



## NEC3 Professional Services Contract (PSC3)

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

**and [Insert at award stage]  
(Reg No. \_\_\_\_\_ )**

**for The Independent Valuation of the Tangible Fixed  
Assets in Operation for Eskom's Generation and  
Distribution Divisions, as well as the National  
Transmission Company South Africa (NTCSA)**

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**CONTRACT No. [Insert at award stage]**

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## **PART C1:      AGREEMENTS & CONTRACT DATA**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
<b>C1.1</b>	<b>Form of Offer &amp; Acceptance</b> [to be inserted from Returnable Documents at award stage]	<b>[3]</b>
<b>C1.2a</b>	<b>Contract Data provided by the <i>Employer</i></b>	<b>[8]</b>
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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:

### **The Independent Valuation of the Tangible Fixed Assets in Operation for Eskom’s Generation and Distribution Divisions, as well as the National Transmission Company South Africa (NTCSA)**

The tenderer, identified in the Offer signature block, has

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

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

The offered total of the Prices exclusive of VAT is	<b>R</b>
Value Added Tax @ 15% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(in words)	

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

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

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

**For the tenderer:**

\_\_\_\_\_  
(Insert name and address of organisation)

Name & signature of witness

Date

## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Employer**

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

*(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**

Note:

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

No.	Subject	Details
1	N/A	N/A
2	N/A	N/A
3	N/A	N/A
4	N/A	N/A
5	N/A	N/A
6	N/A	N/A
7	N/A	N/A

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)*

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

Name & signature of witness \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

## C1.2 PSC3 Contract Data

### Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<b>A: Priced contract with activity schedule</b> <b>W1: Dispute resolution procedure</b>  <b>X2 Changes in the law</b> <b>X7: Delay damages</b> <b>X10 <i>Employer's Agent</i></b> <b>X11: Termination by the <i>Employer</i></b> <b>X18: Limitation of liability</b> <b>X20: Key Performance Indicators</b> <b>Z: <i>Additional conditions of contract</i></b>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>(011) 800 2110</b>
	Fax No.	
11.2(9)	The <i>services</i> are	<b>the appointment of a service provider for the valuation of the Regulatory Asset Base (RAB) for Eskom's Generation and Distribution Divisions, as well as the National Transmission Company South Africa</b>
11.2(10)	The following matters will be included in the Risk Register	<b>N/A</b>
11.2(11)	The Scope is in	<b>Part 3: Scope of Work</b>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and [www.ecs.co.za](http://www.ecs.co.za)

12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>1 week</b>
13.6	The <i>period for retention</i> is	<b>5 years following Completion or earlier termination.</b>

## 2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		1   <b>Megawatt Park</b>	<b>Contract period</b>
		2   <b>Eskom sites</b>	<b>Contract period</b>

## 3 Time

31.2	The <i>starting date</i> is.	<b>TBC</b>	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	<b>TBC (6 months)</b>	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1   <b>N/A</b>	<b>N/A</b>
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>4 weeks of the Contract Date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>1 week.</b>	

## 4 Quality

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

## 5 Payment

50.1	The <i>assessment interval</i> is	<b>between the 25th day of each successive month.</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		<b>N/A</b>	
51.1	The period within which payments are made is	<b>2 weeks.</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>	

51.5 The *interest rate* is

the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,

and

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 *mutatis mutandis* 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

<b>6</b>	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>7</b>	<b>Rights to material</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>8</b>	<b>Indemnity, insurance and liability</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices
<b>9</b>	<b>Termination</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>	
21.3	The <i>Consultant</i> prepares forecasts of the total <i>expenses</i> at intervals of no longer than	<b>4 weeks.</b>

