

	<b>Invitation to Tender/ Request for Proposal (RFP)</b>	<b>Document Identifier</b>	240-114238630	<b>Rev</b>	16
		<b>Effective Date</b>	February 2023		
		<b>Review Date</b>	February 2028		

## ESKOM HOLDINGS SOC LTD

### INVITATION TO TENDER

FOR

#### THE SUPPLY AND DELIVERY OF AN ULTRASONIC FLOW METER TO KOEBERG NUCLEAR POWER STATION



<b>Tender number</b>	<b>WCKBG1173AB</b>
<b>Issue date</b>	<b>6 February 2024</b>
<b>Closing date and time</b>	<b>12 March 2024</b>
<b>Tender validity period</b>	<b>120 days from the closing date and time</b>
<b>Clarification meeting</b>	<b>A clarification meeting will only be held upon request from the tenderer. A voluntary clarification meeting will be held at a date and time to be determined after the tender issue.</b>
<b>Tenders are to be delivered to the following address on the stipulated closing date and time:</b>	<b>ESKOM HOLDINGS SOC Ltd ATT Tender Centre Block "E" Stores Building Brackenfell Complex Eskom Road Brackenfell 7560 Western Cape, South Africa</b>

**NB: National Treasury request suppliers to register on the Central Supplier Database.**  
<http://ocpo.treasury.gov.za>

**NOTE TO TENDERERS: PLEASE KEEP CHECKING THE TENDER BULLETIN**

**FOR ANY POSSIBLE ADDENDUMS TO THIS TENDER**

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## Invitation to Tender

Eskom Holdings SOC Ltd (hereinafter “Eskom”) invites you to submit a tender for the **The Supply and Delivery of an Ultrasonic Flow Meter to Koeberg Nuclear Power Station**

0653554 METER FLW:ULTRASONIC;FLANGE 3 IN;0-30;3

METER, FLOW:  
TYPE: ULTRASONIC;  
MNF: KROHNE;  
MODEL: OPTISONIC 3400;  
P/NO: OPTISONIC 3400 STANDARD COMPACT;  
CONNECTION: FLANGE 3 IN;  
RANGE: 0-30 M3/HR;  
MATERIAL: SS GR 316L AISI;  
NOMINAL BORE: 3 IN;  
POWER: 22 VA;  
POTENTIAL: 100-230 VAC;  
ENCLOSURE RATING: IP67  
OUTPUT SIGNAL: 4 TO 20 MA;  
PROCESS CONNECTION: M20 X 1.5 GLAND;  
DSG-312-131; 0204/87Q; Q2:NEV:3:1;  
EQUIVALENCY NO: I090/09E; FUNC LOC: 1/2 ASG 034 MD

The enquiry documents are supplied to you on the following basis:

1. Free of charge

Eskom has delegated the responsibility for this tender to the Eskom *Representative* whose name and contact details are set out in the Tender Data. A submission of a tender/proposal by you in response to this invitation will be deemed as your acceptance of the Eskom Standard Conditions of Tender (to be accessed via [www.eskom.co.za](http://www.eskom.co.za)).

Queries relating to these Invitation may be addressed to the Eskom *Representative*.

Yours faithfully



Elmarie Capes: Senior Advisor Procurement

Date: 06 February 2024

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1.1 The following documents listed hereunder are attached to this enquiry.

<b>Number</b>	<b>Description</b>	<b>Annexure/to be downloaded and attached</b>	<b>Attached (Y/N/ N/A)</b>
1.1.1	*Acknowledgement form	Annexure A	Y
1.1.2	*Tenderer's particulars	Annexure B	Y
1.1.3	*Integrity Declaration Form (refer to <a href="http://www.eskom.co.za">www.eskom.co.za</a> for the Supplier Integrity Pact that suppliers are required to download and read)	Annexure C	Y
1.1.4	*CPA Requirements for Local Goods/Services	Annexure D	Y
1.1.5	*CPA(IG) for Foreign Goods/Services (if applicable)	Annexure E	Y
1.1.6	*SBD 1 -Invitation to Bid must be filled out by all tenderers and submitted with the tender at tender submission deadline	Annexure F	Y
1.1.7	*SBD 4 – Bidders Disclosure	Annexure G	Y
1.1.8	*SBD 6.1- Preference Points Claim Form in terms of PPPFA 2022 regulations	Annexure H	Y
1.1.9	SBD 6.2- Declaration Certificate for Local Production and Local Content (only applicable if designated materials are included).	Annexure I.1	N/A
1.1.10	Annexure C-Local Content Declaration-Summary Schedule	Annexure I.2	N/A
1.1.11	Annexure D-Imported Content Declaration – Supporting Schedule to Annexure C	Annexure I.3	N/A
1.1.12	Annexure E-Local Content Declaration-Supporting Schedule to Annexure C	Annexure I.4	N/A
1.1.13	Reverse e-auction training acknowledgement form	Annexure J.1	Y
1.1.14	Reverse e-auction process	Annexure J.2	Y
1.1.15	The Eskom e-Auction System User Guide for Prospective Bidders	Annexure J.3	Y
1.1.16	Pricing Scheduling Documentation	Annexure K	Y
1.1.17	Authority to Submit a Tender	Annexure L	Y

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1.1.18	Non-Disclosure Agreement (NDA) Vendors	Annexure M	Y
1.1.19	Eskom Standard Conditions of Tender	Annexure N	Y
1.1.20	Eskom General Conditions of Purchase	Annexure O	Y
1.1.21	Technical Evaluation Criteria	Annexure P	Y
1.1.22	Quality Evaluation Criteria	Annexure Q	Y
1.1.23	DSG-312-131	Annexure R	Y
1.1.24	DSG-318-087	Annexure S	Y
1.1.25	Appendix A – Supplier Quality Programme Requirements	Annexure T	Y

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1.2 The Tender Data makes several references to the **Eskom Standard Conditions of Tender** and in those instances, the clause numbers are referenced hereunder. If the **Eskom Standard Conditions of Tender** is not attached to the **Invitation to Tender/Request for Proposal**; then the tenderers are required to download this from [www.eskom.co.za](http://www.eskom.co.za). The “**Tender Data**” as detailed herein shall take precedence over the **Standard Conditions of Tender** in the event of any ambiguity or inconsistency between the two documents.

<b>Clause Number from Standard Conditions of Tender</b>	<b>Tender Data</b>
1.2.1 Parties	The Employer is <b>Eskom Holdings SOC Ltd</b> The Eskom Representative is: Name: <b>Annemarie Berry</b> Tel: <b>021 522 3310</b> E-mail: <b>BerryAE@eskom.co.za</b>
1.2.2 Enquiry documents	The Invitation to tender number is: <b>WCKBG1173AB</b> See the content list above for the enquiry documents.
1.2.3 Type of Invitation to Tender	This invitation to tender is an open Invitation to tender via Reverse E-Auction
1.2.4 Eskom's rights to accept or reject any tender	The tender shall be for the whole of the contract.
1.2.5 Eligible tenders	Submit a tender only if the tenderer (whether a single company or a structure similar to a Joint Venture) complies with the <i>eligibility criteria</i> stated in the Tender Data and the tenderer, or any of his principals, is not under any restriction to do business with Eskom/State Owned Companies.  Tenderers are deemed <b>ineligible</b> to submit a tender if <ol style="list-style-type: none"> <li>1. Tenderers have the nationality of a country on any international sanctions list. A tenderer shall be deemed to have the nationality of a country if the tenderer is a national or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.</li> <li>2. Tenderers submit more than one [tender/proposal] either individually or as a partner in a joint venture (JV) or consortium</li> <li>3. [Tenders/proposals] submitted by a JV or consortium where the JV/consortium agreement does not explicitly state that the parties of the JV or consortium shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.</li> <li>4. A Tenderer must not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A</li> </ol>

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	<p>Tenderer may be considered to have a conflict of interest with one or more parties in this [tendering/RFP] process, if :</p> <ol style="list-style-type: none"> <li>1. (a)they have a controlling partner/majority shareholder in common; or</li> <li>2. (b)they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender/proposal of another Tenderer, or influence the decisions of the Employer regarding this bidding process;</li> <li>5. Tenders signed by non- authorized persons</li> <li>6. Where the tenderers are not registered on National Treasury's Central Supplier Database (except Foreign Suppliers)</li> <li>7. Any tenderer that is restricted by National Treasury</li> <li>8. Any tenderer on the Tender Defaulters list.</li> <li>9. A tenderer that sub-contracts 100% Scope of Work.</li> </ol> <p><b>Ineligible tenderers will be disqualified.</b></p>
1.2.6 Tender Closing	<p>The deadline for <b>tender</b> submission is:</p> <p><b>Date:12 March 2024</b></p> <p><b>Time 10:00AM (Standard South African Time)</b></p> <p><b>Late Tenders will not be accepted.</b></p> <p><b>(Please allow extra time for registration at the entrance/security at Brackenfell Complex)</b></p> <p>Tenders are to be submitted to the Eskom tender box at the following physical address:</p> <p><b>THE TENDER OFFICE</b>  <b>Tender Centre</b>  <b>Block "E" Stores Building</b>  <b>Brackenfell Complex</b>  <b>Eskom Road</b>  <b>Brackenfell 7560</b>  <b>Western Cape, South Africa</b></p>
1.2.7 Copy of original tender	<p><b>The tenderer must submit the following at tender submission deadline:</b></p> <p>One (1) tender as a complete original tender,  One (1) copy of the original tender (NOT BLANK COPY)  One (1) Soft/electronic copy (<b>Preferably on a USB/thumb drive – Do NOT send it on email</b>)</p> <p><b>(The soft/electronic copy does not replace the second hard copy.)</b></p> <p><b>Where a Tenderer does not submit 1 hard copy of the original tender at tender submission deadline, the tenderer will be disqualified.</b></p>

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1.2.8 Tender Validity Period	The tender validity period is <b>120 days</b>
1.2.9 Site/clarification meetings	A clarification meeting will only be held upon request from the tenderer. A voluntary clarification meeting will be held at a date and time to be determined after the tender issue.
1.2.10 Clarification on enquiry documents	The tenderer will notify the Employer of any clarifications required before the closing time for clarification queries, which is <b>5</b> working days before the deadline for tender submission.
1.2.11 Alternative tenders	Alternative tenders are <b>not allowed</b> .
1.2.12 Provision of security for performance	If security for performance (e.g., Performance Bond) is required, the names of two financial institutions that the tenderer will approach must be submitted with the tender.  Not applicable.
1.2.13 Opening of tenders	Tenders will be opened at the same date and time as the tender deadline. Tenders will be opened on: Place: <b>Tender Centre</b> <b>Block "E" Stores Building</b> <b>Brackenfell Complex</b> <b>Eskom Road</b> <b>Brackenfell 7560</b> <b>Western Cape, South Africa</b> Date: <b>12 March 2024</b> Time: <b>10H00 (Standard South African Time)</b>
1.2.14 Prices to be read out	Prices will not be read out.
1.2.15 Basic Compliance	Basic compliance for this invitation to tender/ RFP are:  1. Meet the eligibility criteria for a tenderer 2. Submit one (1) hard copy of the original tender to Eskom 3. Submit a complete original tender with commercial, financial and technical information 4. Submission of the mandatory commercial tender returnables as at stipulated deadlines. 5. Central Supplier Database (CSD) number (MAA.....)
1.2.16 Mandatory tender returnables	A tenderer that does not submit mandatory documents/information required in mandatory documents by the required deadlines as stipulated in the Tender Returnable section of the respective Invitation to Tender; will be deemed non-responsive.
1.2.17 Functionality requirements	Functionality requirements are applicable.  The following criteria will be applicable for this transaction under functionality criteria:

