



## NEC3 Professional Services Contract (PSC3)

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

**and  
(Reg No. ....)**

**for The provision of Loss adjustment services for  
ESCAP SOC LTD ("Escap") - A Captive Insurance  
Company for Eskom Holdings SOC Ltd for a period  
of five (05) years**

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**PR no.:**  
**Enquiry no.:**  
**CONTRACT No.: 46000\_\_\_\_\_**

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CONTRACT TITLE: THE PROVISION OF LOSS ADJUSTING SERVICES TO ESCAP SOC LTD

**PART C1: AGREEMENTS & CONTRACT DATA**

<b>Document reference</b>	<b>The provision of loss adjusting services</b>	<b>No of pages</b>
<b>C1.1</b>	<b>Form of Offer &amp; Acceptance</b>	<b>[3]</b>
<b>C1.2a</b>	<b>Contract Data provided by the <i>Employer</i></b>	<b>[10]</b>
<b>C1.2b</b>	<b>Contract Data provided by the <i>Consultant</i></b>	<b>[6]</b>

# 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:

### **Loss adjustment services for ESCAP SOC LTD (“Escap”) - A Captive Insurance Company for Eskom Holdings SOC Ltd for a period of five (05) years**

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.
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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>Rates Based Contract</b>
Value Added Tax @ 15% is	<b>Rates Based Contract</b>
The offered total of the Prices inclusive of VAT is	<b>Rates Based Contract</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

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**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  
 P O Box 1091,  
 Johannesburg 2000 SA

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

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**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		
2		
3		
4		
5		
6		
7		

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

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

**For the tenderer:**

**For the Employer**

Signature \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

Capacity \_\_\_\_\_

\_\_\_\_\_

On behalf of *(Insert name and address of organisation)*

*(Insert name and address of organisation)*

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

\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

## C1.2 PSC3 Contract Data

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

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>G: Term contract</b> <b>W1: Dispute resolution procedure</b>  <b>X1: Price adjustment for inflation</b> <b>X2 Changes in the law</b> <b>X7: Delay damages</b> <b>X9: Transfer of rights</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>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>
11.2(9)	The <i>services</i> are	<b>The provision of loss adjusting services over a period of 5 years.</b>
11.2(10)	The following matters will be included in the Risk Register	<b>To be confirmed at task instruction stage</b>
11.2(11)	The Scope is in	<b>Part 3: Scope of Work</b>
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>Three (03) working days unless agreed otherwise</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)

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13.6 The *period for retention* is **Five (05) years following Completion or earlier termination.**

**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 all Eskom premises and locations where losses occur	On an as and when required basis

**3 Time**

31.2 The *starting date* is.

11.2(3) The *completion date* for the whole of the services is.

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 As per task instruction	As per task instruction

31.1 The *Consultant* is to submit a first programme for acceptance within **As per task instruction.**

32.2 The *Consultant* submits revised programmes at intervals no longer than **As per task instruction.**

**4 Quality**

40.2 The quality policy statement and quality plan are provided within **4 weeks of the Contract Date.**

42.2 The *defects date* is **52 weeks after Completion of the whole of the services.**

**5 Payment**

50.1 The *assessment interval* is **between the 25th day of each successive month.**

50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		As per task instruction	[As per task instruction •]

51.1 The period within which payments are made is **4 weeks.**

51.2 The *currency of this contract* is the **South African Rand**

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51.5	The <i>interest rate</i> is	<p>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,</p> <p>and</p> <p>the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>
<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	<b>The total of the Prices</b>
<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>G</b>	<b>Term contract</b>	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	<b>Four (4) weeks</b>

