

# Under Review

Eskom Supplier Integrity Pact

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	<b>ESKOM SUPPLIER INTEGRITY PACT</b>	<b>Group Commercial: Policy and Procedure</b>
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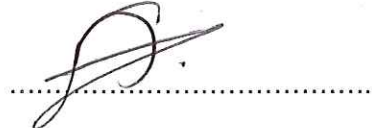


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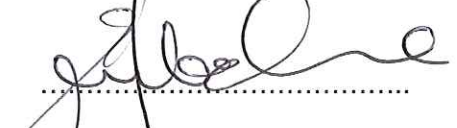


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## 1. SUPPORTING CLAUSES

### 1.1 SCOPE

This Integrity Pact is applicable to Eskom Holdings SOC Ltd (including all subsidiaries) and all its suppliers (potential suppliers, vendors, contractors, consultants, service providers and both natural and juristic persons).

### 1.2 PURPOSE

The Integrity Pact is a pact between Eskom and its suppliers that prescribes the "ethical behaviour" [desirable/acceptable conduct (actions and decisions) that will bring about good/appropriate consequences/outcome in the interaction with others. Ethical behaviour incorporates ethical values and considers not only what is good for oneself, but also what is good for others]. Eskom considers such behaviour of paramount importance and expects every supplier to act ethically and with integrity at all times, as it does its own employees/directors.

Eskom commits to ensuring that it implements a procurement policy that aligns to all applicable South African laws and regulations, as well as the constitutional principles of fairness, transparency, equity, cost effectiveness and competitiveness.

This document is intended to replace "Supplier Code of Conduct", and to supplement all other relevant Commercial and Ethics related policies/codes/procedures.

## 2. PREAMBLE

In order to achieve this purpose, all Eskom suppliers are required to read this Integrity Pact and sign and submit the Integrity Declaration Form (Annexure A) whenever they participate in any Eskom tender/enquiry, or when any contract modification is effected.

Eskom and its suppliers commit to honouring their respective obligations herein, and agree to refrain from any form of dishonesty, fraud and corruption throughout the entire procurement process, including tendering practices that are in bad faith, anti-competitive or unfair( under-pricing/colluding/bid rigging).

All suppliers wanting to do business with Eskom will be required to sign the Integrity Declaration Form and submit to Eskom as indicated above.

## 3. SUPPLIER'S OBLIGATIONS

### 3.1 Eskom's suppliers accept that will they at all times:

- 3.1.1 Maintain an unimpeachable standard of integrity in all their business and personal dealings and take all reasonable measures necessary to prevent all dishonest, unfair, fraudulent, corrupt, and illegal practices during any stage of the Eskom procurement process including the execution of contracts and contract modifications.
- 3.1.2 Ensure that they are familiar with all publicly available Eskom policies/procedures/codes that impact the supply chain process and suppliers in general including, but not limited to, Eskom's conditions of tender.
- 3.1.3 Reject all improper business practices (as may be prohibited by Eskom).
- 3.1.4 Not abuse the trust placed in them by Eskom employees, or misuse opportunities arising in the course of their interaction with Eskom for personal gain.

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- 3.1.5 Seek to constantly maintain and enhance the standards of professional competence
- 3.1.6 Adopt, where possible, policies and practices which align with those of Eskom (labour practices, affirmative action initiatives and human relations policies).

