NEC3 Supply Contract (SC3)

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

and
(Reg No.)

for **The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years**

Contents:

Part C1 **Agreements & Contract Data**
Part C2 **Pricing Data**
Part C3 **Scope of Work**

Tender Number: **E3801DXMWPNC**

PART C1: AGREEMENTS & CONTRACT DATA

Contents:

C1.1 Form of Offer and Acceptance

C1.2a Contract Data provided by the *Purchaser*

C1.2b Contract Data provided by the *Supplier*

C1.3 Proforma Guarantees

C1.1 Form of Offer & Acceptance

Offer

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

The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years

The tenderer, identified in the Offer signature block, has

either	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.
or	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 *Supplier* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

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

This Offer may be accepted by the Purchaser 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 *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s)			
Name(s)			
Capacity			
For the tenderer: *(Insert name and address of organisation)*			
Name & signature of witness		Date	

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

Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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: Goods Information including Supply Requirements

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 Purchaser during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

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

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

Signature(s)			
Name(s)			
Capacity			
for the Purchaser *(Insert name and address of organisation*)	**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199**		
Name & signature of witness		Date	

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

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

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Purchaser 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 Purchaser 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 Purchaser**
Signature		
Name		
Capacity		
On behalf of *(Insert name and address of organisation)*		**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199**
Name & signature of witness		
Date		

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

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

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for Options	
		X1: Contract Price Adjustment
		X2: Changes in the law
		X3: Multiple currencies (if Applicable)
		X4: Parent company guarantee (If Applicable)
		X7: Delay damages.
		X13: Performance bond (If Applicable)
		X17: Low performance bond (If Applicable)
		X4 and or X13 will only be applicable should Financial Analysis report recommends that the parent company guarantee and or performance bond be obtained.
		Z: *Additional conditions of contract*
	of the NEC3 Supply Contract (April 2013) [2]	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The *Purchaser* is (name):	**Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
	Tel No.	**011 800 8000**
	Fax No.	**N/A**
10.1	The *Supply Manager* is (name):	**Nokulunga Shabalala** **Thuso Malatjie**
	Address	**Eskom Megawatt Park** **1 Maxwell Drive** **Suninghill** **Johannesburg**

[2] Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

	Tel	**014 762 6455/ 011 800 2197**
	Fax	**N/A**
	e-mail	**MalatjTu@eskom.co.za / ShabalNu@eskom.co.za**
11.2(13)	The *goods* are	**Smart Metering Access Covers**
11.2(13)	The *services* are	**The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years**
11.2(14)	The following matters will be included in the Risk Register	**1. Late deliveries 2. Supply of incorrect product / product out of Eskom designs / specifications. 3. Manufacturing of equipment without an approved Purchase Order.**
11.2(15)	The Goods Information is in	**Part 3: Scope of Work and all documents and drawings to which it makes reference.**
11.2(15)	The Supply Requirements as part of the Goods Information is in	**Annexure A to this Contract Data**
12.2	The *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	**One [1] week**
2	**The *Supplier's* main responsibilities**	**Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.**
3	**Time**	
30.1	The *starting date* is.	**To be advised**
30.1	The *delivery date* of the *goods* and *service*s is:	**The delivery date will be specified in each Purchase order.**
30.2	The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date.	**Unless agreed by both parties**
31.1	The *Supplier* is to submit a first programme for acceptance within	**[1] weeks of the Purchase Order Date.**
32.2	The *Supplier* submits revised programmes at intervals no longer than	**2 weeks**
4	**Testing and defects**	
42	The *defects date* is	**12 months from the date of delivery per purchase order for goods and services.**
43.2	The *defect correction period* is	**Programming is 3 weeks including testing.**
42.2	The *defects access period* is	**5 working days**

