
 - 1.2 “Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]
 - 1.3 “Contract” – means the written agreement relating to the Project, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. [.]as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
 - 1.4 “Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
 - 1.5 “Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30).
 - 1.6 “Expiry Date” - means the date on which the Defects Certificate is issued in terms of the Contract.
 - 1.7 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
 - 1.8 “Project” - means [insert if applicable].
2. At the instance of the Contractor, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:
 - 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
 - 3.2 state the amount claimed (“the Demand Amount”);
 - 3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
 - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
 - 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
 - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Contractor.
6. Eskom shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.
7. Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
 - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
 - 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
 - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
 - 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
 - 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
 - 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____ Bank Signatory: _____

Witness: _____ Witness: _____
Bank's seal or stamp

Pro forma Retention Money Guarantee (may be used when Option X16 applies)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

Reference No. [●] [Drafting Note: Bank reference number to be inserted]

Retention Money Guarantee: [Drafting Note: Name of Contractor to be inserted]

Project [] : Contract Reference: [Drafting Note: Contractor contract reference number to be inserted]

1. In this Guarantee the following words and expressions shall have the following meanings:-
 - 1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
 - 1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]
 - 1.3 "Contract" – means the written agreement relating to the Project, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
 - 1.4 "Contractor" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
 - 1.5 "Eskom" - means Eskom Holdings SOC Limited, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30
 - 1.6 "Expiry Date" - means the date on which the Defects Certificate is issued in terms of the Contract.
 - 1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand); [Drafting Note: Insert amount of Retention Money Guarantee.].
 - 1.8 "Project" - means the.....
2. At the instance of the Contractor, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
 - 3.1 be signed on behalf of Eskom by a director of Eskom or his authorised delegate.
 - 3.2 state the amount claimed ("the Demand Amount");

- 3.3 state that the Contractor has failed to carry out his obligation(s) to rectify certain defect(s) for which he is responsible under the Contract (and the nature of such defect(s)) alternatively that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
- 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
- 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
- 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
- 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed by the fact that a dispute may exist between Eskom and the Contractor.
6. Eskom shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.
7. Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- 8.1 shall expire on the Expiry Date until which time it is irrevocable;
- 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
- 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
- 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
- 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
- 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____

Date _____ Bank's seal or stamp

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

PART 2: PRICING DATA

ECC3 Option B

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option B	3
C2.2	The <i>bill of quantities</i>	1

C2.1 Pricing assumptions: Option B

1. How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract (ECC3) Option B states:

Identified and defined terms	11	
	11.2	(21) The Bill of Quantities is the <i>bill of quantities</i> as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.
		(28) The Price for Work Done to Date is the total of
		<ul style="list-style-type: none">• the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and• a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed.
		Completed work is work without Defects which would either delay or be covered by immediately following work.
		(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

This confirms that Option B is a re-measurement contract and the bill comprises only items measured using quantities and rates or stated as lump sums. Value related items are not used. Time related items are items measured using rates where the rate is a unit of time.

1.2. Function of the Bill of Quantities

Clause 55.1 in Option B states, "Information in the Bill of Quantities is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Bill, but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Bill of Quantities. The Bill of Quantities is only a pricing document.

1.3. Guidance before pricing and measuring.

Employers preparing tenders or contract documents, and tendering contractors are advised to consult the sections dealing with the bill of quantities in the NEC3 Engineering and Construction Contract Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

There is no general provision in Option B for payment for materials on Site before incorporation into the *works*. If secondary Option X14 Advanced payment has not been used then the tendering contractor may obtain the same effect by inserting appropriate items in the method related charges where the *method of measurement* allows, or alternatively making allowance in the rates of the *bill of quantities* for the financing of Plant and Materials until they are incorporated in the *works*.

When compensation events arise, the default position is that the Bill of Quantities is not used to calculate the cost effect of the event. Defined Cost and the resulting Fee is used and Defined Cost includes all components of cost which the *Contractor* is likely to incur, including so called P & G items. Rates and lump sums from the Bill of Quantities, or from any other source, may be used instead of Defined Cost and the Fee only if the *Contractor* and *Project Manager* agree. If they are unable to agree, then Defined Cost plus Fee is used.

2. Measurement and payment

2.1. Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:

Abbreviation	Unit
%	percent
h	hour
ha	hectare
kg	kilogram
kl	kilolitre
km	kilometre
km-pass	kilometre-pass
kPa	kilopascal
kW	kilowatt
l	litre
m	metre
mm	millimetre
m ²	square metre
m ² -pass	square metre pass
m ³	cubic metre
m ³ -km	cubic metre-kilometre
MN	meganewton
MN.m	meganewton-metre
MPa	megapascal
No.	number
sum	Lump sum
t	tonne (1000kg)

2.2. General assumptions

- 2.2.1. Unless otherwise stated, items are measured net in accordance with the drawings, and no allowance has been made in the quantities for waste.
- 2.2.2. The Prices and rates stated for each item in the Bill of Quantities shall be treated as being fully inclusive of all work, risks, liabilities, obligations, overheads, profit and everything necessary as incurred or required by the *Contractor* in carrying out or providing that item.
- 2.2.3. An item against which no Price is entered will be treated as covered by other Prices or rates in the *bill of quantities*.
- 2.2.4. The quantities contained in the Bill of Quantities may not be final and do not necessarily represent the actual amount of work to be done. The quantities of work assessed and certified for payment by the *Project Manager* at each assessment date will be used for determining payments due.
- 2.2.5. The short descriptions of the items of payment given in the *bill of quantities* are only for the purposes of identifying the items. Detail regarding the extent of the work entailed under each item is provided in the Works Information.

2.3. Departures from the *method of measurement*

2.3.1.

2.4. Amplification of or assumptions about measurement items

The following is provided to assist in the interpretation of descriptions given in the *method of measurement*. In the event of any ambiguity or inconsistency between the statements in the *method of measurement* and this section, the interpretation given in this section shall be used.

