NEC3 Framework Contract

Between **ESKOM HOLDINGS SOC Limited**
(Reg No. 2002/015527/30)

and .....
.....

for THE DESIGN, MANUFACTURE AND TESTING EX-WORKS OF VARIOUS TYPES OF POLE TOP AND GROUND MOUNTED TRANSFORMERS ON AN "AS AND WHEN" REQUIRED BASIS OVER A 12-MONTH PERIOD FOR DISTRIBUTION DIVISION

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CONTRACT No.

Part C1: Agreements & Contract Data

Contents:

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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 DESIGN, MANUFACTURE AND TESTING EX-WORKS OF VARIOUS TYPES OF POLE TOP AND GROUND MOUNTED TRANSFORMERS ON AN "AS AND WHEN" REQUIRED BASIS OVER A 12-MONTH PERIOD FOR DISTRIBUTION DIVISION

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

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

The offered total of the Prices exclusive of VAT is	**R**
Value Added Tax @ 15% is	R
The offered total of the amount due inclusive of VAT is[1]	R
(Excluding VAT).	

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

Signature(s) ---------- ----------

Name(s) ---------- ----------

Capacity ---------- ----------

For the tenderer: ----------

Name & signature of witness ---------- Date ----------

Tenderer's CIDB registration number (if applicable)

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

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *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	Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Framework Information
Part C4	*Selection* and *Quotation* Procedure

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

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

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

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

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer 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 Employer ----------

Name & signature of witness ---------- Date ----------

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

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

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

	For the tenderer:	**For the Employer**
Signature	----------	----------
Name	----------	----------
Capacity	----------	----------
On behalf of	----------	**ESKOM HOLDINGS SOC LIMITED, Sunilaws Office Park, Beacon Bay EAST LONDON, 5205**
Name & signature of witness	----------	----------
Date	----------	----------

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option	
		A: Lump sum prices
	dispute resolution Option	**W1: Dispute resolution procedure**
	and secondary Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X5: Sectional Completion
		X7: Delay damages
		X12: Partnering
		X18: Limitation of liability
		Z: *Additional conditions of contract*
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The *Employer* is (Name):	**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**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
10.2	The *Supply Manager* is (name):	**Neliswa Mtobana**
	Address	**ESKOM HOLDINGS SOC LIMITED,** ***Sunilaws Office Park, Beacon Bay EAST LONDON, 5205***
	Tel	**+27 43 703 5759**
	e-mail	**mtobannm@eskom.co.za**

11.2(3)	The Work Package are	**The Design, Manufacture and Testing Ex-Works of various types of Pole Top and Ground Mounted Transformers On an "as and when" required basis over a 12-Month Period for Distribution Division**
11.2(15)	The *boundaries of the site* are	**Ex-Works**
11.2(16)	The Site Information is in	**Distribution Division various clusters**
12.2	The *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	**One (1) week**
2	**The *Supplier's* main responsibilities**	**Data required by this section of the core clauses is provided by the *Supplier in* Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.**
3	**Time**	
11.2(3)	The *completion date* for the whole of the *works* is	**As per the agreement between both parties**
11.2(9)	The *key date*s and the *condition*s to be met are:	***Condition* to be met** / ***key date***
		1 **TBA** **[•]**
30.1	The *access dates* are:	**Part of the Site** / **Date**
		1 **TBA** **[•]**
31.1	The *Contractor* is to submit a first programme for acceptance within	**2 (two) weeks of the Contract Date.**
31.2	The *starting date* is	**From the date of the last signature on the NEC Document, the contract duration is 12 months, Whichever comes first between time and funds**
32.2	The *Contractor* submits revised programmes at intervals no longer than	**2 (two) weeks**
35.1	The *Employer* is not willing to take over the *works* before the Completion Date.	
4	**Testing and Defects**	
42.2	The *defects date* is	**152 weeks after Completion of the whole of the *works* per project or section thereof if sectional completion is applicable.**

