



## NEC3 Professional Services

# Short Contract (PSSC3)

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

and [•]

for [•]

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Documentation prepared by: [•] Jackie Claase

# C1 Agreements & Contract Data

## C1.1 Form of Offer and Acceptance

### Offer

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

### Title of the Contract (the services)

The tenderer, identified in the signature block below, having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, 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 *Consultant* under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

The offered total of the Prices exclusive of VAT is (*)	R[•]
Value Added Tax @ 15% is	R[•]
The offered total of the Prices inclusive of VAT is	R[•]
(in words) [•]	

(\*) If the work is to be paid for on a time charge basis, state “**Not applicable; paid on time charge basis**”

This Offer may be accepted by the Client 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 *Consultant* in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the  
tenderer:**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

## Acceptance

By signing this part of this Form of Offer and Acceptance, the Client identified below accepts the tenderer's Offer. In consideration thereof, the Client shall pay the Consultant the amount due in accordance with the conditions of contract identified in the Contract Data. Acceptance of the tenderer's Offer shall form an Agreement between the Client 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: The Scope

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 Client 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 Client (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data at, or just after, the date this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the tenderer receives one fully completed and signed 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 *Consultant*) within five working days of the date of such receipt notifies the *Client* 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  
Client**

Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg

(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 Client 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 Client 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 Client 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 Client 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 Consultant

### For the Client

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 *Client*

**[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 Professional Services Short Contract (April 2013) (PSSC3)<sup>1</sup> before you enter data. The number of the principal clause which requires the data 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
<b>General</b>		
10.1	The <i>Client</i> is (Name):	<b>Eskom Holdings SOC Ltd (Reg No. 2002/015527/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>[•] 011 800 5936/0829223646</b>
	Fax No.	<b>[•]</b>
	E-mail address	<b>[•] shareal@eskom.co.za</b>
11.2(6)	The <i>services</i> are	<b>[•] To provide an independent external assessment on the Eskom Internal Audit department</b>
11.2(7)	The Scope is in	<b>the document called 'C3.1 The Scope' in Part 3 of this contract.</b>
30.1	The <i>starting date</i> is.	<b>[•] 15 November 2023?</b>
11.2(2)	The <i>completion date</i> is.	<b>[•] 15 May 2024</b>
12.2	The <i>law of the contract</i> is	<b>[•] the Republic of South Africa</b>
13.3	The <i>period for reply</i> is	<b>[•] Five working days</b>
41.1	The <i>defects date</i> is	<b>[•] Three months after Completion of the whole of the <i>services/task</i> order.</b>
50.1	The <i>assessment day</i> is the	<b>[•] every Friday.</b>
50.5	<del>The <i>delay damages</i> for late Completion are</del>	<del><b>[•] per day--</b></del>
51.2	<del>If a rate less than 0.5% per week of delay has been agreed</del>	<del><b>The interest rate on late payment is [•]%</b></del>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902. See [www.ecs.co.za](http://www.ecs.co.za)

82.1	The Consultant's total liability to the Client for matters for which insurance is provided is limited to	<b>[●] R0.00 (zero Rand)</b>
	The Consultant's total liability to the Client for other matters is limited to	<b>[●] The value of the contract</b>
93.1	The <i>tribunal</i> is:  The <i>arbitration procedure</i> is  The place where arbitration is to be held is  The person or organisation who will choose the arbitrator if the Parties cannot agree a choice is:	<b>arbitration.</b>  <b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>  <b>[●] the Republic of South Africa</b>  <b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>

**The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013)<sup>2</sup> and the following additional conditions:**

## **Z1 Cession delegation and assignment**

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

## **Z2 Joint ventures**

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.

<sup>2</sup> Can be obtained from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 (see [www.ecs.co.za](http://www.ecs.co.za)).

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

#### **Z4 Confidentiality**

- Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

#### **Z5 Waiver and estoppel: Add to core clause 12.3:**

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

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

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

#### **Z7 Notifying compensation events**

- Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

**Z8      *Employer's limitation of liability***

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

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

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

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

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

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

**Z11      *Ethics***

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

**Affected Party**      means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,

**Coercive Action**      means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

**Collusive Action**      means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

**Committing Party**      means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,

**Corrupt Action**      means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

**Fraudulent Action**      means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

**Obstructive Action**      means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

**Prohibited Action**      means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z11.1      A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.