### 3.2 Eskom's suppliers confirm specifically that:-

- 3.2.1 All confidential information, to which they may have access in the course of their work (including, but not limited to, the enquiry documents, technical documents, and/or any information gained during clarifications/negotiations), is not disclosed without the express consent from authorised Eskom employee the supplier is required to complete a Non-disclosure Agreement (NDA) to give effect to this as part of the tender/Request for Proposal (RFP) process.
- 3.2.2 They will not misrepresent information, submit false certificates or forged documents to influence the tendering process to advantage themselves or to mislead Eskom in any way and that Eskom has the right to request an audit of such information, and take further action against the supplier should it be found that it has acted in a dishonest or fraudulent manner.
- 3.2.3 Although the establishment of long term and close relations between Eskom and its suppliers is recognised, in the right context, as having the potential to benefit both parties. They are, nevertheless, required to avoid relationships with Eskom employees/contractors/directors, which are, or perceived to be, contrary to the constitutional principles of fairness, equitability, transparency, competitiveness and cost effectiveness. Suppliers will thus be required to complete the Declaration of Interest Form (incorporated in Annexure A-Integrity Pact Declaration) wherein they are required to disclose any interest that an Eskom employee/director may have, whether financial, private or personal, in its business, and/or any affiliation/relationship which affects, or may affect, or may be perceived to affect, the decision-making during tender award. Should a supplier later become aware of a conflict of interest(family, business and/or social relationship) between its owners/members/directors/partners/shareholders and an Eskom employee/director with respect to a tender in which it participated, supplier is required to disclose the interest/relationship in to Eskom and submit whatever information may be required regarding the parties involved.
- 3.2.4 Although the entertainment of customers and provision of business courtesies or gifts is generally an accepted commercial practice, they must not in any way negatively affect Eskom's image and reputation, and should not exceed the value prescribed by Eskom annually. Business courtesies and gifts should be clearly marked with the supplier's name and/or logo and should not be of such a nature (value or circumstances) as to be construed as placing an Eskom employee/director under undue obligation to the supplier or in any way improperly influence the recipient.
- 3.2.5 They will avoid entering into unethical and/or fraudulent dealings with any Eskom employee/director involved in the evaluation/adjudication/negotiation of a transaction in which it participates, involving direct/indirect monetary or material benefits in order to be unfairly benefitted. In such circumstances, no business courtesy, bribe, gift, fees, commission or inducement may be offered to, or requested by an Eskom director/employee involved in the evaluation/adjudication/negotiation of a transaction in which the supplier is participating.
- 3.2.6 They will not enter into any dishonest and/or illegal agreement or understanding with other tenderers involved in a tender/RFP process in which it participates. They will be required to attest to the fact that they are not involved in any unfair tendering practices by completing the

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Integrity Declaration Form (Annexure A) which incorporates a Declaration of Fair Tendering Practices, when participating in any Eskom tender/enquiry or modifying any contract.

- 3.2.7 They have read and understood the relevant provisions of the Eskom Supplier Re-consideration process (suspension process) and sanctions that may arise out of such process should they found to be guilty of a misconduct, as per Annexure B- Extract from Eskom's Procurement and Supply Chain Management Procedure (32-1034)
- 3.2.8 Should a supplier become aware of any dishonest, fraudulent or inappropriate behaviour of any Eskom employee/director; then said supplier is requested to report this behaviour to the Eskom Ethics Office(ethics@eskom.co.za), via the Eskom Forensic Website or through the Eskom toll free hotline 0800 11 27 22, wherein confidentiality is guaranteed.

#### **4. ESKOM'S OBLIGATIONS**

- 4.1 Eskom undertakes to treat all tenderers during the tendering process, according to the constitutional principles of equality, fairness and transparency.
- 4.2 All Eskom employees/directors are required to complete an annual DOI, wherein they are required to declare all interests, regardless of whether they are conflicting directorships, memberships, details of any "related" or inter-related persons or other associate that does business with Eskom and all other material personal interests, whether a conflict exists or not. In addition to this annual declaration, employees/directors are also required to declare additional DOI and NDA if involved in the tender evaluation/adjudication/negotiation process.
- 4.3 Eskom will ensure that all gifts/business courtesies received in the normal course of business are declared, recorded and authorised by relevant managers. Employees/directors involved in the tender evaluation/adjudication/negotiation process, may not accept, demand or take a promise or any monetary values, business courtesies, gifts, rewards, favours from any of the tenderers involved to benefit, or as may be perceived to benefit such tenderer.
- 4.4 Should Eskom become aware of any relationship/interest of any employee/director in a tenderer in which it is involved in tender evaluation/adjudication/negotiation process, then this employee/director will be excluded from said tender evaluation/adjudication/negotiation process.
- 4.5 Eskom will implement the Supplier Re-consideration (suspension) process (Annexure B) if aware of any contravention of the provisions of this Pact, any other misconduct by a supplier and/or any Eskom employee who acts in bad faith to benefit a supplier. According to this process, Eskom has the right, after following a process of investigation, giving the supplier an opportunity to state his case, to suspend a supplier from the Eskom database, and/or institute disciplinary actions against its employees. Eskom will also forward the names of the suspended suppliers to National Treasury, who will remove it from the Centralised Supplier Database (CSD) and include it on the database of suspended suppliers. Eskom may also inform the Competition Commission depending on the nature of the misconduct.