43.2	The *defect correction period* is	**1 (one) weeks upon notification of defect**
5	**Payment**	
50.1	The *assessment interval* is	**Period agreed upon by *Contract Manager* and *Contractor* from the *Starting Date*.**
51.1	The *currency of this contract* is the	**South African Rand.**
51.2	The period within which payments are made is	**For contracts valued below R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying Suppliers within 30 days of receipt of undisputed invoices.** **For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of receipt of undisputed invoices.**
51.4	The *interest rate* is	**the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and**
6	**Compensation events**	**As per NEC 3 SC contract.**

7	**Risks and insurance**	
80.1	These are additional *Employer*'s risks	**N/A**
8	**Termination**	**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.**
9	**Data for main Option clause**	
10	**Data for Option W1**	
The *Adjudicator* is		**the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**
	Address	**TO BE APPOINTED WHEN DISPUTE ARISE**

B	**Priced contract with bill of quantities**	
60.6	The *method of measurement* is	**as stated in Part C2.1, Pricing Assumptions.**

	e-mail	**[•]**
W1.2(3)	The *Adjudicator nominating body* is:	**the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body.**
W1.4(2)	The *tribunal* is:	**arbitration.**
W1.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
	The place where arbitration is to be held is	T B A
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**

11 Data for secondary Option clauses

X1 Price adjustment for inflation

X1.1(a) The *base date* for indices is **1 month prior to Tender Closing Date**

X1.1(c) The proportions used to calculate the Price Adjustment Factor are:

proportion	**linked to index for**	**Index prepared by**
0. 65 (65%)	**Labour (Table C-3a for labour rates)**	**SIEFSA**
0. 20 (20%)	**Transport (Table L-2 for road freight costs)**	**SIEFSA**
0.15 (15%)	**non-adjustable**	

Total 1.00

The prices will be fixed and firm rates for the first 12 months of the contract. At the anniversary date of the contract the prices will be adjusted by Contracts Management team for inflation using CPA. The relevant publications to be used are published by the SIEFSA.

X2 Changes in the law — **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.**

X5 Sectional Completion

X5.1 The *completion date* for each *section* of the *works* is:

Section	**Description**	***Completion date***

		1	**TBA**	**[•]**
X5 & X7	**Sectional Completion and delay damages used together**			
X7.1 X5.1	Delay damages for late Completion of the *section*s of the *works* are:			
	Remainder of the *works*			
	The total delay damages payable by the *Contractor* does not exceed:	**R [•]**		
X7	**Delay damages (but not if Option X5 is also used)**			
X7.1	Delay damages for Completion of the whole of the *works* are	**0.1% of Contract Value per day. Up to a limit not exceeding 10% of Contract Value**		
X16	**Retention (not used with Option F)**			
X16.1	The *retention free amount* is	**N/A**		
	The *retention percentage* is	**N/A**		
X18	**Limitation of liability**			
X18.1	The *Contractor*'s liability to the *Employer* for indirect or consequential loss is limited to:	**R0.0 (zero Rand)**		
X18.2	For any one event, the *Contractor*'s liability to the *Employer* for loss of or damage to the *Employer*'s property is limited to:	**the amount of the deductibles relevant to the event**		
X18.3	The *Contractor*'s liability for Defects due to his design which are not listed on the Defects Certificate is limited to	**The greater of** • **the total of the Prices at the Contract Date and** • **the amounts excluded and unrecoverable from the *Employer*'s assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.**		
X18.4	The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	**the total of the Prices other than for the additional excluded matters.** **The *Contractor's* total liability for the additional excluded matters is not limited.** **The additional excluded matters are amounts for which the *Contractor* is liable under this contract for** • **Defects due to his design which arise before the Defects Certificate is issued,**		

