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- General** 1.
- Parties** 1.1 Eskom shall conduct the tender process in a manner that is fair, equitable, transparent, competitive and cost-effective. The Eskom *Representative* and each tenderer that submits a tender shall act timeously and ethically.
- Interpretation** 1.2 Terms in italics vary for each tender. The details of each term in italics is identified in the Tender Data.
- 1.3 The Invitation to Tender documents comprises the *enquiry documents* (including any annexures thereto) and/or any *additional requirements* that have been stated in the Tender Data. Documents that a tenderer is required to provide may form part of any contract that arises from this Invitation to Tender if so, stated in the Tender Data. However, these Standard Conditions of Tender and the Tender Data shall not form part of any contract arising from this Invitation to Tender.
- 1.4 An *open Invitation to Tender* will be advertised on *Eskom's Tender Bulletin* and National Treasury (NT) e-Tender Portal and in any other media if so required. A *closed Invitation to Tender*, also known as *procurement from multiple sources*, will be sent directly to specific tenderers that Eskom has identified. A sole source and a single source are regarded as a tenderer that meets the requirements stated in the Eskom Procurement and Supply Chain Management Procedure 32-1034. Any addenda to an issued Invitation to Tender will be published or issued in the same way as the Invitation to Tender was and will form part of the enquiry documents.
- Communication** 1.5 Every communication between Eskom and a tenderer shall be made to or from the Eskom *Representative* only, in writing, and in a format that can be read, copied and recorded. 'In writing' means hand-written, type-written, printed or electronically made, and that results in a permanent record. Communication shall be in the English language. Eskom takes no responsibility for non-receipt of communications from or by a tenderer.
- Eskom's rights to accept or reject any tender** 1.6 Eskom may accept or reject any variation, deviation or *alternative tender*. Eskom reserves the right to accept the whole or any part of the tender.
- Eskom may cancel the tender at any time before a contract has been concluded and will give written reasons for the cancellation upon written request to do so. If the tender has been cancelled or if Eskom has rejected all tenders due to non-compliance with any thresholds or requirements, Eskom may abandon the proposed goods, work and/or services, or have them performed in any other manner, or re-issue a similar invitation to tender.
- Eskom, its subsidiaries, shareholders, advisors, directors, employees, and representatives including the Eskom *Representative* shall not be liable for any losses, claims or damages of whatsoever nature or howsoever arising that may be sustained by a tenderer or any other person as a result of its participation in the tender or from any amendment, termination or suspension of the process set out in this Invitation to Tender or from its exclusion from participating in the tender process at any point.
- Eskom's right to negotiate** 1.7 Eskom reserves the right to enter into mandated negotiations with any one or more selected tenderer(s) in accordance with Eskom's approved procurement policies and procedures.
- Disclaimer** 1.8 While Eskom takes all reasonable measures to ensure that the information in the tender

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regarding accuracy of tender documents

documents is correct and complete, Eskom does not make any representations or warranties, express or implied, as to the accuracy or completeness of such information.

Tenderer's Obligations

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

Eligibility

2.1 Submit a tender only if the tenderer (whether a single company or an incorporated or unincorporated joint venture or consortium) complies with the eligibility criteria stated in the Tender Data and the tenderer, or any of its principals, is not under any restriction to do business with Eskom or State-Owned Companies. Tenderers that Eskom finds to be ineligible will be disqualified.

Tender closing time

2.2 Ensure that Eskom has received the complete original tender and one (1) complete hard copy of the original tender at the *address* and in the tender box or *facsimile number or e-mail address* specified in the Tender Data by no later than the *closing date and time for tender submission*. Proof of posting or of courier delivery does not equate to proof of delivery. Eskom will not accept a tender submitted by facsimile or e-mail unless stated otherwise in the Tender Data.

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

2.4 Accept that if Eskom extends the deadline for tender submission for any reason, the requirements of these Standard Conditions of Tender apply equally to the extended deadline. In the case of an open tender, tenderers are required to visit the *Eskom Tender Bulletin* and NT e-Tender Portal regularly to ensure they keep abreast of any changes to the *closing date and time for submission* and of amendments and addenda to the Invitation to tender,

2.5 Any tenders that have not been placed in the tender box or have not been received by Eskom in the manner stipulated in the Tender Data at the *closing date and time for tender submission* will be considered to have been received late. No late tender will be accepted. Accept that Eskom will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed or the *address* and *references* are marked incorrectly.

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

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

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

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Cost of tendering 2.6 Accept that Eskom will not compensate the tenderer for any costs incurred in the preparation and submission of a tender, including the costs of any testing necessary to demonstrate that aspects of the tender satisfy the evaluation criteria, or the negotiation of any contract.