2.4.1.

C2.2 the *bill of quantities*

Refer to Annexure C

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Works Information</i>	17
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C3.1: EMPLOYER'S WORKS INFORMATION

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1 Description of the works

1.1 Executive overview

The purpose of this contract is to facilitate the construction of all Electrification Work for the Asset Creation Section of Distribution within the Gauteng Cluster.

This contract will facilitate ease of appointment of contractors who prequalify according to the Conditions of Tender as advertised. Work will be allocated on a fair basis to each contractor depending on the Panel they are appointed on, their CIDB Grading and financial evaluations as carried out by Eskom for projects with a value equal to or exceeding Three Million Rand.

All work shall be carried out to the specified requirements, standards and quality as set out by Eskom while observing and complying to all safety and environmental requirements at the agreed negotiated rates. All project specifications will be included in the relevant Project Specific Agreement for each project.

The Contractor is appointed on this contract on a Rate Only basis, as and when required. Eskom will provide confirmation of the total value of work completed in terms of this contract once the period of the contract has reached its agreed end date, or upon request of the contractor for the total value of each project completed to date at the time of request.

Eskom reserves the right not to appoint any work to a Contractor based on poor performance of the Contractor.

1.2.

1.2.1. Scope of Work

The works consists of various types of electrical reticulation covering new supplies, increases, decreases LPU's, dismantling and infills work.

The Contractor shall carry out the testing as required in term of Occupational Health and Safety Act, Act 85 of 1993 and complete the Compliance Certificate. The original must be handed to Eskom and a copy left at the point of supply.

The work comprises of:

- The supply of labour, transport, and supervision to execute the following:
 - Bush Clearing
 - Light or dense vegetation shall be cut and removed upon the receipt of all necessary permits and approvals from relevant authorities.
 - Excavations for:
 - Stays and Struts – Shall be dug by hand, auger or rock drill.
 - Wood Poles – Shall be dug by hand, auger or rock drill.
 - Concrete Poles – Shall be dug by hand, auger or rock drill.
 - Cable Trenches – Shall be dug by hand, auger or rock drill.
- LV & MV wood poles lines including the installation, earthing and connection of distribution transformers and installation of fuse units.
- Installation of Pole Top Boxes
 - The materials for this shall be supplied by Eskom.
 - The boxes will be vandal proof enclosures manufactured from 3mm 3CR12 powder coated steel. 4-way and 8-way pole top boxes will be installed in this project. They should be wired and fitted with auxiliary equipment as per D-DT1030, 1031, 1032 and 1033 respectively. Circuit breakers shall be 40A curve 1/D hydraulic magnetic.

- Install padlocks on the pole top boxes.
- Stay and Strut Installations
 - The materials for this shall be supplied by Eskom. The staying shall be 97 kN ultimate load. The stay-rod size shall be 20 mm diameter 300WA steel with a minimum length of 2.0 m. The stay wire shall be 17 x 4.00 mm.
- Underground LV and MV Cable Installations
 - The LV and MV cabling shall be installed in accordance with D-DT0854.
- LV and MV Structure assembly and installation
 - LV and MV structures shall be in accordance with the standard.
- Pole Top Box Installation
 - way, 4 way, 6 way and 8 way steel pole top boxes shall be installed and connected to the LV conductor.
- Conductor Stringing and Tension
 - The conductor installation shall be in accordance with D-D3136.
- Equipment Installation
 - All equipment shall be installed in accordance with the standard as specified on the design.
- Earthing
 - The MV and LV earthing shall be installed in accordance with the MV and LV Distribution System Earthing standard.
- Minisub and Transformer Installation
 - Minisubs shall be installed as specified by the design in accordance with the standard.
- Meter Kiosk Installation
 - LPU Meter Kiosks shall be installed on the transformer structure to house the circuit breaker, the data concentrator and the summation meter.
- Meter installation
 - The prepaid smart meters shall be installed on the pole top boxes.
- Overhead and Underground Service Installations
 - The concentric cable shall be used for all service connections.
- Directional Drilling
 - Directional drilling method shall be done to cross the roads.
- Joint Bays
 - Joint bays shall be prepared in accordance with the standard.
- Dismantling of existing equipment
 - To be removed as specified by the design
- Removal of existing LV And MV Cable
 - To be removed as specified by the design.
- Installation of Labels
 - All labels shall be installed in accordance with the labeling standard and specified by the design.
- Data Collection
 - collect and submit (PCS files)
 - Install Data concentrators
- Testing
 - All relevant tests shall be performed and witnessed by the clerk of works.
- As-built Drawings
 - The design drawing shall be marked on site and show all the changes that were made during construction.

1.2.2. Employer's objectives and purpose of the works

The Eskom Project Manager will contact the allocated Contractor and issue the Contractor with the design package for the project to be executed. A Project Specific Agreement will be issued as well, which will detail all the project specific requirements for execution of the project for the task order to be issued. The Project Specific Agreement issued will form the basis of the agreement between Eskom and the Contractor for each project to be executed in terms of this contract.

The terms and conditions contained in the Project Specific Agreement will be in accordance with the terms and conditions of this contract but specific to the requirements of the project to be executed.

The allocated Contractor will do a site visit with the Eskom project representatives and verify the scope of work to be executed contained in the design package, assess the Site conditions, the Project Specific SHEQ requirements and SD&L requirements before the quotation for the works is finalised. The Project Manager will then request a quotation from the Contractor for the execution of the works as verified. The quotation must be submitted to the Project Manager by the Contractor within 7 days. The Project Manager will request the Quantity Surveyor to verify the quotation for correctness and confirm the cost according to the agreed negotiated rates.

Should the quotation require adjustment, the Project Manager will request the allocated Contractor to amend the quotation. Once the quotation has been accepted by Eskom, the Project Manager will issue the allocated Contractor with a Task Order for the project which will contain a Task Order Number and will be attached to the Project Specific Agreement. The Project Specific Agreement will then be signed off by the Project Manager and the Contractor and work may then commence on the project.

