

	<b>Eskom Holdings SOC Ltd's Standard Conditions of Tender</b>	Unique Identifier	240-62044728
		Revision	Rev. 4
		Revision Date	Feb 2019
		Group Technology & Commercial	

## 1. General

**Actions** 1 The *Employer*, the Eskom *Representative* and each *eligible* tenderer submitting a tender shall act timeously, ethically and in a manner which is fair, equitable, transparent, competitive and cost-effective.

**Interpretation** 2 Terms shown in italics vary for each tender and the details of each term in italics are identified in the Tender Data.

3 The Invitation to Tender documents issued by Eskom comprises of the *enquiry documents* which are the *basic enquiry documents* and/or any *additional requirements* as stated in the Tender Data. Documents to be provided by the tenderer may form part of any contract arising from this Invitation to Tender, if so stated in the Tender Data , however these Standard Conditions of Tender and the Tender Data shall not form part of any contract arising from this Invitation to Tender,.

4 An *open Invitation to Tender* will be advertised on *Eskom's Tender Bulletin* and/or any other media if so required. A *closed Invitation.to Tender* will be sent directly to a limited number of known tenderers. A sole source is regarded as a tenderer who meets the requirements as stated in the Eskom Procurement and Supply Chain Management Procedure 32-1034. Any addenda to the Invitation to tender, will be published or issued in the same way as the Invitation to Tender was and will form part of the enquiry documents.

**Communication** 5 Each communication between Eskom and a tenderer shall be to or from the Eskom *Representative* only, in writing, and in a form that can be read, copied and recorded. For this purpose, 'in writing' means hand-written, type-written, printed or electronically made, and resulting in a permanent record. Communication shall be in the English language. Eskom takes no responsibility for non-receipt of communications from or by a tenderer

**Eskom's rights to accept or reject any tender** 6 Eskom may accept or reject any variation, deviation or *alternative tender* and reserves the right to accept the whole or any part of the tender. Eskom may cancel the tender process at any time prior to the formation of a contract and will give written reasons for the cancellation upon written request to do so.

After the cancellation of the tender process or the rejection of all tenders due to non-compliance with the thresholds, Eskom may abandon the proposed work and services, have it performed in any other manner, or re-issue a similar invitation to tender at any time. Eskom, its subsidiaries, shareholders, advisors, directors, employees, representatives including the Eskom *Representative* shall not be liable for any losses, claims or damages of whatsoever nature or howsoever arising which may be sustained by a tenderer or any other person as a result of its participation or any amendment, termination or suspension of the process set out in this Invitation to Tender or its exclusion from participating in the tender process at any point.

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**Eskom's right to negotiate** 7 Eskom reserves the right to enter into mandated negotiations with any one or more selected tenderer(s) in accordance with Eskom's approved procurement policies and procedures.

**Disclaimer regarding accuracy of tender documents** 8 While Eskom takes all reasonable measures to ensure that all information contained in the tender documents is correct and complete, Eskom does not, however, make any representations or warranties, express or implied, as to the accuracy or completeness of such information and Eskom expressly disclaims any and all liability for such representations, warranties or statements.

## 2. Tenderer's Obligation

The tenderer shall comply with the following obligations when submitting a tender and shall:

**Eligibility** 1 Submit a tender only if the tenderer (whether a single company or a structure similar to a Joint Venture) complies with the *eligibility criteria* stated in the Tender Data and the tenderer, or any of his principals, is not under any restriction to do business with Eskom.

**Tender closing time** 2 Ensure that Eskom has received the tender at the *address* and in the tender box or *facsimile number or e-mail address* specified in the Tender Data by no later than the *deadline for tender submission*. Proof of posting or of courier delivery will not be taken by Eskom as proof of delivery. Eskom will not accept a tender submitted telephonically or by e-mail, unless stated otherwise in the Tender Data.

3 Any reference to time will mean South African Standard Time (SAST), i.e. GMT+2 hours. The *closing time* will be determined by using the Telkom time signal as available over the telephone. This time will be strictly adhered to.

4 Accept that if Eskom extends the deadline for tender submission for any reason, the requirements of these Standard Conditions of Tender apply equally to the extended deadline. Tenderers are required to visit the *Eskom Tender Bulletin* regularly in the case of an open tender to ensure they are informed of any changes in either the *deadline for submission* or any other amendments relating to the Invitation to tender,

5 Any tenders not in the tender box or received by Eskom as stipulated in the Tender Data at the *deadline for tender submission* will be considered late. No late tender will be accepted. Accept that Eskom will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed and the *address* and *references* marked incorrectly.

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Without limitation, Eskom takes no responsibility for any delays in any courier or postal system or any delays in transit of tenders or for tenders delivered to a location other than the tender box at the tender office stated in the Tender Data.

