



NEC3 Professional Services Contract (PSC3)

**Contract between Eskom Holdings SOC Ltd
(Reg No. 2002/015527/30)**

**and
(Reg No. _____)**

for Forensic and Anti-Corruption Panel of Professional services provider for the provision of Forensic investigation and post investigation Services for Eskom Holdings SOC Limited and its subsidiaries for a period of Eighteen months (12 months with 6 months contingency)

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CONTRACT No.

VENDOR No.

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

Provision of Forensic investigation and Post Investigation Services for Eskom Holdings SOC Limited and its subsidiaries for a period of Eighteen months (12 months with 6 months contingency)

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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

The offered total of the Prices exclusive of VAT is	(Not Applicable – Cost reimbursable)
Value Added Tax @ 15% is	(Not Applicable – Cost reimbursable)
The offered total of the Prices inclusive of VAT is	(Not Applicable – Cost reimbursable)
(in words) Not Applicable	

If Option E or G apply, for each offered total insert in brackets, “(Not Applicable – Cost reimbursable)”

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

Signature(s)

Name(s)

Capacity

For the tenderer:

(Insert name and address of organisation)

Name & signature of witness

Date

Schedule of Deviations

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

For the tenderer:

For the Employer

Signature

.....

Name

.....

Capacity

.....

On behalf of *(Insert name and address of organisation)*

(Insert name and address of organisation)

Name & signature of witness

.....

Date

.....

Acceptance

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

The terms of the contract, are contained in:

- Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part C2 Pricing Data
- Part C3 Scope of Work: The Scope

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

**Eskom Holdings SOC Limited
1 Maxwell Drive, Sunninghill**

(Insert name and address of organisation)

Name &
signature of
witness

Date

C1.2. PSC3 Contract Data

Part one - Data provided by the Employer

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	G: Term contract
	dispute resolution Option and secondary Options	W1: Dispute resolution procedure
		X1: Price adjustment for inflation
		X2 Changes in the law
		X7: Delay damages
		X9: Transfer of rights
		X10 Employer's Agent
		X11: Termination by the Employer
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Professional Services Contract (April 2013) ¹	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	011 800 8111

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and www.ecs.co.za

11.2(9)	The <i>services</i> are	Provision of forensic and post investigations services for Eskom Holdings SOC Limited and its subsidiaries, for a period of Eighteen months (12 months with 6 months contingency).
11.2(10)	The following matters will be included in the Risk Register	As per Task Order instruction
11.2(11)	The Scope is in	Part 3: Scope of Work
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	5 working days unless otherwise stated
13.6	The <i>period for retention</i> is	5 years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Eskom buildings	As per Task Order instruction

3 Time

31.2	The <i>starting date</i> is.	01 September 2026	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	31 August 2027	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 As per the Task Order	As stated in the Task Order
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	As per the Task Order instruction	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	As per the Task Order	

4 Quality

40.2	The quality policy statement and quality plan are provided within	Four (4) weeks of the starting Date.	
42.2	The <i>defects date</i> is	52 weeks after Completion of the whole of the services.	

5 Payment

50.1	The <i>assessment interval</i> is	Between the 25th day of a month to the 25th day of the subsequent month.	
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50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item as per the task order	Amount as per the task order
51.1	The period within which payments are made is	30 days after receipt of invoice for QSE and Generic suppliers; and 14 days for EME suppliers.	
51.2	The <i>currency of this contract</i> is the	South African Rand	
51.5	The <i>interest rate</i> is	The publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due.	
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
7	Rights to material	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
8	Indemnity, insurance and liability		
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are		
	Event	Cover	
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	
	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.	
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims	
81.1	The <i>Employer</i> provides the following insurances	Refer to Annexure A for details of insurance provided by the <i>Employer</i>.	