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<b>Criteria</b>	<b>Weight</b>
Supply Of Product	40%
Technical Requirements	30%
Quality Requirements	30%
Functional Evaluation Total	<b>100%</b>
Minimum Threshold	<b>80%</b>

Tenderers who do not meet the minimum threshold for functionality scoring will be disqualified and not be evaluated further

1.2.18 Evaluation of price	<p>Prices will be evaluated as follows:</p> <ol style="list-style-type: none"> <li>1. Inclusive of VAT</li> <li>2. Making the specified correction for arithmetical errors</li> <li>3. Excluding contingencies in any bill of quantities or activity schedule.</li> <li>4. Making an appropriate adjustment for any other acceptable variations, deviations, or alternative tenders submitted.</li> <li>5. Making a comparison of the Net Present Value of each adjusted tender based on the tendered programme (if provided) and prices, on the estimated effect of Price Adjustment Factors and rate of exchange fluctuations (if applicable) and on other evaluation parameters relating to uncertainty and risk, where applicable.</li> <li>6. Unconditional discounts must be taken into account for evaluation purposes.</li> <li>7. Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is affected.</li> <li>8. Prices will be scored out of 80 or 90 points</li> </ol>
1.2.19 Evaluation of Specific Goals	<p>Specific goals will be scored out of 10 or 20 points in accordance with PPPFA.</p> <p>If a tenderer fails to meet Specific goals and submit proof, the tenderer will not be disqualified. However, be awarded 80/90 points for price and will score 0 points for Specific goals (out of 10/20)</p> <p><b>Allocation of preference points (20/10)</b></p> <p>Preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:</p>

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B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

To claim preference points, a tenderer must submit the proof of B-BBEE status level of contributor (e.g. a valid B-BBEE certificate issued by a SANAS accredited verification agency / sworn affidavit / CIPC affidavit)

Failure on the part of a supplier to submit "proof of B-BBEE status level of contributor" for purposes of evaluation and scoring by the tender closing will not result in disqualification (if tenderer is otherwise deemed to be responsive/acceptable in all other aspects). The tenderer will, however, be scored zero on B-BBEE for purposes of PPPFA scoring and ranking.

A tenderer may not be awarded points for B-BBEE status level if the tender documents indicate that the tenderer intends to subcontract more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

### **Definitions**

#### **1. Black Person**

Means Africans, Coloureds, Indians & Chinese:

- Who are citizens of the Republic of South Africa by birth or decent; or
- Who became citizens of the Republic of South Africa by naturalisation-
- Before 27 April 1994; or
- On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date

#### **2. 51% Black Owned**

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	<p>Means entity in which:</p> <ul style="list-style-type: none"> <li>• Black people hold at least 51% of the exercisable voting rights as determined under Codes series 100 of the Dtic Codes of Good Practice as amended.</li> <li>• Black people hold at least 51% of the economic interest as determined under Codes series 100 of the Dtic Codes of Good Practice as amended; and</li> <li>• Has earned all the points for Net Value under statement 100 of the Dtic Codes of Good Practice as amended</li> <li>•</li> </ul> <p>Note:</p> <p><b>Failure on the part of the supplier to submit supporting documents/proof of specific goals for purposes of evaluation and scoring by RFQ closing will not result in disqualification (if tenderer is otherwise deemed to be responsive/acceptable in all other aspects). The tenderer will, however, be scored zero for Specific goals for purposes of PPPFA scoring and ranking.</b></p>
1.2.20 Ranking of tenders	<p>Suppliers will be ranked by applying the preferential point scoring based on the relevant system as stipulated hereunder]:-</p> <p>Suppliers will be ranked by applying the preferential point scoring based on the relevant system as stipulated hereunder]:-</p> <ol style="list-style-type: none"> <li>1. 90/10 for tender with a rand value above R50 million or</li> <li>2. 80/20 for tender with rand value equal to or below R50 million</li> </ol> <p style="text-align: center;"><b>OR</b></p> <p>state that either 80/20 or 90/10 will apply should there be a degree of uncertainty on which PPPFA Point allocation system will apply; the lowest acceptable tender will be used to determine the applicable preference system</p> <p>Eskom will then add the score from Pricing and Specific goals together and rank the suppliers from the highest to the lowest.</p>
1.2.21 Objective Criteria (if applicable)	<p><b>Objective criteria is not applicable</b></p>
1.2.22 Reverse e-auction (if applicable)	<p><b>Reverse e-auction is applicable</b></p> <p><b>Please note:</b>  <b>Reverse e-auction is an electronic price and preference point system (aligned to PPPFA) that aims to achieve the most competitive prices. Eskom reserves the right to utilize reverse e-auction in certain enquiries. Where reverse e-auction is utilized in a specific enquiry this will be indicated in the respective enquiry and the relevant reverse e-auction supporting documents will form part of the enquiry. The Tenderers will be</b></p>

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	<b>required to submit a complete tender but without prices. Where a supplier includes prices in their tender; these prices will not be considered and will be disregarded.</b>
1.2.23 Contractual Requirements	The conditions of contract will <b>not be applicable</b>
1.2.24 Contractual Condition	The conditions of contract will <b>not be applicable</b>
1.2.25 CIDB Requirements	CIDB Requirements will <b>not be applicable</b>

**Please note:**

**Tenderers are requested to bear in mind Eskom's standard payment terms as stipulated hereunder when submitting tenders and concluding contracts with Eskom:**

**For contracts valued below R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying Suppliers within 30 days of receipt of undisputed invoices.**

**For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of receipt of undisputed invoices.**

**Eskom reserves the right to negotiate with preferred bidders after a competitive bidding process or price quotations; should the tendered prices not be deemed market-related.**

**Main contractors/ suppliers are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting. Where a main contractor subcontracts with a subsidiary this must be declared in tender documents.**

**A report containing a list of potential sub-contractors may be drawn by accessing the following link: [www.csd.gov.za](http://www.csd.gov.za)**

**“proof of B-BBEE status level of contributor” means-**

- (a) the B-BBEE status level certificate issued by an authorised body or person; or
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act

### **1.3 TENDER RETURNABLES**

The tenderer must submit the returnable set out hereunder as part of its tender at the stipulated deadline.

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**NOTE:**

**\* Returnable required at Tender closing (disqualifiable) -** These returnable are required to be fully completed, signed (if required on the returnable) and submitted with the tender at Tender closing date and time. If not fully completed, signed (if required on the returnable) and/or submitted by tender closing the tender must be disqualified.

**\*\*Returnable required at Tender closing. (Non-disqualifiable) –** These returnable are also required to be fully completed, signed (if required on the returnable) and submitted with Tender at Tender closing date and time, however, if not submitted by Tender closing, the Procurement Practitioners must request in writing the outstanding returnable to be submitted within 5 working days. If the requested returnable are not fully completed, signed (if required on the returnable) and/or received by the Procurement Practitioner within 5 working days of the request; the tender must be disqualified. The 5 working days requirement does not apply to CIDB proof of grading. (Refer to the returnable table under CIDB reference for prescribed period)

**# These returnable are mandatory for evaluation and therefore required at tender closing time and date. These will not be requested by the Procurement Practitioner, however the tenderer will not be disqualified but score zero.**

<b>Reference</b>	<b>Returnable From Suppliers</b>	<b>Returnable required at Tender closing (disqualifiable)*</b>	<b>Returnable required at Tender closing. (Non-disqualifiable) **</b>	<b>Returnable required prior to Contract Award.</b>
<b>Basic Compliance</b>	Two (2) hard copies of the tender One (1) additional complete soft copy of the original tender is in electronic format. (The soft/electronic copy does not replace the second hard copy.)	✓		
<b>Annexure A</b>	Acknowledgement Form		✓	
<b>Annexure B</b>	Tenderers Particulars		✓	
<b>Annexure C</b>	Integrity Declaration Form		✓	
<b>Annexure D</b>	CPA for local goods/services (if applicable)		✓	
<b>Annexure E</b>	CPA(IG) for imported goods/services (if applicable)		✓	

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<b>Annexure F</b> (applicable for all suppliers including foreign suppliers)	SBD 1 – to be completed and submitted by all tenderers.		✓	
<b>Annexure G</b>	SBD 4 – Bidders Disclosure		✓	
<b>#Annexure H</b>	SBD 6.1 – Preference Points Claim Form in terms of PPPFA 2022 regulations		✓	
<b>Annexure I.1</b>	SBD 6.2- Declaration Certificate for Local Production and Local Content (only applicable if designated materials are included).	N/A		
<b>Annexure I.2</b>	Annexure C-Local Content Declaration- Summary Schedule	N/A		
<b>Annexure I.3</b>	Annexure D-Imported Content Declaration – Supporting Schedule to Annexure C	N/A		
<b>Annexure I.4</b>	Annexure E-Local Content Declaration- Supporting Schedule to Annexure C	N/A		
<b>Annexure J.1</b>	Reverse e-auction training acknowledgement form		✓	
<b>Annexure K</b>	Pricing Scheduling Documentation		✓	
<b>Annexure L</b>	Authority to Submit a Tender		✓	
<b>Annexure M</b>	Non-Disclosure Agreement (NDA) Vendors		✓	
<b>Additional Documents required in event of JV:-</b>	Letter of intent to form a JV/consortium or Valid joint venture agreement confirming the rights and obligations of each of the joint venture partners and their profit-sharing ratios.		✓	
	Separate written confirmation that the joint venture will operate as a single business entity (incorporated) for the duration of the contract, or this may be included as an obligation within the JV agreement.		✓	
	# Proof of compliance to the stipulated Specific goals.		✓	
	Details and confirmation of a single designated bank account in the name		✓	

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	of the JV and independent of the individual JV partners, as set out in the joint venture agreement.			
<b># Specific Goals</b>  Refer to page 9 on the ITT for more information	Failure on the part of the supplier to submit " <b>proof of specific goals</b> " for purposes of evaluation and scoring by the tender closing will not result in disqualification (if tenderer is otherwise deemed to be responsive/acceptable in all other aspects). The tenderer will, however, be scored zero for Specific goals for purposes of PPPFA scoring and ranking.		✓	
<b>Tax Clearance Certificates</b>	A certified copy of a tax clearance certificate is still required by Foreign suppliers (with a footprint in South Africa- but who are not on CSD and have not provided a SARS pin number) and Local suppliers (who have not provided their SARS e-filing PIN number for verification by Eskom and/or their CSD profile / CSD number) .  Foreign suppliers with no footprint in South Africa, must still complete the SBD1 document, however no proof of tax compliance is required.			✓
<b>Tax Evaluation Questionnaire (if services contract and was included as annexure)</b>	Evaluation questionnaire to determine whether a company, close corporation (CC) or Trust is a personal service provider for purposes of PAYE]			N/A
<b>Compliance with Employment Equity Act</b>	To the extent that the tenderer falls within the definition of a "designated Employer" as contemplated in the Employment Equity Act 55 of 1998, the tenderer is required to furnish the Employer with proof of compliance with the Employment Equity Act, including proof of submission of the Employment Equity report to the Department of Labour. (South African tenderers only)			✓
<b>Shareholding</b>	Shareholding organogram and detailed breakdown (for each individual company/JV member)			✓