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## 5. GENERAL

- 5.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 5.2 The actions stipulated in this Integrity Pact are without prejudice to any other civil or criminal proceedings that may arise in accordance with the provision of the law.
- 5.3 This signed Integrity Pact shall be valid for an indefinite period unless replaced by a more recent signed Integrity Pact.
- 5.4 Should one or several provisions of this Integrity Pact be regarded as invalid, remainder of the provisions will still remain valid.

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## ANNEXURE A – INTEGRITY DECLARATION FORM

*(Form to be completed and signed by supplier/tenderer as Invitation to Tender/RFP returnable or as part of contract modification documentation)*

### 1. 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:-

- the *tenderer/s* employees/directors are also employees/contractors/consultants/ directors in the state or a state owned entity.
- the *tenderer/s* employees/directors are also employees/contractors/consultants/ directors of Eskom
- the *tenderer/s* employees/directors are also employees/contractors/consultants or directors in another entity together with Eskom employees/consultants/contractors/ directors
- 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:-
  - an individual is related to another individual if they are married, or live together in a relationship similar to marriage;
  - or are separated by no more than two degrees of natural or adopted consanguinity or affinity;
  - 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
  - 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"
- 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;

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

Full Name & Capacity/ Position within tenderer (e.g. employee/Director/member/ owner/shareholder)	Identity Number	Confirm and provide details (including employee number) if you are a State/State owned entity employee/contractor/ director.	Full Names & Capacity/Position of Eskom employee/ director/ consultant and details of the relationship or interest(marital/ familial/personal/ financial etc.)	To your 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.  
\_\_\_\_\_
2. 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:

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

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

Item	Question	Yes	No
1.1	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, or 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)  The Database of Restricted Suppliers and 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> ).		
1.2	Was the <i>tenderer/s</i> (or any of its directors/members/shareholders) 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?		
1.2.1	Provide details.		
1.3	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		

I, the undersigned, \_\_\_\_\_ 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)

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 this declaration prove to be false.

Signature:	
Designation and capacity in which signing:	
Date:	

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**Joint Ventures**

I, the undersigned, \_\_\_\_\_ 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).

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 this declaration prove to be false.

Signature:	
Designation and capacity in which signing :	
Date:	

(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 B – EXTRACT FROM ESKOM'S PROCUREMENT AND SUPPLY CHAIN MANAGEMENT PROCEDURE (32-1034)****3.8.9 Reconsiderations of Supplier Registration Status****3.8.9 1 Grounds for Reconsideration in Specific Instances**

Eskom is entitled to reconsider the registration status of a supplier on the Eskom Supplier Database, on any one or more of the following grounds:-

i) A contravention of, a failure to comply with, or a breach of any of the terms, conditions or provisions of:-

- the Eskom Purchasing Pact for Suppliers;
- the Standard Conditions for Registration as Supplier;
- the Standard Conditions of Tender;
- the agreed conditions of contract, for the supply of assets, goods or services to Eskom, where applicable;

by the supplier, any of its employees, any person under its control, or any related person, which is of such materiality that it is deemed a threat or abuse to the Eskom procurement system, thereby requiring a reconsideration of the supplier's registration status with Eskom;

- ii) any conduct of the supplier, any of its employees, any person under its control, or any related person being the direct or indirect cause of any disciplinary action taken against an employee of Eskom for any misconduct that pertains to any aspect of procurement (in the broad sense, including the entire process prior to the acquisition of goods or services and the administration of any contract or order resulting from that process);
- iii) the supplier, any of its employees, any person under its control, or any related person promoting or inciting labour unrest, other than a protected strike, at any site or premises under the control and supervision of Eskom or, where another supplier has a contract with Eskom for the supply of assets, goods or services, of that other supplier where such labour unrest has a detrimental or potentially detrimental impact for Eskom on any aspect of procurement (in the broad sense, including the entire process prior to the acquisition of assets, goods or services and the administration of any contract resulting from that process);
- iv) the supplier, any of its employees, any person under its control, or a related person deliberately attempts to frustrate or obstruct, directly or indirectly, the ability of Eskom and/or of another supplier under a contract with or order from Eskom to carry out the obligations, duties or responsibilities in terms of any contract, order or legislation;
- v) the supplier, any of its employees, any person under its control, or a related person making use of any labour, material, transport, equipment, intellectual property or other assets, belonging to or under the control and supervision of Eskom or which Eskom is entitled to use, without the written