82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
10	Data for main Option clause	
G	Term contract	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	As per the Task order request
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).
W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	<p>The <i>arbitration procedure</i> is</p> <p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> • if the Parties cannot agree a choice or • if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	<p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>Johannesburg, South Africa</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	

X1.1	The index is	<ul style="list-style-type: none"> • Consumer Price Index (CPI) as published by Statistics SA. • Prices are fixed for a period of twelve (12) months will be escalated using CPI annually and at the anniversary of each Task Order and will be guided by each Task Order date.
X2	Changes in the law	
X2.1	The law of the project is	The laws of the Republic of South Africa
X7	Delay damages	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	As per the Task Order
X9	Transfer of rights	As per the Task Order. The Consultant grants the Employer an irrevocable, non-exclusive, royalty-free licence to utilise the Consultant's intellectual property to the extent necessary for the construction, operation, maintenance, repair, or alteration of its facilities or that of a third party.
X10	The Employer's Agent	
X10.1	The <i>Employer's Agent</i> is	
	Name:	Alain Kaputu +27 11 800 4576 Kaputua@eskom.co.za
	Address:	1 Maxwell Drive Megawatt Park Johannesburg, Sandton SA
	The authority of the <i>Employer's Agent</i> is	To carry out all the actions of the Employer.
X11	Termination by the Employer	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (Zero Rand)
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	The total of the Prices
X18.3	The <i>end of liability date</i> is	Five years after Completion of the whole of the <i>services/task order</i>.
Z	The Additional conditions of contract are	Z1 to Z13 always apply.

Z1 Cession delegation and assignment

- Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z4 Confidentiality

- Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.

Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

Z6 Provision of a Tax Invoice. Add to core clause 51

Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Employer's limitation of liability

Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z9.1 or had a business rescue order granted against it.

Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z11 Ethics

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

Affected Party means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or

- Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,
- Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
- Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
- Committing Party** means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,
- Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
- Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
- Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
- "Prohibited Action"** means any one or more of a Coercive Action, Collusive Action, Corrupt Action, Fraudulent Action or Obstructive Action.
- Z11.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z11.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
- Z11.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

Z12.1 SD&L Requirements

Skills Development: The *Consultant* is obligated to train 1 candidate for every **R10 Million cumulated through task order(s)**; this obligation will be binding from the Starting Date until the Completion Date for the whole of the Services. The *Consultant* must ensure that the skills committed are successfully achieved by the Completion Date.

Supplier Development: The *Consultant* is required to **sub-contract 20% of the contract value**; this will mean that the main *Consultant* will use some of the Sub-consultant’s resources with the intention of empowering the Subconsultant. These requirements will be binding from the Starting Date until the Completion Date for the whole of the Services and will be monitored by the *Employer*.

As a result of failure by the *Consultant* to achieve the SD&L subcontracting requirements as stipulated in clause Z12.1, the *Employer* will reserve the right to terminate the *Consultant’s* obligations to provide the Services.

The *Consultant* should source candidates from previously disadvantaged groups in South Africa. Skills development candidates should ideally be currently unemployed graduates from FET Colleges and universities and/or matriculants. The composition of the candidates shall be representative of the population demographics of South Africa.

Z13 Travelling and Accommodation

Z13.1 The following rates are the current Travel and Subsistence rates and they shall be applicable:
NB: All travel claims will need to be pre-approved by the Requesting Manager

Km's:	<ul style="list-style-type: none"> Home-work-work is not reimbursable Any excess of 50 km of business travel per day will be reimbursed at R4.95/km
Km rates:	<ul style="list-style-type: none"> R4.95/km
Accommodation:	<ul style="list-style-type: none"> Maximum 3-star, bed and breakfast establishment or hotel may be utilised for duration up to 6 months. Only breakfast and supper may be included in the quotation.
Car rentals:	<ul style="list-style-type: none"> Group B reimbursable at cost, the car should at least have 2 airbags, air- conditioning and ABS brakes for safety purposes.
Flights:	<ul style="list-style-type: none"> Economy class reimbursable at cost
Cost of Meals:	<ul style="list-style-type: none"> Travelling on Eskom business: the actual cost of a meal, not exceeding R96, 00 (VAT plus gratuity included) per meal No alcoholic beverages can be claimed for
Travel bookings:	<ul style="list-style-type: none"> To be made and paid for by the <i>Consultant</i>. This must then be claimed back once a month together with all other T&S expenses on a VAT invoice, and include all relevant documentation

All Travel and Subsistence expenses are subject to Eskom Standard Travel and Subsistence guidelines as amended from time to time. All claims must be accompanied by detailed supporting documents and must be claimed within two calendar months of incurrence.