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	clearly identifying percentages owned by individual shareholders (full names & ID Numbers) and other entities (provide full legal/trading name and respective identifying registration/trust numbers)			
<b>Additional documents required (ECSA/ SACPCMP/CVs/ permits/licenses/ specific registration documents (if applicable to scope of work)</b>		✓		
<b>DOCUMENTS REQUIRED UNDER CONTRACTUAL REQUIREMENTS (WHERE CONTRACTUAL REQUIREMENTS ARE STIPULATED)</b>				
<b>Safety</b>	COIDA - Original certificate of good standing or proof of application issued by the Compensation Fund (COID) or a licensed compensation insurer (South African tenderers only)			✓
<b>Quality</b>	Documents that may be required per scope of work			✓
<b>Other safety/quality documents as required per scope of works</b>				✓
<b>Environmental</b>	Documents that may be required as per scope of work			✓
<b>Due Diligence</b>	Audited Financial Statements of the <i>tenderer</i> for the previous 18 months, or to the extent that such statements are not available, for the last year. Tenderers must note that in the case of a joint venture or special purpose vehicle (SPV) especially formed for this tender, audited financial statements for each participant in the JV / SPV is required. Start-up enterprises formed within the last 12 months are not required to send in statements, but if successful with their tender will be required to send statements for the first year when once available.			✓

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#### **DOCUMENTS REQUIRED UNDER FUNCTIONALITY/TECHNICAL CRITERIA**

<b>Annexure P</b>	Technical Evaluation Criteria (All deliverables indicated in Annexure P to be submitted)	✓		
<b>Annexure Q</b>	Quality Evaluation Criteria (All deliverables indicated in Annexure Q to be submitted)	✓		
<b>Annexure T</b>	Appendix A – Supplier Quality Assurance Requirements		✓	

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## ANNEXURE A

### ACKNOWLEDGEMENT FORM

We are in receipt of the Invitation to Tender/Proposal from Eskom Holdings SOC Ltd and the following addenda issued by Eskom:


We confirm that the documentation received by us is: (**Indicate by ticking the box**)

Correct as stated in the Invitation to Tender / RFP Content List, and that each document is complete.

**Or:** Incorrect or incomplete for the following reasons:

---



---



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### **Cataloguing Acknowledgement:**

**[Please select the relevant statement by ticking the appropriate box below]:**

1. We agree to provide the cataloguing information as described in the *tender submission*.
2. We have already supplied Eskom with the cataloguing information pertaining to this enquiry in a previous contract/order [*insert previous invitation to tender/RFQ number*]
3. We do not intend to provide the cataloguing information for the required scope / specifications. for the reasons stated hereunder:

---



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4. I confirm that I am a Distributor/Importer/Agent and my Principal, being the Original Equipment Manufacturer (OEM) is or is not in the position to supply cataloguing information for items. See attached letter from OEM confirming his position.

Invitation to Tender/Request for Proposal No: \_\_\_\_\_

Name of company/JV: \_\_\_\_\_

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Country of registration: \_\_\_\_\_

Name of contact person: \_\_\_\_\_

Contact details of contact person:

Tel (landline):	
Cell phone:	
e-mail address:	

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## **ANNEXURE B**

### **TENDERER'S PARTICULARS**

**The tenderer must furnish the following particulars where applicable:**

Indicate the type of tendering structure by marking with an 'X' (where applicable provide registration number):	
Individual tenderer	
Unincorporated Joint venture (registration number for each member of the JV)	
Incorporated JV	
Other	

**Please complete the following:**

Name of lead partner/member in case of JV	
CIPC Registration Number or CIPC disclosure certificate (for each individual company / JV member)	
VAT registration number (for each individual company / JV member)	
CIDB registration number (for each individual company/JV member if applicable), respective contractor grading designation for each individual company/JV member , and combined cidb contractor grading designation (for JVs)	
Contact person	
Telephone number	
E-mail address	
Postal address (also of each member in the case of a JV)	
Physical address (also of each member of the JV)	

If subcontractors are to be used, indicate the following for the main sub-contractor(s). Add to the list of applicable.

Name of contractor	
CIPC Registration number or CIPC disclosure certificate	
VAT registration number	
CIDB Registration number (if applicable) and CIDB grade specified for the sub-contractor as may be stipulated in the Tender Data	
Proposed Scope of work to be done by sub-contractor	

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Contact person	
Telephone number	
Fax number	
E-mail address	
Postal address	
Physical address	

1. If you are currently registered as a vendor with Eskom, please provide your Vendor registration number with Eskom. \_\_\_\_\_
2. If you are currently registered as a vendor on the Treasury Central Supplier Database(CSD) please provide your supplier registration number with Treasury \_\_\_\_\_
3. Please note that it is mandatory for you to register on National Treasury's CSD, if you intend doing work with any State department or State owned entity/company.
4. You may register online at National Treasury website on [www.treasury.gov.za](http://www.treasury.gov.za)
5. If you are registered on SARS Efilng system, please provide your pin number in order to verify your tax compliant status \_\_\_\_\_
6. If you are required to be tax compliant as per SBD 1, but are not registered on CSD ( foreign suppliers) or have not provided your SARS Efilng pin, please confirm that you have attached/will send a copy of a current valid tax compliant certificate as a tender returnable (by contract award stage).

YES		NO	
-----	--	----	--

8. If sub-contracting is prescribed in the specific enquiry, you need to complete 8.1- 8.7

8.1 Confirm if you intend sub-contracting

YES		NO	
-----	--	----	--

8.2 What percentage will you be sub-contracting? \_\_\_\_\_%

8.3 To whom do you intend sub-contracting? \_\_\_\_\_

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8.4 Is the said sub-contractor registered on CSD?

YES	NO
-----	----

8.5 If yes to 8.4, please provide CSD number.\_\_\_\_\_

8.4 Please confirm B-BBEE level of said sub-contractor\_\_\_\_\_

8.5 Which designated group does the sub-contractor belong to:-

- a) An EME or QSE;
- b) An EME or QSE which is at least 51% owned by black people;
- c) An EME or QSE which is at least 51% owned by black people who are youth;
- d) An EME or QSE which is at least 51% owned by black people who are women;
- e) An EME or QSE which is at least 51% owned by black people with disabilities;
- f) An EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- g) A cooperative which is at least 51% owned by black people;
- h) An EME or QSE which is at least 51% owned by black people who are military veterans; or
- i) More than one of the categories referred to in paragraphs (a) to (h).

8.6 Please confirm that you have attached your signed intent to sub-contract document.

YES	NO
-----	----

8.7 Have you attached proof of sub-contractor's belonging to designated group

YES	NO
-----	----

#### 1. Single tenderers

I, the undersigned, \_\_\_\_\_ (Full names) hereby confirm that I am duly authorised to sign all documents in connection with this tender and any contract resulting from it, on behalf of \_\_\_\_\_ (*insert the full legal name of the tenderer*).

Signature: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

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## 2. Joint Ventures

We, the undersigned, are submitting this tender in Joint Venture and hereby authorise Mr/Ms \_\_\_\_\_ (full names), an authorised signatory of \_\_\_\_\_, (insert the full legal name of the business entity serving as the lead partner) acting in the capacity of lead partner, to sign all documents in connection with the tender and any contract resulting from it on our behalf.

We attach to this Schedule a copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners.

Legal Name of Joint Venture Member	Full Name and Capacity of Authorised Signatory	Signature

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## **ANNEXURE C**

### **INTEGRITY DECLARATION FORM**

***Note: This returnable is required to be fully completed, signed and submitted by tenderers at the stipulated deadlines.***

#### **DECLARATION OF INTEREST**

I/We understand that any natural/legal person, including employees of the State and/or those related to an Eskom employee/director (as per the definition of "related" set out hereunder), may tender to Eskom. However, in view of possible allegations of favouritism (the practice of showing favour to, or giving preference to some person/group, to the detriment of, or at the expense of another that is entitled to equal treatment or an equal opportunity), should the resulting tender, or part thereof, be awarded to such natural/legal person, as described herein, it is required that the *tenderer/s* declare such interest/relationship where:-

1. the *tenderer/s* employees/directors are also employees/contractors/consultants/ directors in the state or a state owned entity.
2. the *tenderer/s* employees/directors are also employees/contractors/consultants/ directors of Eskom
3. the *tenderer/s* employees/directors are also employees/contractors/consultants or directors in another entity together with Eskom employees/consultants/contractors/ directors
4. the *legal person/s (including its employees/contractors/directors/members/ shareholders)* on whose behalf the tender documents are signed, is in some other way "related" to an Eskom employee/contractor/consultant/director involved in the tender evaluation/tender adjudication/tender negotiation. "Related" meaning that:-
  1. an individual is related to another individual if they are married, or live together in a relationship similar to marriage;
  2. or are separated by no more than two degrees of natural or adopted consanguinity or affinity;
  3. an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with the definition of "control" (as per Companies Act section 2(1)) ; and

#### **1.a juristic person is "related" to another juristic person if:-**

1. either of them directly/indirectly controls the other, or the business of the other, as determined in accordance with the definition of "control" (as per Companies Act section 2(1) );
2. either is a subsidiary of the other; or
3. a person directly/indirectly controls each of them, or the business of each of them, as determined in accordance with the definition of "control"
5. the *tenderer/s* and one or more of the *tenderers* in this tendering/RFP process have a controlling partner in common, or a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender/proposal of another tenderer, or influence the decisions of Eskom regarding this bidding process;

To give effect to the provisions above, please complete the table hereunder with all required information.

<b>Full Name &amp; Capacity/</b>	<b>Identity</b>	<b>Confirm and provide</b>	<b>Full Names &amp;</b>	<b>To your</b>
----------------------------------	-----------------	----------------------------	-------------------------	----------------

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Position within tenderer (e.g. employee/Director/member/owner/shareholder)	Number	details (including employee number) if you are a State/State owned entity employee/contractor/director.	Capacity/Position of Eskom employee/ director/ consultant and details of the relationship or interest (marital/ familial/personal/ financial etc.)	knowledge is this person involved in the evaluation/ adjudication/ negotiation of tenders

1. If any employee/director/member/shareholder/owner of tenderer/s is also currently employed by Eskom, state whether this has been declared and whether there is authorisation(Y/N) to undertake remunerative work outside public sector employment and attach proof to this declaration.

Do the tenderer/s and other tenderer in this tendering/RFP process share a controlling partner or have any relationship with each other, directly or through common third parties? (Y/N) If Yes, attach proof to this declaration.

## 2. DECLARATION OF FAIR TENDERING PRACTICES

This serves as a declaration that when goods/services are being procured, all reasonable steps have been taken to address and/or prevent the exploitation of the procurement process and the use of any unfair tendering practices.