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<b>11 Data for Option W1</b>		
W1.1	The <i>Adjudicator</i> 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	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> ).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Johannesburg South Africa
	The person or organisation who will choose an arbitrator	
	<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>	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
<b>12 Data for secondary Option clauses</b>		
<b>X1</b>	<b>Price adjustment for inflation</b>	<b>CPI as published by Statistics SA.</b>
X1.1	The index is	CP Headline index (Table B2)
	The staff rates are	Fixed and firm for a period of twelve (12) months and are not variable with changes in salaries paid to resources.
<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	South African Law
<b>X7</b>	<b>Delay damages</b>	
X7.3	Delay damages for late Completion of the whole of the <i>services</i> are	<b>The Consultant pays delay damages at the rate of 0, 1% of Task instruction value per day up from the Task Completion Date until Task Completion.</b>

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<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>TBC on award</b>
	Address	<b>Eskom Megawatt Park, Maxwell Drive, Sunninghill, Sandton (Johannesburg)</b>
	The authority of the <i>Employer's Agent</i> is	<b>TBC on award</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>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>	<b>Z1 to Z14 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.

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**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.

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**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.

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**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.

- Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 11.2 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.
- Z 11.3 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.

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Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

**Z12 Insurance**

Z12.1 Replace core clause 81 with the following:

81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

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

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81.3 The *Employer* provides the insurances stated in the Insurance Table B.

**INSURANCE TABLE B**

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

**Z13 Nuclear Liability**

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

**Z14 Asbestos**

**Asbestos**

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

**AAIA** means approved asbestos inspection authority.

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

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

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

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Z14.3 The *Employer* manages asbestos and ACM according to the Standard.

Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

# C1.2 Contract Data

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

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

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		<b>CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.</b>	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	<b>As per the contract period.</b>	
11.2(10)	The following matters will be included in the Risk Register	<b>To be determined during the contract period.</b>	
11.2(13)	The <i>staff rates</i> are:  Either complete here or cross refer to a schedule in Part C2.2	<b>Name/Designation</b>	<b>Rate</b>
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>  <b>All areas that the Consultant needs to gain access to in order to perform the services required</b>	<b>access date</b>  <b>During the contract period as and when required</b>
31.1	The programme identified in the Contract Data is		

<b>G</b>	<b>Term contract</b>	
11.2(25)	The <i>task schedule</i> is in	<b>Part 2</b>

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## PART 2: PRICING DATA

### PSC3 Option G

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions: Option G	[1]
C2.2	<i>Staff rates, expenses and the task schedule.</i>	[2]

## C2.1 Pricing assumptions: Option G

### How work is priced and assessed for payment

From Option G: Term contract

Identified and defined terms	11 11.2	(17) The Price for Services Provided to Date is, for each Task, the total of <ul style="list-style-type: none"> <li>• the Time Charge for work which has been completed on time based items on the Task Schedule and</li> <li>• a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item.</li> </ul>
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(20) The Prices are

- the Time Charge for items described as time based on the Task Schedule and
- the lump sum price in the Task Schedule for each other item.

From the Core Clauses:

Identified and defined terms	11.2	(13) The Time Charge is the sum of the products of each of the <i>staff rates</i> multiplied by the total staff time appropriate to that rate properly spent on work in this contract.
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and

Assessing the amount due	50.3	The amount due is <ul style="list-style-type: none"> <li>• the Price for Services Provided to Date,</li> <li>• the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and</li> <li>• other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>.</li> </ul>
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Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

In effect Option G is a cost reimbursable form of contract with work ordered by the *Employer* on a Task by Task basis using the Task Schedule to compile the cost of carrying out a Task.

*Expenses* are calculated separately and added to the amount due for the services provided.

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## Staff rates and expenses

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes before entering *staff rates* into Contract Data, or in section C2.2 which follows.

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.

## The function of the Task Schedule

The Task Schedule may include items of work to be paid for on a rate (Time Charge) or on a lump sum price for the item. Any work ordered during the term of the contract – i. e. before the Completion Date – for which there is no priced item in the Task Schedule is priced using the compensation event procedure and the resulting Price is added into the Price List.

