

	<b>Eskom Holdings SOC Limited's Standard Conditions of Tender</b>	Unique Identifier	240-62044728
		Revision	Rev. 2
		Revision Date	Sept 2018
		Group Technology & Commercial	

## 1. General

### Actions

- 1 The *Employer*, the Eskom *representative* and each *eligible* tenderer submitting a tender shall act timeously as stated in these Conditions of Tender and in a manner which is fair, equitable, transparent, competitive and cost-effective.

### Interpretation

- 2 Terms shown in *italics* vary for each tender. The details of each term for this tender are identified in the tender data. Terms shown in capital initials are defined terms in the applicable *conditions of contract*.
- 3 The Enquiry documents issued by Eskom comprise of the *enquiry documents* as stated in the tender data. Any additional or amended requirements in the tender data and additional requirements given in the Schedules in the *tender returnables*, to be provided by the tenderer, are deemed to be part of these Conditions of Tender.
- 4 These Standard Conditions of Tender and the tender data shall not form part of any contract arising from this Invitation to Tender.

### Communication

- 5 Each communication between Eskom and a tenderer shall be to or from the Eskom *Representative* only, in writing, and in a form that can be read, copied and recorded. For this purpose, 'in writing' means hand-written, type-written, printed or electronically made, and resulting in a permanent record. Communication shall be in the English language. Eskom takes no responsibility for non-receipt of communications from or by a tenderer

### Eskom's rights to accept or reject any tender

- 6 Eskom may accept or reject any variation, deviation, tender, or alternative tender, and may cancel the tender process and reject all tenders at any time prior to the formation of a contract. Eskom or the Eskom *Representative* will not accept or incur any liability to a tenderer for such cancellation and rejection, but will give written reasons for the action upon written request to do so. Eskom reserves the right to accept the whole or any part of any tender.

For further details on Eskom's procurement processes, please refer to the Eskom Supply Chain Policy 32-1033 on the following link:

<http://www.eskom.co.za/c/61/eskom-purchasing-policies/>.

After the cancellation of the tender process or the rejection of all tenders Eskom may abandon the proposed work and services, have it performed in any other manner, or re-issue a similar invitation to tender at any time. Eskom, its subsidiaries, shareholders, advisors, directors, employees, representative including the Eskom *Representative* shall not be liable for any losses, claims or damages of whatsoever nature or howsoever

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arising which may be sustained by a tenderer or any other person as a result of any amendment, termination or suspension of the process set out in this Invitation to Tender (and all its schedules and annexures) or which may be sustained by any tenderer or any other person arising out of or pursuant to its participation in the tender process outlined in this Invitation to Tender, or its exclusion from participating in the tender process at any point.

#### Eskom's right to negotiate

7

Eskom reserves the right to enter into mandated negotiations with any one or more selected tenderer in accordance with Eskom's approved procurement policies and procedures.

#### Disclaimer regarding accuracy of tender documents

8

While Eskom takes all reasonable measures to ensure that all information contained in the tender documents is correct and complete, Eskom does not, however, make any representations or warranties, express or implied, as to the accuracy or completeness of such information and Eskom expressly disclaims any and all liability for such representations, warranties or statements.

## 2. Tenderer's Obligation

The tenderer shall comply with the following obligations when submitting a tender and shall:

#### Eligibility

1

Submit a tender only if the tenderer complies with the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with Eskom.

#### Tender closing time

2

Ensure that Eskom has received the tender at the address and in the tender box or facsimile number or e-mail address specified in the tender data by no later than the *deadline for tender submission*. Proof of posting or of courier delivery will not be taken by Eskom as proof of delivery. Eskom will not accept a tender submitted telephonically or by telegraph.

3

Any reference to time will mean South African Standard Time (SAST), i.e. GMT+2 hours. The closing time will be determined by using the Telkom time signal as available over the telephone. This time will be strictly adhered to.

3

Accept that if Eskom extends the *deadline for tender submission* for any reason, the requirements of these Standard Conditions of Tender apply equally to the extended deadline.

