



NEC3 Term Service Contract (TSC3)

Between **ESKOM HOLDINGS SOC LIMITED**
(Reg No. 2002/015527/06)

and

for **SUPPLY AND DELIVERY OF VARIOUS MASTER
PADLOCKS.**

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Contract 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:

Supply and delivery of various master padlocks.

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

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

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

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

Not Applicable

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the

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

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: Service Information |

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

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

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

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy 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, Sandton, 2157

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

No.	Subject	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)

Name &
signature
of witness

Date

Senior Manager Business Enablement

Eskom Holdings SOC Limited
1 Maxwell Drive, Sunninghill, Sandton,
2157

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract (June 2005) and the relevant parts of its Guidance Notes (TSC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	%
	The <i>subcontracted fee percentage</i> is	%
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

CV's (and further key person's data including
CVs) are in .

A	Priced contract with price list		
11.2(12)	The <i>price list</i> is in		
11.2(19)	The tendered total of the Prices is	R	

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	X1 Price adjustment for inflation
		X2 Changes in the law
		X4 Parent company guarantee or
		X13 Performance bond
		X7 Delay damages
		Z Additional conditions of the contract
	and secondary Options	
		
		
	of the NEC3 Term Service Contract (June 2005) ³	
10.1	The <i>Employer</i> is (name):	Eskom Holdings SOC Limited (Reg No: 2002/015527/06), a juristic person incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Service Manager</i> is (name):	Veliswa Inise-Tembeni
	Address	Sunilaws Office Park East London
	Tel	+27 43 703 5720
	Fax	
	e-mail	inisev@eskom.co.za

³ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

11.2(2)	The Affected Property is	Eastern Cape Operating Unit
11.2(13)	The service is	Supply and delivery of various master padlocks
11.2(14)	The following matters will be included in the Risk Register	Not applicable
11.2(15)	The Service Information 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 (five) working days
2	The Contractor's main responsibilities	No data will be required for this section of the conditions of the contract.
21.1	The Contractor submits a first plan for acceptance within	1 (one) week of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	From the last signature on this document and the contract duration is 36 Months
30.1	The <i>service period</i> is	Thirty six (36) months
4	Testing and defects	No data is required for this section of the conditions of contract.
5	Payment	
50.1	The <i>assessment interval</i> is	At the end of each task
51.1	The <i>currency of this contract</i> is the	South African Rand
51.4	The <i>interest rate</i> is	(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard

		Bank of South Africa Limited, whose appointment it shall not be necessary to prove.
6	Compensation events	No data is required for this section of the <i>conditions of contract</i> .
	These are additional compensation events:	1 N/A 2 N/A
7	Use of Equipment Plant and Materials	No data is required for this section of the <i>conditions of contract</i> .
8	Risks and insurance	
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for “Format TSC3” available on http://www.eskom.co.za/live/content.php?Item_ID=9248 (See Annexure A for basic guidance).
83.1	The <i>Employer</i> provides these additional insurances	as stated for “Format TSC3” available on http://www.eskom.co.za/live/content.php?Item_ID=9248 (See Annexure A for basic guidance)
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer’s</i> property is	the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:	the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer’s</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor’s</i> Providing the Service for any one event is:	Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor’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 (Five hundred thousand Rands)..
9	Termination	There is no Contract Data required for this section of the <i>conditions of contract</i> .
10	Data for main Option clause	
A	Priced contract with price list	

20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	2 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	The person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending refer a dispute to him.
W1.2(3)	The <i>Adjudicator nominating body</i> is:	Not applicable
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	East London, Eastern Cape, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
X2	Changes in the law	No data is required for this Option
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of - the total of the Prices at the Contract Date and - the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/live/content.php?Item_ID=9248
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or	the total of the Prices other than for the additional excluded matters.

	in connection with this contract, other than the excluded matters, is limited to	The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for • Not applicable
X18.5	The <i>end of liability date</i> is	Not applicable
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	14 (fourteen) days of receiving the Task Order
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.
Z1	Cession delegation and assignment	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry.	
Z2	Joint ventures	
Z2.1	If the <i>Contractor</i> 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 <i>Employer</i> for the performance of this contract.	
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Service Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.	
Z2.3	The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.	
Z3	Change of Broad Based Black Economic Empowerment (B-BBEE) status	
Z3.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.	
Z3.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Service Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Service Manager</i> .	
Z3.3	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works.	
Z3.4	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.	