<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is	<b>to be appointed when a dispute arises</b>
W1.2(3)	The <i>adjudicator nominating body</i> is:	<b>the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>).</b>
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	The place where arbitration is to be held is	<b>Sandton - South Africa</b>
	The person or organisation who will choose an arbitrator	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
	<ul style="list-style-type: none"> <li>• if the Parties cannot agree a choice or</li> <li>• if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	any law within the Republic of South Africa which applies to the Consultants providing the services.
<b>X7</b>	<b>Delay damages</b>	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	<b>a minimum of 2% to a maximum of 5% per day per delay</b>
<b>X9</b>	<b>Transfer of rights</b>	
		<b>There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.</b>
<b>X10</b>	<b>The <i>Employer's Agent</i></b>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	<b>Manqoba Ndwandwe</b>
	Address	<b>Megawatt Park, Maxwell Drive, Sunninghill</b>
	The authority of the <i>Employer's Agent</i> is	<b>to carry out all the actions of the Employer in this contract</b>
<b>X11</b>	<b>Termination by the <i>Employer</i></b>	
		<b>There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.</b>

<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.00 (Zero Rand)</b>
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	<b>The total of the Prices</b>
X18.3	The <i>end of liability date</i> is	<b>five years after Completion of the whole of the services/task order.</b>
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 also applies)</b>	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	<b>N/A</b>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>Agreed date between Employer and Consultant</b>
<b>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>

**Z1 Cession delegation and assignment**

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

**Z2 Joint ventures**

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

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

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

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

#### **Z4 Confidentiality**

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

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

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

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

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

#### **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.

## C1.2 Contract Data

### Part two - Data provided by the *Consultant*

Clause	Statement	Data	
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.		
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:		
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	TBC (6 months)	
11.2(10)	The following matters will be included in the Risk Register	N/A	
11.2(13)	The <i>staff rates</i> are:	name/designation	rate
	Either complete here or cross refer to a schedule in Part C2.2	Refer to Pricing Data Part C2.2	
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Megawatt Park	Contract Period
		2 Eskom Sites	Contract Period

		3 Generation, NTCSA, and Distribution Relevant Personnel	Contract Period
31.1	The programme identified in the Contract Data is	N/A	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>item</b>  <b>Refer to Pricing Data Part C2.2</b>	<b>amount</b>
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(14)	The <i>activity schedule</i> is in	<b>Pricing Data Part C2.2</b>	
11.2(18)	The tendered total of the Prices is	<b>R (in figures)</b>  <b>(in words), excluding VAT</b>	

## PART 2: PRICING DATA

### PSC3 Option A

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions: Option A	[2]
C2.2	The <i>activity schedule</i>	[2]

## C2.1 Pricing assumptions: Option A

### How work is priced and assessed for payment

Option A is a lump sum form of contract where the work to be done is broken down into well defined activities each listed in the *activity schedule* and priced by the tendering consultant as a lump sum. (See clause 11.2(18)).

Only completed activities which are without Defects are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date. (See clause 11.2(15)).

The *activity schedule* may change after the Contract Date as a result of compensation events. (See clause 11.2(14)).

### Function of the Activity Schedule

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

### Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

### Preparing the activity schedule

Generally it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant*:

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

## **Expenses**

*Expenses* are not included in the *activity schedule* items and are assessed separately at each assessment date, unless an additional condition of contract (Z clause) is included which requires that expenses be included within activity Prices and not paid separately.

*Expenses* associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the activity schedule prices or *staff rates*.

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

## **Staff rates**

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

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

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

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13 and 14 in the PSC3 Guidance Notes.

## C2.2 the *activity schedule*

Use this page as a cover page to the *Consultant's activity schedule* or include here in this format:

Item No.	Programme Reference	Activity description	Price (excl VAT)
1.		Review, Analyse and Report on data received	
		Submit Information/Data collection report	
2.		Reconciliation between fixed assets register and the technical assets register: Generation	
		Reconciliation between fixed assets register and the technical assets register: NTCSA	
		Reconciliation between fixed assets register and the technical assets register: Distribution	
3.		Provide draft outputs of a valuation model: Distribution	
		Obsolescence adjustments i.e. physical and functional/technical	
		Depreciation profiling	
		Normal useful life studies: Distribution	
4.		Provide draft outputs of a valuation model: NTCSA	
		Obsolescence adjustments i.e. physical and functional/technical	
		Depreciation profiling	
		Normal useful life studies: NTCSA	
5.		Provide draft outputs of a valuation model: Generation	
		Obsolescence adjustments i.e. physical and functional/technical	
		Depreciation profiling	
		Normal useful life studies: Generation	
6.		Allocation of DRC back to the line items: Distribution	
		Allocation of DRC back to the line items: NTCSA	
		Allocation of DRC back to the line items: Generation	
7.		Final Report submission	
		Matric of results to provide an overview of the depreciation policies around PP&E of power and utilities providers internationally	
		Engagement sessions providing and explanation of the valuation conducted with the relevant counterparties and stakeholders	