Where it is permissible for tenders to be received by facsimile, Eskom takes no responsibility for difficulties in transmission caused by line or equipment faults. Completed tenders not received at the designated facsimile machine by the *deadline for tender* submission will be considered late. The time print on both the sending and receiving facsimile machines will be disregarded, as the Telkom time signal as available over the telephone determines the closing time, by which the completed tender must be received.

Eskom employees are not permitted to deposit a tender into the Eskom tender box on behalf of a tenderer.

**Cost of tendering**

- 6 Accept that Eskom will not compensate the tenderer for any costs incurred in the preparation and submission of a tender, or the negotiation of any contract, including the costs of any testing necessary to demonstrate that aspects of the tender satisfy the evaluation criteria.

**Submitting a tender**

- 7 Check the *enquiry documents* on receipt and notify the Eskom *representative* of any discrepancy or omissions of documents. The enclosed Acknowledgement Form must be completed as required and submitted with the tender and must clearly state if the tender is for the whole or part of the works, services or supply identified in the specification and/or works information by Eskom
- 8 Return the *mandatory tender returnables* for evaluation purposes and *other tender returnables* required for contract award, to Eskom, completing without exception all the forms, data and schedules included therein. Where any certificate, proof of registration or the like is required to be submitted as a *mandatory* or *other tender returnable*, the tenderer must ensure that Eskom is in possession of a valid and where stated an original certificate or proof of registration for the duration of the *tender validity* period and, if the tender is successful, up to contract award.
- 9 Submit the tender as an original tender, plus one (1) copy and provide an English translation for documentation submitted in a language other than English. If a complete copy of the original is not submitted, the tender will be disqualified. Eskom may require that tenders are submitted in any other electronic format or that more than one copy be supplied. Tenders may not be written in pencil and must be completed in ink.
- 10 Sign the original tender. Eskom will hold the signatory named as the person duly authorised to sign the tender on behalf of the tenderer, liable for the tender.

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|                                                           | 11 | Seal the original tender and the copy(ies) of the tender as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state the Eskom address on the outside, the <i>Invitation to Tender number</i> stated in the Tender Data, as well as the tenderer's name and contact address.                                                                                                                                        |
|                                                           | 12 | Seal the original tender and required copies together in an outer package that states on the outside, only the Eskom address and <i>Invitation to Tender number</i> as stated in the Tender Data. The outer package must be marked "CONFIDENTIAL".                                                                                                                                                                                                   |
|                                                           | 13 | Hold the tender(s) valid for acceptance by Eskom at any time within the <i>validity period</i> after the <i>deadline for tender submission</i> .                                                                                                                                                                                                                                                                                                     |
| <b>Tender validity</b>                                    | 14 | Hold the tender(s) valid for acceptance by Eskom at any time within the <i>validity period</i> after the <i>deadline for tender submission</i> . Extend the <i>validity period</i> for a specified additional period if Eskom requests the tenderer to do so. A tenderer agreeing to the request will not be required or permitted to modify a tender, except to the extent Eskom may allow for the effects of inflation over the additional period. |
| <b>Confidentiality and copyright of documents</b>         | 15 | Treat as confidential all matters arising in connection with the tender. Use and copy the documents provided by Eskom only for the purpose of preparing and submitting a tender in response to this Invitation to Tender.                                                                                                                                                                                                                            |
| <b>Standardised specifications and other publications</b> | 16 | Obtain, as necessary for submitting a tender, copies of the latest revision of standardised specifications and other publications, which are not attached but which are incorporated into the <i>enquiry documents</i> by reference.                                                                                                                                                                                                                 |
| <b>Site visit and / or clarification meeting</b>          | 17 | Attend a <i>site visit and/or clarification meeting</i> at which tenderers may familiarise themselves with the proposed work, services or supply, location, etc. and raise questions. Details of the meeting(s) are stated in the Tender Data.                                                                                                                                                                                                       |
| <b>Seek clarification</b>                                 | 18 | Request clarification of the <i>enquiry documents</i> , if necessary, by notifying the Eskom <i>Representative</i> earlier than the <i>closing time for clarification of queries</i> .                                                                                                                                                                                                                                                               |
| <b>Insurance</b>                                          | 19 | Be informed that the extent (if any) of insurance provided by Eskom may not be for the full cover required in terms of the relevant category listed in the <i>conditions of contract</i> . The tenderer is advised to seek qualified advice regarding insurance.                                                                                                                                                                                     |
| <b>Pricing the tender</b>                                 | 20 | Include in the rates, prices, and the tendered total of the Prices (if any) all duties, taxes (including VAT), and other levies payable by the successful tenderer. Such duties, taxes and levies are those applicable 14 (fourteen) days prior to the <i>deadline for tender submission</i> .                                                                                                                                                       |