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, 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 *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* 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 *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service Manager* 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.

Z7 Health, safety and the environment: Add to core clause 27.4

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*: accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property; warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z7.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

- Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

- Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Service Manager* should have notified the event to the *Contractor* but did not".

Z10 Employer's limitation of liability

- Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z11.1 or had a judicial management order granted against it.

Annexure A: Insurance provided by the Employer

These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. Details of the insurance itself are available from the internet web link given below.

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the service provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
6. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

http://www.eskom.co.za/live/content.php?Item_ID=9248

Annexure B: The *Employer's* Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 andrewbaird@ecsconsult.co.za
Christopher BINNINGTON	Gauteng	+27 11 888-6141 cdb@bca.co.za
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Robert St. LEGER	Cape Town	+27 21 794 7488 bobst@iafrica.com
Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: Leighton.Itholeng@eskom.co.za

PART 2: PRICING DATA
TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i>	3

C2.1 Pricing assumptions: Option A

The *conditions of contract*

How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (TSC3) core clauses and Option A states:

Identified and defined terms	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of - the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and - where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate.
		(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

Function of the Price List

Clause 54.1 in Option A states: "Information in the Price List is not Service Information". This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Service in accordance with the Service Information". Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

Link to the *Contractor's* plan

Clause 21.4 states "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance". Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price list* and result in a satisfactory cash flow in terms of clause 11.2(17).

Preparing the *price list*

It will be assumed that the tendering contractor has read Pages 14, 15 and 73 of the TSC3 Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he considers necessary. Whichever party provides the items in the *price list* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Service as described at the time of entering into this contract.

1 As the *Contractor* has an obligation to correct Defects (core clause 42.1) and there is no compensation event for this unless the Defect was due to an *Employer's* risk, the lump sum Prices and rates must also include for the correction of Defects.

2 If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost

to the *Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Contractor* in the *price list* are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk.

5 The Contractor does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

Format of the *price list*

(From page 73 of the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

C2.2 the *price list*

Part 1

Supply and delivery of various master padlocks.

The rates and Prices entered for each item includes for all work and other things necessary to complete the item.

Price list for Maintenance and Operations Department

Item No	Short Text	Material	Quantity	Unit Price	Total Value
1	PADLOCK: MASTER STEEL PROH GREEN EC OU	0187161	1 219		
2	PADLOCK: MASTER STEEL LIVE BLACK EC OU	0187175	780		
3	PADLOCK: MASTER STL RESTR-A ORANGE ECOU	0187154	178 123		

The above rates exclude VAT but include cost of delivery.

CONTRACT WILL BE ESTABLISHED FOR A PERIOD OF 36 MONTHS; PRICES ARE FIXED AND FIRM FOR THE FIRST 12 MONTH PERIOD AND THEREAFTER WILL BE ESCALATED IN ACCORDANCE WITH RELEVANT CPI.

The above is subject to the following:

- A request for *services/works* will be given to the *Consultant/Contractor* by the *Employer*, in its total discretion and on an as and when needed basis, in the form of a Task Order / Instruction. Signatories of both parties on the Task Order/ Instruction are required prior to any Obligation being created for commencement of or payment for *Services/works*.
- A Task Order/Instruction is an order/instruction by the *Employer* to perform *services/works* as nominated by the *Employer* from the skills and *services/works* category, in terms of the above Price List, for which the *Consultant/Contractor* has been found by the *Employer*, in its total discretion, to have the relevant and present competency and capacity and no serious misconducts by key persons of the *Consultant/Contractor*, alleged or otherwise."
- The *Consultant/Contractor* should not commence with any *services/works* regarding any Task Order/Instruction without receiving the purchase order number (45# number) from the contract custodian.
- This contract is the only contract which can be used to request the *services/works* deemed to be Supply and delivery of various master padlocks. The need for the master padlocks arises from material management. There is no contract in place. These units are needed for various capital projects, critical spares under maintenance and operations environment

Contractor

Date

PART 3: SCOPE OF WORK

C3.1 Service Information

Description of the service

Supply and delivery of various master padlocks. The need for the master padlocks arises from material management. There is no contract in place. These units are needed for various capital projects, critical spares under maintenance and operations environment

Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
ECOU	Eastern Cape Operating Unit
SM	Service Manager
SHEQ	Health & Safety, Environmental Quality assurance

Management strategy and start up.

