



**NEC3 Professional Services Contract (PSC3)**

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

**and  
(Reg No. 2003/0160454/07)**

**for THE PROVISION OF EXECUTIVE COACHING AND  
STRATEGIC FACILITATION SERVICES PANEL AT EXCO  
LEVEL ON AN AS AND WHEN BASIS FOR A PERIOD OF  
FIVE (05) YEARS**

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**CONTRACT No.**

**PART C1: AGREEMENTS & CONTRACT DATA**

| <b>Document reference</b> | <b>Title</b>   | <b>No of pages</b> |
|---------------------------|--|--------------------|
| C1.1                      | Form of Offer & Acceptance<br>[to be inserted from Returnable Documents at award stage]                      | [•]                |
| C1.2a                     | Contract Data provided by the <i>Employer</i>  | [•]                |
| C1.2b                     | Contract Data provided by the <i>Consultant</i><br>[to be inserted from Returnable Documents at award stage] | [•]                |
| C1.3                      | Securities proforma  | [•]                |

# C1.1 Form of Offer & Acceptance

**Offer**

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

**THE PROVISION OF EXECUTIVE COACHING AND STRATEGIC FACILITATION SERVICES PANEL AT EXCO LEVEL ON AN AS AND WHEN BASIS 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. |
| <i>or</i>     | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.   |

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

|   |   |
|---|---|
| The offered total of the Prices exclusive of VAT is | <b>Not Applicable - Cost Reimbursable</b> |
| Value Added Tax @ 15% 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

Name \_\_\_\_\_  
 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.

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 (2) 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

Name

Capacity

**for the  
*Employer***

**Eskom Holdings SOC Limited**

Name &  
signature of  
witness

Date

**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   |         |         |

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
*Eskom Holdings SOC Limited*  
 \_\_\_\_\_  
 \_\_\_\_\_

# 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><br><b>W1: Dispute resolution procedure</b><br><br><b>X1: Price adjustment for inflation</b><br><b>X2 Changes in the law</b><br><b>X9 Transfer of rights</b><br><b>X10 <i>Employer's Agent</i></b><br><b>X11: Termination by the <i>Employer</i></b><br><br><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):<br><br>Address<br><br>Tel No.                           | <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><br><br><b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b><br><br><b>011 800 8111</b>   |
| 11.2(9)  | The <i>services</i> are  | <b>The provision of executive coaching and strategic facilitation services panel at exco level on an as and when basis for a period of five (05) years</b>  |
| 11.2(10) | The following matters will be included in the Risk Register                            | <b>None</b>   |
| 11.2(11) | The Scope is in  | <b>Part 3: Scope of Services</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>  |

<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)

|      |                                    |   |
|------|------------------------------------|---|
| 13.3 | The <i>period for reply</i> is     | <b>one (01) week</b>  |
| 13.6 | The <i>period for retention</i> is | <b>4 weeks following Completion or earlier termination.</b> |

**2 The Parties' main responsibilities**

|      |   |                                 |                      |
|------|---|---------------------------------|----------------------|
| 25.2 | The <i>Employer</i> provides access to the following persons, places and things | <b>access to</b>                | <b>access date</b>   |
|      |   | 1 Eskom premises and facilities | as and when required |

**3 Time**

|         |  |  |                 |
|---------|--|--|-----------------|
| 31.2    | The <i>starting date</i> is.   | <b>TBA</b>                               |                 |
| 11.2(3) | The <i>completion date</i> for the whole of the <i>services</i> is.          | <b>TBA</b>                               |                 |
| 11.2(6) | The <i>key dates</i> and the <i>conditions</i> to be met are:                | <b>Condition to be met</b>               | <b>key date</b> |
|         |  | 1 To be determined for Eskom Instruction | TBD             |
| 31.1    | The <i>Consultant</i> is to submit a first programme for acceptance within   | <b>Not applicable</b>                    |                 |
| 32.2    | The <i>Consultant</i> submits revised programmes at intervals no longer than | <b>Not applicable</b>                    |                 |

**4 Quality**

|      |   |   |
|------|---|---|
| 40.2 | The quality policy statement and quality plan are provided within | <b>Not applicable</b>   |
| 42.2 | The <i>defects date</i> is  | <b>Four (4) weeks after Completion of the services related to each Task Order</b> |