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|                                                                                            | 21 | Provide rates and Prices that are fixed for the duration of the contract and not subject to contract price adjustment except as provided for in the <i>Enquiry</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                            | 22 | State the rates and Prices in South African Rand unless instructed otherwise in the Tender Data. The selected <i>conditions of contract</i> may provide for part payment in other currencies. Submit your Prices in accordance with the exchange rate and base date as stipulated in the Tender Data.                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Alterations to documents</b>                                                            | 23 | Not make any alterations or additions to the <i>tender documents</i> , other than for purposes of complying with instructions issued by the Eskom <i>Representative</i> or if necessary to correct errors made by the tenderer. All such alterations shall be initiated by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like.                                                                                                                                                                                                                                                                                       |
| <b>Alternative tenders</b>                                                                 | 24 | Submit alternative tenders only if a main tender is also submitted and if allowed as stated in the Tender Data. The alternative tender is submitted with the main tender together with a schedule that compares the requirements of the <i>enquiry documents</i> with the alternative requirements the tenderer proposes. Accept that an alternative tender may be based only on the <i>criteria</i> stated in the Tender Data and as acceptable to Eskom                                                                                                                                                                                                                        |
| <b>Clarification and correction of Prices after tender submission</b>                      | 25 | Provide clarification and documents as required by the Eskom <i>Representative</i> during the evaluation of tenders, if not submitted. However, mandatory tender returnables will not be requested and submitted after tender submission date. Clarifications may include providing a breakdown of rates or Prices, and may not result in changes to prices or substance of the tender submitted, except as required by the Eskom <i>Representative</i> to confirm the <i>correction of arithmetical errors</i> discovered in the evaluation of tenders. The total of the Prices as corrected by Eskom with the concurrence of the tenderer, shall be binding upon the tenderer. |
| <b>Sign Form of Agreement</b>                                                              | 26 | Undertake to check the final draft of the contract provided by the Eskom <i>Representative</i> , and sign the contract documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Proof of authority to act as agent</b>                                                  | 27 | Where an agent on behalf of a principal submits a tender, an authenticated copy of the authority to act as an agent of the tenderer must be submitted as a <i>tender returnable</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Compliance with legislation and Supplier Development and Localisation Requirements.</b> | 28 | Comply with legislation such as CIDB for construction works; designated materials according to PPPFA; Amended B-BBEE Codes, COIDA; OHS Act; Eskom's requirements for Safety, Health, Environment and Quality (SHEQ), as well as requirements regarding Supplier Development and Localisation, as set out in the Tender Data.                                                                                                                                                                                                                                                                                                                                                     |

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29 Tenderers are required to provide proof to the satisfaction of Eskom that safety, health, environmental and quality (SHEQ) systems, policies and capabilities are in place at the time of contract award. All costs and personnel associated with SHEQ should be reflected in the tender for Eskom's assessment thereof. In the event that at the *deadline for tender submission* only proof of application for CIDB is available, a valid proof of registration must be submitted by the tenderer prior to contract award.

30 Eskom may disqualify a tender if it is found that the tenderer has misrepresented or falsified any certificate or document. A fraudulent B-BBEE certificate or 'fronting' will be reported to the B-BBEE Commissioner and the tenderer will be suspended from any business with a State Owned company for 10 years and may be sentenced to jail.

#### Provision of Security for Performance

31 To the extent that the provision of security for performance is a requirement, the tenderer must indicate the names of a minimum of 2 (two) financial institutions that the tenderer is likely to approach in order to obtain the required form of security. Eskom reserves the right to reject the financial institution if found not to be suitable.

### 3. Eskom's undertakings

Eskom and the Eskom *Representative*, shall:

#### Respond to clarification

1 Respond to a request for clarification received earlier than the *closing time for clarification of queries*. The responses will be published to all tenderers in the same manner the *enquiry documents* were issued and it is the tenderers responsibility to check the Eskom Tender Bulletin regularly for updated responses to clarifications by the Eskom *Representative*.

#### Issue Addenda

2 If necessary, issue Addenda that may amend, amplify, or add to the *Enquiry documents*. If a tenderer applies for an extension to the *deadline for tender submission*, in order to take Addenda into account in preparing a tender, Eskom may grant such an extension and the Eskom *Representative* shall notify all tenderers of the extension.

#### Return late tenders

3 Return tenders received after the *deadline for tender submission* unopened to the tenderer submitting a late tender. Tenders will be deemed late if they are not received at the designated facsimile machine or in the designated tender box at the date and time stipulated as the *deadline for tender submission*

#### Tender opening

4 Open the tenders in the presence of the tenderers' representatives who choose to attend at the time and place stated in the Tender Data. Tenders for which an acceptable notice of withdrawal has been submitted will not be opened.