Annexure A: Notes to Consultants

This is guidance to consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract, and the Employer carries no liability for it. The Consultant must obtain its own advice.

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of “project” or “contract” value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A “project” is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A “contract” is a single contract not linked to or being part of a “project”.

2. There are three main “formats” of cover and deductible structure; Format A, Format B and Format Dx.

Format A is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

Format B is for a project or contract value greater than R350M. (Three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

Format Dx applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

Format A generally applies to Transmission Division projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

<http://www.eskom.co.za/tenders/insurancepoliciesandprocedures>

4. The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers sometime after Completion of the whole of the *services*. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

C1.2 Contract Data

Part two - Data provided by the *Consultant*

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

Clause	Statement	Data	
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.		
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:		
		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	31 August 2027	
11.2(10)	The following matters will be included in the Risk Register	As per the Task Order instruction	
11.2(13)	The <i>staff rates</i> are:	Name/Designation	Rate
		Refer to the table C2.2	Refer to the table C2.2
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Eskom buildings	As per the Task Order
31.1	The programme identified in the Contract Data is	As per the Task Order	
G	Term Contract		
11.2(25)	The task schedule is in	Part 2	

PART 2: PRICING DATA

PSC3 Option G

Document reference	Title	No of pages
C2.1	Pricing assumptions : Option G	21
C2.2	<i>Staff rates, expenses and the task schedule.</i>	22 - 38

C2.1 Pricing assumptions: Option G

How work is priced and assessed for payment

From Option G: Term contract

- | | | |
|------------------------------|------------|---|
| Identified and defined terms | 11
11.2 | <p>(17) The Price for Services Provided to Date is, for each Task, the total of</p> <ul style="list-style-type: none"> • the Time Charge for work which has been completed on time based items on the Task Schedule and • a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item. <p>(20) The Prices are</p> <ul style="list-style-type: none"> • the Time Charge for items described as time based on the Task Schedule and • the lump sum price in the Task Schedule for each other item. |
|------------------------------|------------|---|

From the Core Clauses:

- | | | |
|------------------------------|------|---|
| Identified and defined terms | 11.2 | <p>(13) The Time Charge is the sum of the products of each of the <i>staff rates</i> multiplied by the total staff time appropriate to that rate properly spent on work in this contract.</p> |
|------------------------------|------|---|

and

- | | | |
|--------------------------|------|---|
| Assessing the amount due | 50.3 | <p>The amount due is</p> <ul style="list-style-type: none"> • the Price for Services Provided to Date, • the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and • other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>. <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Consultant</i> is included in the amount due.</p> |
|--------------------------|------|---|

In effect Option G is a cost reimbursable form of contract with work ordered by the *Employer* on a Task-by-Task basis using the Task Schedule to compile the cost of carrying out a Task.

Expenses are calculated separately and added to the amount due for the services provided.

C2.2 Staff rates, expenses & the task schedule

State whether the *staff rates* and *expenses* exclude VAT.

1. The *staff rates* and *expenses* are:

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes before entering *staff rates* into Contract Data, or in section C2.2 which follows.

This is because *staff rates* can be established in one of three ways:

- rates for named staff,
- rates for categories of staff, or
- rates related to salaries paid to staff.

Rate adjustment for inflation

Option X1: Price adjustment for inflation. See pages 13 and 14 of the PSC3 Guidance Notes.

As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 15 of the PSC3 Guidance Notes.