		<b>Total of the Prices</b>	

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

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

**The *staff rates* are:**

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT

**The *expenses* are:**

No.	Expense item	Amount / rate excluding VAT

## PART 3: SCOPE OF WORK

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C3.1	This cover page	1
	<i>Employer's Scope</i>	6
	Total number of pages	7

## **C3.1: EMPLOYER'S SCOPE**

### **Contents**

- Description of services
- Specification and description of the *services*
- Constraints on how the *Consultant* Provides the Services

## Description of the services

### Executive overview

#### The appointment of a service provider for the Valuation of the Regulatory Asset Base (RAB) for Eskom's Generation, Distribution Divisions and NTCSA Subsidiary

Expert consulting is required to provide Eskom with a value to attach to its assets based on the International Valuation Standards (IVS), the MYPD methodology and in accordance with IFRS for financial reporting.

The service provider will revalue Eskom's Generation, Distribution Divisions and NTCSA Subsidiary tangible fixed assets in terms of the IVS Standards, the MYPD methodology and in accordance with IFRS for financial reporting.

In terms of the above, it is required that assets be valued using the Modern Equivalent Assets Value (MEAV) methodology whereby the current cost of replacing as assets with its modern equivalent asset is adjusted for physical deterioration and all relevant forms of obsolescence and optimisation to allow reasonable return on such RAB (MYPD Methodology and IVS).

As per IVS, in applying the depreciated replacement cost, the service provider must ensure that the following key elements of a market transaction have been considered:

- An understanding of the assets, its function, and its environment;
- Research and analysis including benchmarking to peers to determine the remaining physical life (to estimate physical deterioration and economic life of the asset);
- Knowledge of the business requirements (to estimate functional/technical obsolescence);
- An assessment of future industry requirements (to estimate economic/external obsolescence);
- Familiarity with the class of property through access to available market data; and
- Knowledge of construction techniques and materials (to estimate the cost of modern equivalent asset).

The computation of RCN and DRC must be allocated to the line items as per the fixed asset register.

The service provider will be required to engage with the Regulator on the results of the revaluation and the computation thereof.

The following information will be provided by Eskom for Generation, NTCSA and Distribution assets:

- Download of the Fixed Asset Register (FAR);
- Physicals information per the technical asset registers; and
- Internal estimates of the RCN for NTCSA and Distribution assets.

### Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
ECSA	Engineering Council of South Africa

SACPCMP	South African Council for Project and Construction Management Professionals
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## Specification and description of the services

- a) The final deliverable should be in the form of a written document and a Powerpoint presentation which should include assumptions and methodologies applied in deriving the following Generation, NTCSA and Distribution assets:
- Reconciliation between the fixed asset register and the technical asset registers
  - Replacement cost new (RCN)
  - Obsolescence adjustments i.e. physical and functional/technical
  - Depreciated replacement cos (DRC)
  - Normal useful life and remaining useful life
  - Depreciation profiles
  - Residual value factors/estimates
- b) Benchmarking studies performed on the following:
- Normal useful life studies and peer group analysis. Matrix of results to provide an overview of the depreciation polices around PP&E of power and utilities providers internationally.
- c) All models used and related workings to derive the above must be made available to Eskom, including the allocation of the RCN and DRC back to the line items as per the fixed asset register.

## Constraints on how the *Consultant* Provides the Services.

### Management meetings

Regular meetings of a general nature may be convened and chaired by the *Employer's Agent* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Overall contract progress and feedback	Monthly at the end of the month	<b>Megawatt Park</b>	<i>Employer's Agent and Consultant</i>

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

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

### **Consultant's key persons**

*Names to be added*

## Documentation control and retention

### Identification and communication

All final reports to be issued in electronic format and hard copy to the Employer's Agent. Draft reports for comment and input are to be submitted to the Employer's Agent in electronic format as well. The communication between the Consultant and Employer's Agent will be done via email, telephone and physical meetings.