The Contractor's plan for the service

- The contractor is to observe the Occupational Health and Safety requirements to be met by Contractors and Sub-Contractors employed by Eskom Ref: 34-333 Rev 0.
- All safety requirements to be strictly adhered to by the Contractor.
- Protective clothing must be worn at all times.
- Immediately report to Eskom liaison person any difficulties or problems which are impeding the quick and smooth carrying out of the work.
- Adherence of Eskom Cardinal Rules as follows:
 - Rule 1: "Open, isolate, test, earth, bond and/or insulate before touch"
 - Rule 2: "Hook up at height"
 - Rule 3: "Buckle Up"
 - Rule 4: "Be Sober"
 - Rule 5: "Ensure that you have a permit to work"

Management meetings

All meetings shall be advised by the Service Manager who will specify the times and locations Parties, the nature and the progress of the service. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within five days of the meeting.

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

Supply and delivery of various master padlocks

Documentation control

All contractual documentation and communication will be in the form of properly compiled letters or forms attached to email.

Invoicing and payment

VAT TAX INVOICES

Please note that all invoices are to be submitted in electronic format to invoiceseskomlocal@eskom.co.za

NB: For any payment related queries, kindly contact our Shared Services Call Centre on 011 800 5060 or Fss@eskom.co.za

The following needs to appear on the invoice:

"Your invoice is encrypted in order to comply with SARS requirements that invoices and statements sent electronically are tamperproof."

Your banking details have to appear on all invoices in order to prevent payments into incorrect accounts and/or late payments due to verification of account details.

(SARS REQUIREMENT I.T.O TAX INVOICES FOR VAT PURPOSES)

In terms of the Revenue Laws Amendment Act, Act 45 of 2003, published on 22 December 2003, the following amendment will be made to Section 20 of the Value Added Tax Act 89 of 1991 ("the VAT Act"):

- (1) Section 20 of the Value Added Tax Act, 1991, is hereby amended by the substitution subsection (4) for paragraph (c) of the following paragraph: "(c) the [legal or trading] name, address and where the recipient is a registered vendor, the registration number of the recipient."
- (2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

The effect of the above amendment is that Eskom's VAT registration number will have to appear on all tax invoices it receives from its suppliers in order for it to be a valid tax invoice in terms of Section 20 of the VAT Act from 1 March 2005.

We thus kindly request that the VAT registration number of Eskom as set out below is reflected on all tax invoices sent to Eskom for payment at the soonest of your convenience, but by the latest from 1 March 2005.

The VAT registration number for Eskom Holdings SOC Ltd is 4740101508. Please copy the End-user of the site when submitting the invoice to Shared Services.

Insurance provided by the *Employer*

See Annexure A: Insurance provided by the Employer

Things provided at the end of the *service period* for the *Employer's* use

N/A

Management of work done by Task Order

The Users will confirm request by means of a valid purchase order number

Supply and delivery of various master padlocks

Health and safety, the environment and quality assurance

Health and safety risk management

The Service Provider will sign Section 37.2 Agreement before commencement of the contract.

Environmental constraints and management

N/A

Quality assurance requirements

N/A

Subcontracting

Preferred subcontractors

N/A

Subcontract documentation, and assessment of subcontract tenders

The use of the NEC3 - TSC is required.

Plant and Materials

Specifications

The Service Provider shall advise ESKOM where the supplier observes that ESKOM is not adhering to the necessary legal or legislative requirements.

Contractor's procurement of Plant and Materials

The contractor provides all materials required for the services.

List of drawings

Drawings issued by the *Employer*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

Drawing number	Revision	Title
N/A		