The *task schedule* is prepared by the *Employer* for the *Consultant* to price, or may be prepared jointly with the *Consultant*. It is typically priced in two parts as items of work to be carried out on a time basis and lump sum prices for other items of work. The task schedule must be as complete as possible and fully representative of all the work and *services* which the *Employer* may require the *Consultant* to carry out. The only unknown is when the work is to be carried out; the Task Order will be used to instruct when work to be done.

## C2.2 Staff rates, expenses & the task schedule

Pricelist will be determined during the Mini Tendering/RFQ Phase.

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## PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i>	8
	Total number of pages	

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## C3.1: EMPLOYER'S SCOPE

### Contents

#### Description of the services

The detailed scope will relate to the insurance covers as underwritten by Escap SOC Ltd, including but not limited to

- a) Assets All Risks
- b) Liabilities including Directors and Officers liability
- c) Crime classes
- d) Aviation, Hull and Liabilities
- e) Contractor's All Risks
- f) Marine Cargo
- g) Nuclear Property and Liability
- h) Motor

#### Loss investigation

At the time of a claim-assignment or engagement, the loss adjuster must ensure comprehensive terms of reference and instructions are established.

The loss adjuster is responsible for:

- establishing facts relevant to the circumstances of the loss
- attending to collation of documents, audio-visual recordings and information relevant to the circumstances of loss/damage/injury.
- assessing the validity of the loss and/or claim objectively against reported circumstances and against available evidence, facts and information.
- determining whether the insurance covers the loss/damage/injury and reviewing policy conditions to ensure loss falls within policy coverage.
- documenting all relevant facts, evidence and information into a coherent and comprehensive report.
- ensuring preservation of evidence by accurately recording evidence gathered and using appropriate means for retention of the evidence.

#### Evaluating information collected

Upon determining that the loss is covered under the prevailing insurance policy, the loss adjuster is responsible for:

- Determining extent of loss and/or damage and/or injury
- Establishing rights of recourse and/or subrogation rights by
  - identifying possible contributory insurances.
  - identifying and assessing all cases for potential subrogation action.
  - evaluating the likelihood of successful recovery
  - securing where possible, optimal salvage values for damaged but salvageable works, materials and/or plant, equipment
  - ensuring demands against responsible parties are correctly issued where necessary.

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### **Reporting findings and providing guidance to Escap**

Reporting findings, subject to the proviso, that all reports and communications are to be regarded as confidential and proprietary knowledge of Escap, unless otherwise agreed and all reports shall be submitted and presented to Group Insurance unless otherwise directed,

- ensuring relevant evidence, facts and information gathered during loss investigation are documented, prepared into reports and promptly forwarded to Escap.
- ensuring reports are prepared thoroughly, accurately and in a professional format according to best market practice and as and when required per modifications and specifications issued by Escap
- ensuring Interim Reports, recording clearly on the cover-page the number and date of the report and the list of all reports previously issued, are all timely and periodically submitted to accurately reflect the current status of the investigation
- ensuring the indemnifiable claim damages/costs are checked and validated on the various loss settlement options identified and are documented in report
- ensuring, where necessary,
  - Escap is personally briefed (via office meetings, if so required) or have opportunities to discuss the reports.
  - Escap is promptly and accurately informed on all key-matters, changes, amendments of loss estimates, potential liability to third parties, loss mitigation and loss prevention strategies.
  - Information and guidance are provided to Escap regarding salvage and disposal of salvage
  - Methods of salvage, salvage disposal and potential returns from such are identified and evaluated for market fairness.

### **Negotiating and effecting settlement**

In preparation of claims settlement negotiations

- All relevant issues and options for settlement are accurately identified in advance.
- Additional information to support identified options is obtained from relevant sources and parties.
- Financial assessment is carried out on the various claim settlement options identified.
- Settlement options are documented and prepared accurately in a professional format prior to negotiations and are in accordance with client or company policy and guidelines and with relevant legislation or codes of practice.