A **[tender/proposal]** will be disqualified if the **tenderer/s**, or any of its directors have:

1. abused the institution's procurement process (e.g. bid rigging/collusion)
2. committed fraud or any other improper conduct in relation to such system.

Please complete the declaration with an 'X" under YES or NO

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<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
1.1	<p>Is the <i>tenderer/s (or any of its directors/members/shareholders)</i> listed on National Treasury's Database of Restricted Suppliers as companies/persons prohibited from doing business with the public sector</p> <p><b>[Note: Companies/persons who are listed on the Database were informed in writing of this restriction by the Authority/Accounting Officer of the institution that imposed the restriction after the audi alteram partem rule was applied].</b></p> <p>The Database of Restricted Suppliers can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>).</p>		
1.2	<p>Is the <i>tenderer/s (or any of its directors / members / shareholders)</i> listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combatting of Corrupt Activities Act (No 12 of 2004)</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>).</p>		
1.3	<p>Was the <i>tenderer/s (or any of its directors/members/shareholders)</i> convicted by a court of law (including a court outside South Africa) for fraud and/or corruption with respect to the procurement/tendering processes/procedures during the past five years?</p>		
1.3.1	Provide details.		
1.4	Was the <i>tenderer/s (or any of its directors/members/shareholders)</i> prohibited from doing business with any International Financial Development/funding Agency or Lending Institution		
1.5	<i>Is there any history/record of the tenderer/s (or any of its directors/members/shareholders) failing to meet their contractual obligation with any SOC?</i>		

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### 3. DECLARATION OF SHAREHOLDING INFORMATION

I, the undersigned \_\_\_\_\_ [Position] \_\_\_\_\_ hereby declare that I am the duly authorised representative of \_\_\_\_\_ [Name of Tenderer].

I further declare that the following individuals and/or entities listed hereunder are Shareholders in \_\_\_\_\_ [Name of Tenderer]:

***Note that this information in the tables hereunder must be fully completed for each tenderer (including incorporated JVs). In event that the tenderer is an unincorporated JV, this must be completed for each JV member. Please add additional rows if required.***

#### Individuals:

Full Name	Identity Number	Shareholding Percentage

#### Other Entities\*:

Full Legal / Trading Name	Registration Number/Trust Number	Shareholding Percentage	Full name and surname of the directors/beneficiaries/shareholders of the shareholding entity	Identification Numbers of the shareholders/directors/beneficiaries of the shareholding entity

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I, the undersigned, \_\_\_\_\_ (full names) hereby confirm that I am duly authorised to sign all documents in connection with this tender and any contract resulting from it on behalf of \_\_\_\_\_ (insert the full legal name of tenderer).

I declare that I have read and understood the provisions of the Supplier Integrity Pact, that all information furnished herein is correct, that it is understood that the tenderer's tender/proposal may be rejected, and that Eskom will act against the tenderer should any aspect of this declaration prove to be false, and

I give my consent for this information to be used for the purpose as described in this Integrity Declaration Form and/or in relation to the Supplier Integrity Pact, and

I further consent that information provided in terms of this Integrity Declaration Form may be processed for verification of conflicts of interest and other ancillary purposes by Eskom. Such processing may include the sharing of the information with third parties.

<b>Signature:</b>	
<b>Designation and capacity in which signing</b>	
<b>Date:</b>	

**Joint Ventures**

I, the undersigned, \_\_\_\_\_ (full names) hereby confirm that acting in the capacity of lead partner, I am duly authorised to sign all documents in connection with the tender and any contract resulting from it on behalf of \_\_\_\_\_ (insert the full legal name of the JV); and

I declare that I have read and understood the provisions of the Supplier Integrity Pact, that all information furnished herein is correct, that it is understood that the JV's tender/proposal may be rejected, and that Eskom will act against the JV should any aspect of this declaration prove to be false; and

I give my consent for this information to be used for the purpose as described in this Integrity Declaration Form and/or in relation to the Supplier Integrity Pact, and

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**I further consent that information provided in terms of this Integrity Declaration Form may be processed for verification of conflicts of interest and other ancillary purposes by Eskom. Such processing may include the sharing of the information with third parties.**

<b>Signature:</b>	
<b>Designation and capacity in which signing</b>	
<b>Date:</b>	

(A copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners is attached to the invitation to tender/Request for proposal).

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## **ANNEXURE D**

### **CPA REQUIREMENTS FOR LOCAL GOODS AND SERVICES (SOUTH AFRICA)**

#### **THE APPLICATION OF CONTRACT PRICE ADJUSTMENT (CPA) TO TENDER SUBMISSIONS**

*This Section will not be applicable to professional services contract*

##### **1. APPLICATION OF CPA**

Eskom will afford Tenderers an opportunity to propose additional/alternate offers to the abovementioned. Additional Offers, which are optional, will only be considered if a fully compliant Main Offer is submitted and acceptable

CPA conditions may apply if the contractual duration is to be longer than 12 months. If the contractual duration will be less than or equal to 12 months, a fixed priced offer must be submitted.

##### **2. TENDER SUBMISSIONS**

Tenderers shall comply with the following requirements:

###### **a. Main offer:**

1. A Main Offer that is fully compliant with the CPA requirements as specified in the Enquiry.
2. This condition is mandatory unless a fully fixed priced offer is submitted. If more than one offer is submitted, then the fully CPA compliant offer must be indicated as the Main Offer.

**Failure to do so may result in the supplier's offer(s) being disqualified.**

###### **b. Additional/Alternative offer:**

Additional offers, which are optional, will only be considered if a fully compliant main offer is submitted and acceptable:

1. A fixed priced offer in addition to the fully CPA compliant main offer; or
2. Any other offer with CPA specifications which deviate from the CPA requirements specified in the enquiry. However, it is compulsory that all such deviations are sufficiently substantiated.

Additional/Alternative Offers must be clearly indicated as such

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### **3. ESKOM'S PREFERRED INDEX LIST**

Eskom's preferred index list is set out hereunder in Tables 1 and 2. The index list comprises indices that could be used in the Tenderers main offer.

### **4. FOREIGN PORTION OF THE TENDER/AGREEMENT PRICE**

In instances where the preferred index list does not specify a foreign index which is required for the specific agreement, the following must apply:

1. The source of an index must be that of the national statistical institute of the relevant country or a generally acknowledged statistical (e.g. industry) body in or for that country, e.g. BEAMA and MEPS.
2. The index must be the equivalent, or if unavailable, the nearest equivalent index to that of the specific prescribed local index.

### **3. NUMBER OF FORMULAE & INDICES**

The Tenderer is limited to a maximum of 10 (ten) indices in total, i.e.: a maximum of 5 local indices and maximum of 5 foreign indices, excluding the fixed portion per CPA formula, per offer/agreement.

### **4. CPA FIXED PORTION**

A minimum of 15% of the total agreement value is to be fixed when a CPA formula applies; except in the case of professional services or consulting agreements.

### **5. BASE DATE**

1. In instances of indices or other references published monthly, the Base Date is to be:  
*The month before the month in which the Enquiry closes*
2. In instances where the reference figures, e.g. market prices, are published daily or at more intervals than once a month:  
*The average for the month before the month in which the Enquiry closes*
1. In this case, the following shall apply:
  1. Where the average is published:  
*The average published price in the currency Eskom will be exposed to. e.g. The currency in which Eskom will effect payment*
  2. Where a high, low and mean are published:  
*The mean*
  3. Where other prices than the Cash Settlement or Cash Sellers Price are published:

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*The Cash Settlement or Cash Sellers Price*

2. Where applicable, these principles, must also apply for the CPA “cut-off” date.

**3. CPA FOR PROFESSIONAL SERVICES**

The preferred index to be used for adjusting these agreements is the country specific CPI Headline index.

The price adjustment factor will be effective from each contractual anniversary of the base date. This must be the average of the country specific CPI Headline index figures published for the last twelve month period (cycle) ending before the contract anniversary date.

No fixed portion is mandatory.

Signed	Date
Name	Position
Tenderer	

**Table 1: Preferred Local Index List** -this list of indices needs to be relevant to the commodity.  
Buyers need to check and include the relevant indices.

Labour	Commodities	Processed material	Transport	Others
<b>Labour general (hourly paid)</b> SEIFSA, C3, actual labour cost	<b>Steel</b> StatsSA, P0142.1 Table 2, basic iron and steel	<b>Mechanical engineering material</b> SEIFSA, G, mechanical engineering material	SEIFSA, L2, road freight costs	StasSA, PO141 CPI (Headline) all items OR SEIFSA, D-2 (CPI)
	<b>Copper</b> SEIFSA, F, copper metric ton	<b>Electrical engineering material</b> SEIFSA, G-1, electrical engineering material		
<b>Labour general</b> SEIFSA, C3 (a), actual labour cost (field force) where subsistence	<b>Aluminium</b> SEIFSA, R, aluminium	<b>Building and construction material</b>	StasSA, PO142.1), <b>PPI</b> 4. Final Manufactured Goods	
	<b>Zinc</b> SEIFSA, F, zinc			

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allowance is paid	<b>Lead</b> SEIFSA ,F, lead	SEIFSA, G, building and construction material		5. Or Intermediate Manufactured Goods OR SEIFSA Table U Producer Price Index (PPI) - final manufactured GOODS OR Intermediate Manufactured Goods
-------------------	--------------------------------	---	--	--

**Table 2: Preferred Foreign Index List**

<b>Labour</b>	<b>Commodities</b>	<b>Processed material</b>	<b>Transport</b>	<b>Others</b>
National Statistical Institute, Country-specific general labour index	MEPS, Country-specific general steel index	National Statistical Institute, Country-specific mechanical engineering material	National Statistical Institute, Country-specific general transport cost index	National Statistical Institute, Country-specific CPI (Headline)
	LME, Copper	National Statistical Institute, Country-specific electrical engineering material		National Statistical Institute, Country-specific PPI
	LME, aluminium			
	LME, zinc			
	LME, lead	National Statistical Institute, Country-specific building and construction material		

Closing date of tender \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

TENDERER'S SIGNATURE \_\_\_\_\_

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## **ANNEXURE E**

### **CPA (IG) REQUIREMENTS FOR FOREIGN GOODS AND SERVICES**

#### **CONTRACT PRICE ADJUSTMENT AND FOREX PAYMENTS – IMPORTATION**

Failure to propose contract price adjustment methods, either by completing this document or proposing alternative methods for any portion of the tender price, will lead to that portion of the tender price being considered fixed.

Where space in this document is insufficient, the tenderer shall submit the required information on separate schedules, duly referenced to this document.

Where foreign exchange is involved, and Eskom will cover the risk forward, the methods of payment listed in Part 1 are the only acceptable methods. It must be noted that Eskom considers **Payment Method 1** to be the default payment method.

#### **PART 1: PAYMENT OF FOREIGN COMMITMENTS**

Payment of Eskom's foreign commitment in foreign currency will be made either:

##### **Payment Method 1A:**

To a nominated bank account in a foreign country in a foreign currency (payment will be made to the party and account nominated by the supplier in the contract, and not to any other party);

**Please note that the contracting party must be the direct importer of the goods  
Applicable (Y / N)**

##### Payment Method 1B:

To a valid SARB approved CFC account in South Africa, in a foreign currency (payment will be made to the party and account nominated by the supplier in the contract, and not to any other party).

