



NEC3 Professional Services Contract (PSC3)

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

**and Provision of Sales Forecasting and Tracking Tool, to
replace Topline (Essbase System) including its data
warehouse.**

for

Contents:	Page number
Part C1 Agreements & Contract Data	[02]
Part C2 Pricing Data	[13]
Part C3 Scope of Work: The Scope	[15]

CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	Pages
C1.1	Form of Offer & Acceptance	[3]
C1.2	Contract Data provided by the <i>Employer</i>	[5]
C1.3	Scope of work	[15]

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:

Provision of Sales Forecasting and Tracking Tool, to replace Topline (Essbase System) including its data warehouse.

The tenderer, identified in the Offer signature block, has

examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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

Total contract value	
Value Added Tax @ 15% is	
The offered total of the Prices is	

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:**

Name &
signature of
witness

Date

Acceptance

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

The terms of the contract, are contained in:

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

Eskom Holding SOC Ltd
PO Box 1091, Johannesburg
2000

Name &
signature of
witness

Date

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		G: Term Contract
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1 Price Adjustment for Inflation
		X2 Changes in the law
		X7 Delay damages
		X9: Transfer of rights
		X10 <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (June 2005) ¹ with amendments June 2006	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Limited (reg no: 2002/015527/06), a juristic person incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg.
	Tel No.	+27 11 651 6101
	Email.	Sibongile Ndlovu
11.2(9)	The <i>services</i> are	For provision of Sales Forecasting and Tracking Tool, to replace Topline (Essbase System) including its data warehouse.
11.2(10)	The following matters will be included in the Risk Register	N/A
11.2(11)	The Scope is in	Part 3: Scope of Work
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	[1] week
13.6	The <i>period for retention</i> is	
2	The Parties' main responsibilities	
25.2	<i>The employer provides access to the following persons, places and things</i>	Access to Eskom Premises
3	Time	
31.2	The <i>starting date</i> is.	TBA
11.2(3)	The <i>completion date</i> for the whole of the services is.	TBA
4	Quality	
40.2	The quality policy statement and quality plan are provided within	N/A
42.2	The <i>defects date</i> is	
5	Payment	
50.1	The <i>assessment interval</i> is	After each project deliverable
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	N/A
51.1	The period within which payments are made is	30 days after receipt of the valid tax invoice.
51.2	The <i>currency of this contract</i> is the	South African Rand
51.5	The <i>interest rate</i> is	(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa (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	No data required for this section of conditions of contract
7	Rights to material	No data required for this section of conditions of contract
81.1	The <i>Employer</i> provides the following insurances	Refer to Annexure A for details of insurance provided by the <i>Employer</i>.
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	Limited to the value of the contract.
9		
10	Data for main Option clause	

G	Term Contract	
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	the person selected from the Eskom Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him.
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering or its successor body. (See www.jointcivils.co.za).
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	South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> if the Parties cannot agree a choice or if the <i>arbitration procedure</i> 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.
12	Data for secondary Option clauses	
X1	Price Adjustment for Inflation	
	The <i>base date</i> for indices is The proportions used to calculate the Price Adjustment Factor are:	Latest published indices as per Stats SA Annual CPI increase on anniversary date of the contract
X2	Changes in the Law	
X2.1	The law of the project is	South African Law
X7	Delay damages	
		The consultant pays delay damages at the rate stated in the Contract Data for each day from the Completion Date until Completion.
X9	Transfer of rights	
		The Employer owns the Consultants rights over material prepared for this contract by the Consultant except as stated otherwise in the scope of work.
X10	The Employer's Agent	
X10.1	The <i>Employer's Agent</i> is	
	Name:	Sibongile Ndlovu

	Address	Eskom Megawatt Park EAL Midrand 011 651 6101
	The authority of the <i>Employer's Agent</i> is	to carry out all the actions of the <i>Employer</i> in this contract with the exception of those required by clauses 51.1 and 81.1.
X11	Termination by the Employer	The Employer may terminate the Consultant's obligation to provide the Services for convenience on ninety (90) days written notice to the Consultant.
Z	The <i>Additional conditions of contract</i> are	Z1 to Z11 always apply.