4

Any tenders not in the *tender box* as stipulated in the tender data at the *deadline for tender submission* will be considered late.

Accept that Eskom will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed and marked as stated.

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Without limitation, Eskom takes no responsibility for any delays in any courier or postal system or any delays in transit within or between Eskom offices. Eskom likewise takes no responsibility for tenders delivered to a location other than the tender box at the tender office stated in the tender data.

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

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

#### Cost of tendering

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

#### Submitting a tender

- 6 Submit a tender for providing the whole or part of the works, services or supply identified in the specification provided by Eskom as stated in the tender data.
- 7 Return the *tender returnables* to Eskom, completing without exception all the forms, data and schedules included therein. Where any certificate, proof of registration or the like is required to be submitted as a *tender returnable*, the tenderer must ensure that Eskom is in possession of a valid certificate or proof of registration for the duration of the *validity period* and, if the tender is successful, up to contract award. Unless otherwise stated, tenderers must submit an original or a certified copy of such certificate or proof of registration.
- 8 Submit the tender as an original hardcopy tender, plus one (1) copy and provide an English translation for documentation submitted in a language other than English. Tenders may not be written in pencil and must be completed in ink.
- 9 Sign the original hardcopy tender, and all copies of the tender where indicated. Eskom will hold the signatory duly authorised and liable on behalf of the tenderer.
- 10 Seal the original hardcopy tender and each copy of the tender as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state the Eskom address on the outside, the Invitation to Tender number stated in the tender data, as well as the tenderer's name and contact address.

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|   | 11 | Seal the original hardcopy and required copies together in an outer package that states on the outside, only the Eskom address and Invitation to Tender number as stated in the tender data. The outer package must be marked "CONFIDENTIAL".  |
|   | 12 | Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "Financial Proposal" and place the remaining returnable documents in an envelope marked "Technical Proposal". Each envelope shall state Eskom's address on the outside, and the identification details stated in the tender data, as well as the tenderer's name and contact details. The tenderer must ensure that both parts of the tender are delivered as a single package. |
| <b>Tender validity</b>                                    | 13 | Hold the tender(s) valid for acceptance by Eskom at any time within the <i>validity period</i> after the <i>deadline for tender submission</i> .   |
|   | 14 | Extend the <i>validity period</i> for a specified additional period if Eskom requests the tenderer to extend it. A tenderer agreeing to the request will not be required or permitted to modify a tender, except to the extent Eskom may allow for the effects of inflation over the additional period.  |
| <b>Check documents</b>                                    | 15 | Check the tender documents on receipt, including pages within them, and notify the Eskom representative of any discrepancy or omissions using the enclosed fax-back form.  |
| <b>Confidentiality and copyright of documents</b>         | 16 | Treat as confidential all matters arising in connection with the tender. Use and copy the documents provided by Eskom only for the purpose of preparing and submitting a tender in response to this Invitation to Tender.  |
| <b>Standardised specifications and other publications</b> | 17 | Obtain, as necessary for submitting a tender, copies of the latest revision of standardised specifications and other publications, which are not attached but which are incorporated into the <i>enquiry documents</i> by reference.   |
| <b>Acknowledge receipt</b>                                | 18 | Complete the Receipt of Invitation to Tender and submit the Acknowledgement Form, which is attached to the invitation to tender, and return it within 5 (five) days of receipt of the invitation to tender to the Eskom <i>Representative</i> .  |
|   | 19 | Acknowledge receipt of Addenda to the <i>enquiry documents</i> , which the Eskom <i>Representative</i> may issue, and if necessary apply for an extension to submit the tender in order to take the Addenda into account. All Addenda will be issued to tenderers in the same manner the <i>enquiry documents</i> were issued. If the <i>enquiry documents</i> were issued on the Eskom tender bulletin it is the tenderers responsibility to check the tender bulletin regularly for Addenda issued by the Eskom <i>Representative</i> .    |