No work may commence on a project unless the Task Order has been issued, the Project Specific Agreement has been signed, the Contractor Safety File has been approved by Eskom, the 37(2) agreement has been signed and Site Access has been granted to the allocated Contractor. Eskom will not be liable to pay for any work unless a valid Task Order Number has been issued.

The Contractor is to submit the Project Specific Safety File within seven days upon being requested to do so by the Project Manager for approval by Eskom. The Safety File is to conform to all Eskom and OHS requirements. Should there be a need to rectify the safety file an additional opportunity will be granted to conform to the recommendations made by the Eskom SHE representative and must be resubmitted within seven days for approval. Should the Project Specific Safety File fail upon resubmission the works will be allocated to another Contractor.

The Contractor will compile a Risk Register as per the terms and conditions of the ECC for discussion at regular Risk Reduction Meetings or as per agreement with the Project Manager.

It is expected from the Contractor to do the whole of the work as per timeframe set in the Task Order, Project Specific Agreement, and agreed Program of the Works.

The Contractor will be responsible for the collection and transporting of all necessary material from any and/or all Eskom warehouses and delivery of the material to site as well as return any material to Eskom stores from the site upon instruction from the Project Manager. Payments will be made based on the distance from the site to the relevant Eskom store and back to site.

The contractor is to ensure that all required documentation prescribed by Law is kept on file at the site office. All OHS and Construction Regulation requirements are to be adhered to by the contractor.

The Contractor will also ensure that all plant and equipment dedicated to the project will not be removed from site until there is no use for the intended plant and equipment. No moving of plant and equipment between projects will be allowed as it will have impact on completion of the project and lead to delays in completion.

The Contractor is to ensure that all Site Managers are competent, and trained in the use of the ECC and are fully conversant and familiar with the usage and procedures thereof. Adherence to the terms and conditions of the ECC are essential and a requirement of all Contractor Site Managers dedicated to each project as per the Construction Regulations.

Payment Assessments will only be done for work done to date. No material on site will be paid for. Records of defined costs are to be kept on file on site whereby the Project Manager always has access to this file.

1.2 Interpretation and terminology

1.3.1. Abbreviations

Abbreviation	Meaning given to the abbreviation
AFC	Approved for construction
BBBEE	Broad Based Black Economic Empowerment
ECC	Engineering Construction Contract
ITP	Inspection and Test Plan
PM	Project Manager
PPPFA	Procurement Preferential Policy Framework Act
QS	Quantity Surveyor
QCP	Quality Control Plan
SDL&I	Supplier Development Localization and Industrialisation
SHEQ	Safety Health Environment and Quality
TBA	To be announced

1.3.2. Acceptance of Eskom SHEQ Policies and Procedures

The attached documents form part of this legal binding contract, the *Contractor* confirms that he has familiarized himself with all the embedded documents from 1 to 11 as indicated.

No	Unique Identifier	Revision	Document Title
1	240-DX-GP-003T	1	<p>Environmental Specifications</p>  <p>Environmental%20s pecifications%20ter</p>
2	240-106084699	2	<p>OHS Tender Evaluation for Construction Work (electrification)</p>  <p>annexure C4 OHS Tender Evaluation fo</p>
3	240-109253698	3	<p>Contract Quality Plan</p>  <p>240-109253698%20 CQP%20Template%2</p>
4	240-109253302	2	<p>Quality Control Plan / Inspection and Test Plan (QCP/ITP)</p>  <p>240-109253302%20_ %20Quality%20Cont</p>
5	QM 58	3	<p>Supplier Quality Management: Specification</p>

			 240-105658000 Supplier Quality Ma
6	240-68099512	9	TENDER & CONTRACT QUALITY REQUIREMENTS FOR 240-105658000 AND QUALITY REQUIREMENTS FOR ISO 9001 STANDARD  240-68099512 (Rev 9) Form A Tender Cc
7	240-12248652	7	Supplier Quality Management: List of Tender Returnable Documents  240-12248652 (Rev 7)_List of Tender Ret
8	TE-Gauteng-2023-11	3	Gauteng Cluster Technical Evaluation Criteria for Electrification Contractor  SI-Gauteng Cluster-Technical Ev
9	LTIR	1	Weekly Report - Contractor Reporting_Contractor Capture Form Rev 1_LTIR  Weekly%20Report%20-%20Contractor%
10	SHE Specifications		ELECTRIFICATION PROJECT FOR GAUTENG CLUSTER  SHE specification - Electrification Projec
11	Eskom Life saving Rules	1	ESKOM LIFE SAVING RULES  Eskom life-saving rules.pdf

2 Management and start up.

2.1 Management meetings

Regular meetings of a general nature may be convened and chaired by the *Project Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Pre-introductory meeting	Upon request of the Project Manager at an agreed date by all parties	Site	<i>PM, QS, Site Supervisor, Safety and Environmental Representatives and the Contractor.</i>
Introductory meeting	After safety and environmental files have been assessed and approved.	Site	<i>PM, QS, Site Supervisor, Safety and Environmental Representatives and the Contractor.</i>
Toolbox talk and risk assessment	Daily before work begins.	Site	<i>Contractor and Site Supervisor.</i>
Risk register and compensation events	As necessary.	Site	<i>PM, Contractor and Site Supervisor.</i>
Overall contract progress and feedback	On a regular basis as agreed with the Project Team and the Contractor	Site	<i>PM, QS, Contractor, Site Supervisor, and Safety and Environmental Representatives.</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Works Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the works. Records of these meetings shall be submitted to the *Project Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

All project instructions are to be issued by the Project Manager only.

2.2 Documentation control

The contract document and tenders shall be stored in the cabinets at procurement Department. All correspondence is to be addressed to the *Project Manager* in a form of properly compiled letters or forms in a chronological order, attached to emails.