5	**Payment**	
50.1	The *assessment interval* is	**Upon delivery of each batch.**
51.1	The *currency of this contract* is the	**South African Rand (Any other currency will be determined at specific purchase order)**
51.2	The period within which payments are made is	**For contracts valued below R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying Suppliers within 30 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.** **For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.**
51.4	The *interest rate* is	**the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and** **(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.**
6	**Compensation events**	**As per the terms and conditions of the NEC3 Supply Contract (April 2013).**
7	**Title**	**As per the terms and conditions of the NEC3 Supply Contract (April 2013).**
8	**Risks, liabilities, indemnities and insurance**	
80.1	These are additional *Purchaser's* risks	**Not applicable**
88.1	The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including	**In the event that the appointed successful manufacturer(s) are unable to meet Eskom's full**

	loss of profit, revenue and goodwill is limited to	**requirements of the Purchase Order (PO); Eskom shall implement the following solution:** **• Procure from an alternative manufacturer(s) at the offered prices and claim the difference from the awarded manufacturer(s). This shall be dealt with the NEC 3 Supply Contract conditions in terms of clause 88.1 (The Supplier's liability to the Purchaser for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to the following applies) : Should the Supplier fail to perform in terms of timeous delivery, after remedial measures have been put in place and agreed upon, Eskom reserves the right to purchase the shortfall of goods on order elsewhere. The Supplier will be liable for the total difference in cost of the items relevant to the shortfall, should the purchase price of an Alternative Supplier exceed the Suppliers contracted price for the specific purchase order to which the non-performance is attributed to.** **Should the contractor/service providers/supplier(s) fail to perform in terms of the approved programme, and after being placed on terms and subsequently failing to rectify the default within the contractually stated period, the Employer reserves the right to exercise its right to termination and furthermore to appoint another Supplier to perform the outstanding works. The Supplier will be liable for the total difference in cost of the of the outstanding works, should the contracted value of the alternative appointed Supplier.** **Any other matter excluding the above mentioned, where it is proven that the contractor is liable the amount payable will be determined upon investigation.**
88.2	For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to	**(1) for the *Purchaser's* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event** **and** **(2) for all other existing *Purchaser's* property the applicable deductible as at contract date**
88.3	The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to:	**The total of the Prices**
88.4	The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	**The total of the Prices**
88.5	The *end of liability date* is	**12 months after Delivery of the whole of the *goods* and *service*s.**

<table>
<tr><td>9</td><td>Termination and dispute resolution</td><td></td></tr>
<tr><td>94.1</td><td>The Adjudicator is</td><td>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</td></tr>
<tr><td>94.2(3)</td><td>The Adjudicator nominating body is:</td><td>the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)</td></tr>
<tr><td>94.4(2)</td><td>The tribunal is:</td><td>Arbitration</td></tr>
<tr><td>94.4(5)</td><td>The arbitration procedure is</td><td>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</td></tr>
<tr><td>94.4(5)</td><td>The place where arbitration is to be held is</td><td>South Africa</td></tr>
<tr><td></td><td>The person or organisation who will choose an arbitrator
- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is</td><td>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</td></tr>
<tr><td>10</td><td>Data for Option clauses</td><td></td></tr>
<tr><td>X1</td><td>Contract Price Adjustment</td><td>The contract rates will be fixed and firm for 12 months and will be subject to annual escalation based on the table below;

Proposed CPA Meter Seal

<table><tr><th>SEIFSA index</th><th>Weight</th></tr><tr><td>Table U-A (1) Final Manufactured Goods</td><td>65%</td></tr><tr><td>Table L2(B) for transport</td><td>20%</td></tr><tr><td>Fixed-non-adjustable</td><td>15%</td></tr><tr><td>Total</td><td>100%</td></tr></table></td></tr>
<tr><td>X2</td><td>Changes in the law</td><td></td></tr>
<tr><td>X2.1</td><td>A change in the law of</td><td>is a compensation event if it occurs after the Contract Date.</td></tr>
<tr><td>X3</td><td>Multiple currencies</td><td>Given that this is “an as and when required basis “contract, as such the forward cover will be taken at the time of placing purchase orders where applicable.

Foreign Currency, Foreign currency amounts and the payment method must be clearly indicated in the specific request for quotation (RFQ) submission.</td></tr>
</table>