Please note:

1. The contracting party must be the direct importer
2. For payment purposes, Eskom will require both the foreign (commercial ) invoice and the local tax invoice
3. The foreign currency values on both the commercial and local invoice must be the same. Eskom will not pay any profit in foreign currency.
4. Service related payments are excluded from this option;

**Applicable(Y/N) or**

##### **Payment Method 2:**

In South African Rand at the selling spot rate of exchange obtained by Eskom's Treasury on the date that the forward cover is cancelled. Eskom will notify the supplier of the date that the forward cover is cancelled as well as the intended payment date, which will be as per the agreed payment terms. Any exchange rate adjustment after Eskom has notified the supplier of the date and the rate which the forward cover is cancelled, will be for the account of the supplier.

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Please note:

1. The contracting party has to be the direct importer of the goods.
2. This payment option is not applicable for the payment of services

**Applicable (Y/N).....**

An indemnity in writing confirming that the supplier will not buy forward cover is required where Payment Method 1 or 2 is contracted.

**[Payment Method 2 must be accepted by the Commercial Policy and Procedure Manager before the tender documentation is sent out, but at the latest before the tender closing date. If it is not approved before tender closing, Payment Method 1 will be the default.]**

Fixed ZAR pricing

The tenderer may elect to be responsible for the hedging of the exposure of the imported content. However, Eskom reserves the right to have line of sight of the exchange rates to be quoted by the tenderer. This entails a simultaneous exercise of the verification of the exchange rates to be used.

**Applicable (Y/N).....**

Please note: Eskom will require substantiating proof of importation at the time of invoicing, if payment methods 1A,1B and 2 are selected.

Where goods were previously imported into stock by the supplier, for delivery to various customers, including Eskom, the price quoted must be in South African Rand. In such cases Eskom will not undertake any foreign exchange commitment or arrange forward cover.

## **PART 2: EXCHANGE RATES**

The tenderer shall use the exchange rate as at 12H00 on the date of the advertisement of the tender. The source of the exchange rates shall be the South African Reserve Bank ([www.resbank.co.za](http://www.resbank.co.za))

Please note that the tenderer is required to submit proof of the SARB rate/s used.

## **PART 3: ADJUSTMENT OF IMPORTATION COSTS, ETC**

The values in Rand included in the tender/contract price for the following costs shall be based on rates ruling for the month prior to the closing date of the tender and any variation in these rates applied to the value included in the tender price will be for Eskom's account.

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<b>RATES/TARIFFS</b>	
Sea/Air Freight	
Bunker Adjustment Factor	
Currency Adjustment Factor	
Marine Risk Insurance (MRI) (Eskom will provide cover)	
Rate for Extension of MRI after Arrival of Goods at Site (if required)	
Wharfage	
Landing Charges	
Customs Duties	
RSA Port on which Import Charges are Based	

**PART 4: ADJUSTMENT OF OVERSEAS MANUFACTURE, EXPATRIATE LABOUR AND OTHER COSTS (To be read in conjunction with Eskom CPA Index)**

Eskom requires a fixed portion (free of price adjustment) appropriate to the nature of the contract.

The methods/formulae proposed in this part shall clearly identify the base month, the period over which adjustment will apply, the elements of labour and materials and source of the indices/rates/prices to be used.

The source of indices/prices/rates nominated in this part shall be from a recognised publishing authority. It must be clearly and completely defined. Supplier in-house indices are not acceptable.

The value of overseas manufacture, labour and material costs (ex-works), inland transportation, expatriate labour, etc. included in the tender/contract price shall be subject to adjustment in accordance with the methods stated hereunder.

The base indices/prices/rates shall be those ruling for the month prior to the month of the closing of the enquiry.

**1. MANUFACTURING CPA METHOD (LABOUR AND MATERIAL)**

Please submit your proposals for this section on a separate sheet of paper as an annexure.

**2. EXPATRIATE LABOUR METHOD**

Please submit your proposals for this section on a separate sheet of paper as an annexure.

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3. OTHER VALUES METHOD (e.g. Engineering fees, design fees, barging, inland transportation, etc.)

Please submit your proposals for this section on a separate sheet of paper as an annexure.

#### **PART 5: ADJUSTMENT OF LOCAL MANUFACTURE/SUPPLY MATERIAL, TRANSPORT AND ERECTION COSTS**

The contract price adjustment method for local manufacture or partly local manufacture from imported stock, equipment or plant cost, transport cost within the RSA and local erection/installation cost shall be in accordance with the attached Eskom CPA Principles

#### **PART 6: GUIDELINES FOR CONTRACT PRICE ADJUSTMENT CLAIMS --- PART 2, 3 AND 4**

1. When the percentage increase or decrease between two indices/prices/tariffs is calculated, the earlier figure shall be taken as the base.
2. Where portions of the works are delivered at different times, contract price adjustments shall be made in respect of appropriate portions of the contract price.
3. Where the terms of payment of the contract allow progress payments, other than Eskom's standard payment terms, the agreed contract price adjustment method shall be applied to the value of such payment and to the date and level of completion to which payment is linked.
4. Where any figure given in a table is therein stated to be a provisional figure or is subsequently amended, the figure as ultimately confirmed or amended in the publication concerned shall apply.
5. Where the appropriate claim indices/prices, as defined in terms of the agreed formulae, are not available or are provisional, interim claims based on the last published confirmed or revised indices/prices as at the date of delivery/installation may be submitted. When the confirmed or revised index/price becomes available the final claim may be submitted, provided that such claim is received within 180 days of the date of delivery/installation.
6. Where requested by Eskom, the contractor shall submit publications showing base indices/prices/rates as they become available as well as updated values at three monthly intervals during the course of the contract.
7. Where it is considered necessary Eskom reserves the right to call for any documentary evidence to substantiate claims.

Closing date of tender \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

TENDERER'S SIGNATURE \_\_\_\_\_

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**ANNEXURE F**

**SBD 1**

**PART A  
INVITATION TO BID**

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)**

BID NUMBER: \_\_\_\_\_ CLOSING DATE: \_\_\_\_\_ CLOSING TIME: \_\_\_\_\_

DESCRIPTION \_\_\_\_\_

**THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID  
BOX SITUATED AT (STREET ADDRESS)

<b>SUPPLIER INFORMATION</b>				
NAME OF BIDDER				
POSTAL ADDRESS				
STREET ADDRESS				
TELEPHONE NUMBER	CODE		NUMBER	
CELLPHONE NUMBER				
FACSIMILE NUMBER	CODE		NUMBER	
E-MAIL ADDRESS				
VAT REGISTRATION NUMBER				
	TCS PIN:		OR	CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORDN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?				
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)		
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)		
	<input type="checkbox"/>	A REGISTERED AUDITOR NAME:		
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORDN AFFIDAVIT(FOR EMEs &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>				

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ARE YOU THE ACCREDITED REPRESENTATIVE <b>IN SOUTH AFRICA</b> FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES</b> <b>/WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
<b>TOTAL NUMBER OF ITEMS OFFERED</b>		<b>TOTAL BID PRICE (ALL INCLUSIVE)</b>	
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT/ PUBLIC ENTITY		CONTACT PERSON	
CONTACT PERSON		TELEPHONE NUMBER	
TELEPHONE NUMBER		FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	
E-MAIL ADDRESS			

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## **PART B TERMS AND CONDITIONS FOR BIDDING**

### **BID SUBMISSION:**

1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE
3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.

### **TAX COMPLIANCE REQUIREMENTS**

1. BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2. BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
3. APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
4. BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
5. IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
6. WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

### **QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?  YES  NO
2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?  YES  NO
3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?  YES  NO
4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?  YES  NO

**IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.**

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

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## Annexure G

**SBD 4**

### BIDDER'S DISCLOSURE

#### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

#### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise,

employed by the state?

**YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State Institution

<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

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2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

1. If so, furnish particulars:

.....  
.....

### 3. DECLARATION

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

3.1 I have read and I understand the contents of this disclosure;

3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.

3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and

---

2 Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

1. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

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**ANNEXURE H**
**SBD 6.1**

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

---

**1. GENERAL CONDITIONS**

1. The following preference point systems are applicable to invitations to tender:
  1. the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  2. the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

**1. To be completed by the organ of state**

*(delete whichever is not applicable for this tender).*

1. The applicable preference point system for this tender is the **90/10** preference point system.
2. The applicable preference point system for this tender is the **80/20** preference point system.
3. Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.
  1. Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:
    1. Price; and
    2. Specific Goals.

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## 1. To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>SPECIFIC GOALS</b>	20
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

2. Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
3. The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 3. DEFINITIONS

1. **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
2. **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
3. **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
4. **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
5. **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 6. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

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**80/20**

**or**

**90/10**

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right) \text{ or } Ps = 90 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

## **2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT**

### **1. POINTS AWARDED FOR PRICE**

A maximum of 80 or 90 points is allocated for price on the following basis:

**80/20**

**or**

**90/10**

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right) \text{ or } Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

## **7. POINTS AWARDED FOR SPECIFIC GOALS**

1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
  1. an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system;

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2. any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

*(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.*

*Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)*

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points allocated (90/10 system)</b>	<b>Number of points allocated (80/20 system)</b>	<b>Number of points claimed (90/10 system) (To be completed by the tenderer)</b>	<b>Number of points claimed (80/20 system) (To be completed by the tenderer)</b>
1	10	20		
2	9	18		
3	6	14		
4	5	12		
5	4	8		
6	3	6		
7	2	4		
8	1	2		
Non-compliant contributor	0	0		

#### **DECLARATION WITH REGARD TO COMPANY/FIRM**

1. Name of company/firm.....
2. Company registration number: .....
3. TYPE OF COMPANY/ FIRM

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- Partnership/Joint Venture / Consortium
- One-person business/sole proprietor
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

1. The information furnished is true and correct;
2. The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
3. In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
4. If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  1. disqualify the person from the tendering process;
  2. recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  3. cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  4. recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  5. forward the matter for criminal prosecution, if deemed necessary.

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

.....

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## ANNEXURE I1

SBD 6.2

### **DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS**

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed by the DtC, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

#### **1. General Conditions**

- 1.1. DtC makes provision for the promotion of local production and content.
- 1.2. DtC prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.4. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on <http://www.thedti.gov.za/industrialdevelopment/ip.jsp> at no cost.**

- 1.5. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted at the stipulated deadlines.

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2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

3. Does any portion of the goods or services offered have any imported content?

(*Tick applicable box*)

YES		NO	
-----	--	----	--

3..1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<b>Currency</b>	<b>Rates of exchange</b>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

**NB:** Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dtic must be informed accordingly in order for the DTIC to verify and in consultation with the AO/AA provide directives in this regard.