2.3 Health and safety risk management

The Contractor shall control his activities and processes in accordance with the Occupational Health & Safety Act, No. 85 of 1993 and Eskom's Construction Safety, Health and Environmental Management 32-136, Safety, Health, Environment and Quality Policy, EPC32-727 and SHE Requirements for the Eskom Commercial Process, ST32-726. The Contractor shall comply with the health and safety requirements contained in Section 1.3.2 of this Works Information.

The Contractors Project SHEQ File is to be updated on a continuous basis. The Contractor is to ensure that all relevant documentation and authorisations are contained in the file pertaining to the project. Upon completion of the project, the Contractor is to convert all documentation contained in the SHEQ file into electronic format and save it as a PDF File. The file name should contain the name of the Contractor and the project. The file should then be saved onto a disk or removal storage device and handed over to the Project Coordinator or Project Manager upon completion of the project.

2.4 Environmental constraints and management

The Contractor shall control his activities and processes in accordance with Environmental Requirements for the Procurement of Assets, Goods and Services, TST41-120 Rev. 2. The Eskom Environmental Management Plan provides the aspects and impacts that will require management and must be followed strictly. The Contractor is to prepare a site/factory specific separate EMP for all environmental concerns that might arise and any changes to the approved plan shall be reported and be approved by the Eskom Environmental Representative and Project Manager prior to the commencement of work.

In addition, the Contractor is required to ensure that all goods, services or works supplied in terms of this Works Information also conform to all applicable environment legislation(s), Safety, Health, Environment and Quality Policy, EPC32-727; SHE Requirements for the Eskom Commercial Process, ST32-726; (and additional requirements). The Contractor shall comply with the environmental criteria and constraints stated in Section 1.3.2.

When required, the Contractor must ensure that all Subcontractors' EMP comply with legal and other requirements and also includes all the environmental risks associated with the scope of work. The Main (Principal) Contractor shall define the specific risks applicable to the Subcontractor's scope of work or supply of kiosks.

The Contractor is to send a flash report for any environmental incidents that have occurred on site as soon as possible or within 24 hours to the Eskom Environmental Representative and Project Manager clearly stating any impact to the environment.

No environmental records shall be destroyed or discarded by the Contractor. Eskom as the Employer and the Contractor shall agree that the Contractor retains certain environmental records. Waste generated during the course of the project must be disposed at a registered site and the Contractor shall retain records of disposal.

Deviations from these requirements will be regarded as a contractual default. Should there be concerns regarding environmental performance and contractual default to environmental requirements, management engagements and interventions will be introduced to determine a means to addressing the shortfalls. Once these interventions have been explored and exhausted, then the Eskom Supplier Disciplinary Process will be followed.

The cost to the Contractor to obtain permits should it become necessary to cut a protected tree, ensure that waste is disposed of on a permitted, legal waste site and all relevant costs payable to dumping site as well as safe storage of all equipment which will be removed and replaced from site which will be transported upon instruction to the nearest designated disposal sites.

2.5 Quality assurance requirements

Quality Assessment Criteria, Forms A and Form B of the QM-58 specification will be selected and completed by Eskom Representative who will identify the applicable *Contractor* quality requirements to be met. Form A and Form B of the QM-58 specification shall be signed by the *Contractor* responding to an Eskom Enquiry.

2.5.1 Contractor and Subcontractor Quality Management System Requirements

- The *Contractor* and *Subcontractor* shall have formal Quality Management System in place in accordance with the requirements of the QM-58 specification.
- Such formal system shall consist of the appropriate documentations such as work procedures, work instructions, method statements, work flow documentation etc. as the case may be. This requirement constitutes the most basic Quality Management System requirements.
- Unless specifically excluded in the Quality Assessment Criteria, as per the Level of Quality Requirements (Level 1, 2, 3 or 4). The *Contractor* shall have a fully documented, implemented and maintained Quality Management System that complies with ISO-9001 standard. In the event that the *Contractor* invariably requires the assistance of some *Subcontractor* in order to realise its own supply obligations. The aforementioned requirement applies equally in all cases where any such *Subcontractor's* scope of responsibility includes the provision of any of the following activities viz.

- Design & Development, Manufacturing, Testing, Storage, Delivery, Installation, Commissioning, and Project Management.
- Unless specifically excluded in Quality Assessment Criteria, such Quality Management System shall carry valid ISO-9001 certification from an accredited certification body, as indicated in the applicable Eskom invitation (This requirement applies equally to both the *Contractor* and any/all manufacturing third party organizations mentioned above).
- Eskom reserves the right to request and perform necessary assessments at *Subcontractor* facilities.
- The *Contractor* shall be responsible for defining the specific quality control elements applicable to the respective *Subcontractor's* scope of work/supply and ensure that their *Subcontractor(s)* quality programmes support Eskom requirements.
- The *Contractor* shall inform Eskom of any proposed changes to the Quality Management System or staff that will affect the Quality System prior to implementation of these changes.

2.5.2 Quality Plan

The information in this section constitutes the minimum requirements for a Quality Plan:

- All individual products and processes shall have a documented, implemented and maintained Contract Quality Plan and/or Quality Control Plan (Inspection and Test Plan).
- All production and/or service provision shall be carried out in accordance with documented Contract Quality Plan (CQP) and/ or Quality Control Plan (QCP)/ Inspection and Test Plan (ITP).
- The *Contractor* shall plan for the required Quality related activities and interfaces within the *Contractor's* Quality system, in order to demonstrate its ability towards both controlling and meeting specified Eskom requirements

2.5.3 Contract Quality Plan

Contractor shall require *Subcontractors* to submit Contract Quality Plan (CQP) and associated documentation in accordance with requirements of Project Quality Management System processes applicable to *Subcontractor* Scope of Work.

Contractor shall, where applicable based on Scope of Work Criticality, ensure Procurement documents clearly and unambiguously require *Subcontractor* submission of a *Subcontractor* CQP for *Contractor* and Eskom review.