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| <b>Site visit and / or clarification meeting</b> | 20 | Attend a <i>site visit and/or clarification meeting</i> at which tenderers may familiarise themselves with the proposed work, services or supply, location, etc. and raise questions. Details of the meeting(s) are stated in the tender data.   |
| <b>Seek clarification</b>                        | 21 | Request clarification of the <i>enquiry documents</i> , if necessary, by notifying the Eskom <i>Representative</i> earlier than the <i>closing time for clarification of queries</i> .   |
| <b>Insurance</b>                                 | 22 | Be informed that the extent (if any) of insurance provided by Eskom may not be for the full cover required in terms of the relevant category listed in the <i>conditions of contract</i> . The tenderer is advised to seek qualified advice regarding insurance.   |
| <b>Pricing the tender</b>                        | 23 | Include in the rates, prices, and the tendered total of the Prices (if any) all duties, taxes (including VAT), and other levies payable by the successful tenderer. Such duties, taxes and levies are those applicable 14 (fourteen) days prior to the <i>deadline for tender submission</i> .   |
|  | 24 | Provide rates and Prices that are fixed for the duration of the contract and not subject to contract price adjustment except as provided for in the <i>conditions of contract</i> .  |
|  | 25 | State the rates and Prices in South African Rand unless instructed otherwise as an additional condition in the tender data. The selected <i>conditions of contract</i> may provide for part payment in other currencies.   |
| <b>Alterations to documents</b>                  | 26 | Not make any alterations or additions to the <i>tender documents</i> , other than for purposes of complying with instructions issued by the Eskom <i>Representative</i> or if necessary to correct errors made by the tenderer. All such alterations shall be initialed by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like. |
| <b>Alternative tenders</b>                       | 27 | Submit alternative tenders strictly in accordance with all the requirements of the <i>enquiry documents</i> , only if a main tender is also submitted. The alternative tender is submitted with the main tender together with a schedule that compares the requirements of the <i>enquiry documents</i> with the alternative requirements the tenderer proposes.                           |
|  | 28 | Accept that an alternative tender may be based only on the <i>criteria</i> stated in the tender data and as acceptable to Eskom.   |
| <b>Clarification of tender after submission</b>  | 29 | Provide, on request from the Eskom <i>Representative</i> during the evaluation of tenders, any other material that has a bearing on the tender, the tenderer's commercial position (including notarised joint venture agreements), preferencing arrangements or samples of   |

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materials, considered necessary by Eskom for the purpose of a full and fair risk assessment, and for the purposes of conducting inspections, tests or any other analysis. This may include providing a breakdown of rates or Prices. No change in the total of the Prices or substance of the tender is sought, offered, or permitted except as required by the Eskom *Representative* to confirm the *correction of arithmetical errors* discovered in the evaluation of tenders. The total of the Prices stated by the tenderer as corrected by the Eskom *Representative* with the concurrence of the tenderer, shall be binding upon the tenderer

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| <b>Submit bonds, policies etc.</b>   | 30 | If instructed by the Eskom <i>Representative</i> (before the formation of a contract), submit for Eskom's acceptance, the bonds, guarantees, policies and certificates of insurance required to be provided by the successful tenderer in terms of the <i>conditions of contract</i> . |
| <b>Sign Form of Agreement</b>  | 31 | Undertake to check the final draft of the contract provided by the Eskom <i>Representative</i> , and sign the contract documents.  |
| <b>Proof of authority to act as agent</b>  | 32 | Where an agent on behalf of a principal submits a tender, an authenticated copy of the authority to act as an agent of the tenderer must be submitted as a <i>tender returnable</i> .  |
| <b>Compliance with Supplier Development and Localisation (SD&amp;L) Requirements</b> | 33 | Comply with Eskom's requirements regarding Supplier Development and Localisation, as set out in the tender data.   |
| <b>Compliance with CIDB</b>  | 34 | Eskom, as a state owned entity, requires all tenderers to be registered with the Construction Industry Development Board ("the CIDB") for all construction related work.   |

This requirement flows from the Construction Industry Development Board Act 38 of 2000 ("the CIDB Act") and the Construction Industry Development Board Regulations ("the Regulations"), in terms of which a contractor is required to register with the CIDB to partake in public sector procurement for construction works (as defined therein).