### **Meetings with involved parties**

- All information and data needed for claim settlement meetings are documented and prepared accurately and in a professional format prior to meetings.
- Meetings of involved parties are arranged and conducted in an orderly, courteous, and professional manner to ensure optimal resolution of issues and settlement.
- Outcomes of meetings between involved parties, decisions and outstanding action items are documented accurately and promptly and are conveyed to all participants of the meeting and other interested parties.
- Whenever appropriate, all documents and information processed as part of the loss adjustment activities are made available to other involved parties promptly.

### **Identification of risk management and loss prevention measures**

Providing guidance and recommendations on prevention of similar losses in future

- Opportunities to provide guidance on loss prevention are identified during current loss investigations.

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- Potential risk and hazard indicators are identified
- All relevant risk information is identified and assessed to determine the integrity of its source, if it is comprehensive, valid, reliable and pertinent to the nature of the risk and meets the needs of the policyholder.
- Risk types are assessed against known exposure factors and for compliance with relevant legislation and the internal policies and directives of the policyholder.

**Provide guidance on the application of risk management techniques where appropriate**

- The policyholder's product, service types and environment are evaluated so that the nature of risk can be identified, and appropriate techniques can be applied.
- A range of viable risk management strategies and techniques and the benefits and disadvantages of the various options are presented to Escap.
- If required, a Cost Benefit analysis could be called for on the various options identified.

**Panel Contract Management**

- Once the suppliers are awarded contracts to be part of this panel, the Escap middle management insurance team will manage and control task instruction allocation to ensure fair distribution of work and equitable spend across the panel members.
- The principle of rotation will be utilised to ensure equal opportunity for members in the panel. Where a supplier has been awarded a Task Instruction, the supplier will be excluded from participating in the next allocation and spend profile will be closely managed.
- Panel members will be afforded equal opportunities for the services with the objective of ensuring equal spend across panel members as per the approved terms of reference (TOR).
- The Escap middle management insurance team will administer all requests and process task instructions for acceptance by all stakeholders i.e., supplier, contract manager, service requester and finally the employer's agent.
- A report on the performance of the panel will be issued quarterly to the Delegated Authority.

**The Parties use of material provided by the *Consultant***

***Employer's purpose for the material***

The *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope

**Management of work done by Task Instruction**

A Task Instruction will be generated by the Escap claims team for all projects. This will be submitted to the *Consultant* for commencement of the *Service*.

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

**Management meetings**

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

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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**

The *Consultants* organogram detailing the people and their lines of authority/communication is provided to the *Employer's Agent*.

### **Documentation control and retention**

#### **Identification and communication**

The working papers and relevant supporting documentation will be provided by the *Employer's Agent*. Any updates will be communicated via email to the firms.

A copy of the working papers will be made available by the *Employer's Agent*.

The Eskom approved templates will be utilised for the documentation. This will be provided by the *Employer's Agents*.

#### **Retention of documents**

Clause 13.6 states that the Consultant retains copies of drawings, specifications, reports and other documents which record the services in the form stated in the Scope. State here what that form is. Note the time period for which the Consultant is to retain such documents is the period for retention stated in the Contract Data.

#### **Records and forecasting of expenses**

All expenses will be regulated by the National Treasury Cost Containment Instruction Note.

#### **Records and forecasting of the Time Charge**

Timesheets generated by the *Consultants* on a weekly basis for all projects. The timesheet will be generated from their time/schedule application system.

#### **Invoicing and payment**

Clause 50.2 states invoices submitted by the *Consultant* include the details stated in the Scope to show how the amount due has been assessed. Also state what must be shown on the Invoice. The following text is suggested.

Invoices can only be generated and processed for payment when the details stated in the *Scope* to show how the amount due has been assessed.