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**LOCAL CONTENT DECLARATION**  
**(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER  
LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF  
EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY  
(CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. ....**

**ISSUED BY:** (Procurement Authority / Name of Institution):  
.....

**NB**

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content is accessible on <http://www.thdti.gov.za/industrial development/ip.jsp>.
- 3 Local Content Declaration Templates (Annex C, D and E) is attached to this enquiry and must be submitted at the stipulated deadline.
- 4 Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted at the stipulated deadline of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names), do hereby declare, in my capacity as ..... of .....(name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R

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Stipulated minimum threshold for local content (paragraph 3 above)	
--	--

Local content %, as calculated in terms of SATS 1286:2011	
---	--

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.**

**The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.**

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 9.1 of the Preferential Procurement Regulations, 2022 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_

#### **Annexure I2- \_Local content Declaration-Summary Schedule (annex C)**

#### **Annexure I3 - Imports Declaration-Supporting schedule to Annex C (annex D)**

#### **Annexure I4 - Local Content Declaration-Supporting Schedule to Annex C (annex E)**

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## Annexure J.1

### Acknowledgement Form - Reverse E-auctioning Training

Invitation to Tender/Request for Proposal No. [.....]

Name of company/JV:

---

Name of contact person:

---

Contact person's details:

Tel (landline): \_\_\_\_\_

Cellphone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Acknowledgment:

I \_\_\_\_\_ (supplier name) acknowledge that I have attended Reverse E-auction training presented during the clarification meeting held on \_\_\_\_\_ at \_\_\_\_\_. I am satisfied with the training and I can confirm that I will be able to operate the Reverse E-auction system should I be the recommended supplier.

I \_\_\_\_\_ (supplier name) acknowledge that I have undergone self-training of the uploaded Reverse E-auction video, and did not have to attend the clarification meeting for me to understand it. I am satisfied with my self-training and confirm that I will be able to operate the Reverse E-auction system should I be the recommended supplier.

Signature: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

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## Annexure J.2

### **Definition of Reverse E-auctioning**

CLASSIFICATION	Public	DATE	DECEMBER 2023
FOR ATTENTION	Tenderer	ACTION REQUIRED	Reading
FROM	Annemarie Berry	CONTACT NUMBER	021 522 3310
SUBJECT	Reverse E–Auctioning		

#### **WHAT IS REVERSE E-AUCTIONING?**

Reverse e-auctioning means an electronic negotiation process that aims to achieve the most competitive prices for clearly specified items.

Reverse e-auctioning replaces the negotiation process, with an electronic negotiation process on price only, which provides the results of the tender process immediately.

Notwithstanding the above, Eskom reserves the right to award an order/contract to a supplier who may not be the highest scoring or highest-ranked supplier, only in accordance with Section (2)(1)(f) of the PPPFA.

Reverse e-auction, when applicable, will only be considered once the normal procurement process has progressed to the point that the responsive tenderers have been identified.

Tenderers will be trained on the reverse e-auction system. Responsive tenderers will receive login details in order to participate.

**Link to Eskom eAuction User orientation Video:**  
<https://www.youtube.com/watch?v=2OzleM6x-fs&t=27s>

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### Annexure J.3



## **The Eskom eAuction System**

### **User Guide for Prospective Bidders**

Last updated: 2019\05\15

#### **Introduction**

The Eskom eAuction site is a service in which external users and companies bid for products or services via the Internet. Eskom eAuction facilitate a competitive process between buyers and sellers in different locations or geographical areas.

Online auctions mirror traditional auctions and usually involve multiple bidder participation. In both scenarios, bidders and sellers buy and sell tangible and intangible products and services. Starting bids are at the Eskom reserve value but increase at steady rates to meet market demand and item popularity. The time span of an online auction ranges from one to 10 days for items.

Online auctions have become a widely accepted business model for the following reasons:

- No fixed time constraint
- Flexible time limits
- No geographical limitations
- Offers a highly competitive environment

Online auctions include business to business (B2B), business to consumer (B2C), and consumer to consumer (C2C) auctions.

The Eskom eAuction site enables Closed auction for both Eskom sales and Eskom purchases with Business Partners as well as open Auctions to the public where anyone can bid on an even basis for products.

Companies participating in Eskom eAuctions will be required to maintain their BBBEE score rating as Auctions are awarded on a point-based system that considers both Price and BBBEE rating.

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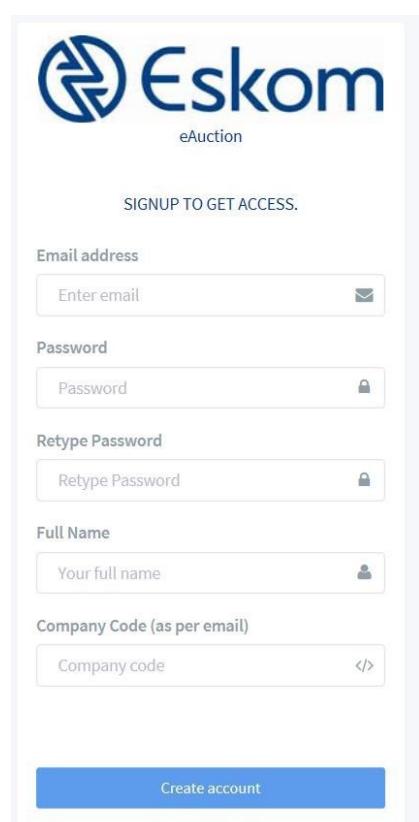
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## User Access

All users of the eAuction system must have their own login username and password. Users may not share this information as a shared username is more difficult to verify who made the bids.

### Registration Form



SIGNUP TO GET ACCESS.

Email address  
Enter email

Password  
Password

Retype Password  
Retype Password

Full Name  
Your full name

Company Code (as per email)  
Company code

**Create account**

To register a user must enter their Email address and create a password of their choice.

*Passwords must be longer than 8 characters, have a mix of letters numbers and special characters, and include at least 1 capital letter and one lower case letter.*

The Company code field must be populated with the code as per the email to link the user to the company they may bid on behalf of. All users of the same company use the same company code to link their bids together.

*All bids in the system are linked to the user that made them as well as to the company the user is bidding on behalf of. The audit trail allows the system administrator to identify the user and the date and time the bid was made.*

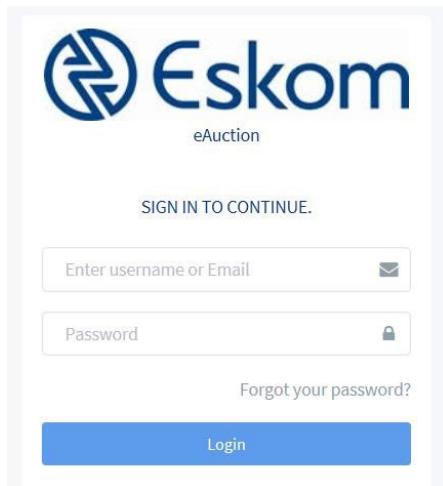
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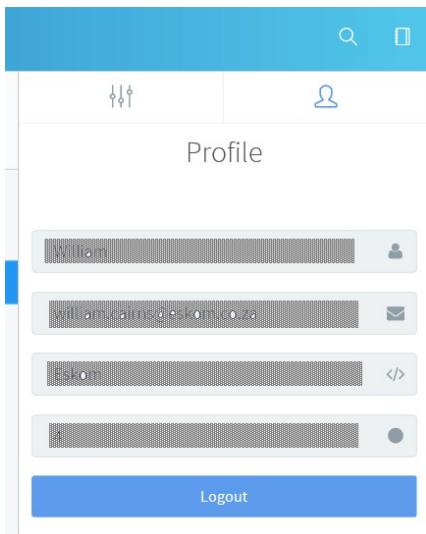
## User Login



The image shows the Eskom eAuction login interface. It features the Eskom logo at the top left. Below the logo, the text "eAuction" is visible. A large blue button in the center contains the text "SIGN IN TO CONTINUE." In the middle of the screen, there are two input fields: one for "Enter username or Email" and another for "Password". To the right of the password field is a lock icon. Below these fields is a link "Forgot your password?". At the bottom of the screen is a large blue "Login" button.

Once a user has registered they can login to the system. The user enters this username and password onto the form and clicks the login button.

## User Logout



The image shows the Eskom eAuction user profile screen. At the top, there is a blue header bar with a search icon and a user profile icon. Below the header, the word "Profile" is displayed. The main area contains four input fields, each with a placeholder name and a small user icon to its right. The fields are: "William", "william.caems@eskom.co.za", "Eskom", and a partially visible fourth field. At the bottom of the screen is a blue "Logout" button.

When a user is finished with their actions on the system they should logout. This is a security feature to ensure that no one else with access on the computer may make unauthorized bid on behalf of the user. The logout button is available on the User Profile screen.

## Auctions

The main screen of the system gives users access to all auction they may bid on, as well as all auctions that the user had access to that have closed.

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## Auction Process

### Standard and Reverse

#### Auctions The eAuction system

supports:

- Open Auctions (Eskom is selling a product to the public);
- Standard Auctions (Eskom is selling a product) and • Reverse Auctions (Eskom is Buying a product or service).

In the case of a standard auction Eskom is selling a product and therefore each bid is required to be higher than the last bid. In a reverse auction where Eskom is buying a service or product each bid is required to be lower than the previous bid.

On the bidding screen the current auction type is displayed

**Eskom is trying to obtain the highest price for this sale.**

### Next Bid

The eAuction system indicates what the next bid is required to be. This value is based on the currently winning bid and a fixed bid increment that is applied. In a standard auction this is the lowest bid that can be made next, bids of a lower amount will be rejected, however bids of a higher amount can be made (The opposite applies in a Reverse Auction).

This has been implemented to prevent very small bid increments that have no material difference in the final price obtained.

### End time of an Auction

The End Time of an auction is the earliest time the auction can close. However, bids made close to the end time will extend the end time of the auction to give other bidders an opportunity to react to any bids made.

This has been implemented to ensure that all bidders have a fair opportunity to make the winning bid.

An example:

*eAuction for the sale of 10000 tons of Ash from Lethabo Power Station had an End Time of 10:00 in the morning. Bidder A makes a bid at 09:58, the Auction is therefore extended by 10 minutes to 10:08. At 10:04, Bidder B makes a new best bid and the auction gets extended to 10:14 to allow Bidder A an opportunity to react to Bidder B's bid. Bidder A makes a new bid at 10:05 and the auction gets extended to 10:15. Bidder B decides that the new bid by A cannot be beaten and does not make any further other bids. The auction then closes at 10:15 when no new bids have been*

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*received for the 10 minutes. (10 minutes is an example only and each auction can have their set to a different increment extension value).*

### Winning an Auction

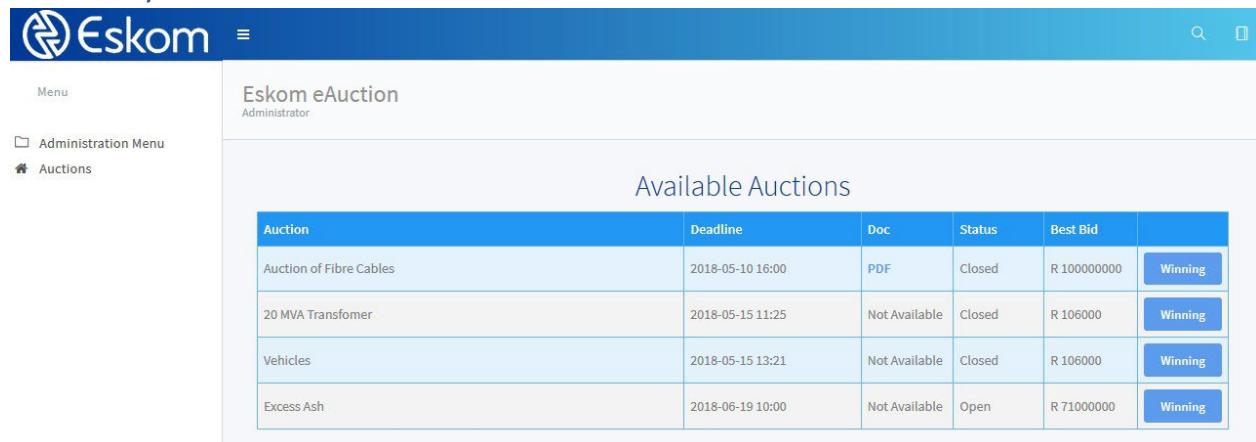
Bids made on an Auction are a financial commitment to deliver the product/services as expected at the price offered. It is a financially binding commitment. Please read the End user Agreement for more details on the legal aspects of making a bid.