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consent of Eskom and either for the benefit or gain by the supplier or by a person other than Eskom or to the prejudice or potential prejudice of Eskom;

vi) the supplier, any of its employees, any person under its control, or a related person being found in the unauthorised possession of, or being engaged in removing without permission, any property belonging to Eskom, any employee of Eskom or another supplier of Eskom;

vii) The supplier, any of its employees, any person under its control, or a related person person being found guilty by a court:

- of any offence in terms of the Prevention and Combatting of Corrupt Activities Act 12 of 2004;
- of any other crime involving dishonesty and for which any term of effective imprisonment, with or without the option of a fine, is imposed;

viii) any conduct by the supplier, any of its employees, any person under its control, or a related person resulting:

- in that person being found guilty by a court of any crime;
- in that person paying an admission of guilt fine in terms of chapter 8 of the Criminal Procedure Act 51 of 1977;
- in any adverse finding being made against that person by any court, commission, tribunal, administrative body or regulatory institution in any proceedings, matter or investigation before it;
- in any adverse procurement-related decision by an organ of state made solely on the basis of that conduct;

which conduct relates to, impacts upon or pertains to any aspect of procurement (in the broad sense, including the entire process prior to the acquisition of goods or services and the administration of any contract or order resulting from that process) by Eskom or to any aspect of the procurement system of Eskom;

ix) the supplier, any of its employees, any person under its control, or a related person acquiring from any source, not authorised in writing by Eskom, or using, without the written permission of Eskom, any confidential information of Eskom, including any intellectual property of Eskom, or confidential information of another supplier in the possession of or under the control of Eskom, with a view to obtain a competitive advantage over other suppliers or potential suppliers of assets, goods or services to Eskom;

x) the supplier, any of its employees, any person under its control, or a related person disclosing any confidential information of Eskom, including any intellectual property of Eskom, or confidential information of another supplier in the possession of or under the control of Eskom, to a third party for any procurement-related purpose where that confidential information was obtained in the course of or incidental to carrying out the contractual obligations of the supplier to Eskom;

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- xi) if the supplier no longer meets the general requirements for registration as a supplier of assets, goods or services to Eskom or no longer meets, where applicable, the pre-qualifying criteria for registration as a supplier of a specific kind, class or category of assets, goods or services to Eskom;
- xii) the supplier, any of its employees, any person under its control, or a related person making any false statement or any misrepresentation, by commission or omission and either knowingly, negligently or innocently, to Eskom which:
  - induces or is calculated to induce Eskom to register that supplier as supplier on the Eskom Supplier Database, to enter into a contract with that supplier or issue him with an order; or
  - relates or pertains to the performance of the contractual obligations between Eskom and that supplier;
- xiii) the supplier, any of its employees, any person under its control, or a related person wilfully making any false statement or any misrepresentation, by commission or omission, to Eskom in order to:
  - prevent another person from being registered as a supplier on the Eskom Supplier Database or from being registered with a particular supplier profile;
  - prevent a contract to be entered into or an order to be issued by Eskom with or to another registered supplier;
  - induce Eskom to reconsider the registration of or to de-register another supplier on the Eskom Supplier Database;
- xiv) the supplier having built up a history of poor performance on one or more contracts with or orders from Eskom, including poor performance on matters or aspects of safety, health, quality control and/or environmental regulation, or having committed a serious and gross breach of contract;
- xv) in general, any conduct by the supplier, any employee of his or any person under his control or a related person prejudicial or potentially prejudicial for procurement (in the broad sense, including the entire process prior to the acquisition of goods or services and the administration of any contract or order resulting from that process) by Eskom or for the procurement system of Eskom.