**5 Payment**

|      |   |  |
|------|---|--|
| 50.1 | The <i>assessment interval</i> is                     | <b>the 25<sup>th</sup> day of each successive month.</b>   |
| 50.3 | The <i>expenses</i> stated by the <i>Employer</i> are | <b>N/A</b>   |
| 51.1 | The period within which payments are made is          | <b>30 days from receipt of a valid Tax Invoice.</b>  |
| 51.2 | The <i>currency of this contract</i> is the           | <b>South African Rand</b>  |
| 51.5 | The <i>interest rate</i> is                           | <b>the publicly quoted prime rate of interest charged by the Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due.</b> |

|          |   |   |   |  |
|----------|---|---|---|--|
| <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>   |   |   |  |
| 81.1     | The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are  |   |   |  |
|          | <b>Event</b>  | <b>Cover</b>  | <b>Period following Completion of the whole of the <i>services</i> or earlier termination</b> |  |
|          | Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>   | <b>Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims</b>   | <b>See Notes to Consultants in Annexure A</b>   |  |
|          | death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services. | <b>Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.</b>   | <b>See Notes to Consultants in Annexure A</b>   |  |
|          | 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   | <b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims</b> | <b>As <i>Consultant</i> deems necessary</b>   |  |
| 81.1     | The <i>Employer</i> provides the following insurances   | <b>Refer to Annexure A for details of insurance provided by the <i>Employer</i>.</b>  |   |  |
| 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 amount of the Purchase Order</b>   |   |  |

|           |   |  |
|-----------|---|--|
| <b>9</b>  | <b>Termination</b>  | There is no reference to <b>Contract Data</b> in this section of the core clauses and terms in italics used in this section are identified elsewhere in this <b>Contract Data</b> .  |
| <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>   |
| 50.4      | The <i>exchange rates</i> are those published in  | <b>Not applicable</b>  |
| <b>11</b> | <b>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:   | <b>arbitration</b>   |
| 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  | <b>South Africa</b>  |
|           | 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> | <b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>   |
| <b>12</b> | <b>Data for secondary Option clauses</b>  |  |
| <b>X1</b> | <b>Price adjustment for inflation</b>   |  |
| X1.1      | The index is  | <p><b>The Consumer Price Index (CPI) and will apply on the anniversary of the contract.</b></p> <p><b>Fixed for the first twelve (12) months of the contract</b></p>   |

|            |   |   |
|------------|---|---|
| <b>X2</b>  | <b>Changes in the law</b>                       |   |
| X2.1       | The law of the project is                       | South African Law   |
| <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:   |   |
|            | Address   | <b>Eskom Megawatt Park<br/>1 Maxwell Drive\<br/>Sunninghill<br/>2191</b>  |
|            |   | <b>Tel: +27 11 800 8111</b>   |
|            | The authority of the <i>Employer's Agent</i> is | <b>To carry out all obligations in the contract on behalf of the <i>Employer</i></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> |

**Z1 Cession delegation and assignment**

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

**Z2 Joint ventures**

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

**Z4 Confidentiality**

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

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

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

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

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

**Z7 Notifying compensation events**

Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

**Z8 Employer's limitation of liability**

Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

**Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z9.1 or had a business rescue order granted against it.

**Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

**Z11 Ethics**

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

- Affected Party** means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,
- Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
- Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
- Committing Party** means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,
- Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
- Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
- Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
- "Prohibited Action"** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.
- 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.
- 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.

## 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. The Consultant must obtain its own advice.*

1. 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".

2. There are three main "formats" of cover and deductible structure; Format A, Format B and Format Dx.

**Format A** is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

**Format B** is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

**Format Dx** applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

**Format A generally applies to Transmission Division** projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

**[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)**

4. 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.

# C1.2 Contract Data

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

| Clause   | Statement  | Data                    |                    |
|----------|--|-------------------------|--------------------|
| 10.1     | The <i>Consultant</i> is (Name):<br>Address<br>Tel No.<br>Fax No.  |                         |                    |
| 22.1     | The <i>key people</i> are:<br><br>1 Name:<br>Job:<br>Responsibilities:<br>Qualifications:<br>Experience:<br><br>2 Name:<br>Job:<br>Responsibilities:<br>Qualifications:<br>Experience: |                         |                    |
| 11.2(3)  | The <i>completion date</i> for the whole of the <i>services</i> is   | <b>TBA</b>              |                    |
| 11.2(10) | The following matters will be included in the Risk Register  | <b>None</b>             |                    |
| 11.2(13) | The <i>staff rates</i> are:  | <b>name/designation</b> | <b>rate</b>        |
|          | <b>Either complete here or cross refer to a schedule in Part C2.2</b>  |                         |                    |
| 25.2     | The <i>Employer</i> provides access to the following persons, places and things  | <b>access to</b>        |                    |
|          |  | <b>1</b>                | <b>access date</b> |
|          |  | <b>2</b>                |                    |
|          |  | <b>3</b>                |                    |

|          |   |             |               |
|----------|---|-------------|---------------|
| 31.1     | The programme identified in the Contract Data is        |             |               |
| 50.3     | The <i>expenses</i> stated by the <i>Consultant</i> are | <b>item</b> | <b>amount</b> |
| <b>G</b> | <b>Term contract</b>                                    |             |               |
| 11.2(25) | The <i>task schedule</i> is in                          |             |               |

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                      | [•]                |
| C2.2                      | <i>Staff rates, expenses and the task schedule.</i> | [•]                |

# C2.1 Pricing assumptions: Option G

## 1. How work is priced and assessed for payment

From Option G: Term contract

|                              |            |  |
|------------------------------|------------|--|
| Identified and defined terms | 11<br>11.2 | (17) The Price for Services Provided to Date is, for each Task, the total of |
|------------------------------|------------|--|

- the Time Charge for work which has been completed on time based items on the Task Schedule and
- 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.