Contractor and *Subcontractor* CQP shall comply with Eskom "Quality Requirements Specifications" and shall be submitted prior to the initial Scope of Work Kick-off or initial Pre-fabrication meeting and prior to commencement of manufacturing, whichever is earlier.

2.5.4. Quality Control Plan

Contractor shall develop and implement processes and procedures which efficiently and effectively monitor, verify and document Quality of Scope of Work deliverables. *Contractor* shall ensure that *Subcontractor* QCP/ITP's are prepared at a level of detail sufficient to address all Quality Control related activities in chronological order, from contract review through materials verification, manufacturing, fabrication, assembly, final testing, documentation, and certification.

Where activities subject to Inspection and Test procedures are to be undertaken by a *Subcontractor*, the QCP/ITP shall make reference to this fact and shall include descriptive details of *Subcontractors* involvement. A separate QCP/ITP shall be required for each *Subcontractor* Scope of Work.

Contractor may authorise use of *Subcontractor* QCP/ITP format providing it is in compliance with the above. *Contractor* shall be ultimately responsible for the development and proper implementation of all *Subcontractor* QCP/ITPs, including those reviewed or developed by *Subcontractors*.

Eskom reserves the right to select witness and hold points within all developed *Subcontractor* QCP/ITPs for Eskom oversight of selected functions and to perform surveillance or audits of the Work.

Contractor shall establish processes and procedures for formal assessment of *Subcontractor* inspection and testing programs. These shall include review of *Subcontractor* inspection reports and other Quality Control documentation. Additional formal assessment of manufacturing, fabrication and assembly facility operations

shall be conducted by *Contractor* to ensure continuing suitability, adequacy and effectiveness of the *Subcontractor* inspection and testing programs. Assessment frequency shall be established in consideration of *Subcontractor* Scope of Work, Criticality of Scope of Work deliverables and performance information. Assessment scope and schedule shall be developed in consultation with Eskom.

Mandatory pre-inspection meetings will be convened by Eskom or its Inspection Agency or AIA to be attended by the *Contractor* and *Subcontractors* representatives, including their Quality representatives who will be involved with the Works and records to be kept.

Eskom reserves the right to appoint resident quality inspectors that can be based at the *Contractor* or *Subcontractor's* premises and on site where the work is being performed. The *Contractor* is expected to provide work space at no cost to Eskom, for the inspector as required.

2.6 Programming constraints

A comprehensive and fully detailed programme is to be submitted within the seven (7) days after the introductory meeting and should indicate all milestones and critical dates. This programme must first be approved by the *Project Manager* and must be updated on an as and when required basis by the *Project Manager*.

The following dates shall be clearly reflected on the programme:

- Starting and completion dates for all activities as well as relevant key dates for hold or witness points. All relevant significant activities shall be shown in order to monitor the progress in the factory/workshop.
- The programme shall also reflect a 2-week period for inspection and correcting of Defects before the completion date.

Updated programmes must be available at all meetings reflecting progress to date and the date when delivery will take place through the use of task orders.

Format of the program

- The *Contractor* shall submit his construction program in terms of the conditions of contract.
- The *Contractor* is to submit a revised programme for acceptance at each site meeting.
- This program shall be in the form of an approved Gantt Chart containing the following information:
- All construction activities, including milestones, initial tasks, critical path, required Outages, and target *Dates*. All potential risk activities should be clearly indicated on the critical path.
- Every activity on the programme will be clearly linked to labour resources and equipment required to perform the specific activity.
- Projected weekly progress on *site* for the entire duration of the contract.
- Completion and hand-over *Dates* for formal inspection by the site supervisor must be indicated.
- A column showing the daily tempo of all the construction activities must be indicated next to the activity on the programme.
- Project expenditure on a monthly basis for the entire duration of the contract.
- The following project phases and activities are minimum requirements for the programme:
- Site Establishment and Material Delivery – Lead times to be specified.
- Preparation work – Work that can be completed without the necessity of power outages
- Outage work – Work that must be completed under outage conditions
- Planned outages to be included in the programme
- *Contractors* float to be included in the programme
- The Contract Program will be on display in the *Contractors* Site Offices and will be updated weekly. In addition to the maintaining of this programme, the *Contractor* will report progress to the *Project Manager* at each site meeting or at request of the *Project Manager*.
- The *Contractor* shall also provide an organisation chart showing the personnel to be employed for the *works*, along with a detailed CV of all key personnel.
- Should any deviations to the program be found the *Contractor* shall submit a revised program to the *Project Manager* within one week of such deviations being brought to the *Contractor's* attention.
- The Outages must be arranged with *Employer* via the Outage arrangement procedures, as a pre-requisite for the acceptance of the programme by the *Project Manager*.

- Acceptance of any program by the *Project Manager* shall have no contractual status other than an indication that the *Project Manager* is satisfied as to the order in which the work is to be carried out, and that the *Contractor* undertakes to perform all work in accordance with the accepted program.
- The *Project Manager* retains the right to alter the accepted program should circumstances on *site* necessitate such a change.

Other information to be shown on the program.

1. The following Statutory non-working days are included within the contract period:

- All Public Holidays for the duration of the contract.
- The programme must clearly indicate the non-working days for the entire construction period.

2.7 Contractor’s management, supervision and key people

The *Contractor* is to submit an organogram showing all key people involved in the contract 7 days after contract award. All key personnel must be appointed in writing, must be current for the specific site and area of work and must be kept on file. This would be essential if the *Contractor* is a Joint Venture

2.8 Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Project Manager’s* payment certificate.