In order to improve the processing of valid tax invoices the following details must be visible on the invoice:

- At the top of the page, Tax Invoice, should be clearly displayed;
- The Tax Invoice should be dated, example 13 January 2020

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The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

The *Consultant* shall address the tax invoice to \_\_\_\_\_ and include on it the following information:

Name and address of the *Consultant*

Name and address of the *Employers Agent*:

Eskom Holdings SOC Limited

1 Maxwell Drive

Megawatt Park

Sunninghill

Or

Eskom Holdings SOC Limited, Megawatt Park, PO Box 1091, Johannesburg, 2000, RSA

The insurance claim 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;

(add other as required)

## Contractual Requirements

### Please Note:

Contractual requirements are not evaluation criteria. Proof that the highest ranked tenderer/ tenderer recommended for award (based on objective criteria) is able to meet the contractual requirements, this requirement is expected to be met within 30 days of signing the NEC 3 Professional Services Contract.

Failure to meet "Contractual Requirements "by the stipulated deadlines; may result in the tenderer being regarded as non-responsive and ineligible for contract award. See below:

### I. Technical requirements:

Technical gaps/requirements identified during the evaluations are **expected to be met prior to signing this NEC 3 Professional Services Contract.**

### II. Quality management

#### System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the *Scope*.

#### Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the *Scope* in accordance to the following:

- a) 240-105658000 Supplier Quality Management Specification
- b) 240-126469599 Method Statement Rev2
- c) Supplier Quality Management List of Returnables Rev 7
- d) 240-68099512 Form A Rev 9

The *Consultant* is required to submit the final versions of Contract Quality plan (CQP) for review and approval within 30 days after contract award. This is to ensure that all the expected elements for Quality are met.

The *Consultant* shall maintain and comply with Quality Management System Requirements ISO 9001 or Management Certification Requirement 17021 and shall maintain pre-contract award quality requirement

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(category 1) and comply with the post-contract award quality requirement as well as the quality standard conditions as stipulated in sections: 3, 3.7 and 3.8 respectively of Supplier Quality Management Specification 240-105658000 (QM58) throughout the duration of the contract.

### III. Health and safety

Clause 25.4 states that the *Consultant* acts in accordance with the health and safety requirements stated in the Scope. It is suggested that this part of the *Scope* address how the *Consultant* acts when doing his *services*. These requirements may be no more than just complying with the law. However if the *Consultant* is required to work on Eskom premises, then whatever requirements which personnel working in those premises need to comply with should be included here or referred to in an Annexure - See attached OHS Specification – Document Identifier 240 - 153079702.

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *service* in accordance to the following:

- a) Annexure B-Acknowledgement Form for Eskom SHE Rules and other Requirements 2019
- b) Annexure C
- c) 32-136 Contractor Health and Safety Requirements
- d) 32-727 Eskom SHEQ Policy

### IV. Supplier Development, Localisation and Industrialisation (SDL&I)

Tenderers who complete and submit the objectives as required, but who do not meet Eskom's targets, will not be disqualified. SDL&I objectives do not form part of scoring but commitments will form part of contractual obligations

#### 1. Transformation – BBBEE Improvement or Retention Plan

Transformation remains an area of focus, where Eskom continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialisation, create employment and contribute to skills development.

Eskom encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Tenderer/s will be allocated points in terms of a preference point system based on specific goals, Eskom also requests that tenderer/s submit B-BBEE improvement or retention plan within 30 days of signing the contract.

Tenderer/s are therefore requested to indicate the extent to which they will maintain (only if the Respondent is a Level 1-4) or improve their B-BBEE status over the contract period.

Tenderer/s are requested to submit their B-BBEE Improvement Plan as an essential document within 30 days of signing the contract.

Tenderer/s with a B-BBEE recognition status of Level 5 to Level 8 or non-compliant at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of Level 4 by the end of the first year of the contract and thereafter improve at least one B-BBEE Level higher of each year from the second year of the contract.