		The manufacturer is to confirm with Eskom <u>BEFORE</u> RFQ close whether the foreign currency to be used by them is acceptable to Eskom **If the manufacturer is the direct importer of the goods/services to be provided to Eskom, the manufacturer is required to select one of the following Eskom payment methods:** **Payment Method 1A** Eskom makes a payment in foreign currency directly overseas to a nominated foreign beneficiary. **Payment Method 1B** Eskom will pay a local supplier in foreign currency into the contracting party's CFC (Customer Foreign Currency) bank account. **Requirements:** • Eskom will require documentary evidence of the approval application made to the Reserve Bank and the official response from the Reserve Bank. (response from Reserve Bank must be on a SARB on SARB's letterhead. NO copy and paste). • The commercial (overseas) invoice and a local tax invoice required to be submitted at time of payment request. The foreign currency amounts on both invoices must be the same. Eskom will not pay profit in foreign currency. • The manufacturer must be the direct importer. • Eskom requires proof of importation by the contracting party **Payment Method 2** This is a ZAR based payment linked to an exchange rate movement. This payment method is only applicable for the procurements of goods. Eskom will hedge the exposure and payment to the supplier will be done at the spot rate of exchange at which Eskom sells the forward cover in the market. **Requirements:** • Manufacturer is required to apply for approval to use this payment method via the Procurement Practitioner PRIOR to tender close. If approval is not sought prior to tender close, Eskom will then apply Payment Method 1A. • Proof of importation by the contracting party will be required. • The manufacturer must be the direct importer **Fixed ZAR contract** • Fixed in terms of exchange rate movement, manufacturer to assume the responsibility of the exchange rate risk. • Eskom will allow the manufacturer to hedge the exchange rate movement by means of forward

		cover.(This means that the manufacturer takes the foreign currency and/or exchange rate risk for the full exposure of the contract) **However:** • Eskom will require that a simultaneous exercise is done to ensure that the exchange rates for the manufacturer's forward cover is market related. • Proof of importation by the contracting party will be required. • The manufacturer must be the direct importer of the goods/services to be provided **The following documentation will be required for payment purposes:** • Commercial invoice (from the foreign supplier) • Local invoice or Tax invoice • Both the commercial invoice and local invoices must match **Import payments** • SAD 500 • Bill of Entry as evidence that goods have been cleared by the Department of Customs and Excise • Customs release notification • Transport documents from the freight company **Any of the following documents as per the mode of transportation**. • Marine/ ocean bill of lading • Airway bill / air transport document • Road or rail consignment note • Postal receipt • Certificate of posting • Courier dispatch note or air waybill **NB: Evidencing transport of the relative goods to the Republic of South Africa**
X4	**Parent company guarantee**	**This will only be applicable should the Financial Analysis report recommend that the parent company guarantee be obtained.**
X7	**Delay damages**	
X7.1	**Delay damages for Delivery are**	**A delay damage of R5000/day will be charged capped at 15% of the total purchase order value. Should the capped value be reached, Eskom will reserve the right to purchase the shortfall elsewhere and possibly decide to terminate the contract due to non-performance.**
X13	**Performance bond**	
X13.1	The amount of the performance bond is	**To be advised at contract award stage.**

Z	**The *additional conditions of contract* are**	**Z1 to Z15 always apply for Eskom**
Z1	**Cession delegation and assignment**	
Z1.1	The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*	
Z1.2	Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 *Supplier* 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 *Purchaser* for the performance of this contract.	
Z2.2	Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.	
Z2.3	The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.	
Z3	**Change of Broad Based Black Economic Empowerment (B-BBEE) status**	
Z3.1	Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier*'s B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.	
Z3.2	The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.	
Z3.3	Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier*'s obligation to Provide the Goods and Services.	
Z3.4	Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.	
Z4	**Confidentiality**	
Z4.1	The *Supplier* 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 *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.	

Z4.2	If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
Z4.3	In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* 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 *Supplier* 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 *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
Z4.5	The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.
Z5	**Waiver and estoppel: Add to core clause 12.3:**
Z5.1	Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.
Z6	**Health, safety and the environment: Add to core clause 25.4**
Z6.1	The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*. Without limitation the *Supplier*: • warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and • undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.
Z6.2	The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.
Z7	**Provision of a Tax Invoice and interest. Add to core clause 51**
Z7.1	Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.
Z7.2	If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3	The *Supplier* (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 *Purchaser*'s VAT number 4740101508 on each invoice he submits for payment.
Z8	**Notifying compensation events**
Z8.1	As per the terms and conditions of the NEC3 Supply Contract (April 2013).
Z9	***Purchaser's* limitation of liability**
Z9.1	The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	The *Supplier*'s entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser*'s liability under the indemnity is limited.
Z10	**Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**
Z10.1	or had a business rescue order granted against it.
Z11	**Addition to secondary Option X7 Delay damages (if applicable in this contract)**
Z11.1	If the amount due for the *Supplier*'s payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.
Z12	**Ethics**

