NEC3 Supply

Short Contract (SSC3)

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

and **[•]**

for **THE SUPPLY AND DELIVERY OF 132kV 3150A 40kA 2P 2M 2B2400 31mm/kV CURRENT TRANSFORMERS**

Contents: Compiled in accordance with CIDB Standard for Uniformity in Construction Procurement (May 2010) amendments) **Page No.**

Documentation prepared by: **Candice Ratlhagane**

C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

THE SUPPLY AND DELIVERY OF 132kV 3150A 40kA 2P 2M 2B2400 31mm/kV CURRENT TRANSFORMERS

The tenderer, identified in the signature block below, has

either	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.
or	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 Supplier 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	**R[●]**
Value Added Tax @ 15% is	**R[●]**
The offered total of the Prices inclusive of VAT is	**R[●]**
(in words)	

This Offer may be accepted by the Purchaser by signing the form of Acceptance overleaf 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 Supplier 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	

Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Goods 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 Tender Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Purchaser 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, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week of receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Purchaser'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 copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

Unless the tenderer (now *Supplier*) within five working days of the date of such receipt notifies the Purchaser in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)				
Name(s)				
Capacity				
for the Purchaser	*(Insert name and address of organisation)*			
Name & signature of witness			Date	

Note: If a tenderer wishes to submit alternative tender offers, further copies of this document may be used for that purpose, duly endorsed, 'Alternative Tender No. _____ '

Schedule of Deviations

Note:

1. To be completed by the Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser**
Signature			
Name			
Capacity			
On behalf of	*(Insert name and address of organisation)*		*(Insert name and address of organisation)*
Name & signature of witness			
Date			

C1.2 Contract Data

Data provided by the *Purchaser*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)

1. Please read the relevant clauses in the NEC3 Supply Short Contract (April 2013) (SSC3)[1] before you enter data. The number of the principal clause is shown for most statements however other clauses may also use the same data.
2. Where the following symbol is used "**[•]**" **-** data is required to be inserted.]

Completion of the data in full is essential to create a complete contract.

Clause	Statement	Data
	General	
10.1	The *Purchaser* is (Name):	**Eskom Holdings SOC Limited (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.	**[•]**
	Fax No.	**[•]**
	E-mail address	**[•]**
11.2(4)	The *delivery date* is **[If the *goods* are instructed by Batch Order enter the data, "The delivery date is identified in the Batch Order"]**	**TBA**
11.2(5)	The Goods Information is in	**the document called 'Goods Information' in Part 3 of this contract.**
11.2(8)	The *goods* are	**The supply and delivery of 132kV 3150A 40kA 2P 2M 2B2400 31mm/kV current transformers**
12.2	The *law of the contract* is	**English**
13.2	The *period for reply* is	**[1] week**
15.1	The *premises* are	**Transmission Simmerpan Stores**
23.1	The *Purchaser* requires the *Supplier* to Provide the Goods when instructed by Batch Order.	**Yes**
23.1	If the *goods* are instructed by Batch Order,	**TBA**
	the batch order interval is	**TBA]**
	the end date is	**TBA**
	the quantity range of *goods* in a batch is	**from [•] to [•]**

[1] Available from Engineering Contract Strategies on www.ecs.co.za Tel 011 803 3008, Fax 086 539 1902

30.1	The *starting date* is.	**TBA**
41.1	The *defects date* is	**[2] Weeks after Delivery.**
42.2	The period for the correction of Defects after Delivery is	**[1] week**
50.1	The *assessment day* is the	**[25TH] day of each month.**
50.5	The *delay damages* are **[If the *goods* are instructed by Batch Order enter a *delay damages* amount appropriate to the quantity or use of the *goods* in the Batch]**	**[●] per day.**
51.2	The interest rate on late payment is	**[●]% per complete week of delay. [Insert a rate only if a rate less than 0.5% per week of delay has been agreed]**
84.1	The *Purchaser* provides this insurance **[only enter details here if the *Purchaser* is to provide insurance; otherwise state none]**	**N/A**
86.1	The *Supplier*'s liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	**Zero**
86.2	The *Supplier* is not liable to the *Purchaser* for loss of or damage to the *Purchaser*'s property in excess of	**[●] for any one event.**
93.1	The *Adjudicator* 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).**
93.2(2)	The *Adjudicator nominating body* is:	**the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (UK) or its successor body (See www.ice-sa.org.za).**
93.4	The *tribunal* is: If the *tribunal* is arbitration, the arbitration procedure is	**arbitration.** **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
11.1	**The *conditions of contract* are the NEC3 Supply Short Contract (April 2013)[2] [3]and the following additional conditions.** **[Only enter details here if additional conditions are required, otherwise state 'none']**	