- Z11.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* 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 *Employer* can terminate the *Consultant's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Consultant's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

## Z12 Insurance

### Z 12 .1 Replace condition of contract 81 with the following:

#### Insurance cover 81

- 81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

Insurance against	Minimum amount of cover	For the period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Commercial and business to determine [Delete this note after inserting]	Commercial and business to determine [Delete this note after inserting]
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<p><b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b> The amount required by the applicable law.</p>	Commercial and business to determine [Delete this note after inserting]

Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	Commercial and business to determine [Delete this note after inserting]
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81.3 The *Client* provides the insurances in the Insurance Table B

**INSURANCE TABLE B**

<b>Insurance against or name of policy</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

### **Z13 Nuclear Liability**

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

## **Z14 Asbestos**

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

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
<b>Ambient Air</b>	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
<b>Compliance Monitoring</b>	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>Standard</b>	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

## Data provided by the *Consultant* (the *Consultant's Offer*)

The tendering consultant is advised to read both the NEC3 Professional Services Short Contract (April 2013) and the relevant parts of its Guidance Notes (PSSC3-GN)<sup>3</sup> 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 26 of the PSSC3 Guidance Notes.

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

10.1	The <i>Consultant</i> is (Name):	[•]
	Address	[•]
	Tel No.	[•]
	Fax No.	[•]
	E-mail address	[•]
The <i>Consultant</i> offers to Provide the Services in accordance with the <i>conditions of contract</i> for an amount to be determined in accordance with the <i>conditions of contract</i>		
22.2	The name, job, qualifications and experience of <i>Consultant's</i> key people are in	[•]
50.3	The <i>staff rates</i> are	
	Person or Job	Unit of measure
		Rate
	People not stated here are at open market or competitive tendered rates	
11.2(5)	The offered total of the Prices is:	R[•] excluding VAT
	[Enter the total of the Prices from the Price List. If all work is to be carried out on a time charge basis, enter 'Not Applicable'.]:	[in words] [•] excluding VAT

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902 or [www.ecs.co.za](http://www.ecs.co.za) .

## C2 Pricing Data

### C2.1 Pricing assumptions

Entries in the first four columns in the Price List are made either by the *Client* or the tendering consultant.

For each row:

- If the *Consultant* is to be paid an amount for the item which is not adjusted if the quantity of work 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 *Consultant* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.
- If the work is to be paid on a time charge basis, only expenses should be included.

All Prices are to be shown excluding VAT unless instructed otherwise by the *Client* in Tender Data or in an instruction the *Client* has given before the tenderer enters his Prices.

Costs incurred by the *Consultant* other than the listed expenses are included in the Rates and Prices and the *staff rates*. If expenses are paid at cost, then 'at cost' should be entered into the Rate column.

Delete or strike through unused rows.

If there is insufficient space in the Price List which follows, state in which document the Price List is contained.

## C2.2 Price List

Item no.	Description	Unit	Expected quantity	Rate	Price excl. VAT
1	Independent External Assessment Report	1	1		

## Resources Information

Item no.	Resource	Unit	Rate per hour	Man Hours	Price excl. VAT
1	Team Member	1			
2	Senior Auditor	1			
3	Auditor	1			

## C3: Scope of Work

### C3.1 The Scope

#### 1. Purpose of the services

An independent service provider to perform the required independent external assessment on the Eskom Internal Audit department as required by the 'International Standards for the Professional Practice of Internal Auditing'.

#### 2. Description of the services

##### A. Scope of work/supply

To perform an independent external quality assessment on the Eskom Internal Audit activity utilising the International Professional Practices Framework (IPPF) Quality Assessment Manual for the Internal Audit Activity published by the Internal Audit Foundation in 2017 in order to conclude on the internal audit activity's conformance with the Code of Ethics and The IIA's International Standards for the Professional Practice of Internal Auditing (Standards), whether or not internal auditors apply the Code of Ethics, and to identify areas for improvement. The external assessment may include operational or strategic comments.