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

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

Action	information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
Prohibited Action	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z12.1	A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
Z12.2	The *Purchaser* may terminate the *Supplier*'s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* 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 *Purchaser* can terminate the *Supplier*'s obligation to Provide the Services for this reason.
Z12.3	If the *Purchaser* terminates the *Supplier*'s obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
Z12.4	A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover **84**

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

84.2 The *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier*'s risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

INSURANCE TABLE A

Insurance against	**Minimum amount of cover or minimum limit of indemnity**
Loss of or damage to the *goods*, plant and materials	The replacement cost where not covered by the *Purchaser*'s insurance. The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance.
Liability for loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract	**Loss of or damage to property** *Purchaser*'s property The replacement cost where not covered by the *Purchaser*'s insurance. The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance. Other property The replacement cost **Death of or bodily injury** The amount required by the applicable law.
Liability for death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z_13.2 Replace core clause 87 with the following:

Insurance by the *Purchaser*

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

Insurance against or name of policy	**Minimu of indemnity**
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage	Per the insurance policy document

Terrorism	

Z14 Nuclear Liability

Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.3 Subject to clause Z14.4 below, the *Purchaser* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.4 The *Purchaser* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

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

Z15 Asbestos

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

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.

Ambient Air means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.

Compliance Monitoring means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

OEL means occupational exposure limit.

Parallel Measurements means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

Safe Levels means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

Standard means the *Purchaser*'s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z15.2 Upon written request by the *Supplier*, the *Purchaser* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Supplier* may perform Parallel Measurements and related control measures at the *Supplier*'s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

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

Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z15.5 The *Supplier*'s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z15.6 The *Supplier* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations.

Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser*'s expense, and conducted in line with South African legislation.

Annexure A: Supply Requirements

[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]

The Supply Requirements for this contract are as follows:

1. The requirements for the supply are	**The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years**	
2. The requirements for transport are	To be stipulated in respective purchase orders.	
3. The delivery place is	To be stipulated in respective purchase orders.	
4. Actions of the Parties during supply	**Action**	**Party which does it**
	Giving notice of Delivery	*Supplier*
	Checking packing and marking before dispatch	*Supplier*
	Contracting for transport	*Supplier*
	Pay costs of transport	*Supplier*
	Arrange access to delivery place	*Purchaser*
	Loading the *goods*	*Supplier*
	Unloading the *goods*	*Supplier*
For international procurement	Undertake export requirements	N/A
	Undertake import requirements	Supplier where applicable
5. Information to be provided by the *Supplier*	**Title of document**	
	Packing lists for cases and their contents	
	Copy of invoice for the *goods*	
	Delivery Note	
	Test results and maintenance manuals	
For international procurement	Licences, authorisations and other formalities associated with export of the *goods*	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the *goods* are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	

	Specify other import documents required by authorised officials.

All other information NOT pertinent to the above is given in the balance of the Goods Information.

C1.2 Contract Data

Part two - Data provided by the *Supplier*

Clause	Statement	Data
10.1	The *Supplier* is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The Goods Information for the *Supplier's* design is in:	Part of scope of works.
11.2(11)	The tendered total of the Prices is	**To be stipulated in respective purchase orders.**
11.2(12)	The *price schedule* is in:	**C2 SC3 Pricing Data** and to **be stipulated in respective purchase orders.**
11.2(14)	The following matters will be included in the Risk Register	**1. Late deliveries** **2. Supply of incorrect product / product out of Eskom designs / specifications.** **3. Manufacturing of equipment without an approved Task Order**
25.2	The restrictions to access for the *Supply Manager* and Others to work being done for this contract are	**None**
30.1	The *delivery date* of the *goods* and *service*s is:	***The delivery date will be specified in each Purchase Order.***
31.1	The programme identified in the Contract Data is contained in:	**The *Supplier* submits a first programme to the Supply Manager for the acceptance within one week period after the purchase order date as stated in the Contract Data**
63.2	The *percentage for overheads and profit* added to the Defined Cost is	**10%**

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Supply Contract (SC3)

The *conditions of contract* stated in the Contract Data Part 1 may include the following Options:

Option X4: Parent company guarantee
Option X13: Performance bond

These Options require a bond or guarantee "in the form set out in the Goods Information".
Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Goods Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto it's letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Purchaser* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Supplier's Parent Company)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton Johannesburg (the *Purchaser*) and

[Insert registered name and address of the *Supplier*] (the *Supplier*), for

[Insert details of the *goods* and *services* from the Contract Data] (the *goods* and *services*).