The final bids are still subject to Eskom review as the final awarding of a contract is also influenced by other requirements such as BBBEE rating etc. To find out more about the impact of these ratings on the final awarding of the contract please speak to the procurement officer to get the details.

When an Auction closes all bidders will receive an email from the Eskom eAuction site indicating that the Auction has closed. Once the auction is closed no more bids can be entered and no opportunity is available to change your final bid.

The procurement officer will contact the winning bidder directly and finalise the contract.

### Screen Layout



The screenshot shows the Eskom eAuction interface. The header includes the Eskom logo, a user profile button, and a search bar. The left sidebar contains a menu with 'Menu', 'Administration Menu', and 'Auctions' options. The central content area is titled 'Available Auctions' and displays a table with the following data:

Auction	Deadline	Doc	Status	Best Bid	
Auction of Fibre Cables	2018-05-10 16:00	PDF	Closed	R 100000000	Winning
20 MVA Transfomer	2018-05-15 11:25	Not Available	Closed	R 106000	Winning
Vehicles	2018-05-15 13:21	Not Available	Closed	R 106000	Winning
Excess Ash	2018-06-19 10:00	Not Available	Open	R 71000000	Winning

The screen is divided into three parts, the top is the header section containing the Eskom Logo and the

user profile button . The left section has the menu area allowing quick access to the main auction screen from any other screen. The central portion of the screen contains the information about available auctions.

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## Auction Details

Available Auctions						
Auction	Deadline	Doc	Status	Best Bid		
Auction of Fibre Cables	2018-05-10 16:00	PDF	Closed	R 100000000	Winning	
20 MVA Transformer	2018-05-15 11:25	Not Available	Closed	R 106000	Winning	
Vehicles	2018-05-15 13:21	Not Available	Closed	R 106000	Winning	
Excess Ash	2018-06-19 10:00	Not Available	Open	R 71000000	Winning	

Information about auctions is displayed in a tabular format. Note that the button on the right hand side indicates if the currently logged on bidder is winning the auction or not. (If not currently the best bid the button will read "Bid").

Clicking on the button will take the user to the screen where bids can be made. (See the next section)

Only auctions open to the company of the logged in user will be displayed. Note that the screen also displays auctions that are closed.

Open auctions will always be displayed for all users.

## Making a bid

Auction Bidding														
<b>Auction Details</b>														
Auction: Excess Ash														
End Date: 2018-06-19 10:00														
Specification:														
Eskom is trying to obtain the highest price for this sale.														
<b>New Bid</b>														
The minimum next bid is:														
72000000														
<b>Bid</b>														
Current Bids														
<table border="1"> <thead> <tr> <th>Bid Date</th> <th>Amount</th> <th>Action</th> </tr> </thead> <tbody> <tr> <td>2018-04-09 14:05</td> <td>R 71000000</td> <td>Your bid</td> </tr> <tr> <td>2018-04-06 13:39</td> <td>R 66000000</td> <td></td> </tr> <tr> <td>2018-04-06 13:39</td> <td>R 64000000</td> <td></td> </tr> </tbody> </table>			Bid Date	Amount	Action	2018-04-09 14:05	R 71000000	Your bid	2018-04-06 13:39	R 66000000		2018-04-06 13:39	R 64000000	
Bid Date	Amount	Action												
2018-04-09 14:05	R 71000000	Your bid												
2018-04-06 13:39	R 66000000													
2018-04-06 13:39	R 64000000													

When the user enters an auction to view the bids the best unique bids from all bidders is displayed on the screen. The current company bid is marked as "Your Bid" to allow the logged in user to compare their current bid to the other bidders.

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**New Bid**  
The minimum next bid is:  
72000000  
Bid

The New Bid box shows the next possible bid that can be made. This bid, if made, will make the current user the holder of the best bid (*Note that other bidders see the same screen and it is possible that they make this bid before you, in this case the screen will update with the new best bid and an error will be returned*).

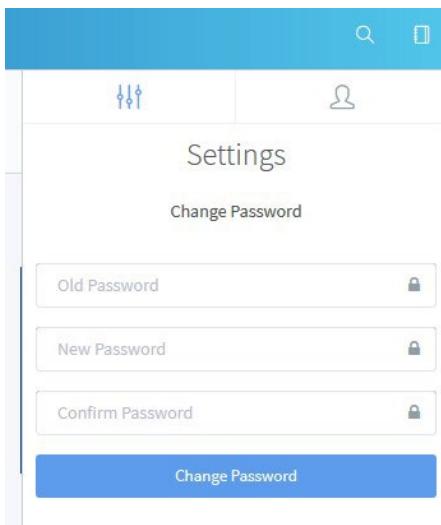
When a new bid is made the bid screen will update with the new information. It is suggested that if you are the winning bid that you refresh the screen on a regular basis to see if another bidder has made a bid.

If you are outbid on an auction your company will receive an email indicating that you have been outbid.

## User Profile



By clicking on the user profile button the user profile screen will be displayed. The user profile screen has two sections, the Change password Screen and the user profile screen.



Settings

Change Password

Old Password  

New Password  

Confirm Password  

Change Password

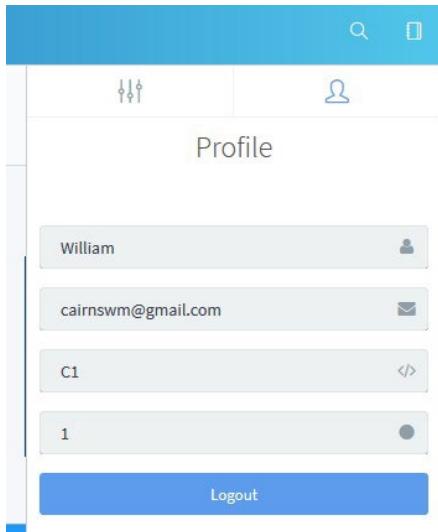
To change your password, enter your current password and the new password you require.

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The user profile screen displays your current settings. This includes the company code that was entered when you first registered.

Users that are inactive get disabled and must re-enter their Company code to get access to their company bids again.

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## Annexure K

### Pricing Scheduling Documentation

1	Description	Required Quantity	Unit Price
	0653554 METER FLW:ULTRASONIC;FLANGE 3 IN;0-30;3 METER, FLOW: TYPE: ULTRASONIC; MNF: KROHNE; MODEL: OPTISONIC 3400; P/NO: OPTISONIC 3400 STANDARD COMPACT; CONNECTION: FLANGE 3 IN; RANGE: 0-30 M3/HR; MATERIAL: SS GR 316L AISI; NOMINAL BORE: 3 IN; POWER: 22 VA; POTENTIAL: 100-230 VAC; ENCLOSURE RATING: IP67 OUTPUT SIGNAL: 4 TO 20 MA; PROCESS CONNECTION: M20 X 1.5 GLAND; DSG-312-131; 0204/87Q; Q2:NEV:3:1; EQUIVALENCY NO: I090/09E; FUNC LOC: 1/2 ASG 034 MD	One (1)	Reverse E-Auction
	<b>TOTAL PRICE EXC VAT</b> <b>TOTAL PRICE INCLUDING VAT</b> <b>Delivery cost</b> <b>Mode of Transport</b> <b>Lead times</b> <b>Payment terms</b>		

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### Annexure L – Authority to Submit a Tender

Indicate the status of the *tenderer* by ticking the appropriate box hereunder. The *tenderer* must complete the certificate set out below for his category of organisation or alternatively attach a certified copy of a company or organisation document which provides the same information for the relevant category as requested here.

<b>A COMPANY</b>	<b>B CLOSE CORPORATION</b>	<b>C PARTNERSHIP</b>	<b>D JOINT VENTURE</b>	<b>E SOLE PROPRIETOR</b>

#### A. Certificate for company

I,....., chairperson of the board of directors of ..... hereby confirm that by resolution of the board taken on ..... (date), Mr/Ms ..... , acting in the capacity of ..... , was authorised to sign all documents in connection with this tender offer and any contract resulting from it on behalf of the company.

<b>Signed:</b>	<b>Date:</b>
<b>Name:</b>	<b>Position:</b> <b>(Chairman of the Board of Directors)</b>

#### B. Certificate for close corporation

I,....., member of ..... , hereby confirm that by majority vote of the members taken on ..... (date), Mr/Ms ..... , acting in the capacity of ..... , was authorised to sign all documents in connection with this tender offer and any contract resulting from it on behalf of the company.

<b>Signed:</b>	<b>Date:</b>
<b>Name:</b>	<b>Position:</b> <b>(Member)</b>

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### C. Certificate for partnership

We, the undersigned, being the **key partners** in the business trading as ..... hereby authorise Mr/Ms ..... , acting in the capacity of ..... , to sign all documents in connection with the tender offer for Contract ..... and any contract resulting from it on our behalf.

Name	Address	Signature	Date

NOTE: This certificate is to be completed and signed by the full number of Partners necessary to commit the Partnership. Attach additional pages if more space is required.

### D. Certificate for Joint Venture

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms ..... , an authorised signatory of the company ..... , acting in the capacity of lead partner, to sign all documents in connection with the tender offer for Contract ..... and any contract resulting from it on our behalf.

This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

Furthermore we attach to this Schedule a copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners.

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<b>Name of firm</b>	<b>Address</b>	<b>Authorising signature, name and capacity</b>
Lead partner		

### **E. Certificate for sole proprietor**

I, ..... hereby confirm that I am the sole owner of the business trading as .....

<b>Signed:</b>	<b>Date:</b>
<b>Name:</b>	<b>Position:</b> <b>(Sole Proprietor)</b>

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**Annexure M - Non-Disclosure Agreement (NDA) Vendors**

**CONFIDENTIALITY AGREEMENT**

**“Agreement”**

---

**Between**

**ESKOM HOLDINGS SOC LTD**

**and**

**NAME OF OTHER PARTY**

---

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The Parties to this Agreement are:-

- I. **ESKOM HOLDINGS SOC LTD** a company incorporated under the laws of the Republic of South Africa, having its registered office at Megawatt Park, Maxwell Drive, Sunninghill ext.3, Sandton, Republic of South Africa, with registration number 2002/015527/06 [hereinafter referred to as "**the Disclosing Party**"].
- II. ..... a company incorporated under the laws of [insert name of country], having its registered office at [registered address], with registration number [insert registration number], hereinafter referred to as "**the Receiving Party**".