[2] Can be obtained from Engineering Contract Strategies on www.ecs.co.za, Tel 011 803 3008, Fax 086 539 1902
[3] If the December 2009 edition is being used, replace April 2013 with December 2009

Z1 Cession delegation and assignment

Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*

Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 Change of Broad Based Black Economic Empowerment (B-BBEE) status

Z2.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier*'s B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.

Z2.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Purchaser* within thirty days of the notification or as otherwise instructed by the *Purchaser*.

Z2.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier*'s obligation to Provide the Goods.

Z2.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are the same as for Reason 3 identified in clause 90.3.

Z3 Waiver and estoppel: Add to clause 12.3:

Z3.1 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.

Z4 Provision of a Tax Invoice and interest. Add to clause 51

Z4.1 The *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the correctly assessed amount due.

Z4.2 If the *Supplier* does not provide a tax invoice by the time required in this contract for his assessment of each amount due, the time by when the *Purchaser* 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 *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z4.3 The *Supplier* (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 *Purchaser*'s VAT number 4740101508 on each invoice he submits for payment.

Z5 *Purchaser's* limitation of liability

Z5.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z5.2 The *Supplier*'s entitlement under the indemnity in 83.1 is provided for in 60.1(8) and the *Purchaser*'s liability under the indemnity is limited.

Z6 Termination: Add to clause 90.2 before (Reason 1)

Z6.1 or had a judicial management order granted against it.

Z7 Addition to clause 50.5

Z7.1 If the amount due for the *Supplier*'s payment of *delay damages* reaches the limits stated in this Contract Data (if any), the *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods using the same procedures and payment on termination as those applied for Reason 3. Identified in clause 90.3.

Z8 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 *Supplier* or a third party, such party's employees, agents, or Subcontractors or Subcontractor'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 *Supplier*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor'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.

Z 8.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 8.2 The *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Purchaser* can terminate the *Supplier's* obligation to Provide the Goods for this reason.

Z 8.3 If the *Purchaser* terminates the *Supplier*'s obligation to Provide the Goods for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z 8.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

DATA PROVIDED BY THE *SUPPLIER* (THE *SUPPLIER*'S OFFER)

The tendering Supplier is advised to read both the NEC3 Supply Short Contract (April 2013) and the relevant parts of its Guidance Notes (SSC3-GN)[4] in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on page 28 of the SSC3 Guidance Notes and Flow Charts.

Completion of the data in full is essential to create a complete contract.

10.1	The *Supplier* is (Name):	**[•]**
	Address	**[•]**
	Tel No.	**[•]**
	Fax No.	**[•]**
	E-mail address	**[•]**
11.2(7)	The Price Schedule is in	**the document called 'Price Schedule' in Part 2 of this contract.**
11.2(7)	The offered total of the Prices	**See C1.1 Form of Offer and Acceptance**
63.2	The percentage for overheads and profit added to the Defined Cost is	**[•]%**

[4] Available from Engineering Contract Strategies on www.ecs.co.za Tel 011 803 3008, Fax 086 539 1902.

C2 Pricing Data

C2.1 Pricing assumptions

Entries in the first four columns of this Price Schedule are made either by the *Purchaser* or the tenderer. If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of goods in the item changes, the tenderer enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Supplier* is to be paid an amount for the item of goods which is the rate for the goods multiplied by the quantity supplied, the tenderer enters a rate for each item and multiplies it by the Quantity to produce the Price, to be entered in the final column.