I/We the undersigned .....

on behalf of the *Supplier's* parent company (name) .....

of physical address .....

and duly authorised thereto do hereby unconditionally guarantee to the *Purchaser* that the *Supplier* shall Provide the Goods and Services in accordance with the above numbered Contract.

1. If for any reason the *Supplier* fails to Provide the Goods and Services, we hereby agree to cause to Provide the Goods and Services at no additional cost to the *Purchaser*.

2. If we fail to comply with the terms of this Deed of Guarantee, the *Purchaser* may itself procure such performance (whether or not the Agreement be formally determined). The *Purchaser* is to notify us and we shall indemnify the *Purchaser* for any additional cost or expense it incurs.

3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and the *Purchaser* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.

4. The *Purchaser* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.

5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at _____ on this _____ day of _____ 20__

Signature(s)		
Name(s) (printed)		
Position in parent company		
Signature of Witness(s)		
Name(s) (printed)		

Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond / Guarantee)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Bank reference No.

Date:

Dear Sirs,

Performance Bond – Demand Guarantee for [insert name of *Supplier*] required in terms of contract [insert *Supplier*'s contract reference number or title]

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1	"Bank" means	[Insert name of Bank], [●] Branch, Registration No. [●]
1.2	"Bank's Address" means	[Insert physical address of Bank]
1.3	"Contract" means	the written agreement relating to providing the *goods* and *service*s, entered into between the *Purchaser* and the *Supplier*, on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time;
1.4	"*Supplier*" means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	"*Purchaser*" means	Eskom Holdings SOC Ltd a company registered in accordance with the laws of the Republic of South Africa under Registration Number [●]
1.6	"Expiry Date" means	the earlier of • the date that the Bank receives a notice from the *Purchaser* stating that all amounts due from the *Supplier* as certified in terms of the contract have been received by the *Purchaser* and that the *Supplier* has fulfilled all his obligations under the Contract, or • the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the *Purchaser*.
1.7	"Guaranteed Sum" means	the sum of R[●], ([●] Rand)
1.8	"*goods* and *service*s" means	[insert details from Contract Data part 1]

2. At the instance of the *Supplier*, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Purchaser* as security for the proper performance by the *Supplier* of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to the *Purchaser*, on written demand from the *Purchaser* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

   - be signed on behalf of the *Purchaser* by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
   - state the amount claimed ("the Demand Amount');

- state that the Demand Amount is payable to the *Purchaser* in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:

   - is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
   - is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

5. The Bank's obligations in terms of this Guarantee:

   - shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
   - shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Purchaser* and the *Supplier*.

6. The *Purchaser* shall be entitled to arrange its affairs with the *Supplier* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Supplier* or any variation under or to the Contract.

7. Should the *Purchaser* cede its rights against the *Supplier* to a third party where such cession is permitted under the Contract, then the *Purchaser* shall be entitled to cede to such third party the rights of the *Purchaser* under this Guarantee on written notification to the Bank of such cession.

8. This Guarantee:

   - shall expire on the Expiry Date until which time it is irrevocable;
   - is, save as provided for in 7 above, personal to the *Purchaser* and is neither negotiable nor transferable;
   - shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
   - shall be regarded as a liquid document for the purpose of obtaining a court order; and
   - shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
   - will be invalid and unenforceable if any claim which arises or demand for payment is received after the Expiry Date.

1. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ on this _____ day of _____ 20__

For and on behalf of the Bank

Bank Signatories(s)		
Name(s) (printed)		
Witness(s)		
Bank's seal or stamp		

PART 2: PRICING DATA

NEC3 Supply Contract

Document reference	Title	
C2.1	Pricing assumptions	
C2.2	The *price schedule*	

C2.1 Pricing assumptions

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

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

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

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

Function of the Price Schedule

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

Preparing the *price schedule*

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

It will be assumed that the tendering supplier has

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

tendered total of the Prices;

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

Format of the *price schedule*

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

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

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

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

C2.2 the *price schedule*

The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years as and when" required basis for a period of 3 years

The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years

Item no.	SAP no.	Description	Quantity	Measurement	Unit price	Total price
1	575056	Cover, Access: Protective, Ivory B77, WD 150 x LG 250 x THK 3MM, Gloss, Screws, Rectangular, Polycarbonate (Min V1)	1 207 000	Each		
2		Transportation	Rate only	km		Rate only
					Total price (excluding VAT)	
					15% VAT	
					Total price (including VAT)	

Transport will be charged per kilometer rate of each delivery
Supplier to indicate the km rate in the BOQ only

No supplier will be allowed to provide quantities for the transportation of the material

PART 3: SCOPE OF WORK

Document reference	Title	
	This cover page	
C3.1	*Purchaser*'s Goods Information	
C3.2	*Supplier*'s Goods Information	

C3.1: *PURCHASER'S* GOODS INFORMATION

1 Overview and purpose of the *goods* and *service*s

The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years

2 Specification and description of the *goods*

The high-level scope of work is as follows:

The scope entails to The Supply and Delivery of Smart Metering Access Covers as per the specification tabled below on an as and when required basis for various Distribution Clusters for a period of 3 years.

The material specifications entail but not limited to the following:

Item	Meter Module Type	Drawing Number	SAP Number
1	Cover, Access: Protective, Ivory B77, WD 150 x LG 250 x THK 3MM, Gloss, Screws, Rectangular, Polycarbonate (Min V1)	D-DT-3171	0575056

2..Purchaser's design

The listed documents below and embedded documents contain the Purchasers specification.

Technical Documents for Transformers

See Technical Specification and the design

2.1 Procedure for submission and acceptance of *Supplier*'s design

Refer to the specifications stipulated under section 2.1 of the scope of work.

2.2 Other requirements of the *Supplier*'s design

Refer to the specifications stipulated under section 2.1 of the scope of work.

2.3 Use of *Supplier*'s design

The Purchaser may use and copy the Contractor's design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information.

2.4 Manufacture & fabrication

The *Supplier* warrants that the *goods* and material are new, unused as per *Purchaser* standard, and fit for purpose to be used in the final destination and other locations stated in the Goods Information. Refer to Eskom 240-105658000 (QM 58) Specification (Supplier Quality Management: Specification).

2.5 Factory acceptance testing (FAT)

Purchaser to perform factory acceptance testing (FAT) for the first consignment.

Where the products are manufactured in South Africa, a notification of inspection must be communicated at least 7 (seven) working days prior to the testing.

After contract award, *Purchaser* shall at Eskom's sole discretion evaluate the *goods* at any stage during the manufacturing and fabrication process to determine that the *goods* meet the requirements of the specification.

2.6 Other tests and inspections and commissioning in place of use

Refer to the specifications stipulated under section 2.1 of the scope of work.

2.7 Operating manuals and maintenance schedules

Refer to the specifications stipulated under section 2.1 of the scope of work.

3 Specification of the *service*s to be provided

Refer to the specifications stipulated under section 2.1 of the scope of work.

4 Constraints on how the *Supplier* Provides the Goods

4.1 Programming constraints

The delivery place, the hours of access to the delivery place and other information to be provided by the Supplier at the time of Delivery such as the delivery note, which notifies the actual delivery date.

4.2 Work to be done by the Delivery Date

The Supply and Delivery of Smart Metering Access Covers on an as and when required basis for various Distribution Clusters for a period of 3 years as and when" required basis for a period of 3 years

4.3 Cooperating with Others

N/A

4.4 Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	As and when necessary	Alternate between *Supplier* & *Purchaser* premise OR Virtually	*Purchase*r, *Supplier*, and others that may be invited
Overall contract progress and feedback	Monthly Progress review meeting	Alternate between *Supplier* & *Purchaser* premise OR Virtually	*Purchaser*, *Supplier* and others that may be invited
Technical and Quality	As and when necessary	Alternate between *Supplier* & *Purchaser* premise OR Virtually	*Purchaser*, *Supplier* and others that may be invited

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

4.5 Documentation control

All communication is to be channelled through the *Purchaser's Representative* and *Suppliers* key person.