The function of the Task Schedule

The Task Schedule may include items of work to be paid for on a rate (Time Charge) or on a lump sum price for the item. Any work ordered during the term of the contract – i. e. before the Completion Date – for which there is no priced item in the Task Schedule is priced using the compensation event procedure and the resulting Price is added into the Price List.

The *task schedule* is prepared by the *Employer* for the *Consultant* to price or may be prepared jointly with the *Consultant*. It is typically priced in two parts as items of work to be carried out on a time basis and lump sum prices for other items of work. The task schedule must be as complete as possible and fully representative of all the work and *services* which the *Employer* may require the *Consultant* to carry out. The only unknown is when the work is to be carried out; the Task Order will be used to instruct when work to be done.

C2.2 Staff rates, expenses & the task schedule

This section can be used when the *staff rates* and *expenses* are considerable in number and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

State whether the *staff rates* and *expenses* exclude or include VAT.

The *staff rates* are:

PRICING SCHEDULE	
Pricing Schedule: Forensic and Anti-Corruption Consulting Services Panel	
Skills Level	Hourly Rate Excl. VAT
Director	R0
Senior Manager	R0
Manager/ Senior Investigator	R0
Investigator	R0
Specialist Services	Price Excl. VAT
Digital /Computer Forensic/Cyber Forensic Services (Data recovery, Data analysis, imaging and reporting) Charged per device	R0
Polygraph Services (Pre-test interview, testing, data analysis, post-testing interview, and reporting) Charged per person	R0
Hand-writing examination and reporting) Charged per page	R0
Payment: Full-scale Forensic Investigations	
First Payment: Finalisation of the project plan summary (10%)	
Second Payment: Submission of draft report (20%)	
Final Payment: Finalisation and sign-off of the report by the Employer (70%)	
Disbursement: T&S **	
a) Post Investigation Support - Charged at an hourly rate of the required team member(s) i.e. Investigator (Testifying at disciplinary hearings and CCMA)	
b) Travelling - Charged @ Eskom rate, applicable Eskom kilometre (km) rate at the time of travel.	
c) Accommodation: 3 stars graded*** - Only charged at actual occurrences and upon the employer's prior arrangement and authorisation.	
Cost Containment Declaration:	
Eskom is required to abide to the Cost Containment Instruction Notes that are issued by National Treasury. The onus is on the supplier to obtain a copy of this document from National Treasury.	
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 Task Order anniversary 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 Task Order anniversary date.

I/We _____ [Authorised Person] from _____

_____ [Name of organisation] _____ declare that "I/We agree to comply with Cost Containment Instruction Notes that are issued by National Treasury".

The expenses are:

The expenses will be regulated by the National Treasury Cost Containment Instruction Notes

Provision of Forensic investigation and Post Investigation services for a period of eighteen months (12 months with 6 months contingency period)

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i> (detailed to be shared at Task Order level).	1
	Total number of pages	

Provision of Forensic investigation and Post Investigation services for a period of eighteen months (12 months with 6 months contingency period)

C3.1: EMPLOYER'S SCOPE

Description of the services

Executive overview

The forensic investigation function is a critical component of the organisation's governance, assurance, and consequence management framework. It plays a central role in safeguarding organisational integrity, strengthening accountability, and sustaining public, stakeholder, and shareholder confidence.

Eskom operates on a co-sourced model in that all reported allegations are either investigated internally or by the appointed external service provider.

Over the past years, Forensic experienced growing backlog of unresolved forensic matters has evolved into a material systemic and governance risk, negatively impacting the organisation's ability to respond decisively to fraud and corruption, conclude disciplinary processes timeously and demonstrate effective consequence management. To address and clear the backlog of cases, Forensic seeks an intervention of external service providers with the requisite expertise to address the constant backlog.

A panel of external Forensic Investigation Service providers is required to assist in addressing the backlog.

It is expected of the appointed panel of forensic service providers to have unique skills and capabilities which includes but not be limited to conducting digital forensics, capacity to apply data analytics and artificial intelligence polygraph services, handwriting analysis and document analysis. These specific skills do not exist within will provide a variety of services to Eskom and its subsidiaries.