The *Contractor* shall address the tax invoice to Eskom Holdings SOC Ltd and include on each invoice the following information:

- Name and address of the *Contractor* and the *Project Manager*;
- The contract number and title;
- *Contractor’s* VAT registration number;
- The *Employer’s* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- Goods receipt number

Procedures for invoice submission and payment (e. g. electronic payment instructions)

General Information	X
- No Pro-forma Invoice	
- Check Vendor number against the Address and name on Tax invoice	
- Insert the Vendor number on Tax invoice (Top right hand corner)	
- Bank details must be on the invoice or on attach sheet, but it does not require a bank stamp just a letter)	
- Check banking details on invoice against SAP system. If more than one banking account check bank account against banking details on invoice. If banking details not on invoice, write the bank code next to the vendor account (bank code 0002)	
- Check Vendor VAT number against the vendor master. (FK03) If VAT number not on master records, prepare a list and forward to Vendor Management to check and update the vendor master records	
- No fax copies of Tax invoices allowed	
- No copies of Tax invoices allowed unless originally printed by the Vendor if a photocopy tax invoice, it must be an original “certified copy” (i.e. not a copy of a “certified copy” invoice) from the vendor and check in system if not previously be paid. Put stamp “not previously paid” on invoice and sign.	
- Ensure that date received stamp is clear on invoice	
- Stamp all Invoices with the Vat stamp, complete and sign (only when VAT is applicable)	

- The stamp should not be stamped over any written information	
- When scanning invoice, check the quality before linking in SAP (inboxes)	
With Reference Invoices	X
- Goods receipt must be done (payment with reference)	
- Ensure that the SAP purchase order number is clear and correct on the invoice	
- GR number to be written on the Invoices	
- If multiple lines on invoice write the line number of the order against the line to ensure that the processors match the correct lines (to ensure that 191100 is matched correctly)	

2.9 Insurance provided by the Employer

Refer to annexure D

2.10 Training workshops and technology transfer

The obligation for technology transfer being included as part of this contract on Completion of the Works is to train Eskom Staff and/or other Contractors on the use of the access control and remote monitoring system, secure kiosks installation and commissioning, as well as training on maintenance of the secure meter kiosks.

3 Engineering and the *Contractor's* design

3.1 *Employer's* design

The Employer will supply Contractor with a final design document compiled by the Project Engineer detailing the scope of work to be executed on the project as well as Project Drawings.

3.2 As-built drawings, operating manuals and maintenance schedules

The *Contractor* is required to provide the necessary drawings, operating manuals, test certificates and training program details, as well as a commitment letter for providing ongoing product support.

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed on the Site

All people employed by the *Contractor* to perform supervision of installation and commissioning should have Police Clearance before work can commence. The *Contractor's* employees shall be sober when carrying out their duties and may be subjected to random breathalyser tests.

4.1.2 BBBEE and preferencing scheme

Eskom prefers to do business with companies that are more than 50% Black Owned; this includes Black Woman Owned (BWO), Black Youth Owned (BYO), and Black People Living with Disability (BPLwD). In this contract the preference will be given to suppliers that are Black Owned and has a B-BBEE Level of 1 to 3 as per Eskom's preference.

The existing Panellists members shall maintain or improve upon their current B-BBEE level to level 1-3 during the life contract. The Panellists members that are less than 51% BO will also improve on the Black Ownership of the companies/institutions as per Eskom preference (if applicable), for future business relationship with Eskom. The Panellists members will be required to submit a new certificate should ownership of the company change during the life of the contract.

Local suppliers shall be allocated points in accordance with the B-BBEE Evaluation Scorecard (figure 1) shown below:

Note: the following element (A, 2, 3,4,5,6 & 7) will form part of the Eskom's objectives and they will be negotiated with the successful supplier(s)

A. Specific goals

Specific Objective of Tender (Application of other criteria in terms of section 2(1)(d-f) of PPPFA)

The objective criteria for this tender are the following:

- Transforming this industry by appointing small emerging black businesses with 51% black ownership (further preference will be given to BYO/BPLwD),
- Job creation for previously disadvantaged people.

To achieve the above the following aspects will apply.

- Appoint companies with 51% black ownership, or
- In the event where the contract is awarded to a **Generic firm**, 20% shall be sub-contracted/incubate to emerging BYO/BPLwD (100% shareholding) with the purpose of supplier development (where necessary) or
- Joint venture where the lead firm is 51% black owned.

NB. The joint venture may be:

- i) Black Owned Company and Black Owned Company or
- ii) Black Owned Company (Majority shareholder) and non- Black Owned Company or
- iii) Black Women Owned Company and Black Owned Company or
- iv) Black Women Owned Company (Majority shareholder) and non- Black Owned Company

Figure 1: B-BBEE Evaluation Scorecard (90/10 application)

B-BBEE	Qualification	Number of Points (80/20 system)	Number of Points (90/10 system)
1	≥ 100 points	20	10
2	≥ 85 points < 100 points	18	9
3	≥ 75 points < 85 points	16	8
4	≥ 65 points < 75 points	12	5
5	≥ 55 points < 65 points	8	4
6	≥ 45 points < 55 points	6	3
7	≥ 40 points < 45 points	4	2
8	≥ 30 points < 40 points	2	1
Non-compliant	< 30 points	0	0

Note :

Eskom prefers to contract with but is not limited to compliant BBEEE level 1-3 contractors. Any tenderer who does not comply with this criterion should provide a migration plan that will form part of the contractual obligation. The terms and conditions will be negotiated ad agreed prior to contract award. The migration plan will be accepted based on partial fulfilment or as a whole depending on the time period allocated for the transaction/s.

Where there is a partial acceptance of a migration plan, should the same tenderer be awarded further contracts with Eskom the agreed migration plan must be shared with Eskom officials responsible for the tender for continued compliance monitoring.

Eskom will not contract with any supplier without a valid BBEE certificate

4.1.3 Supplier Development and Localisation

Eskom requires suppliers to purchase all their materials, products or any other services required within the borders of South Africa. The Local Content to South Africa will be 100% because Eskom do not expect any skills to be imported for these services and the industry is matured enough to possess all the skills required. It will form part subcontracting, skills development, and supplier development. Local to site will also be 100%.