		• **Defects due to manufacture and fabrication outside the Site,** • **loss of or damage to property (other than the *works*, Plant and Materials),** • **death of or injury to a person and** • **infringement of an intellectual property right.**
X18.5	The *end of liability date* is	**(i) Ten years after the *defects date* for latent Defects and** **(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.** **A latent Defect is a Defect which would not have been discovered on reasonable inspection by the *Employer* or the *Supervisor* before the *defects date*, without requiring any inspection not ordinarily carried out by the *Employer* or the *Supervisor* during that period. If the *Employer* or the *Supervisor* do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the *Employer* or the *Supervisor* to have discovered the Defect.**
Z	**The *Additional conditions of contract* are**	**Z1 to Z15 always apply.**

Z1 Cession delegation and assignment

Z1.1 The *Contractor* 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 *Contractor* 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 *Contractor* 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 *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.

Z2.3 The *Contractor* 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 *Contractor* in writing.

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

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

Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.

Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor*'s obligation to Provide the Works.

Z3.4 Failure by the *Contractor* 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 P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.

Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

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, the *Project Manager*, the *Supervisor*, 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 Health, safety and the environment: Add to core clause 27.4

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational

Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of *works*; and
- undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

Z7.1 Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*'s VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

Z9 *Employer's* limitation of liability

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Contractor*'s entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer*'s liability under the indemnity is limited.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the amount due for the *Contractor*'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 *Contractor*'s obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z12 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 *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

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

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

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

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

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

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

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

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Employer* may terminate the *Contractor*'s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* 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 *Contractor*'s obligation to Provide the Services for this reason.

Z12.3 If the *Employer* terminates the *Contractor*'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.

Z12.4 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 *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover 84

84.1 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.

84.2 The *Contractor* provides the insurances stated in the Insurance Table A.

84.3 The insurances provide cover for events which are at the *Contractor*'s risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minim limit of indemnity
Loss of or damage to the *works*, Plant and Materials	The replacement cost where not covered by the *Employer*'s insuranc The *Employer*'s policy deductible, as Contract Date, where covered by the *Employer*'s insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract	Loss of or damage to property *Employer*'s property The replacement cost where not covered by the *Employer*'s insuranc The *Employer*'s policy deductible, as Contract Date, where covered by the *Employer*'s insurance Other property The replacement cost Bodily injury to or death of a person The amount required by applicable l
Liability for death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract	The amount required by the applica law

Z 13.2 **Replace core clause 87 with the following:**
The *Employer* provides the insurances stated in the Insurance Table B.

INSURANCE TABLE B

Insurance against or name of policy	**Minimum amount of cover or minimum of indemnity**
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

Z14 Nuclear Liability

Z14.1 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.

Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* 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 *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* 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*.

Z14.3 Subject to clause Z14.4 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 *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* 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*.

Z14.4 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.

Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

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

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL 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.

Ambient Air 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.

Compliance Monitoring	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.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	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.
Standard	means the *Employer*'s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	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.

Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* 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.

Z15.2 Upon written request by the *Contractor*, 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 *Contractor* may perform Parallel Measurements and related control measures at the *Contractor*'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 Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Employer* manages asbestos and ACM according to the Standard.

Z15.4 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.

Z15.5 The *Contractor*'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.

Z15.6 The *Contractor* 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.

Z15.7 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.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)
Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering supplier:

Please read both the NEC3 Supply Contract (SC3) and the relevant parts of its Guidance Notes (SC3-GN) in order to understand the implications of this Data which the tenderer is required to complete.
The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
Where a form field like this [ ] appears, data is required to be inserted relevant to the option selected. Click on the form field once and type in the data. Otherwise complete by hand and in ink.