Submitting a tender 2.7 Check the *enquiry documents* on receipt and notify the Eskom *representative* of any discrepancy or omitted documents. The Acknowledgement Form must be completed and submitted with the tender and must clearly state if the tender is for the whole or part of the works, services or supply identified in the specification and/or works information by Eskom

2.8 Return the *mandatory tender returnables* to Eskom for evaluation purposes by tender submission deadline, and *tender returnables* that are required for contract award before contract award. All documents returned (including all forms data and schedules) must, without exception, have been completed. Where any certificate, document, proof of registration or the like is required to be submitted as a *mandatory* or *other tender returnable*, the tenderer must ensure that Eskom is placed in possession of a valid, current and, where stipulated, original document for the entire duration of the *tender validity* period.

2.9 Submit a complete original tender in paper form, plus one (1) complete copy of the original tender, also in paper form, at tender submission deadline. If an original tender is not submitted at all, or a copy of the original tender is not submitted at all, the tenderer will be disqualified.

Eskom may also request that an additional copy of the original tender is submitted in an electronic format.

Tenders must be submitted in English. Tenders must be completed in ink and may not be completed in pencil.

2.10 Sign the original tender. Eskom will hold the signatory named as the person duly authorised to sign the tender on behalf of the tenderer liable for the tender.

2.11 Submit the original tender and the copy in paper format as separate packages/envelopes marking them as "ORIGINAL" and "COPY". If an additional electronic copy was required to be submitted, it must be packaged separately and marked "ELECTRONIC COPY".

Each separate package shall, on its outside, state the relevant Eskom address given as the address at which tenders must be submitted, the Invitation to Tender number stated in the Tender Data, the tenderer's name, physical address for tenderer, email address and contact telephone number for the duly authorized representative who signed the tender on tenderer's behalf.

Seal the separate packages (containing the original tender and copies) together in an outer package that states on the outside that it is "Confidential" and further states the relevant Eskom address given as the address at which tenders must be submitted, the Invitation to Tender number stated in the Tender Data, the tenderer's name, physical address for tenderer, email address and contact telephone number for the duly authorized representative who signed the tender on tenderer's behalf.

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- Tender validity** 2.12 Hold the tender(s) valid for acceptance by Eskom at any time within the *validity period* after the *closing date and time for tender submission*. Extend the *validity period* for a specified additional period if Eskom requests the tenderer to do so. A tenderer that agrees to extend the validity of its tender will not be required or permitted to modify its tender. A tenderer that does not agree to extend the validity of its tender will be excluded from further consideration. Tenderers will be requested to extend the validity of their tenders until a contract(s) have been concluded with one or more tenderers. A request that a tenderer extend the validity of its tender is not a representation that the tender is an acceptable tender or that Eskom will seek to negotiate or conclude a contract with the tenderer. If the validity of tenders expires before contracts have been concluded, the procurement process is deemed to have concluded without an award.
- Confidentiality and copyright of documents** 2.13 Treat as confidential all matters that arise in connection with the procurement. Use and copy the documents provided by Eskom only for the purpose of preparing and submitting a tender in response to this Invitation to Tender.
- Standardised specifications and other publications** 2.14 Obtain and familiarize themselves with, if required for the purposes of submitting a tender, the latest revision of standardised specifications and/or other documents that have been incorporated by reference into the *enquiry documents* by reference.
- Site visit and / or clarification meeting** 2.15 Tenderers must attend a *site visit and/or clarification meeting* that is stipulated as being compulsory in order to familiarise themselves with the proposed work, services, supply, location or similar. Failure to attend a clarification meeting or site visit that is identified as compulsory will result in disqualification from participation.
- Details of the meeting(s) are stated in the Tender Data. Tenderers are entitled to ask questions for clarity in the course of a site visit or clarification meeting.
- Seek clarification** 2.16 While preparing their tenders and prior to submission, tenderers are entitled to seek clarification in respect of the *enquiry documents*. A request for clarification or query must be addressed, in writing, to the Eskom *Representative* identified in the *enquiry document*. No request or query may be addressed to any other Eskom official other than the Eskom *Representative*.
- Eskom will publish all requests for clarification and queries received (without divulging the tenderer's name), together with its responses, on the platform/s on which the tender was advertised.
- A request for clarification or query must allow Eskom a reasonable time to respond, and a reasonable time for tenderers to make consequential adjustments to their tenders before the *closing date and time for submission*.
- Insurance** 2.17 The extent (if any) of insurance provided by Eskom may not be for the full cover required in the *conditions of contract*. The tenderer is advised to seek qualified advice regarding insurance.
- Pricing the tender** 2.18 Include in the rates, prices, and the tendered total of the Prices all duties, taxes (including VAT), and other levies payable by the tenderer if successful. Such duties, taxes and levies are those applicable 14 (fourteen) days prior to the *closing date and time for tender submission*.