The required grade and category of registration which is determined with reference to the nature and value of the contract, is detailed in the tender data. Eskom requires tenderers to submit proof of registration or proof of application for registration with the CIDB, in the required category of registration, as a tender returnable.

In the event that at the *deadline for tender submission* only proof of application is available, a valid proof of registration must be submitted by the tenderer when it is issued, and in any event prior to contract award.



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The requirements of the CIDB Act and the Regulations may change from time to time and Eskom will be required to apply the version of the CIDB Act and Regulations applicable at the time of contract award. Tenderers should keep themselves updated on these requirements. Further information on the CIDB and CIDB registration can be found on the CIDB website [www.cidb.org.za](http://www.cidb.org.za).

**Compliance with COIDA, OHS Act & Eskom's SHEQ Requirements**

35

The law requires that tenderers are registered with the Compensation Fund ("the Fund") in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA") or with a licensed compensation insurer. This requirement flows from the Occupational Health and Safety Act 85 of 1993 ("the OSH Act"), and Regulation 4(1) (g) of the Construction Regulations 2003.

Tenderers are required to provide proof to the satisfaction of Eskom that safety, health, environmental and quality (SHEQ) systems, policies and capabilities are in place at the time of tendering, failing which, Eskom reserves the right to declare the tender non-responsive during tender evaluation. All costs and personnel associated with SHEQ should be reflected in the tender for Eskom's assessment thereof.

**Compliance with PPPFA**

36

Eskom, as a state owned entity, must comply with the provisions of the Preferential Procurement Policy Framework Act, Act No 5 Of 2000 (PPPFA) and its regulations. Eskom will apply a preferential procurement system in accordance with the PPPFA and its regulations.

**Broad-Based Black Economic Empowerment (B-BBEE)**

37

Eskom may disqualify a tender if it is found that the tenderer has misrepresented its B-BBEE status in its tender or has submitted a fraudulent B-BBEE certificate to Eskom.

**Provision of Security for Performance**

38

To the extent that the provision of security for performance is a requirement, the tenderer must indicate the names of a minimum of 2 (two) financial institutions that the tenderer is likely to approach in order to obtain the required form of security.

### 3. Eskom's undertakings

Eskom and the Eskom *Representative*, shall:

**Respond to clarification**

1

Respond to a request for clarification received earlier than the *closing time for clarification of queries*. The responses will be published to all tenderers in the same manner the *enquiry documents* were issued. If the *enquiry documents* were issued on the Eskom tender bulletin it is the tenderers responsibility to check the tender bulletin regularly for updated responses to clarifications by the Eskom *Representative*.

**Issue Addenda**

2

If necessary, issue Addenda that may amend, amplify, or add to

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the *tender documents*. If a tenderer applies for an extension to the *deadline for tender submission*, in order to take Addenda into account in preparing a tender, Eskom may grant such an extension and the Eskom *Representative* shall notify all tenderers of the extension. The Eskom *Representative* will notify tenderers of Addenda and extensions to the *deadline for tender submission* in the same manner the *enquiry documents* were issued. If the *enquiry documents* were issued on the Eskom tender bulletin it is the tenderers responsibility to check the tender bulletin regularly for updates and notifications regarding the *enquiry documents*.

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| <b>Return late tenders</b>   | 3  | Return tenders received after the <i>deadline for tender submission</i> unopened to the tenderer submitting a late tender. Tenders will be deemed late if they are not received at the designated facsimile machine or in the designated tender box at the date and time stipulated as the <i>deadline for tender submission</i> |
| <b>Tender opening</b>        | 4  | Open the tenders in the presence of the tenderers' representatives who choose to attend at the time and place stated in the tender data. Tenders for which an acceptable notice of withdrawal has been submitted will not be opened.   |
|                              | 5  | At tender opening, Eskom will announce the names of the tenderers and Prices, unless otherwise stated in the tender data.  |
| <b>Two-envelope system</b>   | 6  | Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposals in the presence of tenderer's representatives and announce the name of each tenderer.  |
|                              | 7  | Evaluate the quality of the technical proposals and advise tenderers on who remains in contention for the award of the contract. Return unopened financial proposals to tenderers whose technical proposals failed to meet the minimum criteria.   |
| <b>Non-disclosure</b>        | 8  | Unless required to do so by law, not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tenders and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.             |
| <b>Grounds for rejection</b> | 9  | Consider rejecting a tender if there is any effort by a tenderer to influence the processing of tenders or contract award.   |
| <b>Disqualification</b>      | 10 | Immediately disqualify a tenderer (and its tender) if it is established that the tenderer offered an inducement to any person with a view to influencing the placing of a contract arising from this Invitation to Tender.   |
| <b>Basic Compliance</b>      | 11 | Determine before detailed evaluation, whether each tender properly received:   |