4.1.4 DTI Designated material threshold

Commodity	Local Content Threshold
Cables and accessories	90%
Kiosk	100%
Wooden Poles	100%
Cable mv/lv	100%
Steel Poles and Fabricated steel	100%
Surge Arrester	100%
Steel products and components for construction	100%
Pipes and fittings	100%
Building Material for building	100%
Conductors	100%
Clamps/ joints/ brackets	100%
Concrete work	100%
Circuit Breakers	100%

Bolts and nuts	100%
Smart meter	50%
Prepaid Meters	70%
Plastic pipes	100%

Declaration Certificates for Local Production and Content for designated sectors (SBD 6.2) and National Treasury Instruction on: Invitation and evaluation of bids based on a stipulated minimum threshold for local production and content hereto as evidence of compliance with this requirement.

The implication of the local production and content drive, should your transaction include products of a specific designation as listed by the DTI, the following needs to be done:

The DTI Exemption Certificate is required to tenders that fails to meet the minimum stipulated threshold for local content and production.

4.1.5 Industrialisation

There is no requirement for industrialisation as all resources are sourced from within South Africa.

4.1.6 Skills Development

Successful supplier will be obligated submit a proposal to train 1 candidate for every 2 Million Rand cumulated through task order awarded to the supplier; this obligation will be for the duration of the contract. The duration of the task order will not be linked with the supplier’s obligation to train; therefore the supplier will have to ensure that the skills committed are successfully achieved by the end of the contract period. Skills candidates shall be sourced from previously disadvantaged groups in South Africa. The purpose is to provide these candidates with skills and workplace experience in order to increase the opportunity for them to be employable within the industry. The supplier may develop the candidates directly, through their supply network or through the SETA accredited training providers.

Skills development candidates should be currently unemployed graduates from FET Colleges and universities and/or matriculants. The composition of the candidates shall be representative of the population demographics of South Africa. The supplier will be provided will the list of skills as per respective discipline to choose from, this will mean this supplier will train candidate with skill type that is relevant to their area of expertise.

4.1.6.1. Skills development

List of proposed skills (only critical, scarce and core) that are scope specific.

Skills type	Proposed no.	Intake	Outcome
Electrical Engineering Artisan / Engineer	2	Post / undergraduate	Certificate of complication
Project Manager	2	Post / undergraduate	Certificate of complication
OHRVS	2	Post / undergraduate	Certificate of complication
Risk Assessment	2	Post / undergraduate	MV/LV Cable Terminator Certificate

1. Completion certificate to be issued at the end of the project
2. Compile a training program.
3. Submit a signed contract with the selected candidates.

4.2 Subcontracting

4.2.1 Preferred subcontract

The *Contractor* to submit the names of each proposed subcontractor to the *Employer* for acceptance. The *Contractor* does not appoint a subcontractor until the *Employer* has accepted such subcontractor.

4.2.2. Possible subcontracting opportunities for the local SMME:

- Staff Transport / Water tankers/ Toilets
- Bush clearing
- Site clearing
- Trenching / Backfilling
- Site establishment
- Security
- Accommodation

4.2.3. Subcontract documentation, and assessment of subcontract tenders

The *Contractor* to indicate the percentage of subcontracting, the proposed subcontractors together with their BBBEE statuses, and the sources of assets, goods or services when local content and production criteria are applicable. The proposed target will form part of the contractual obligation. The NEC system is compulsory for all subcontract documentation.

4.2.4. Limitations on subcontracting

The *Contractor* is not allowed to sub-contract more than 25% of the contract to another enterprise/supplier that does not have equal or higher BBBEE status, unless the intended subcontractor is an EME that has the capability and ability to execute the sub-contract, in order to claim the points for BBBEE.

4.2.5. Attendance on subcontractors

The *Contractor* is responsible for performing on the provided scope of work as if he had not subcontracted. The appointed *Contractor* will also be liable to the *Subcontractors'* employees, as he legally and liable to this contract.

4.3 Job Creation

The existing Panellists members shall propose the number of jobs to be created as a direct result of this contract. Suppliers must also propose the number of jobs to be retained as a direct result of this contract. The proposals shall be recorded on the implementation schedule at contract award.

Tenderer to indicate number of Jobs to be created and/or retained from this contract.

Number of Jobs to be created	Number of Jobs to be retained

4.4 Supplier Development

• **SDL&I Retention**

SDL&I has a mandate to achieve maximum and sustainable local development impact through leveraging Eskom’s procurement spend in a manner that allows flexibility within the business to contribute towards

addressing the socio-economic ills like unemployment, poverty, and economic growth, through government local development initiatives and policies.

Suppliers will be required to report progress towards achieving SDL&I’s contractual obligations, on a quarterly basis. The SDL&I retention is to encourage and ensure that the Suppliers implement the agreed targets.

Failure to comply with the contracted SDL&I obligations will enforce the application of the 2% penalty at the end of the contract.

- **Monitoring and reporting of SDL&I Commitments**

- Panel suppliers that have been awarded task orders with SDL&I commitments shall submit reports on their SDL&I performance in accordance with the SDL&I function Data Collection Template.
- Eskom shall review the quarterly reports submitted by the suppliers within fifteen (15) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.
- Upon notification by Eskom that the suppliers have not met their SDL&I obligations, suppliers shall be required to implement corrective measures to meet those SDL&I obligations.

- **Skills development**

Suppliers shall propose the number of jobs to be created as a direct result of being awarded this contract. Suppliers must also propose the number of jobs to be retained as a direct result of this contract. These proposals shall be made in the SD&L Compliance Matrices (Figure 2).

Type of jobs	Target set (local-to-site)	Suppliers Proposal
General workers	100%	
Semi-skilled	20%	
Skilled	10%	

- **NB: See List of Skills to be developed below.**

The monitoring and report will provide implementation schedule and supplier data collection templates to ensure that the above obligations to train candidates are achieved successfully through regular monitoring of task order value awarded to suppliers.

- **Penalties for non-compliance**

The contractor will be subject to a 2.5% penalty of the total of the project value for non-compliance to SD&L requirements.