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- 2.19 Provide rates and Prices that are fixed for the duration of the contract and are not subject to contract price adjustment except as provided for in the *Enquiry*.
- 2.20 State the rates and Prices in South African Rand unless instructed otherwise in the Invitation to Tender. The selected *conditions of contract* may provide for part payment in other currencies. Submit Prices in Rands in accordance with the exchange rate and base date as stipulated in the Invitation to tender.
- Alterations to documents** 2.21 Not make any alterations or additions to the *tender documents*, other than for purposes of complying with instructions issued by the Eskom *Representative* or if necessary to correct errors made by the tenderer. All such alterations shall be initialed by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like.
- Alternative tenders** 2.22 Submit alternative tenders only if a main tender is also submitted, and only if the submission of alternative tenders is permitted by the *Enquiry*. Accept that an alternative tender may be based only on the *criteria* stated in the Tender Data.
- Clarification and correction of Prices after tender submission** 2.23 Provide clarification and documents as may be required by the Eskom *Representative* during the evaluation of tenders. Note that documents identified as mandatory tender returnables that are required to be submitted at the *closing date and time for tender submission* will not be requested and may not be submitted after the *closing date and time*. A clarification that requires the tenderer to provide a breakdown of its tendered rates or Prices may not result in changes to prices or the substance of the submitted tender, except as required by the Eskom *Representative* to confirm the *correction of arithmetical errors* discovered during evaluation. The total of the Prices as corrected by Eskom with the concurrence of the tenderer shall be binding upon the tenderer.
- Sign Form of Agreement** 2.24 Undertake to check the final draft of the contract provided by the Eskom *Representative* and to sign the contract documents.
- Proof of authority to act as agent** 2.25 Where an agent submits a tender on behalf of a principal, an authenticated copy of the authority to act as an agent of the tenderer must be submitted as a *tender returnable*.
- Compliance with relevant legislation (NT instructions, CIBD, PPPFA etc)** 2.26 Comply with relevant legislation and regulatory instruments such as Instruction Notes issued by National Treasury, CIBD Regulations for construction works; materials designated for local content and/or production by the dtic, PPPFA Regulations; Amended B-BBEE Codes, COIDA; OHS Act; Eskom's requirements for Safety, Health, Environment and Quality (SHEQ) and any other applicable legislation or regulatory instruments indicated in the Invitation to Tender.
- Proof of Safety, Health, Environment and Quality requirements** 2.27 Tenderers are required to provide proof to the satisfaction of Eskom that safety, health, environmental and quality (SHEQ) systems, policies and capabilities are in place at the deadline stipulated in the *Enquiry*. All costs and personnel associated with SHEQ must be reflected in the tender.
- CIBD** 2.28 Where the Tender Data has stipulated CIBD grading/s as a qualification criterion,

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tenderers are required to be registered with the Construction Industry Development Board at the *closing date and time for submission of tenders* or to be capable of being so registered within twenty-one (21) working days from the *closing date and time for submission of tenders*.

Contract Skills Development Goal (CSDG) 2.29 If the tenderer is awarded a contract, it, as Contractor, shall achieve in the performance of the contract the Contract Skills Development Goals (CSDG) established in the CIDB Standard for Developing Skills through Infrastructure Contract (published in GN 1779, *Government Gazette* No. 48481 of 28 April 2023) CSDG is applicable to a contract or an order issued in terms of a framework agreement that has a duration of 12 months or more, and to:

- a) a contract of R5 million or more, in the case of a professional service or service contract or an order issued in terms of such a contract; or
- b) a cidb grading designation of grade 7 or higher, in case of an engineering and construction works, or design and build contract or an order issued in terms of such a contract.

Contract Participation Goals (CPG) 2.30 The Contractor shall achieve in the performance of the contract the Contract Participation Goals (CPG) relating to the engagement of targeted enterprises as established in the CIDB standard for indirect targeting for enterprise development through Construction works contracts (published in *Government Gazette* No. 36190 of 25 February 2013).