4.6 Health and safety risk management

Compliance with OHS Act regulations and Annexure B of the OHS requirements.

4.7 Environmental constraints and management

The Supplier shall comply with the environmental criteria and constraints in line with the Environmental Legislation and by-laws.

4.8 Quality

Contract Execution

The *Supplier* shall submit the following documents within 30 days or as per stated timeline after the Contract Date, prior to the commencement of work, for acceptance by Eskom:

- The *Supplier* shall complete a QCP before contract award. This shall be reviewed and signed off by Eskom within 30 days or as per stated timeline after contract award.
- The *Supplier* shall complete a quality control plan and ITP(s) for review and acceptance by Eskom prior to the commencement of any work, inclusive of subcontracted work, within 30 days or as per stated timeline after contract award.
- The sub-supplier QCP/ ITP shall be submitted for review and comment by the *Supplier* and by Eskom within 30 days or as per stated timeline after the award of the tender. All *Supplier* and Eskom comments shall be resolved prior to commencing work.
- The equipment lists and an indication of pressurised components and systems.

Note: These plans are to be compiled in line with Eskom's requirements and will have to be discussed with, and approved by, Eskom prior to any work commencing.

- Correspondence shall be directed to the *Supply Manager*, and periodic quality review meetings shall be convened by Eskom with the *Supplier*.
- The mandatory quality review meetings are to be convened by the nominated project quality manager or his/her representative for the contract.
- Monthly quality performance and management reports are to be prepared by the *Supplier* during contract execution. The content of these reports shall be agreed by Eskom when submitted to Eskom on a monthly basis.

Supplier Quality Performance Monitoring Phase

The *Supplier* shall adhere to the *Supplier* Contract Quality Requirements Specification QM58 (240- 105658000) during the contract execution, with special reference but not limited to:

- (Reference 3.5.2) The Supplier shall submit the following documents 30 (thirty) days after contract award:
- A Contract Quality Plan and QCP/ITP(s) for review and acceptance by the Purchaser prior to the commencement of any work, inclusive of subcontracted work. This shall be reviewed and signed off by the Purchaser.

- QCP/ITP(s) during contract execution shall be adhered to.
- Purchaser to perform first consignment release, a self - release will be issued Supplier upon satisfactory report.
- Supplier to keep record of non-conformance & inspection defect/reject reports and Non-conformance Reports to be reconcile with the record of the Purchaser during interphase meeting.

4.9 Invoicing and payment

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

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the Supplier and the Supply Manager;
- The contract number and title;
- Supplier's VAT registration number;
- The Purchaser's VAT registration number.
- Description of goods and services provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

Tax invoices must be sent to INVOICESESKOMLOCAL@ESKOM.CO.ZA for processing

4.10 Insurance provided by the *Purchaser*

As per NEC Core Clause 8.

4.11 Contract change management

- The Supplier and the Purchaser to give an early warning by notifying the other as soon as either becomes aware of any matter which could increase the total of the Prices, interfere with the timing of the delivery of the goods and impair the effectiveness of the delivery.
- The Supplier may give an early warning by notifying the Purchaser of any other matter which could increase the total cost.
- The Supplier enters early warning matters in the Risk Register.
- Early warning of a matter for which a compensation event has previously been notified is not required.

4.12 Provision of bonds and guarantees

The form in which a bond or guarantee required by the conditions of contract (if any) is to be provided by the Supplier is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The Purchaser may withhold payment of amounts due to the Supplier until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the Supplier by the Supply Manager to receive and accept such bond or guarantee. Such withholding of payment due to the Supplier does not affect the Purchaser's right to termination stated in this contract.

4.13 Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier*

For other compensation events, the changes to the Prices are assessed as the effect of the compensation event upon

- The actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting amount calculated by applying the percentage for overheads and profit to the Defined Cost of the work.

Effects on Defined Cost are assessed separately for:

- people,
- equipment,
- plant and materials included in the goods,
- work subcontracted by the Supplier and
- transport.

The *Supplier* shows how each of these effects is built up in each quotation for a compensation event.

If the compensation event arose from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

The *percentage for overheads and profit* is applied to the assessed effect of the event on Defined Cost except that it is not applied to any tax charges for

- customs clearance and
- export and import.