Scope of work/supply

1.1. Full Scale Forensic Investigations (including Post Investigation Support Services)

- 1.1.1. Conduct investigation into fraud, corruption and irregularity.
- 1.1.2. Review of allegation supporting documents.
- 1.1.3. Compile investigation plans
- 1.1.4. Consult or conduct interviews with sources relevant to the investigation.
- 1.1.5. Collection, analysis and preservation of evidence in line with law of evidence.
- 1.1.6. Conduct background searches of subject/individual/entities under investigation.
- 1.1.7. Review and apply relevant legislative prescripts, rules, guidelines, policies and procedures.
- 1.1.8. Compiling affidavits/taking of statements.
- 1.1.9. Ability to use multi-disciplinary approach during investigation, i.e liaising with the relevant law enforcement agencies during criminal investigations.
- 1.1.10. Ability to apply data analytics and AI techniques to uncover malpractices or anomalies.
- 1.1.11. Post investigation support that includes amongst others attending disciplinary proceedings, criminal proceedings and civil litigation as and when required. This will include consultations with both internal and external stakeholders.

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1.2. Digital Forensic Investigation

- 1.2.1. Conduct digital and computer forensic investigation in line with law of evidence and in a manner that the evidence recovered will be admissible in a court of law.
- 1.2.2. Investigation involving digital devices and cloud computing technology e.g mobile phones, tablets, IoT devices, connected devices,
- 1.2.3. Seize the evidence from the implicated source to ensure a strict chain of custody.
- 1.2.4. Preserve evidence integrity. make a forensic duplicate of the data using a hard drive duplicator or forensic imaging tool.
- 1.2.5. Secure the original data and conduct the rest of the investigation on the copies to avoid tampering.
- 1.2.6. Data recovery: Perform digital evidence recovery on devices, laptops, cell phones, tablets, external hard drives and other digital information storage platforms.
- 1.2.7. Recover digital data from various sources, including web browser histories, chat logs, remote storage devices, deleted space, accessible disk spaces, operating system caches and virtually any other part of a computerized system.
- 1.2.8. Data Analysis- Examine collected data/evidence i.e keywords
- 1.2.9. Apply data analytics techniques to uncover malpractices or anomalies;
- 1.2.10. Compile and present a forensic report based on the analysis and findings.
- 1.2.11. Post investigation support that includes amongst others: Disciplinary proceedings and expert testimony, criminal justice, civil litigation as and when required.

1.3. Polygraph Examination

- 1.3.1. Is a scientifically validated test used to determine the probability of a person answering truthfully, or not, to a set of pre-determined questions. It is often referred to as a lie detection test due to it mainly being used in a lie detection framework, or to monitor for concealed information.
- 1.3.2. Conduct examination and presentation of polygraph test results in the form of a report by a person competent to do so.
- 1.3.3. Post investigation support- as an expert witness at CCMA, disciplinary, criminal justice if required.

1.4. Handwriting and Document Examination

To determine the authenticity of handwriting/signature/document under question or in dispute (i.e. genuine, forged, an original, cut and paste, traced, simulated, altered).

Provision of Forensic investigation and Post Investigation services for a period of eighteen months (12 months with 6 months contingency period)