NB: Valid B-BBEE certificate or Sworn Affidavit is a condition for contract award, if your company's annual Total Revenue is R10 Million or less qualifies as an Exempted Micro-Enterprise therefore you can submit Sworn Affidavit. If your annual Total Revenue is R50

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Million or less you qualify as Qualifying Small Enterprise and must comply with all of the elements of QSE score card relevant to your sector unless an entity is at least 51% Black owned you are required to obtain a Sworn affidavit. If your Annual Total Revenue is above R50m you need to submit a Valid B-BBEE certificate.

2. Local Procurement Content

“Local Procurement Content” refers to value added in South Africa by South African resources. Where a single contract involves a combination of local and imported goods and/or services, the tender response must be separated into its components as per the Price Schedule included with the tender documents. Local procurement content is total spending minus the imported component.

Tenderers are required to submit their proposals in the table below.

Local Procurement Content	Eskom target	Tenderer Proposal
	100%	

3. Subcontracting to entities with a minimum 51% black ownership

Subcontracting refers to activities which the tenderer outsources to other enterprises in its supply chain during the execution of the contract scope of work. The subcontracting requirements include all procurement spend by the contractor/supplier with designated groups. This procurement spend consists of paid invoices for both

- the indirect expenses (e.g. overheads) on goods and services supplied to the contractor/supplier by designated groups; and
- direct spend on goods and services supplied by the subcontractors for the execution of the scope of work.

Activities, as a proportion of the local procurement content, which may be subcontracted to designated black owned enterprises must be submitted in a table below.

Subcontracted Group	Designated	Eskom Target	Tenderer Proposal
Black Owned			
Black Women Owned			
Black Youth Owned			
Black Persons with Disability			

4. Jobs. Tenderers are required to submit proposals for the type and number of jobs that will be created and retained in South Africa as a direct result of being awarded a contract.

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Type of Jobs to be created	Number of Jobs to be created

  

Type of Jobs to be retained	Number of Jobs to be retained

  

5. Skills development

Successful tenderer will be obligated to train 1 candidate for every R2 million accumulated through task orders/instructions awarded to the service provider; this obligation will be for the duration of the contract however supplier needs to demonstrate positive progress on quarterly basis. The duration of the task order will not be linked with the supplier’s obligation to train; therefore, the service provider will have to ensure that the skills committed are successfully achieved as per work allocated to them. Skills candidates shall be sourced from previously disadvantaged groups in South Africa, particularly at the site where the services will be taking place. The purpose is to provide these candidates with skills and workplace experience in order to increase the opportunity for them to be employable within the industry as well as assist those who are struggling financially during their schooling. The service provider may develop the candidates directly, through their supply network or through the SETA accredited training providers.

Skills development candidates should be currently unemployed graduates from colleges and universities and/or matriculants. The composition of the candidates shall be representative of the population demographics of South Africa particularly at the site where delivery is taking place. The supplier will train as per the list below:

Note: Tenderers are required to take full responsibility for the total cost of developing the requisite skills, and Eskom shall not make any financial contribution towards the fulfilment of this obligation. Tenderers also are advised to approach their relevant SETAs to access grants, subsidies and incentives as well as South African Revenue Services for tax rebates that are earmarked for skills development initiatives.

The winning tenderer will be requested to submit an Implementation plan within 30 days of signing the contract.

**Section 4: SDL&I Penalty and Performance Security**

Eskom will apply a penalty of 2.5% of the invoice amount for failure to meet SDL&I obligations.

As security for the fulfilment of SDL&I obligations, Eskom will apply a penalty of 2.5% on every invoice amount (excluding VAT) for failure to submit SDL&I performance reports every quarter;

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**or** failure to meet the SDL&I obligations in this contract. The retained amounts shall only be released to the tenderer upon following the steps below:

- The tenderer will be expected to submit their performance reports on a quarterly basis towards SDL&I obligations.
- SDL&I will assess the submitted performance report against the Implementation plan submitted by the tenderer within 30 days after contract award, then issue a compliance report.
- Should the report yield non-compliance results, Eskom will apply the 2.5% penalty on each invoice submitted.
- Should the compliance report be compliant, Eskom will release the retained funds to the tenderer.