The date when the *Supply Manager* instructed or should have instructed the *Supplier* to submit quotations divides the work already done from the work not yet done.

5 Procurement

5.1 Minimum requirements of people employed on the Site

All people employed by the Contractor to perform supervision of installation and commissioning should have Police Clearance before work can commence. The Contractor's employees shall be sober when carrying out their duties and may be subjected to random breathalyser tests.

5.2 Procurement spend on entities with a minimum 51% black ownership

The winning tenderer is encouraged to procure/spend on designated groups on the following paid invoices for both:

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

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

Procurement from Designated Group	**Target**	**Tenderer's Proposal**
Black Owned	4.0%	
Black Woman Owned	3.0%	
Black Youth Owned	2.0%	
Black Persons with Disability	1.0%	

5.3 Local Production content

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

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

Local Procurement	Eskom target	Tenderer Proposal
Content	100%	

5.4 Skills Development

Tenderers are required to develop the unemployed candidates in the country from the skills listed below. These skills are also included in a 2020 list of occupations in high demand as stipulated in the Government Gazette 43937. Candidates shall be from South Africa, and their composition shall be representative of the population demographics of South Africa.

Skill type / Occupation	Entry Level	Deliverables
Electrician	Relevant certification and work experience	Electrical Trade Test
ORHVS	Basic technical literacy or foundational electrical trade knowledge	ORHVS - Certificate
N4 Electrical Engineering (FET/TVET College)	N3 Electrical Engineering (FET/TVET College)	N4 –Certificate
N5 Electrical Engineering (FET/TVET College)	N4 Electrical Engineering (FET/TVET College)	N5 – Certificate
N6 Electrical Engineering (FET/TVET College)	N5 Electrical Engineering (FET/TVET College)	N6 – Certificate

Note: The contractor must deliver one skill for every R3 million invoiced to Eskom. Skills must be selected consecutively from the list above. The final skills to be delivered by each contractor will depend on the contract value.

The process of developing these skills shall involve the participation by tenderers directly and through their supply network. In certain cases, the SETA's accredited training providers can be approached to participate in developing critical and scarce skills.

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

5.5 Job Creation

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

Number of Jobs to be created	Number of Jobs to be retained

5.6 SDL&I Penalty and Performance Security

For the duration of the contract, Eskom will retain 2.5% of every invoice (excluding VAT) as security for the fulfilment of all SDL&I Obligations. The retained amounts shall only be released to the Contractor upon:

- Eskom receives the SDL&I progress report/s from the contractor.
- Fulfilment of all SDL&I obligations by the contractor.
- Submission of an approved compliance report by SDL&I Department.

Other requirements related to procurement

Not Applicable

Cataloguing requirements by the *Supplier*

The required goods already have SAP numbers which the Supplier have to indicate at all times.

Preferred subcontractors

Subcontracting is mandatory on contracts above R30 million and is a condition for contract award. If feasible, tenderers shall subcontract a maximum of 15% of the contract value to any of the following designated groups:

- an EME or QSE which is at least 51% owned by black people;
- an EME or QSE which is at least 51% owned by black people who are youth;
- an EME or QSE which is at least 51% owned by black people who are women;
- an EME or QSE which is at least 51% owned by black people with disabilities;
- an EME or QSE which is 51% owned by black people living in rural or underdeveloped area or townships;
- a cooperative which is at least 51% owned by black people;
- a EME or QSE which is at least 51% owned by black people who are military veterans

NOTE : Tenderers shall submit the following returnables for Subcontracting

- Subcontracting agreement signed by both parties or
- Copies of signed letters from the tenderer to the sub-contractors stating the intent to sub-contract
- Subcontractors' Company registration documents
- Subcontractor's valid BBBEE certificate issued by a SANAS accredited verification agency or valid affidavit or valid BBBEE Certificate issued by CIPC for EME companies

Main contractor to propose the areas of subcontracting and the subcontracting percentage.

Potential scope to be subcontracted and/or outsourced:

Subcontracting, in this instance, will be treated as a condition for contract award. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal

or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

6 List of drawings

6.1 Drawings issued by the *Purchaser*

This is the list of drawings issued by the Purchaser at or before the Contract Date and which apply to this contract.

As per SAP numbers on the scope of work.