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- Meets the requirements of these Conditions of Tender,
- Has been properly signed, and
- Is responsive to the requirements of the tender documents.

12 Judge a responsive tender as one which conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in Eskom's opinion would:

- Detrimentially affect the scope, quality, or performance of the works, services or supply identified in the specification,
- Change Eskom's or the tenderer's risks and responsibilities under the contract, or
- Affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

13 A tenderer's failure to comply with the said conditions of tender will render a tender non-responsive.

#### **Mandatory requirements**

14 A tenderer's failure to meet stipulated gatekeepers (pre-requisites for evaluation) or failure to provide any compulsory documentation required for purposes of tender evaluation and the determination of competitive ranking will also render the tender / offer non-responsive.

#### **Copies of Tenders**

15 It must further be noted that a tenderer's failure to provide one copy of the original tender and in the stipulated format, will also disqualify the tenderer from further evaluation. Tenderers will not be permitted to provide the required copy after tender / enquiry closing, and Eskom will not be responsible for the making of copies for the purposes of evaluation, in an effort to avoid the risks of tender tampering.

#### **Non-responsive tenders**

16 Reject a non-responsive tender, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

#### **Arithmetical errors**

17 Check responsive tenders for arithmetical errors, correcting them as follows: Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.

If a bill of quantities applies and there is a discrepancy between the rate and the line item total, resulting from multiplying the rate by the quantity, the rate as quoted shall govern. Where there is an obviously gross misplacement of the decimal point in the rate, the line item total as quoted shall govern, and the rate will be corrected.

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Where there is an error in the total of the Prices, either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the Prices, if any, will be corrected.

The corrected price will be communicated to the tenderer. The tenderer may withdraw the tender, but may not change the tendered price.

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|   | 18 | Reject a tender if the tenderer does not accept the corrected total of the Prices (if any).   |
| <b>Evaluating the tender</b>            | 19 | Evaluate responsive tenders in accordance with the procedure and criteria stated in the tender data. Unless required to do so by law, the evaluated tender price will be disclosed only to the relevant Eskom adjudicating authority and will not be disclosed to tenderers or any other person until after the award of the contract to the successful tenderer.   |
| <b>Clarification of a tender</b>        | 20 | Obtain from a tenderer clarification of any matter in the tender which may not be clear or could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified.  |
| <b>Acceptance of tender</b>             | 21 | Notify Eskom's acceptance to the successful tenderer before the expiry of the validity period, or agreed additional period.   |
| <b>Notice to unsuccessful tenderers</b> | 22 | After the successful tenderer has acknowledged Eskom's notice of acceptance, notify other tenderers in accordance with Eskom's current procedures that their tenders have not been accepted.  |
| <b>Prepare contract documents</b>       | 23 | <p>Revise the contract documents issued by Eskom as part of the tender documents to take account of:</p> <ul style="list-style-type: none"> <li>• Addenda issued during the tender period,</li> <li>• Inclusion of some of the tender returnables, and</li> <li>• Other revisions agreed between Eskom and the successful tenderer, before the issue of Eskom's notice of acceptance (of the tender).</li> <li>• The schedule of deviations attached to the Form of Agreement, if any.</li> </ul> |
| <b>Sign Form of Agreement</b>           | 24 | Arrange for authorised signatories of both parties to complete and sign the original and one copy of the Form of Agreement.   |