The external assessment must be conducted in line with the IIA requirements and in conformance with the IPPF, IIA's International Standards for the Professional Practice of Internal Auditing (Standards) and related Implementation Guides for performing an external quality assessment.

##### B. Specification of Product or Goods

In accordance with The IIA's International Standards for the Professional Practice of Internal Auditing (Standards), "The chief audit executive must develop and maintain a quality assurance and improvement program that covers all aspects of the internal audit activity" (Standard 1300).

The Quality Assessment Manual for the Internal Audit Activity published by the Internal Audit Foundation in 2017, responds to issuance of The IIA's International Standards for the Professional Practice of Internal Auditing (Standards), the related changes in the internal audit profession, and the increasingly demanding business environments in which the profession operates. It was designed to provide guidance and step by step modules for the chief audit executive (CAE) in establishing and maintaining a quality assurance and improvement program, as well as for assessors, internal and external, in testing and assessing that program. The 2017 edition has five chapters based on the principal elements of the quality program required by the Standards, with a continued strong emphasis on external assessments.

The external assessment must be performed in accordance with the Quality Assessment Manual for the Internal Audit Activity published by the Internal Audit Foundation in 2017 in order to evaluate Eskom's Internal Audit activity's conformance with The IIA's International Standards for the Professional Practice of Internal Auditing (Standards) and whether or not internal auditors apply the Code of Ethics the Code of Ethics. The external assessment may focus on identifying opportunities to enhance internal audit processes, offering suggestions to improve the effectiveness of the internal audit activity, promoting ideas to enhance the activity's image and credibility, and offering operational or strategic comments.

##### The scope of work includes the following:

The qualified and independent external reviewer must:

- Review the implementation of the Standards including the existence of a quality assurance process and the provision of consulting services.



- Assess the efficiency and effectiveness of internal audit activity considering (a) its charter, (b) expectations of the Audit Committee, executive management, and the Chief Audit Executive (CAE), and (c) its current needs, exposures to performing at less than an effective level, and the future directions and goals of the organisation.
- Identify opportunities and offer ideas and counsel to the CAE and staff for improving their performance. By implementing selected “successful practices”, the activity can add value to management and the Audit Committee and promote the image and credibility of the activity within the organization.
- Review the internal audit activity’s involvement in the enterprise risk assessment process and preparation of the audit schedule. This would include assessing annual and long-range audit plans to see whether audit areas represent current and future business plan, strategy, exposures and operations.
- Evaluate the organizational structure and approach used in auditing to determine whether resources are adequate to ensure proper audit coverage in all phases of the business. This will also include the information technology audit function. Further, we will comment on the background, mix and experience of staff, training scheduled and received and certifications.
- Determine the perception of internal auditing through interviews and surveys with relevant ARC members, executive management and internal audit customers.
- Provide insights into their level of satisfaction with internal auditing services, along with appropriate suggested changes.
- Examine internal auditing techniques and methodology for testing systems of control.
- Identify ways to enhance policies and practices, as well as coordination with external auditors
- Provide an opinion as to whether the internal audit activity complies with the IIA’s International Standards for the Professional Practice of Internal Auditing and its Code of Ethics.

### **C. Deliverables**

At the end of the review a report shared with the Audit and Risk Committee Chair, providing an opinion rating on both the internal audit function’s overall conformance to the IPPF and the effectiveness of the internal audit function, respectively.

Furthermore, an overall report shared with the Acting Chief Audit Executive as guided by Standard 1300 to implement the recommended remedial actions.

At the end of the review, the following deliverable are also to be provided:

- Results of the surveys indicating Internal Audit’s client’s satisfaction.
- Consultation on techniques that may benefit the internal audit activity.
- A detailed report covering:
  - Internal Audit’s conformance with the Standards,
    - An opinion on conformance with the IIA’s Mandatory Guidance.
    - An opinion on the implementation of the IIA’s Recommended Guidance.
    - An opinion on the internal audit quality, effectiveness, efficiency, and value-add.
  - Areas for improvement both on a governance level and a performance level.
  - Recommendations to address the identified non-conformances, gaps, or improvement opportunities
  - Recommendations of application of "best practices".
- Presentation to the Audit and Risk Committee on the results of the external assessment.