## Retention of documents

The Consultant is to retain copies of terms of reference or brief, reports and other documents which record the services in electronic format and hard copy. The time period for which the *Consultant* is to retain such documents is the *period for the retention* stated in the Contract Data.

## Invoicing and payment

The *Consultant* shall address the tax invoice to **Eskom Holdings SOC Limited** and include on it the following information:

- Name and address of the *Consultant* and the *Employer's Agent*;
- The contract number and title;
- *Consultant's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

## Health and safety

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *services*.

The *Consultant* shall comply with the health and safety requirements below:

### SAFETY

In terms of Eskom's SHE Policy (32-94), Eskom adopt a very strict stance on ensuring adherence to prescribed Safety Regulations. Strict compliance with the OHS Act is vital, and ALL submissions required in terms of Contractor Regulations, as contained in the Act, must be received by Eskom. All Service Providers are also expected to adhere to Eskom's SHE Guidelines (32-524), which must be adhered to at all times, and the successful Service Provider must also sign a Section 37 (2) Agreement, which stipulates our SHE specifications. NO tenders will be accepted from any Service Provider who is UNABLE to comply with Eskom's SHE requirements.

Also of extreme importance are Eskom's Life Saving Rules which are non-negotiable health and safety rules which must not be broken under any circumstances. It must be highlighted that Eskom takes a ZERO TOLERANCE stance to violation of these rules. These rules are applicable to any person entering Eskom sites:

**a. RULE 1: Open, Isolate, Test, Earth, Bond and/or Insulate BEFORE Touch (That is, any plant operating above 1000 V)**

No person may work on any electrical network unless:

- he/she is trained and authorised as competent for the task to be done;
- a pre-task risk assessment to identify all risks and hazards has been conducted prior to any work commencing;
- an equipotential zone is created for each worker on the job site by earthing, bonding, and/or insulating according to approved procedures;
- all conducting material is connected together, all staff on site wear electrical safety shoes, and insulating techniques are applied according to standards; and
- an authorised person/team leader has certified and shown all staff that the apparatus is safe to work on.

NB: In case of live work, this must be conducted according to standards and procedures while maintaining a minimum safe working clearance.

**b. RULE 2: HOOK UP AT HEIGHTS**

Working at height is defined as any work performed above a stable work surface or where a person puts himself/herself in a position where he/she exposes himself/herself to a fall from or into.

No person may work at height where there is a risk of falling unless:

- a pre-task risk assessment to identify all risks and hazards has been conducted prior to commencing any work at height;
- he/she is appropriately trained;
- he/she is appropriately secured during ascending and descending; and
- he/she is using an approved fall arrest system where applicable.

**c. RULE 3: BUCKLE UP**

No work may drive any vehicle on Eskom business and/or on Eskom premises:

- unless the driver and all passengers are wearing seat belts.

**d. RULE 4: BE SOBER**

No person is allowed to work under the influence of drugs and alcohol or may drive any vehicle on Eskom business and/or on Eskom premises:

“Under the influence” means the use of alcohol, drugs and/or controlled substance to the extent that individual/s:

- faculties are in any way impaired by the consumption or use of the substance; or
- is unable to perform in a safe, productive manner; or
- has a level of any such substance in their body equal to/exceeding legal standards;
- has a level of alcohol in his/her body greater than 0.02% blood alcohol concentration.

This includes any level of illegal substance in the body, irrespective of when used.

**RULE 5: ENSURE THAT YOU HAVE A WORK PERMIT**

Where an authorisation limit exists, no person shall work without the required Permit to Work (PTW), which is governed by the Plant Safety Regulations, Operating Regulations for High Voltage Systems (ORHVS), etc.

**Procurement**

**BBBEE and preferencing scheme**

“Eskom Holdings Limited has a Directive on B-BBEE implementation (32-416). The Directive gives preference to companies complying with the B-BBEE Codes of Good Practice, Level 1 to Level 4.”

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