#### **3.8.9.2 Grounds for Reconsideration in General Instances**

Where a natural person who is registered as a supplier on the Eskom Supplier Database:

- dies;
- voluntarily surrenders his estate or is sequestrated in terms of the Insolvency Act 24 of 1936; or
- is declared by a court of law to be of unsound mind and as such incapable of managing his affairs;

Eskom shall take the necessary steps to ensure that:-

- the supplier is blocked on the Eskom Supplier Database;

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- no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
- the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised.

i) Where a partnership who is registered as a supplier on the Eskom Supplier Database:

- is dissolved; or
- voluntarily surrenders its estate or is sequestrated in terms of the Insolvency Act 24 of 1936;

Eskom shall take the necessary steps to ensure that:-

- the supplier is blocked on the Eskom Supplier Database;
- no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
- the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised.

ii) Where a legal person who is registered as a supplier on the Eskom Supplier Database:

- adopted a resolution to voluntarily begin business rescue proceedings or a person applies to a court for an order placing that legal person under supervision and commencing business rescue proceedings; or
- initiates liquidation proceedings or had liquidation proceedings initiated against that legal person

Eskom shall take the necessary steps to ensure that:-

- the supplier is blocked on the Eskom Supplier Database;
- no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
- the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised.

iii) Where Eskom is entitled to reconsider the registration of a supplier on the Eskom Supplier Database based on the Grounds for Reconsideration in Specific Instances, or Eskom takes the necessary steps in the event of death, insolvency, incapacity or business rescue of a supplier, Eskom may also reconsider the registration of:

- any related person, where that related person is registered as a supplier on the Eskom Supplier Database; and

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- any other person who is registered as a supplier on the Eskom Supplier Database and in respect of which the related person referred to above is also a related person; in accordance with the procedure for reconsideration as set out below.

### 3.8.9.3 Procedure for Reconsideration

The procedure for the reconsideration of the registration of a person / entity as a supplier on the Eskom Supplier Database is as follows:

- Separated or combined processes: For the purpose of this Procedure, Eskom via the Standing Committee may decide to follow separate processes for each individual supplier or to follow one or more combined processes against all or any number of individual suppliers where the reconsideration of the registration of more than one person / entity as a supplier on the Eskom Supplier Database is being considered.
- First notification: If on the basis of any written communication or report a Risk and Governance Official has reasonable cause to suspect that there are grounds to reconsider the registration of a supplier, the Risk and Governance Official must immediately collect all relevant information on record with Eskom and prepare a first notification in writing, providing a brief written account with a recommendation, for submission to the Secretariat: Supplier Disciplinary Standing Committee, for placement on the agenda for consideration at the next sitting of the Standing Committee. The written recordal of any information supplied by a confidential informant or any notes of a discussion with such informant by an employee of Eskom must be deemed to be such a written communication or report and the Risk and Governance Official shall ensure that the identity of such informant, if known by Eskom, is protected against disclosure.
- First (Desktop) Assessment: Upon receipt and consideration of a first notification from the Risk and Governance Official, the Standing Committee may, by consensus or majority:
  - reject the matter as frivolous;
  - refer the matter to the relevant Eskom Agent, to be dealt with under the terms and conditions of the relevant contract awarded and/or of the order given by Eskom to the person in question; or
  - accept the matter for further investigation and to that end refer the matter for internal investigation to the appropriate subject matter experts within Eskom.

#### Persons assigned by the Standing Committee to serve as Case Investigators:

- must at least be a manager holding a position classified as an M15 or above in terms of the TASK Job Grading System;
- must be suitably qualified and experienced to investigate the matter;
- may, under exceptional circumstances, be an independent third party who is, to the satisfaction of the Standing Committee, a fit and proper person to do an investigation in the matter and report back to it thereon.

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- iv. Investigation and Preliminary Report: The assigned Case Investigator must, without delay, investigate the matter as discreetly and as fully as circumstances, logistics and contingencies allow in any lawful manner he / she deems fit and appropriate, where after he / she must, as soon as is practically possible, prepare and submit a written and confidential report to the Standing Committee on the investigation containing:
- a description of the investigation and the steps taken to investigate the matter;
  - a summary of all the relevant information pertaining to the matter, set out in a manner that identifies the source or sources of that information;
  - a motivated finding as to whether or not there are in fact grounds to reconsider the registration of a supplier on the Eskom Supplier Database;
  - a provisional view on the matter and the reasons for that provisional view;
  - a recommendation to the Standing Committee; and
  - copies of all relevant documentation, including a copy of the First Notification and the documents on which it was based, as well as any written witness statements or copies of relevant correspondence found during the investigation.
- iv) Second assessment: Upon receipt and consideration of the report of the Case Investigator, the Standing Committee may, by consensus or majority:
- reject the matter as frivolous;
  - refer the matter to the relevant Eskom Agent, to be dealt with under the terms and conditions of the relevant contract awarded and/or of the order given by Eskom to the person in question; or
  - decide to proceed with the process of reconsideration, whereupon the Standing Committee shall take the necessary steps to ensure that:-
- the person or persons in question are each notified in writing of the decision of the Standing Committee and the reasons for that decision;
  - together with the said written notice, the person or persons in question are each provided with a copy of the report of the Case Investigator, without the identity of any confidential informants, if any, being disclosed;
  - the person or persons in question are each informed that they have the opportunity to respond in writing on the report of the Case Investigator and/or to make written representations and/or to submit any additional information in writing to Eskom as to whether or not they should be de-registered as a supplier on the Eskom Supplier Database, and calling upon them to do so before a stipulated date, which may be date not less than twenty-one (21) days from the date of the receipt of the said written notice and which date may be extended once upon a written request for a period of not more than two (2) weeks; and