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

C2.2 Price Schedule

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

Item no.	Description	UOM	Quantity	Unit Price	Total Price
1	**CT 132kV 3150A 40kA 2P 2M 2B2400 31mm/kV 6**	**each**	**6**		

Total of the Prices

C3: Scope of Work

C3.1 Goods Information

The Goods Information should be a complete and precise statement of the *Purchaser's* requirements. If it is incomplete or imprecise there is a risk that the *Supplier* will interpret it differently from the *Purchaser's* intention. Information describing the *Purchaser*'s requirements for the supply of the *goods*, including the information to be provided by the *Supplier* in connection with the supply of the *goods*, should be stated in the section headed Supply requirements.

1. Description of the *goods*

The supply and delivery of 132kV 3150A 40kA 2P 2M 2B2400 31mm/kV Current Transformers

2. Specifications

List the specifications that apply to this contract. Some typical headings have been provided as a minimum; delete if not required or expand and include correct titles as applicable.

Title	Date or revision	Tick if publicly available
Health and Safety requirements		
Environmental requirements		
Quality requirements		
Technical specifications:		

3. Constraints on how the *Supplier* Provides the Goods

State any constraints on how the *Supplier* is to provide the *goods* such as any limits on subcontracting. Also include any management related constraints, invoicing and payment procedures some of which have been inserted below as a minimum guide.

3.1 Subcontracting

State whether there are any controls on who the *Supplier* may subcontract to.

3.2 Use of standard forms

Not Applicable.

3.3 Invoicing and payment

In terms of core clause 50 the *Supplier* assesses the amount due and applies to the *Purchaser* for payment. The *Supplier* applies for payment with a tax invoice addressed to the *Purchaser* as follows:
____

The *Supplier* includes the following information on each tax invoice:

- Name and address of the *Supplier*
- The contract number and title;
- *Supplier*'s VAT registration number;
- The *Purchaser*'s VAT registration number which is __________________;
- The total of
  - The Price for each lump sum item in the Price Schedule or Batch Order which the *Supplier* has completed;
  - Where a quantity is stated for an item in the Price Schedule or Batch Order, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate,
- Other amounts to be paid to the *Supplier*;
- Less amounts to be paid by or retained from the *Supplier*;
- The invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

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

The following documents are yearly returnable and should be submitted to Eskom Holdings SOC Limited (using email address: vendormdm@eskom.co.za) on or before the expiry date:
• BBBEE certificates
• Letter of good standing with the Department of Labour
You also need to ensure that you are registered with the National Treasury Central Supplier Database (CSD).
Failure to comply with any of the above may lead to your Vendor Number with Eskom Holdings SOC Limited being blocked.
Please ensure that all invoices are submitted to email address (invoiceseskomlocal@eskom.co.za) as of 1 October 2017 to ensure payments are processed effectively.
No invoices will be paid if the invoices are sent to site going forward

3.4 Records of Defined Cost

Not Applicable

3.5 B-BBEE and preferencing scheme

The supplier to comply with Eskom's BBBEE requirements.
The supplier to comply with Eskom's SD&L (Supplier Development and Localisation) policy.
The supplier to comply with and fulfils the obligations in respect of the SD & L requirements in as provided for and stated below.
Failure to comply with his SD & L obligations constitutes substantial failure on the part of the Contractor to comply with his obligations under this contract.

3.6 Cataloguing requirements by the *Supplier*

Not Applicable.

4. Requirements for the programme

Not Applicable.

5. Services and other things provided by the *Purchaser*

Not Applicable.

6. Supply requirements

Not Applicable.

Batch Order

Batch Order form for use when the Contract Data states that, in terms of clause 23, the *Purchaser* requires the *Supplier* to supply the *goods* in batches.

Contract number **[•]**

Batch Order No. **[•]** Date

To: **[•]**..
.... (*Supplier*)

I instruct you to supply the following *goods* selected from the Price Schedule:

Item no.	**Description**	**Unit**	**Quantity**	**Rate**	**Price**
				Total of the Prices for the Batch Order	

The start date is **[•]**

The *delivery date* is **[•]**

Signed: Name (in print)

(for *Purchaser*)