The requirements of a contract participation goal relating to the engagement of targeted enterprises as established in the aforesaid standard applies to:

- (a) construction works contracts in the General Building (GB) and to Civil Engineering (CE) classes of construction works;
- (b) construction works contracts of an estimated minimum project duration of 6 months; and
- (c) construction works contracts in which at least 25% of the main contract could reasonably be expected to be subcontracted out in one or more of the following CIDB classes of construction works:

- i) Civil Engineering (CE)
- ii) Electrical Engineering Work (EB)
- iii) General Building Works (GB)
- iv) Mechanical Engineering (ME)

2.31 Eskom may disqualify a tender if it is found that the tenderer has misrepresented or falsified any information, certificate, affidavit or document. Eskom will report any fraud in relation to a tenderer's B-BBEE certificate/affidavit, or evidence of 'fronting' as defined in the B-BBEE Act 53 of 2003, as amended, to the B-BBEE Commission.

Cataloguing 2.32 The successful tenderer may be required to provide the cataloguing information per item after contract award, and in that instance, will need will to ensure that all materials delivered to Eskom are labelled in line with Eskom's labelling specifications as may be stipulated. Where cataloguing is a requirement, the Pricing Schedule must also include a line item for cataloguing, which tenderers are required to quote for. Eskom will pay for the cataloguing.

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Provision of Security for Performance	2.33	If the provision of security for performance in the form of a performance bond or a demand guarantee is a requirement, the tenderer must select a minimum of two (2) financial institutions that it is likely to approach from the list provided of Eskom-approved financial institutions.
Eskom's Obligations	3.	Eskom shall comply with the following obligations: -
Respond to requests for clarification	3.1	Respond to a request for clarification that Eskom receives before the <i>closing date for clarification or queries</i> . Eskom's responses will be published to all tenderers in the same manner the <i>enquiry documents</i> were issued. It is the tenderers' responsibility to check the Eskom Tender Bulletin and NT e-Tender Portal regularly for updated responses to clarifications.
Issue Addenda	3.2	<p>If necessary and prior to the <i>closing date and time for tender submission</i>, amend, amplify, or add to the <i>Enquiry documents</i> by way of Addenda published in the same media that the Enquiry was issued. It is the tenderers' responsibility to check the Eskom Tender Bulletin and NT e-Tender Portal regularly for Addenda.</p> <p>If a tenderer applies for an extension to the <i>closing date and time for tender submission</i> in order to take account of the Addenda in preparing its tender, Eskom may grant such an extension and shall publish the extension.</p>
Return late tenders	3.3	Return tenders received after the <i>closing date and time for tender submission</i> unopened to the tenderer. Tenders will be deemed to be late if they are not received in the designated tender box or at the designated facsimile machine at the date and time stipulated as the <i>closing date and time for tender submission</i>
Tender opening	3.4	Open the tenders in the presence of the tenderers' representatives who choose to attend the tenders' opening at the time and place stated in the Tender Data. Tenders for which a notice of withdrawal has been submitted will not be opened.
	3.5	At tender opening, Eskom will announce the names of the tenderers. Prices may be announced if so, stated in the Tender Data.
Non-disclosure	3.6	Unless required by law, Eskom will not disclose information relating to the evaluation and comparison of tenders and recommendations for the award of a contract to tenderers or to any other person not officially concerned with the tender process until after the award.
Grounds for rejection	3.7	Reject a tender if Eskom establishes that there is proof that the tenderer influenced the processing of tenders or the awarding of the contract, the existence of collusion and/or bid rigging, and/or that the tenderer has participated in any fraudulent activity in connection with the <i>enquiry</i> .
Clarification of a tender	3.8	Obtain clarification from a tenderer in respect of any matter in the tender that may not be clear or that could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified. A document that the Enquiry identifies as a mandatory tender returnable that is required to be submitted at the <i>closing date and time for tender submission</i> will not be requested, but Eskom may seek clarity on it.