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- the person or persons in question are flagged on the Eskom Supplier Database and given written notice of such flagging.
- v) Final Report and Assessment: As soon as possible after the receipt of any such comment, representations and/or additional information by Eskom from the person or persons in question (if any) or upon the expiry of the date or extended date stipulated therefor, a Final Report must be prepared by the Risk and Governance Official inclusive of the comments, representations and/or additional information (if any), but without any further information from the Case Investigator, and submitted to the Standing Committee, which may then, upon receipt and consideration thereof, in its sole and unfettered discretion:
  - decide that the matter be finally considered on the documentation before it and take a decision regarding the outcome of the matter and reconsideration of the supplier's status;
  - direct that the person or persons in question be given an opportunity, at a time and place to be arranged by the Secretariat of the Standing Committee, to make oral submissions before a meeting of a subcommittee, consisting of any one or more of its members, which oral submissions together with any oral reply by the Case Investigator as well as his report with the comment, representations and/or additional information (if any), shall then be taken into account by the subcommittee to take a decision regarding the outcome of the matter and reconsideration of the supplier's status. No party shall be entitled to legal representation at such a hearing and no further documents, other than written heads of argument, may be submitted at such a hearing;
  - invite, with due regard for the dictates of procedural fairness, the person or persons in question and/or the Case Investigator to make and/or exchange further written representations, either in general or on a specific issue, to the Standing Committee before a stipulated date, after which date the Standing Committee shall on the report of the Case Investigator as well as on any comment, representations and/or additional information (if any), plus any further representations received before the stipulated date (if any) take a decision regarding the outcome of the matter and reconsideration of the supplier's status;
  - Provided that: the Standing Committee, and/or its subcommittee, shall keep proper minutes of any of its meetings.
- vi) Sanction: In the event of the Standing Committee or a subcommittee thereof finding that there is a ground or grounds to reconsider the registration of a person / entity as supplier on the Eskom Supplier Database, it may, by consensus or majority:
  - give that person / entity a final warning that, in the event of such a finding being made again, that person will be de-registered as a supplier on the Eskom Supplier Database;
  - give that person a final warning and with conditions to take the necessary steps, at his own costs, within a specified period of time to address any legitimate concerns of Eskom, including conditions:

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- to take and implement specified corrective measures with regard to the supervision and control of the business, the operations or the management of that person as supplier on the Eskom Supplier Database;
- to provide selected employees, agents and/or subcontractors of that person with specified training or with an opportunity to obtain specified qualifications; and/or
- to upgrade, maintain or improve the plant, material or equipment of that person as supplier on the Eskom Database in a specified manner;

Provided that if that person/entity fails to comply with such a directive within the specified period of time, Eskom shall flag that person on the Eskom Supplier Database pending full compliance with such a directive;