4.5. Plant and Materials

4.5.1. Quality

The Contractor shall control his activities and processes in accordance with Eskom’s Quality Requirements for Procurement of Assets, Goods & Services, QM-58 and ISO-9001.

4.5.2. Contractor’s procurement of Plant and Materials

4.5.2.1. On an as and when basis the contractor may be required to purchase material for the specific project with a request from the Project manager before the project commences or during construction.

4.5.2.2. All material purchased by the contractor must conform to all the Eskom Specifications and Standards. Material will be inspected for compliance prior to acceptance by Eskom.

4.5.2.3. All materials will be reimbursed with a 5% handling fee for the total cost before VAT based on defined cost.

4.5.2.4. The Employer requires warranties from the Contractor to be in favour of the Employer and not just to the Contractor during the life of the contract.

4.6 Tests and inspections before delivery

All materials shall be regularly tested at the manufacturers' factories. The Contractor shall make sure that regular quality control tests are carried out to ensure that good quality of the materials is maintained.

4.7 Storage of Material

4.7.1. All material received shall be neatly stored in clearly defined areas to reduce damage and facilitate checking of quantities and quality. Proof of Delivery (POD) slips shall be forwarded to Eskom on delivery / collection and a record shall be kept on site of the total quantities of material received. Such records will be subject to audit by Eskom.

4.7.2. The Contractor shall not release any material received by his store to any person, including Eskom personnel, without the written permission of the Project Manager. In the event of such permission being granted, date, time, quantity, and recipient shall be noted, and signed for the person removing the material.

4.7.3. No person shall be allowed or permitted access remove material from the storage area without the written consent of the Project Manager/Programme Manager

4.8. Contractor`s Liability

4.8.1. Loss, theft, or damage to material supplied by Eskom while under the Contractors control shall be for the account of the Contractor. The risk in the material shall pass from Eskom to the Contractor on receipt by the Contractor.

4.8.2. Contractors should keep records of all material received, used, wastage as well as the outstanding material required to complete the project.\

4.8.3. The quality of the collected and delivered material to be checked and deficiencies recorded by the Clerk of Works after delivery.

4.8.4. The material that got defective during transportation should not be accepted. Site visit for inspection to take place within 48 working hours of the material delivery / receipt.

4.8.5. The contractor will ensure that they have the required insurance cover for any loss, damage or theft of any material may it be from the construction project site or their own premises. The minimum amount of cover is specified on the insurance table.

4.8.6. The Contractor is responsible for the management of the local SMME's for any possible subcontracting that could be undertaken by the local SMME's. Subcontracting must be implemented in terms of the PPPFA requirements as set out by National Treasury. Eskom will provide support where necessary.

5 Construction

5.1 Completion, testing, commissioning, and correction of Defects

5.1.1 Work to be done by the Completion Date

On or before the Completion Date the *Contractor* shall have done everything required to Provide the Works except for the work listed below which may be done after the Completion Date but in any case, before the dates stated. The *Project Manager* cannot certify Completion until all the work except that listed below has been done and is also free of Defects which would have, in his opinion, prevented the *Employer* from using the *works* and Others from doing their work.

	Item of work	To be completed by
	As built drawings of	Within days after Completion
	Performance testing of the <i>works</i> in use as specified in paragraph of this Works Information.	See performance testing requirements.

5.1.2 Use of the *works* before Completion has been certified.

The *Contractor* will have to carry out the supervision of the installations, as per the instruction of the *Project Manager*.

5.1.3 Materials facilities and samples for tests and inspections

From time-to-time random sample test and inspections may be requested, to ensure good quality of the goods being supplied.

5.1.4 Commissioning

Commissioning is to be done before or after Completion depending on the Programme from the Project Manager.

5.1.5 Start-up procedures required to put the *works* into operation.

In order to put the works into operation the Project Manager may require the Contractor to either do this for him or be in attendance whilst he does it, depending on who is the responsible person.

5.1.6 Take over procedures.

Take-over is after or at the same time as Completion. The Contractor is to arrange an inspection before completion of the installation to inspect and identify any outstanding or any defects. The Project Manager may require the Contractor to provide assistance, on an as and when required basis.

5.1.7 Access given by the *Employer* for correction of Defects.

The *Project Manager* arranges access for the *Contractor* to use a part of the *works* which has been taken over if needed to correct any Defects. After the *works* have been put into operation, the *Employer* may require the *Contractor* to undertake certain procedures before such access can be granted. The *Contractor* will be responsible for ensuring that the area to be worked in is barricaded before correcting any defects.

5.1.8 Performance tests after Completion

The Contractor to demonstrate that the works can operate as guaranteed by the Contractor (in Contractor's Works Information) or specified by the Employer either here or elsewhere in this Works Information.

5.1.9 Training and technology transfer

The Employer requires the Contractor to provide training on the use of the access control or any associated transfer of technology from him to the Employer.

5.1.10 Operational maintenance after Completion

The Employer may require the Contractor before the defects date to perform certain duties after Completion and take over which relate to maintenance of the works.

5.1.10.1. All surplus material (Eskom supply), including off-cuts of phase and earth conductors shall be collected by the Contractor / Rotran during construction or on completion of the project and returned to Eskom's Warehouse or disposed on site.

5.1.10.2. All unused material and scrap material to be separated and categorised accordingly. The material must be grouped together according to their type to make it easier for it to be loaded in the trucks and for easy placement when returned to the stores.

5.1.10.3. Eskom RDC's will take back Contractor bought material provided it is part of the item list (has SAP number) and is in a good condition. For non-stock items, Material Management Section will assist with disposal.

PART 4: SITE INFORMATION

Document reference	Title	No of pages
C4	This cover page	1
	Site Information	1
	Total number of pages	

PART 4: SITE INFORMATION

Core clause 11.2(16) states

“Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

3. General description

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

4. Existing buildings, structures, and plant & machinery on the Site

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

5. Subsoil information

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

6. Hidden services

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

7. Other reports and publicly available information

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.