Hereinafter individually referred to as a "Party" and jointly as the "Parties".

**NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

- 1.1 The Disclosing Party intends providing the Receiving Party with certain information relating to [state the nature of the discussions and the reason for the disclosure here] ("the Project").
- 1.2 The parties wish to record the terms and conditions upon which the Disclosing Party shall disclose Confidential Information to the Receiving Party, which terms and conditions shall constitute a binding and enforceable Agreement between the parties and their agents.
- 1.3 Notwithstanding the date of signature hereof, this agreement shall be binding upon the parties with effect from the date upon which the Disclosing Party shall have disclosed any Confidential Information to the Receiving Party, whichever date is the earliest.
- 1.4 Neither this Agreement nor the exchange of information contemplated hereby shall commit either party to continue discussions or to negotiate, or to be legally bound to any potential business relationship. The parties shall only be bound to a business relationship by way of a further definitive written Agreement signed by the Parties.

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1.5 The party disclosing the Confidential Information shall be known as the “**Disclosing Party**” and the party receiving Confidential Information shall be known as the “**Receiving Party**”.

## 2. The Confidential Information

“**Confidential Information**” shall for the purpose of this Agreement mean all information and materials (whether in written, graphic, electronically stored or oral form) owned and/or developed by the Disclosing Party or its affiliates, including, without limitation, any technical, commercial, financial or marketing information, strategies, operations, know-how, trade secrets, processes, machinery, designs, drawings, formulae, test work data, equipment, notes, memoranda, methods and other natural resources, technical specifications and data relating to the Project (including, but not limited to, the information set out in 1.1 above), relating to the disclosing Party's business practices or the promotion of the disclosing Party's business plans, policies or practices, which information is communicated to the receiving Party, or otherwise acquired by the Receiving Party from the Disclosing Party, during the course of the Parties' commercial interactions, discussions and negotiations with one another, whether such information is formally designated as confidential or not.

## 3. Disclosure of Confidential Information

3.1 The Disclosing Party shall only disclose the Confidential Information to the Receiving Party to the extent deemed necessary or desirable by the Disclosing Party in its discretion.

3.2 The Parties acknowledge that the Confidential Information is a valuable, special and unique asset proprietary to the Disclosing Party.

3.3 The Receiving Party agrees that it will not, during or after the course of its relationship with the disclosing party under this agreement and/or the term of this Agreement,

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disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party and to the extent of such authorisation, save in accordance with the provisions of this Agreement. In this Agreement "**third party**" means any party other than the Receiving and Disclosing Parties or their Representatives.

- 3.4 Notwithstanding anything to the contrary contained in this Agreement the Parties agree that the Confidential Information may be disclosed by the Receiving Party to its respective employees, agents, officers, directors, subsidiaries, associated companies, shareholders and advisers (including but not Ltd to professional financial advisers, legal advisers and auditors) ("**Representatives**") on a need-to-know basis and for the purposes of the Project; provided that the Receiving Party takes whatever steps are necessary to procure that such Representatives agree to abide by the terms of this Agreement to prevent the unauthorised disclosure of the Confidential Information to third parties. For purposes of this clause, the Receiving Party's Representatives shall be deemed to be acting, in the event of a breach, as the Receiving Party's duly authorised agents.
- 3.5 Except as otherwise contemplated in this Agreement, the Parties agree in favour of one another not to utilise, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever other than the Project without the prior written consent of the Disclosing Party.
- 3.6 Accordingly, the Receiving Party agrees to indemnify, defend and hold the Disclosing Party harmless from and against any and all suits, liabilities, causes of action, claims, losses, damages, costs (including, but not Ltd to, cost of cover, reasonable attorneys' fees and expenses), or expenses of any kind (collectively, "**Losses**") incurred or suffered by the Disclosing Party and/or its Representatives arising from or in connection with the Receiving Party's unauthorized use or disclosure of the Disclosing Party's Confidential Information in violation of the Agreement.

#### 4. Title

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All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party to be proprietary and the exclusive property of the Disclosing Party. This Agreement shall not confer any rights of ownership or license on the Receiving Party of whatever nature in the Confidential Information.

## **5. Restricting on disclosure and use of the Confidential Information**

- 5.1 The Receiving Party undertakes not to use the Confidential Information for any purpose other than:
  - 5.1.1 the Project; and
  - 5.1.2 in accordance with the provisions of this Agreement.

## **6. Standard of care**

The Receiving Party agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that it applies to safeguard its own proprietary, secret or Confidential Information but no less than a reasonable standard of care, and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

## **7. Return of material containing or pertaining to the Confidential Information**

- 7.1 The Disclosing Party may, at any time, and in its sole discretion request the Receiving Party to return any material and/or data in whatever form containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement and may, in addition request the Receiving Party to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material and/or data.

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7.2 If it is not practically able to do so, the Receiving Party shall destroy or ensure the destruction of all material and/or data in whatever form relating to the Confidential Information disclosed pursuant to the terms of this Agreement and delete, remove or erase or use best efforts to ensure the deletion, erasure or removal from any computer or database or document retrieval system under its or the Representatives' possession or control, all Confidential Information and all documents or files containing or reflecting any Confidential Information, in a manner that makes the deleted, removed or erased data permanently irrecoverable. The Receiving Party shall furnish the Disclosing Party with a written statement signed by one of its directors or duly authorized senior officers to the effect that all such material has been destroyed.

7.3 The Receiving Party shall comply with any request by the Disclosing Party in terms of this clause, within 7 (seven) business days of receipt of any such request.

## **8. Excluded Confidential Information**

The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any Confidential Information that:

8.1 is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;

8.2 is or becomes publicly known, otherwise than as a result of a breach of this Agreement by the Receiving Party;

8.3 is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;

8.4 is disclosed by the Receiving Party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the Receiving Party shall advise the Disclosing Party to enable the Disclosing Party to take whatever steps it deems

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necessary to protect its interests in this regard and provided further that the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such Confidential Information to the greatest extent possible in the circumstances;

- 8.5 is disclosed to a third party pursuant to the prior written authorisation and Ltd to the extent of such approval of the Disclosing Party;
- 8.6 is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.

## **9. Term**

This Agreement shall commence upon the date referred to in date of signature and shall endure for a period of 3 (three) years after the date of termination of the relationship between the parties or at a date specified in any subsequent agreement(s) between the Parties in pursuance of the Project referred to herein.

## **10. Additional Action**

- 10.1 Each Party to this Agreement shall execute and deliver such other documents and do such other acts and things as may be reasonably necessary or desirable to give effect to the provisions of this Agreement.
- 10.2 Nothing contained in the Agreement shall be construed as creating an obligation on the part of either Party to refrain from entering into a business relationship with any third party. Nothing contained in the Agreement shall be construed as creating a joint venture, partnership or employment relationship between the Parties. Except as specified herein, neither Party shall have the right, power or implied authority to create any obligation or duty (express, implied or otherwise) on behalf of the other Party. For the avoidance of doubt, nothing in this Agreement shall oblige either of the Parties to enter into any agreements or transactions whatsoever.

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## 11. Breach

In the event that the Receiving Party should breach any of the provisions of this Agreement and fail to remedy such breach within seven (7) business days from date of a written notice to do so, then the Disclosing Party shall be entitled to invoke all remedies available to it in law including, but not limited to, the institution of urgent proceedings as well as any other way of relief appropriate under the circumstances, in any court of competent jurisdiction, in the event of breach or threatened breach of the Agreement and/or an action for damages.

## 12. Amendments

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless reduced in writing and signed by the duly authorised representatives of both Parties.

## 13. Enforcement

The failure or delay by the Disclosing Party to enforce or to require the performance at any time of any of the provisions of this Agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this Agreement or any part hereof or the right of the Disclosing Party to enforce the provisions of this Agreement.

## 14. Representations & Warranties

14.1 Each Party represents that it has authority to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

14.2 The Disclosing Party warrants that disclosure of the Confidential Information to the Receiving Party:

14.2.1 will not result in a breach of any other Agreement to which it is a party; and

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14.2.2 will not, to the best of its knowledge and belief, infringe the rights of any third party; and the Disclosing Party hereby indemnifies and holds the Receiving Party harmless against any liability for third party claims on such a basis.

#### **15. Entire agreement**

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

#### **16. Governing law**

This Agreement and the relationship of the Parties in connection with the subject matter of this Agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

#### **17. Addresses and Notices**

17.1 The Parties hereby choose the address for service ("domicilium") for all purposes under the Agreement the addresses set out below:

<b>PARTY</b>	<b>PHYSICAL ADDRESS</b>	<b>POSTAL ADDRESS</b>	<b>TELEPH ONE NO.</b>	<b>FAX NO.</b>	<b>CONTACT PERSON</b>
ESKOM HOLDINGS SOC LTD	MEGAWATT PARK, MAXWELL DRIVE, SUNNINGHILL	P O BOX 1091 JOHANNESBUR G 2000 SA	+27 11 800 ....	+27 11 800 ....	
INSERT PARTICULA RS OF OTHER PARTY					

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17.2 A Party may change its domicilium address, by giving thirty (30) business days prior notice in writing to the other Party.

17.3 Any notice given by one party to the other is deemed to have been received by the addressee:

17.3.1 on the date on which the it was delivered to the addressee's address if delivered by hand; or

17.3.2 on the seventh (7<sup>th</sup>) business day after the date of posting if sent by pre-paid registered post to the addressee's address; or

17.3.3 when received in legible form, if sent to the addressee's then telefax number.

## **18. Severability**

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions was not a part of this Agreement, and this Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

## **19. Assignment**

19.1 Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other Party.

19.2 Notwithstanding the above, Eskom may on written notice to the other Party hereto, 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

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entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry.

## **20. Publicity**

Neither party will make or issue any formal or informal announcement or statement to the press or any third party in connection with this Agreement without the prior written consent of the other Party.

## **21. Interpretation**

- 21.1 For the purposes of this Agreement the following rules of construction shall apply, unless the context requires otherwise:
  - 21.1.1 the singular shall include the plural and vice versa;
  - 21.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
  - 21.1.3 any reference to a person includes, without being Ltd to, any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
  - 21.1.4 any word or expression defined in, and for the purposes of, this agreement shall if expressed in the singular include the plural and vice versa, and a cognate word or expression shall have a corresponding meaning;
  - 21.1.5 references in this agreement to “clauses”, “sub-clauses” and are to clauses and sub-clauses of this agreement; and
  - 21.1.6 any reference in this agreement to this agreement or any other agreement, document or instrument shall be construed as a reference to this agreement or that other

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agreement, document or instrument as amended, varied, novated or substituted from time to time.

21.2 All the headings and sub-headings in this agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_

**AS WITNESS:**

For: **ESKOM HOLDINGS SOC LTD**  
**[No lower than an E-Band Manager to sign]**

(Name of witness in print)

Duly authorised

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_

**AS WITNESS:**

For: **[NAME OF OTHER PARTY]**

(Name of witness in print)

Duly authorised

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