- suspend the registration of that person as a supplier on the Eskom Supplier Database for a period not exceeding one (1) years, during which period of suspension that person shall be flagged on the Eskom Supplier Database, with or without conditions. The period for compliance therewith shall be the period of suspension;
  - decide to de-register that person as a supplier on the Eskom Supplier Database, whereupon the Standing Committee or its subcommittee, as the case may be, shall take the necessary steps to ensure that:
    - the supplier is blocked on the Eskom Supplier Database;
    - no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
    - the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised; or
    - decide to de-register that person as a supplier on the Eskom Supplier Database and to terminate all existing contracts or cancel all orders placed with that person, with immediate effect.
- vii) Notification of outcome: Notification of the outcome of any matter shall be given as follows:
- The person or persons whose registration as supplier on the Eskom Supplier Database was under reconsideration, shall be given written notice of the outcome within twenty one (21) days after a decision was taken, with sufficient detail of the steps to be implemented by Eskom as a result thereof, and shall at the same time be provided with written reasons for that decision.
  - If Eskom has reason to believe that a person failed to comply in time with stipulated conditions, which served as a condition for full re-instatement of the supplier on the Eskom Supplier Database, such person / entity shall be given written notice to provide Eskom with sufficient proof of such compliance within seven (7) days after the date of receipt thereof, and,

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in the event of that person failing to respond or failing to provide such sufficient proof, Eskom shall:

- where that person was given a final warning, flag him as a supplier on the Eskom Supplier Database and take the necessary steps to ensure that no award of any further contracts or placing of orders with that supplier is processed by Eskom whilst he remains so flagged; or
  - where that person was suspended and full reinstatement was dependent on the fulfilment of conditions stipulated, block the supplier on the Eskom Supplier Database and take the necessary steps to ensure that no award of any further contracts or placing of orders with that supplier is processed by Eskom and that he is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised; and
  - give that person / entity a written notice accordingly.
- Where a decision was taken to de-register a person as a supplier on the Eskom Supplier Database, Eskom (via the Secretariat of the Standing Committee), must notify its internal PFMA Office, the Director-General of the National Treasury, any other organ of state with an interest in the matter, and employees or agents of Eskom through a written notice.
- viii) If during or as a result of the procedure for the reconsideration of the registration of a person / entity as a supplier on the Eskom Supplier Database, Eskom has any reason to believe that any criminal offence has been committed by any person, Eskom (through its Assurance and Forensics Department) may refer the matter in writing to the South African Police Service and/or the National Director of Public Prosecutions for a criminal investigation and possible prosecution, if warranted.

#### **3.8.9.4 Internal Review**

Eskom, at its sole discretion, may have any decision taken in terms of the process for supplier reconsideration revisited, reviewed and/or reconsidered by the Procurement Subcommittee of the Executive Committee (EXCOPS) of Eskom but is not obliged to do so and may do so, in its sole and unfettered discretion, upon the request of any person in respect of which a decision was taken by the Standing Committee.

#### **3.8.9.5 Procedure for Re-application as a Supplier**

No person / entity de-registered from the Eskom Supplier Database may submit an application to be registered as a supplier on the Eskom Supplier Database:

- For a period of 5 years from the date of the decision to de-register that person as a supplier on the Eskom Supplier Database in the case of an immediate and unconditional de-registration;
- For a period of 3 years from the date of the decision to de-register that person as a supplier on the Eskom Supplier Database, where de-registration is effected only after completion of outstanding contractual obligations;

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Provided that any person / entity who was a related person to that person whilst he was so registered as a supplier is likewise prohibited. However, Eskom may, in its sole and unfettered discretion upon a written and motivated request, permit any such application if the cause or ground for de-registration of that person as a supplier on the Eskom Supplier Database has been fully addressed to the satisfaction of Eskom.

#### **3.8.9.6 Giving Effect to Sanctions**

Each decision of the Standing Committee will be communicated by the Secretariat as minutes to the Supplier Evaluation Manager in order for the Supplier Evaluation Manager to ensure that the Eskom Supplier Database is accordingly updated to reflect the current status of supplier registration, the effecting of any flagging or blocking, and the recording and monitoring of any conditions as stipulated in a directive of the Standing Committee.

The decision to "flag" or "block" a supplier can only be made by the Standing Committee, and the SD&L Department will not act upon any other instructions to "flag" or "block" a supplier, from any other parties, and without due process being followed with respect to the supplier.

Until such time that the "flagging" functionality is built into the Eskom Supplier Database all flagging notifications will be located on Hyperwave, and updated after each meeting of the Standing Committee.

It is a requirement that every Procurement Practitioner make reference to the lists of flagged and blocked suppliers to ensure that no new order / contract awards are being made to such suppliers.

The Standing Committee must be notified by Procurement Practitioners / R&G officials to the extent that such suppliers are currently participating in Eskom tenders, in order to expedite decision-making before conclusion of the process of evaluation.

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