### **D. Independence and Objectivity of Assessor/Assessment Team**

- External assessors, assessment teams, and their organizations must be free from actual, potential, or perceived conflicts of interest that could impair objectivity. Independent, thus not having a conflict of interest and not being a part of, or under the influence of, the organization to which the internal audit activity belongs.
- An independent assessor or assessment team means not having either an actual or a perceived conflict of interest and not being a part of, or under the control of, the organization to which the internal audit activity belongs (The chief audit executive should encourage board oversight in the

external assessment to reduce perceived or potential conflicts of interest).

- Potential impairments may include past, present, or future relationships with the organization, its personnel, or its internal audit activity (e.g., external audit of financial statements; assistance to the internal audit activity; personal relationships; previous or future participation in internal quality assessments; or consulting services in governance, risk management, financial reporting, internal control, or other related areas).
- In cases where the potential assessors are former employees of the internal audit activity's organization, consideration should be given to the length of time the assessor has been independent. (Independent, in this context, means not having a conflict of interest and not being a part of, or under the influence of, the organization to which the internal audit activity belongs).
- Suppliers who are on the Eskom Non-Statutory panel are not considered to be independent. Thus, to ensure the external assessors, assessment teams, and their organizations are free from actual, potential, or perceived conflicts of interest that could impair objectivity and that they are independent, service providers on the Eskom Non-Statutory Panel cannot be selected for this external assessment as it would not be a fully independent external assessment and may result in a scope reduction.

#### **E. Competence, Qualification and Experience of Assessor/Assessment Team**

- **Competence and Qualification**

- a) A qualified, independent external assessor/assessment team must be retained to complete the assessment and must demonstrate competence in two areas:
  - the professional practice of internal auditing (including current in-depth knowledge of the IPPF) and
  - the external quality assessment process.
- b) The external assessor/assessment must demonstrate sufficient competence through:
  - a mixture of experience (experience gained in organizations of similar size, complexity, sector or industry, and technical issues is more valuable than less relevant experience), and theoretical learning.
- c) Sufficient competence and qualifications must include:
  - Certification as an internal audit professional
  - Knowledge of leading internal auditing practices
  - CAE (or comparable senior internal audit management) experience.
  - Completion of The IIA's quality assessment training course or similar training.

- **Experience**

- a) The expertise required to conduct the external assessment includes an additional level of experience gained from previous external assessment work.
- b) Sufficient recent experience in the practice of internal auditing at a management level, which demonstrates a working knowledge and application of the IPPF.
- c) Relevant technical expertise and industry experience.
- d) Internal audit experience in an organization of a similar size, complexity, and industry (public sector, and/or SOE).

#### **F. Pricing**

A lumpsum payment shall be made on conclusion of executing the work and issuing the final external assessment report to the Audit and Risk Committee CHAIR.

The proposal should include the following:

- Total hours to perform the independent external assessment including a breakdown of the hours required for the following activities:
  - Pre-site planning and preliminary work
  - On-site assessment
  - Preparation of report and closing meeting
  - Presentation to the Eskom Audit and Risk Committee
- The actual hours and rate per hour to be indicated per activity (as per breakdown above).

No overtime or weekend work will be required.

### 3. Existing information

List existing information which is relevant to the *services*. This can include documents which the *Consultant* is to further develop. N/A

### 4. Specifications and standards

As described in the Scope

Title	Date or revision	Tick if publicly available
<b><u>General Specifications:</u></b>		
<b><u>Technical specifications:</u></b>		

### 5. Constraints on how the *Consultant* is to Provide the Services

State any constraints on the sequence and timing of work and on the method and conduct of work including the requirements for any work by the *Client*.

Set out any requirements for a quality management system.