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- Basic Compliance** 3.9 Determine before detailed evaluation, whether each tender received meets the *basic compliance* requirements stated in the Enquiry. A tenderer's failure to comply with the *basic compliance* requirements will render the tender non-responsive.
- A tenderer's failure to have submitted an original tender in paper form or to have submitted a copy of the original, also in paper form, will result in its disqualification from further evaluation. Tenderers will not be permitted to provide a copy of the original tender after the *closing date and time for tender submission*.
- Mandatory tender returnables** 3.10 A tender that does not contain the mandatory documents or information stipulated in the Invitation to Tender by the required deadlines will be disqualified from further evaluation.
- Designated materials and thresholds** 3.11 A tender's failure to meet an Enquiry's stipulated requirement for designated materials will result in its disqualification from further evaluation.
- Functionality requirements** 3.12 If functionality is a criterion, tenderers will be scored against the functionality criteria and will be required meet the minimum threshold stated in the Tender Data to proceed to further evaluation.
- Financial analysis (if applicable)** 3.13 Eskom has to determine the risk of doing business with a supplier who may pose a financial risk to Eskom in the execution of the contract. During evaluation of a tenderer's financial statements, Eskom will attempt to identify mitigating factors or requirements for the tenderer to meet, if such factors/requirements exist in the tender's context. However, should suitable mitigating factors not exist in the tender's context or should mitigating factors exist but be insufficient or if the risk is considered to be too high or should the tenderer not agree with the mitigating factors, the tenderer will not be considered for award.
- Evaluation of Price** 3.14 Evaluate the Price in accordance with the criteria/requirements in the Tender Data. Factors such as CPA, FOREX, commodity increases, discounts, NPV and forecasted rates of invoicing are taken into account when determining the tendered Price.
- Arithmetical errors** 3.15 Check responsive tenders for arithmetical errors. If there is a discrepancy between an amount in figures and the amount in words, the amount in words shall prevail.
- Check the highest-ranked tender for the following errors or omissions: -
- a) the misplacement of the decimal point in any unit rate; or
 - b) omissions in completing the pricing schedule or bill of quantities, or
 - c) arithmetical errors in line item totals that are the result of the incorrect multiplication of a unit rate and a quantity in a bill of quantities or schedule of prices; or
 - d) arithmetical errors that are the result of the incorrect addition of the prices.
- Eskom will notify the tenderer of all arithmetical errors or omissions it has identified and will request the tenderer to either confirm the prices as tendered or to accept the corrected prices.
- Where the tenderer elects to confirm the prices as tendered; Eskom will correct the error as follows: -
- a) If a bill of quantities or pricing schedule applies and there is an error in the line-item total that is the result of an error in multiplying the unit rate and the quantity, the line

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item total shall prevail, and the rate shall be corrected.

b) Where there is a misplacement of the decimal point in the unit rate, the line-item total as quoted shall prevail, and the unit rate shall be corrected.

c) Where there is an error in the total of the prices that is the result either of other corrections required by the checking process or in the tenderer's addition of prices, the total of the prices shall prevail, and the tenderer shall be asked to revise the selected item prices (and their rates if a bill of quantities applies) to result in the tendered total of the prices.

Eskom will reject the tender if the tenderer does not correct and/or does not accept the correction of errors as required above.

Evaluation of Specific Goals	3.16	Score the Specific Goals with reference to the supporting documentation in the tender. If a tenderer fails to meet Specific Goals and/or to submit the required proof/supporting documentation by <i>closing date and time of tender submission</i> , the tenderer will not be disqualified if otherwise evaluated as acceptable in all other criteria; however, the tenderer will score zero points for Specific Goals within the 90/10 or 80/20 allocation of points.
Ranking of tenders	3.17	Eskom will add the score for Pricing and Specific Goals together and rank the tenderers from the highest to the lowest.
Objective criteria	3.18	A contract may be awarded to a tenderer that did not score the highest points only in accordance with Section 2(1) (f) of the Preferential Procurement Policy Framework Act, 2000. If Eskom intends to apply Objective Criteria envisaged in section 2(1)(f), Eskom must stipulate the Objective Criteria in the Enquiry. Functionality and any element of the B-BBEE scorecard may not be used as Objective Criteria.
Reverse e-Auction	3.19	Reverse e-auction is an electronic system that utilises the 90/10 and 80/20 Price and Preference point systems, and which is intended to achieve competitive pricing. Eskom may utilise reverse e-auction in certain Enquiries. Where reverse e-auction will be utilised, this will be indicated in the Enquiry and the reverse e-auction supporting documents will be issued in the Enquiry. Tenderers will be required to submit a complete tender that does not contain Prices. If a tenderer has included prices in its tender, the prices will not be considered.
Acceptance of tender	3.20	Notify Eskom's acceptance to the successful tenderer before the expiry of the tender validity period. For open tenders, publish notification of award on the platforms on which the Enquiry was issued/advertised.
Prepare contract documents	3.21	Revise the contract documents issued by Eskom in the Enquiry documents to take account of: <ul style="list-style-type: none"> • Addenda issued during the tender period; • inclusion of returnables stipulated in the Enquiry; • inclusion of changes agreed in contract negotiations; and • other revisions or documents agreed in contract negotiations.
Sign Form of Agreement	3.22	Arrange for authorised signatories of both parties to complete and sign the original and one copy of the Form of Agreement.

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