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

Clause	Statement	Data
10.1	The *Contractor* is (Name): Address Tel No. Fax No.	
11.2(8)	The *direct fee percentage* is The *subcontracted fee percentage* is	
11.2(18)	The *working areas* are the Site and	
24.1	The *Contractor's* key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	

		CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .		
11.2(3)	The *completion date* for the whole of the *works* is	**TBA**		
11.2(14)	The following matters will be included in the Risk Register	**TBA**		
11.2(19)	The Works Information for the *Supplier's* design is in:	THE DESIGN, MANUFACTURE AND TESTING EX-WORKS OF VARIOUS TYPES OF POLE TOP AND GROUND MOUNTED TRANSFORMERS ON AN "AS AND WHEN" REQUIRED BASIS OVER A 12-MONTH PERIOD FOR DISTRIBUTION DIVISION		
31.1	The programme identified in the Contract Data is	**TBA**		
B	**Total Contract price**			
11.2(21) 11.2(31)	The *bill of quantities* is in The tendered total of the Prices is	**C2.1 The Supply contract** **Total Contract price**		
	Data for Schedules of Cost Components	*Note "SCC" means Schedule of Cost Components starting on page 60, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).*		
B	**Priced contract with bill of quantities**	**Data for the Shorter Schedule of Cost Components**		
41 in SSCC	The percentage for people overheads is:	**N/A**		
21 in SSCC	The published list of Equipment is the last edition of the list published by The percentage for adjustment for Equipment in the published list is	**Minus %**		
22 in SSCC	The rates of other Equipment are:	**Equipment**	**Size or capacity**	**Rate**

62 in SSCC	The percentage for design overheads is	%
63 in SSCC	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:	

PART 2: PRICING DATA

NEC3 Supply Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The *price schedule*	**[•]**

C2.1 Pricing assumptions

1. How *goods* and *service*s are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

Identified and defined terms	11 11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate. (12) The Price Schedule is the *price schedule* unless later changed in accordance with this contract.
Assessing the amount due	50.2	The amount due is • the Price for each lump sum item in the Price Schedule which the *Supplier* has completed, • where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate, • plus other amounts to be paid to the *Supplier*, • less amounts to be paid by or retained from the *Supplier*. Any tax which the law requires the *Purchaser* to pay to the *Supplier* is included in the amount due.

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *service*s which can be priced as lump sums or as expected quantities of *goods* and *service*s multiplied by a rate, or a mix of both.

2. Function of the Price Schedule

Clause 53.1 states: “Information in the Price Schedule is not Goods Information”. This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, “The *Supplier* Provides the Goods and Services in accordance with the Goods Information”. Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

3. Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier’s* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule*

across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

3.1. Format of the *price schedule*

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

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

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

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *service*s are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