Include a dispute resolution procedure if required

#### 5.1 Sequence, timing, method and conduct of work

External Quality Assessment	Dates
Decide on the Number of Copies of surveys to be sent to clients of ESKOM HOLDINGS SOC LTD Internal Audit	3 weeks before on-site
Opening/onboard meeting with the CAE ESKOM HOLDINGS SOC LTD	3 weeks before on-site
Responses to the External QA team from Customers sent directly from clients and audit team members	3 weeks before on-site

Preliminary Visit to the ESKOM HOLDINGS SOC LTD CAE (and Project Manager)	2 weeks before on-site
On-Site	Two-week period (no weekends and public holidays)
Issue Draft Report to ESKOM HOLDINGS SOC LTD Internal Audit	Monday two weeks after on-site
Receives Reply to Draft Report Recommendations	Monday, two weeks after issuing of draft report
Closing meeting with the CAE (and relevant Manager(s) from ESKOM HOLDINGS SOC LTD Internal Audit)	Two weeks after issuing of draft report
Issue Final Report to ESKOM HOLDINGS SOC LTD Internal Audit	One week after receipt of comments from the ESKOM HOLDINGS SOC LTD Internal Audit
Presentation of the Final External Assessment Report to the ESKOM HOLDINGS SOC LTD Audit and Risk Committee	As per schedule Audit and Risk Committee meetings

## 5.2 Quality management

Assessments on the quality and progress of activities to be performed every Friday at the Risk register meeting.

## 5.3 Resolution of disputes by adjudication

If a dispute cannot be settled between the *Client* and the *Consultant* within 30 days of notification by either Party to the other, then either Party may refer the dispute for decision by an Adjudicator before any reference of the matter to the *tribunal* in terms of this contract.

The Adjudicator is chosen by the Party wishing to refer a matter to him from the ICE-SA List of NEC Adjudicators<sup>4</sup>. The Parties conclude a NEC3 Adjudicator's Contract (April 2013) with the chosen Adjudicator within 7 days of the selection.

The matter is then referred and decided by the chosen Adjudicator as though the matter had been referred to him in accordance with Option W1 Dispute Resolution procedures in the NEC3 Professional Services Contract, April 2013, (PSC3). The chosen Adjudicator acts in the role of the *Adjudicator* in PSC3 and the Parties in this contract act as though they were the *Employer* and the *Consultant* respectively in Option W1 of the PSC3 (April 2013).

## 5.4 Meetings

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on Fridays; 14h00 – 15h00	Microsoft Teams	<i>Employer and Contractor</i>
Overall contract progress			

<sup>4</sup> ICE-SA is a joint Division of SAICE and the ICE (London). See [www.ice-sa.org.za](http://www.ice-sa.org.za) for the List of NEC Adjudicators.

and feedback			
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### 5.5 Use of standard forms

Provide details of standard forms to be used by the *Consultant* in the administration of the contract, for example early warning and compensation event notifications.??

### 5.6 Invoicing and payment

The following text is provided as a guide; revise to suit actual requirements. Also include a list of information which is to be shown on an invoice.

In terms of core clause 50.1 the *Consultant* assesses the amount due and applies to the *Client* for payment. The *Consultant* applies for payment with a tax invoice addressed to the *Client* as follows:

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

- Name and address of the *Consultant*
- The contract number and title;
- *Consultant's* VAT registration number;
- The *Client's* VAT registration number [●];
- The total Price for services provided to date which the *Consultant* has completed;
- Other amounts to be paid to the *Consultant*;
- Less amounts to be paid by or retained from the *Consultant*;
- The change in the amount due since the previous payment being the invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

The *Consultant* attaches the detail assessment of the amount due to each tax invoice showing the Price for services provided to date for each item in the Price List for work which he has completed.

Payment is made to the Consultant on completion of the whole of the services, thirty days from receipt of a valid tax invoice.

### 5.7 BBEE and preferencing scheme

Specify constraints which *Consultant* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

### ~~5.8 Facilities to be provided by the Consultant~~

### ~~5.9 Cataloguing Requirements by the Consultant~~

~~State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the Consultant (consult Procurement Instruction Number 1 of 2018 — Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).~~

## 6. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated. N/A

7. Information and other things provided by the *Client*

Describe what information and other things the *Client* is to provide and by when. Information is that which is not currently available, but which will become available during the contract. Other things could include access to a person, place (such as office space or a site) or the *Client's* information technology systems.

Item	Date by which it will be provided
Access to Eskom Megawatt Park	Three weeks before onsite assessment
Access cards	Three weeks before onsite assessment
Access to relevant information/documentation required to perform the external assessment	Two weeks after acceptance of contract award
Access to relevant Internal Audit systems	Three weeks before onsite assessment