(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. |
|------------------------------|------|--|

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> |
|--------------------------|------|---|

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.

## 2. 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.

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

*Expenses* associated with employing a staff member in Providing the Services can be listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*.

As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 15 of the PSC3 Guidance Notes.

## 3. 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

## PART 3: SCOPE OF WORK

| <b>Document reference</b> | <b>Title</b>            | <b>No of pages</b> |
|---------------------------|-------------------------|--------------------|
|                           | This cover page         | 1                  |
| C3.1                      | <i>Employer's Scope</i> | 3                  |
|                           | Total number of pages   | 4                  |

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

### **Scope of work/supply**

A panel of external experts to provide:

- strategic facilitation of Exco/Board workshops
- executive coaching (individual and group coaching) for Exco members
- team building interventions for Exco/Board.

### **Specification of Services**

Eskom requires a panel of experts (executive coaches and strategic facilitators) comprising of:

- Coaches and facilitators with the requisite technical, business, and coaching capability and experience to:
  - (1) perform individual coaching with Exco members, (2) perform group coaching with Exco and divisional executive teams, and (3) facilitate various strategic interventions at Exco and divisional Exco/ Board level
- Executive coaches / facilitators will be required to adhere to Eskom's requirements regarding on-going progress reporting, feedback, and measurement processes – as explained at a compulsory on-boarding session.

## Privacy and security of Information

The Parties shall ensure the confidentiality, privacy and security of information of the employer and policyholders, by complying with data privacy legislation such as the Protection of Personal Information Act, 4 of 2013 (POPIA).

The Consultant shall ensure that all data relating to the Employer and policyholders are backed-up regularly. The Consultant shall notify the Employer if it has suffered a data breach.as required by POPIA

## Business Continuity Process

- a) The *Consultant* shall at all times ensure that it has business continuity plans to enable it to continue to provide the services to Eskom in accordance with this Agreement and relevant legislation.
- b) If the *Consultant* is for any reason, including being placed under curatorship or business rescue, becoming insolvent, or being liquidated, unable to continue to render the functions or activities in accordance with this Agreement, it shall:
  - i. promptly finalise all work-in-progress and provide Eskom with a status report of any work that cannot be finalised.
  - ii. promptly return all information, including financial and non-financial information to Eskom; and
  - iii. ensure that all delegated powers and access controls are terminated and provide Eskom with proof of such terminations.

## Consultant's key persons

The Consultant must provide:

- Contact details of Consultant's key persons (including landline and mobile number)
- Leave requirements of Consultant's key persons. If leave requirements conflicts with deliverable deadlines an alternate, suitable key person must be allocated.
- Contact details of alternate, suitable key person.

## 3.2 Documentation control and retention

Identification and communication

Format of documentation will be according to Eskom's templates where prescribed.

Retention of documents

Clause 13.6 states that the Consultant retains copies of reports and other documents which record the services in the form stated in the Scope for the retention period.

## 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.

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 Employer's Agent and include on it the following information:

- Name and address of the Consultant and the Employer's Agent.
- The contract number and title.
- Consultant's VAT registration number.
- Purchase order number
- The Employer's VAT registration number 4490138866.
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.
- Documentary evidence for travel and subsistence reimbursement.
- Time sheets relating to activities undertaken where relevant

## Occupational Health and Safety

The Consultant shall at all times comply with occupational health and safety requirements prescribed by law as they may apply to the services. The Consultant is also expected to comply with the following documents when rendering a service to Eskom but not limited to the following:

- a) Eskom Contractor Health and Safety requirements standards 32-136
- b) SHE specification provided
- c) Occupational Health and Safety Act 85 of 1993 and Applicable Regulations
- d) Compensation for Occupational Diseases and Illnesses Act 130 of 1993
- e) 240-62196227 Life- saving Rules
- f) 32-95 Incident Management Procedure
- g) 32-727 SHEQ Policy

## Working on the Employer's property

Employer's entry and security control, permits, and site regulations

The employer will at all times furnish the consultant with the minimum-security requirements for the affected property. Employer's entry and security control, permits, and site regulations shall be adhered to.

People restrictions, hours of work, conduct and records

The Consultant keeps records of his people working on the Employer's property. The Employer's Agent shall have access to these records at any time.

## Things provided by the Employer

The Employer shall provide access to its facilities to the Consultant as and when required during the contract period.

### **Supplier Quality Management**

- The Consultant shall maintain pre-contract award category 4 quality requirement of Supplier Quality Management Specification 240-105658000 (QM58).
- The Contractor agrees to control and professionally preserve and store appropriate documents, records and recordings to guarantee the traceability of the services rendered and inspection thereof.
- Nothing contained in the Contract shall relieve in any way the Contractor from the obligation of Quality Control thereof.

### **Supplier Development and Localisation**