SAP No	Description	QTY	Unit Price	Total Price
175077	TFR 16KVA 11KV/240V COASTAL D3021	600		
175078	TFR 16KVA 22KV/240V COASTAL D3021	350		
175081	TRF 25KVA 11KV/415V COASTAL D3021	500		
175082	TFR 25kVA 22kV/415V COASTAL D3021	300		
175083	TFR 50KVA 11KV/415V COASTAL D3021	350		
175084	TFR 50kVA 22kV/415V COASTAL D3021	350		
175085	TFR 100KVA 11KV/415V COASTAL D3021	300		
175086	TFR 100KVA 22KV/415V COASTAL D3021	300		
175091	TFR 200kVA 11kV/415V COASTAL D3021	100		
175092	TFR 200kVA 22kV/415V COASTAL D3021	100		
175093	TFR 500KVA 11KV/415V COASTAL D3021	70		
175094	TFR 500KVA 22KV/415V COASTAL D3021	65		
175095	TFR 315kVA 11kV/415V COASTAL D3021	70		
175096	TFR 315KVA 22KV/415V COASTAL D3021	70		
175097	TFR 32kVA 11kV/?240V COASTAL D3021	400		
175098	TFR 32kVA 22kV/240V COASTAL D3021	800		
180189	TFR 200kVA 11kV/415V W/CBL BOX CSTLD8022	2		
180193	TFR 315kVA 11kV/415V W/CBL BOX CSTLD8022	1		
180199	TFR 500kVA 22kV/415V W/CBL BOX CSTLD8022	2		
180282	TFR 50kVA 22kV/19kV SWER ISOL CSTLD3201	2		
180288	TFR 400kVA 22kV/19kV SWER ISOL CSTLD3201	3		
182441	TFR 100kVA 11kV/415V W/CBL BOX CSTLD8022	2		
182445	TFR 1000kVA 11kV/415V W/CBLBOX CSTLD8022	5		
182712	TFR 16kVA 33kV/240V COASTAL D3192	15		
182713	TFR 25kVA 33kV/415V COASTAL D3192	22		
182714	TFR 50kVA 33kV/415V COASTAL D3192	15		
182716	TFR 200kVA 33kV/415V COASTAL D3192	5		
182719	TFR 32kVA 33kV/?240V CSTL D3192	30		
182724	TFR 16kVA 19kV/240 COASTAL D3200	10		
182725	TFR 32kVA 19kV/?240V CSTL D3200	30		
180287	TRFR DISTR:CSTLSWER ISOL;400 KVA;11/19	8		
189923	TFR 64kVA 22kV/240V COASTAL D3021	1010		
189925	TFR 64kVA 33kV/?240V COASTALD3192	50		
205437	TFR 64kVA 19kV/240/-240V COASTAL D3200	15		
205439	TFR 200kVA 33kV/19kV SWER ISOLCSTL D3201	5		
TOTAL (Dx)		**5957**		

PART 3: WORKS INFORMATION

Document reference	Title	No of pages
	This cover page	**[01]**
C3.1	*Selection* and *Quotation* Procedure	**[19]**
	Total number of pages	**[20]**

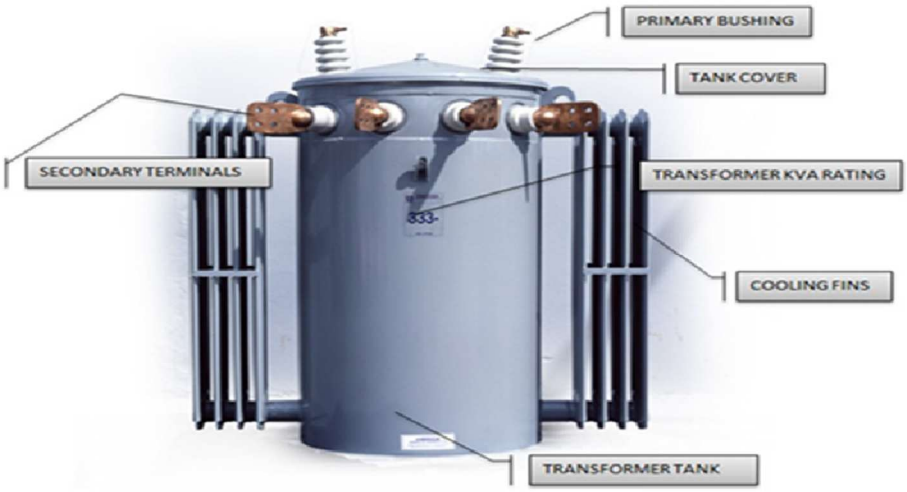
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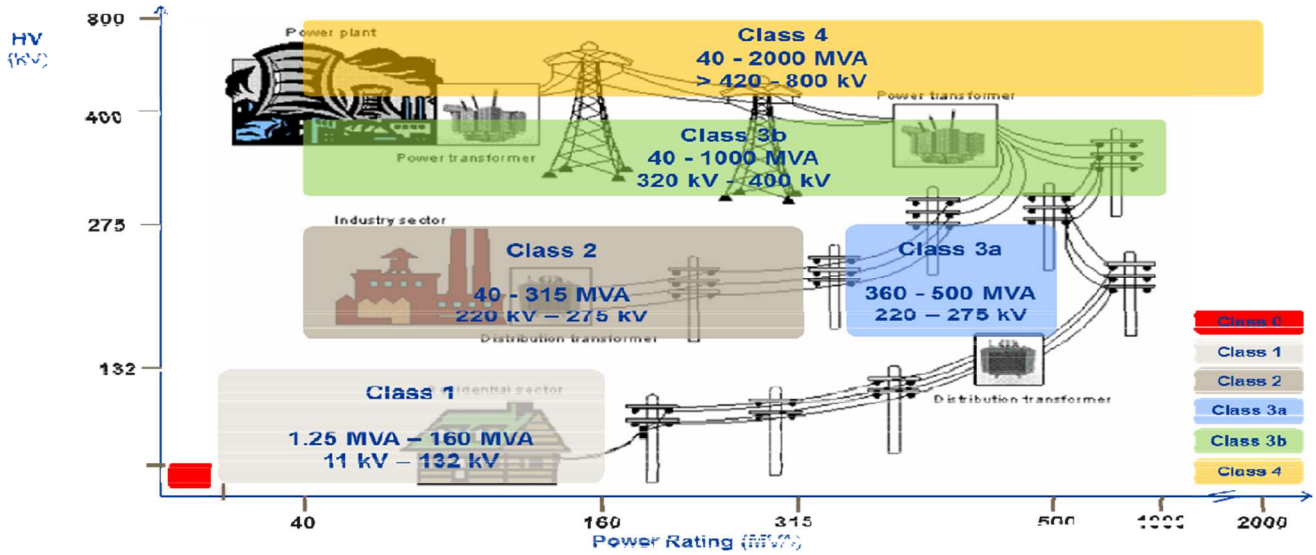
1 Description of *works*