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 and the Electricity Distribution 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 substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91.

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

- Z4.3 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.

Z5 Confidentiality

- Z5.1 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.
- Z5.2 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*.
- Z5.3 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.
- Z5.4 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*.

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 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.

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

- Z7.1 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.

Z8 Notifying compensation events

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

Z9 *Employer's* limitation of liability

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

Z10 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z10.1 or had a judicial management order granted against it.
- Z11.2 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.

Annexure A: Notes to Consultants

This is guidance to Consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract and the Employer carries no liability for it.

- For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of "project" or "contract" value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A "project" is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A "contract" is a single contract not linked to or being part of a "project".

http://www.eskom.co.za/live/content.php?Item_ID=9248

- The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers some time after Completion of the whole of the *services*. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

Annexure B: The *Employer's* Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 andrewbaird@ecsconsult.co.za
Christopher BINNINGTON	Gauteng	+27 11 888-6141 cdb@bca.co.za
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, 011 800 8111.

Part 2: Pricing Data

See Annexure L for a detailed Pricing schedule

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

- Name and address of the *Consultant* and the *Employer's Agent*;
- The contract number and title;
- The Purchase Order number;
- The Service Entry and the Goods Received number.
- *Consultant's* VAT registration number;
- *The consultant's banking details*
- The *Employer's* VAT registration number 4740101508.
- It shall be e-mailed to invoiceseskomlocal@eskom.co.za in pdf format.

C1.2 Contract Data

Part two - Data provided by the *Consultant*

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Email.	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	2 years Implementation and 5 years support and Maintenance.
11.2(10)	The following matters will be included in the Risk Register	To be recorded as and when it happens.
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	See price schedule
	Employers provides access to the following persons, places and things	Access to Megawatt Park offices Access date

C3.1: EMPLOYER'S SCOPE

Replace current system (Topline) with the new technology that is available in the market, for implementation of a Sales Forecasting and Tracking tool with the following features:

- The business requires a tool that can be able to extract data from the Eskom Billing system, Customer Care and Billing (CC&B), MV90 as well as SAP BW data. The tool is expected to be able to handle different technologies; Netezza, SAP BW4 Hana, Oracle, SQL, Python API, etc.
- The tool should be able to generate forecast summaries/reports that can spot issues like missing or outdated data and fill gaps to improve accuracy across the board
- A revenue calculator that can calculate revenue based on price changes
- Ability to slice forecast to enter multiple regions, line of business, products, or any other way the business can be segmented
- Ability to pull historical sales data from any time period in order to make the sales forecasting more trustworthy
- Contain future forecasts
- Enable the forecasters to analyse historical trends in performance as well as future trends
- Sales forecast benchmarking: forecast sales and compare to industry trends
- Quick forecasts through dashboards and reporting: a quick overview of sales forecasts
- Sales forecast visuals: clear and helpful visuals
- Sales forecasting factors: multivariate forecasting algorithms and queries that allow users to adjust the factors that influence projections and generate results from these queries
- Sales forecast review: track forecast accuracy/model fit and confidence
- Sales forecasting management: ability to manage models and assumptions based on forecast reviews
- Custom forecast models: allows for granular control over the forecasting approach
- Record of previous sales forecasts and audit trail
- 10 year history, 15 year future with easy expansion
- Security and privacy must be able to be assigned and controlled closely given the sensitivity of the data
- Statistical modelling
- User driven outline changes – no 3rd party work. Forecasters should be able to adapt easily to produce outputs as needed to minimise dependency on 3rd parties.
- Detailed requirements are outlined in Appendix A, an addendum to the RFI document. The detailed requirements document gives an indication of the department impacted by this RFI, the envisaged implementation phases as well as the business rules that have been defined to enable delivery of the required functionality.