Specification and deliverables

- a) Quality Forensic Investigations into allegations of Fraud; Corruption; Financial Irregularities and General Irregularities i.e., recruitment, abuse of power, conflict of interest, etc.
- b) Develop and submit detailed investigation plan;
- c) Submit project and status reports.
- d) Post investigation support where required
- e) Formulate an investigations approach and methodology which must align with professional standards set by the industry, codes of conduct and other legislation.
- f) Attend planned meetings with management for the duration of the contract.
- g) Provide detailed and accurate forensic Investigation reports with factually supported conclusions and recommendations supported by credible evidence (exhibits/annexures) in a nature and extent suitable for use in any corrective process, be in inhouse disciplinary, justice as well as civil litigation;
- h) To provide effective support to the consequence management processes to allow for increased recovery of losses (civil litigations), improved compliance with regulatory requirements and the provision of effective assistance with respect to criminal prosecutions and disciplinary hearings.
- i) Provide support with identifying Public Finance Management Act No 1 of 1999 violations and quantifications thereof during investigations
- j) Non litigation financial recoveries during a forensic investigation.
- k) Presenting expert evidence in support of internal and external consequence management proceedings
- l) Register/ open of criminal case within an area of jurisdiction, and engagement with relevant law enforcement agencies.
- m) Report section 34 PRECCA on behalf of Eskom.
- n) Investigate suspicious transactions; perform accounting/commercial process/tender fraud/insurance related investigations.
- o) Proactive forensic services, including fraud awareness and regulatory compliance training and developing fraud prevention programmes and plans, etc
- p) Provision of fraud awareness training and/or material trend analysis as and when required.
- q) Transfer of skills into the internal resources as and when required. Each successful service provider will be expected to transfer any of the following skills into Eskom employees, in particular employees within the Forensic and Anti- Corruption Department:
 - 1) Interviewing Skills
 - 2) Report writing Skills
 - 3) Legal Practice skills
 - 4) Presenting of evidence at disciplinary hearings, CCMA, Labour, Civil and Criminal Proceedings
 - 5) Digital/cyber forensic skills
 - 6) Polygraph
 - 7) Handwriting examination

Provision of Forensic investigation and Post Investigation services for a period of eighteen months (12 months with 6 months contingency period)

Constraints on how the *Consultant* Provides the Services.

Management meetings

Meetings of a specialist nature may be convened as specified elsewhere in this Scope or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *services*. Records of these meetings shall be submitted to the *Employer's Agent* by the person convening the meeting within five days of the meeting.

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

Consultant's key persons

The firm's organogram detailing the people, and their lines of authority/communication is provided to the *Employer's Agent*.

Documentation control and retention

Identification and communication

The working papers and relevant supporting documentation will be provided by the *Employer's Agent*. Any updates will be communicated via email to the firms.

A copy of the working papers will be made available by the *Employer's Agent*.

The Eskom approved templates will be utilised for the documentation. This will be provided by the *Employer's Agents*.

Retention of documents

Clause 13.6 states that the Consultant retains copies of reports and other documents which record the services in the form stated in the Scope. State here what that form is. Note the time period for which the Consultant is to retain such documents is the period for retention stated in the Contract Data.

Records and forecasting of expenses

All expenses will be regulated by the National Treasury Cost Containment Instruction Note.

Records and forecasting of the Time Charge

Timesheets generated by the *Consultants* on a weekly basis for all projects. The timesheet will be generated from their time/schedule application system.

Invoicing and payment

Provision of Forensic investigation and Post Investigation services for a period of eighteen months (12 months with 6 months contingency period)

Clause 50.2 states invoices submitted by the *Consultant* include the details stated in the Scope to show how the amount due has been assessed. Also state what must be shown on the Invoice. The following text is suggested.

Invoices can only be generated and processed for payment when the details stated in the *Scope* to show how the amount due has been assessed.

In order to improve the processing of valid tax invoices the following details must be visible on the invoice:

- At the top of the page, Tax Invoice, should be clearly displayed;
- The Tax Invoice should be dated, example 13 January 2020

The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

[List them]

The *Consultant* shall address the tax invoice to _____ and include on it the following information:

Name and address of the *Consultant*

Name and address of the *Employers Agent*:

Eskom Holdings SOC Limited

1 Maxwell Drive

Megawatt Park

Sunninghill

Or

Eskom Holdings SOC Limited, Megawatt Park, PO Box 1091, Johannesburg, 2000, RSA

The purchase order number and title;

Consultant's VAT registration number;

The *Employer's* VAT registration number 4740101508;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.

(add other as required)

[Add procedures for invoice submission and payment (e. g. electronic payment instructions)]