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- 5 At tender opening, Eskom will announce the names of the tenderers. Prices may be announced if so stated in the Tender Data.
- Non-disclosure** 8 Unless required to do so by law, not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tenders and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.
- Grounds for rejection** 9 Reject a tender after the Eskom Supplier Reconsideration Committee has established through the Eskom prescribed processes, that there is proof that the tenderer influenced the processing of tenders or awarding of the contract; that colluding/ bid rigging or any fraudulent activity has taken place in connection with the Invitation to Tender...
- Clarification of a tender** 10 Obtain from a tenderer clarification of any matter in the tender which may not be clear or could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified. Mandatory documents will not be requested but clarity on it may be required.
- Basic Compliance** 11 Determine before detailed evaluation, whether each tender received meets the *basic compliance* as stated in the enquiry. A tenderer's failure to comply with the stated *basic compliance* of tender will render a tender non-responsive. It must further be noted that a tenderer's failure to provide one copy of the original tender, will also disqualify the tenderer from further evaluation. Tenderers will not be permitted to provide the required copy after the *tender submission date*, and Eskom will not be responsible for copying tenders.
- Mandatory tender returnables** 12 A tender that does not submit or meet the mandatory requirements as stated in the Tender Data will render the tender non-responsive.
- Special Conditions** 13 Tenderers who meet the basic compliance and mandatory tender returnables, are required to meet the special conditions as stated in the Tender Data. It must be noted that Eskom will not measure a criteria twice in the different evaluation phases, in order to avoid 'double dipping'
- Designated materials and thresholds** 14 Certain materials are identified by dti as designated materials and a specified percentage (gatekeeper for further evaluation) must be bought from local companies. A tenderer's failure to meet stipulated gatekeepers as per the dti's requirement for local support of designated materials, will also render the tender / offer non-responsive.
- Functionality requirements** 15 If functionality is a criteria, tenderers are scored against the technical functionality criteria and have to meet the threshold as stated in the Tender Data. If the threshold is met, then the tender will be further evaluated.

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#### **Financial analysis**

- 16 Eskom determines the risk of doing business with a supplier who may pose financial risks to Eskom in the execution of the contract. During evaluation of the financial statements, Eskom will identify mitigating factors/ requirements for the tenderer to meet, if applicable. Should it be found that the risk is too high, Eskom may disqualify the tender.

#### **Evaluation of Price**

- 17 Evaluate the price according to the criteria/requirements set in the Tender Data. Factors such as CPA, FOREX, commodity increases, discounts, NPV, forecasted rates of invoicing are taken into account when determining the Price.

#### **Arithmetical errors**

- 18 Check responsive tenders for arithmetical errors, correcting them first as follows: Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.

If a bill of quantities applies and there is a discrepancy between the rate and the line item total, resulting from multiplying the rate by the quantity, the rate as quoted shall govern. Where there is an obviously gross misplacement of the decimal point in the rate, the line item total as quoted shall govern, and the rate will be corrected. If no total is required in the case of gross misplacement, then Eskom will do a clarification requesting the confirmation of the price.

Where there is an error in the total of the Prices, either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the Prices, if any, will be corrected.

The corrected price will be communicated to the tenderer. The tenderer may withdraw the tender, but may not change to a lower price. Reject a tender if the tenderer does not accept the corrected total of the Prices (if any). The corrected Price will be used to score the tenderer on Price according to the Tender Data.

#### **Evaluation of B-BBEE**

- 19 Score the B-BBEE level stated on the certificate as per Tender Data. If no certificate is issued or the certificate proof to be fraudulent or expired on tender submission date, the tenderer will score zero under this criteria. Eskom will apply the PPPFA requirements for sub-contractors' B-BBEE status. The tenderer, if successful, is required to submit a valid certificate before contract award to Eskom.

#### **Ranking of tenders**

- 20 According to the PPPFA Eskom will add the score for Pricing and the B-BBEE together and rank the suppliers from the highest to the lowest.

#### **Objective criteria**

- 21 Eskom will evaluate the objective criteria as stated in the Tender Data. Objective criteria may become a contractual condition and/or may be negotiated should it be required.



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**Acceptance of tender**

- 22 Notify Eskom's acceptance to the successful tender before the expiry of the validity period, or agreed additional validity period. Inform the successful and unsuccessful tenderers only once approval has been granted by the Eskom Adjudication Authority.

**Prepare contract documents**

- 23 Revise the contract documents issued by Eskom as part of the Enquiry documents to take account of:
- Addenda issued during the tender period,
  - Inclusion of some of the tender returnables as stated,
  - Inclusion of changes as agreed during negotiations,
  - Other revisions or documents agreed to between Eskom and the successful tenderer during negotiations,
  - The schedule of deviations attached as agreed to by Eskom and the tenderer during negotiations, if any.

**Sign Form of Agreement**

- 24 Arrange for authorised signatories of both parties to complete and sign the original and one copy of the Form of Agreement.