1.1 *Employer*'s objectives and purpose of the *works*

Executive overview

The scope of work and specification **(240-45395762 Rev 4)** for Eskom Distribution Division includes the design, manufacture and testing ex-works of pole top and ground mounted transformers. These transformers are classified as class "0" transformers which are up to 1MVA and 33kV as depicted below:



- All individual products and processes shall have a documented, implemented and maintained Contract Quality Plan and/or Quality Control Plan (Inspection and Test Plan).
- All production and/or service provision shall be carried out in accordance with documented Contract Quality Plan (CQP) and/ or Quality Control Plan (QCP)/ Inspection and Test Plan (ITP).
- The *Contractor* shall plan for the required Quality related activities and interfaces within the *Contractor*'s Quality system, in order to demonstrate its ability towards both controlling and meeting specified Eskom requirements

3.5.3 Contract Quality Plan

Contractor shall require *Subcontractors* to submit Contract Quality Plan (CQP) and associated documentation in accordance with requirements of Project Quality Management System processes applicable to *Subcontractor* Scope of Work.

Contractor shall, where applicable based on Scope of Work Criticality, ensure Procurement documents clearly and unambiguously require *Subcontractor* submission of a *Subcontractor* CQP for *Contractor* and Eskom review.

Contractor and *Subcontractor* CQP shall comply with Eskom **"**Quality Requirements Specifications" and shall be submitted prior to the initial Scope of Work Kick-off or initial Pre-fabrication meeting and prior to commencement of manufacturing, whichever is earlier.

3.5.4 Quality Control Plan

Contractor shall develop and implement processes and procedures which efficiently and effectively monitor, verify and document Quality of Scope of Work deliverables. *Contractor* shall ensure that *Subcontractor* QCP/ITP's are prepared at a level of detail sufficient to address all Quality Control related activities in chronological order, from contract review through materials verification, manufacturing, fabrication, assembly, final testing, documentation, and certification.

Where activities subject to Inspection and Test procedures are to be undertaken by a *Subcontractor*, the QCP/ITP shall make reference to this fact and shall include descriptive details of *Subcontractors* involvement. A separate QCP/ITP shall be required for each *Subcontractor* Scope of Work.

Contractor may authorise use of *Subcontractor* QCP/ITP format providing it is in compliance with the above. *Contractor* shall be ultimately responsible for the development and proper implementation of all Subcontractor QCP/ITPs, including those reviewed or developed by *Subcontractors*.

Eskom reserves the right to select witness and hold points within all developed *Subcontractor* QCP/ITPs for Eskom oversight of selected functions and to perform surveillance or audits of the Work.

Contractor shall establish processes and procedures for formal assessment of *Subcontractor* inspection and testing programs. These shall include review of *Subcontractor* inspection reports and other Quality Control documentation. Additional formal assessment of manufacturing, fabrication and assembly facility operations shall be conducted by *Contractor* to ensure continuing suitability, adequacy and effectiveness of the *Subcontractor* inspection and testing programs. Assessment frequency shall be established in consideration of *Subcontractor* Scope of Work, Criticality of Scope of Work deliverables and performance information. Assessment scope and schedule shall be developed in consultation with Eskom.

Mandatory pre-inspection meetings will be convened by Eskom or its Inspection Agency or AIA to be attended by the *Contractor* and *Subcontractors* representatives, including their Quality representatives who will be involved with the Works and records to be kept.

Eskom reserves the right to appoint resident quality inspectors that can be based at the *Contractor* or *Subcontractor*'s premises and on site where the work is being performed. The *Contractor* is expected to provide work space at no cost to Eskom, for the inspector as required.

1.2 Invoicing and payment

Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Project Manager's* payment certificate.

Processing of *Contractor* invoice will be dependent on submission of error free Data 3 days after an outage i.e. *Contractor* invoice will not be processed up until Project Data has been submitted and is free of errors after an outage.

The *Contractor* shall address the tax invoice to:
Eskom Holdings SOC Limited
ECOU Operating Unit
Private Bag X1
Beacon Bay
East London
5201

and include on each invoice the following information:
- Name and address of the *Contractor* and the *Project Manager;*
- The contract number and title;
- *Contractor*'s VAT registration number;
- The *Employer*'s VAT registration number **4740101508**;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.
  Z……..

1.2.1 SUPPLIER DEVELOPMENT LOCALISATION AND INDUSTRIALISATION

SDL&I and Designated Sector Requirements

Manufacturers and suppliers are required to meet the prescribed thresholds for the goods that are designated for local production and content to be supplied by them under this contract. The items and applicable thresholds are listed below. The quantities are estimated however the desired result is to award to multiple manufacturers / suppliers and the demand will be determined by need for the goods over a period of twelve (12) months. Manufacturers / suppliers need to price per each item they will be supplying, and the Bid Price must therefore be the total all the different goods they will be supplying per unit.

Commodity	Components	Local Content Threshold
Transformers	Class 0 (0.001MVA to 1MVA power rating: 220V-33kV voltage rating)	90%

The following are mandatory returnables for contract award:

- SBD 6.2: **Local Content Declaration Certificate** duly completed and signed. (Mandatory)
- Annexure C: **Local Content Declaration Summary Schedule** duly completed and signed. Summarizes the tender's calculation results, tender value, and exact local content percentages (Mandatory)
-

- Annexure D: **Imported Content Declaration - Supporting Schedule.** Breaks down all imported components, raw materials, values, foreign exchange rates, freight costs, and landing charges. (Mandatory)
- Annexure E: **Local Content Declaration - Supporting Schedule.** Provides local goods, services, raw materials, manpower, and factory overhead costs sourced within South Africa. (Mandatory)
- Exemption letter from the Department of Trade Industry and Competition (DTIC) if the stipulated threshold for local content for any designated items cannot be met (Mandatory).
- Duly signed delegation of authority letter from someone in executive authority if the person signing the SBD 6.2 and the Annexure C is not someone ordinarily in executive authority in the entity. (Mandatory)