



ESKOM HOLDINGS LIMITED'S

STANDARD

CONDITIONS OF TENDER

April 2008

1 General

- Actions** 1 Eskom Holdings Limited (“Eskom”), the Eskom Representative and each *tenderer* submitting a tender shall act timeously as stated in these Conditions of Tender and in a manner which is fair, equitable, transparent, competitive and cost-effective.
- Interpretation** 2 Terms shown in *italics* vary for each tender. The details of each term for this tender are identified in the Tender Data. Terms shown in capital initials are defined terms in the applicable *conditions of contract*.
- 3 Any additional or amended requirements in the Tender Data and additional requirements given in the Schedules in the *tender returnables* are deemed to be part of these Conditions of Tender.
- 4 The Conditions of Tender and the Tender Data shall not form part of any contract arising from this Invitation to Tender.
- Communication** 5 Each communication between Eskom and a *tenderer* shall be to or from the Eskom *Representative* only, in writing, and in a form that can be read, copied and recorded. For this purpose, ‘in writing’ means hand-written, type-written, printed or electronically made, and resulting in a permanent record. Communication shall be in the English language. Eskom takes no responsibility for non-receipt of communications from or by a *tenderer*.
- Eskom's rights to accept or reject any tender** 6 Eskom may accept or reject any variation, deviation, tender, or alternative tender, and may cancel the tender process and reject all tenders at any time prior to the formation of a contract. Eskom or the Eskom *Representative* will not accept or incur any liability to a *tenderer* for such cancellation and rejection, but will give written reasons for the action upon written request to do so. Eskom reserves the right to accept the whole of any part of any tender.

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

2 Tenderer's obligations

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

- Eligibility** 1 Submit a tender only if the *tenderer* complies with the *criteria* stated in the Tender Data and the *tenderer*, or any of his principals, is not under any restriction to do business with Eskom.

Cost of tendering	2	Accept that Eskom will not compensate the <i>tenderer</i> for any costs incurred in the preparation and submission of a tender, or the negotiation of any contract, including the costs of any testing necessary to demonstrate that aspects of the tender satisfy the evaluation criteria.
Check documents	3	Check the <i>tender documents</i> on receipt, including pages within them, and notify the Eskom <i>Representative</i> of any discrepancy or omissions using the enclosed fax-back form.
Confidentiality and copyright of documents	4	Treat as confidential all matters arising in connection with the tender. Use and copy the documents provided by Eskom only for the purpose of preparing and submitting a tender in response to this invitation.
Standardised specifications and other publications	5	Obtain, as necessary for submitting a tender, copies of the latest revision of standardised specifications and other publications, which are not attached but which are incorporated into the <i>tender documents</i> by reference.
Acknowledge receipt	6	Complete the Receipt of Invitation to Tender and submit the tender fax-back form, which is attached to the Letter of Invitation, and return it within 5 (five) days of receipt of the Invitation to Tender.
	7	Acknowledge receipt of Addenda to the <i>tender documents</i> , which the Eskom <i>Representative</i> may issue, and if necessary apply for an extension to the <i>deadline for tender submission</i> , in order to take the Addenda into account.
Site visit and / or clarification meeting	8	Attend a site visit and/or clarification meeting at which <i>tenderers</i> may familiarise themselves with the proposed work, services or supply, location, etc. and raise questions. Details of the meeting(s) are stated in the Tender Data.
Seek clarification	9	Request clarification of the <i>tender documents</i> , if necessary, by notifying the Eskom <i>Representative</i> earlier than the <i>closing time for clarification of queries</i> .
Insurance	10	Be informed that the extent (if any) of insurance provided by Eskom may not be for the full cover required in terms of the relevant category listed in Section 8 of the <i>conditions of contract</i> . The <i>tenderer</i> is advised to seek qualified advice regarding insurance.
Pricing the tender	11	Include in the rates, prices, and the tendered total of the Prices (if any) all duties, taxes (except VAT), and other levies payable by the successful <i>tenderer</i> . Such duties, taxes and levies are those applicable 14 (fourteen) days prior to the <i>deadline for tender submission</i> .
	12	Show Value-Added Tax (VAT) payable by Eskom separately as an addition to the tendered total of the Prices.
	13	Provide rates and Prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the <i>conditions of contract</i> .
	14	State the rates and Prices in South African Rand unless instructed otherwise as an additional condition in the Tender Data. The selected <i>conditions of contract</i> may provide for part payment in other currencies.
Alterations to documents	15	Not make any alterations or additions to the <i>tender documents</i> , other than for purposes of complying with instructions issued by the Eskom <i>Representative</i> or if necessary to correct errors made by the <i>tenderer</i> . All such alterations shall be initialled by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like.
Alternative tenders	16	Submit alternative tenders strictly in accordance with all the requirements of the <i>tender documents</i> , only if a main tender is also submitted. The alternative

tender is submitted with the main tender together with a schedule that compares the requirements of the *tender documents* with the alternative requirements the *tenderer* proposes.

Submitting a tender

- 17 Accept that an alternative tender may be based only on the *criteria* stated in the Tender Data and as acceptable to Eskom.
- 18 Submit a tender for providing the whole of the works, services or supply identified in the Contract Data unless stated otherwise as an additional condition in the Tender Data.
- 19 Return the *tender returnables* to Eskom, completing without exception all the forms, data and schedules included therein.
- 20 Submit the tender as an original plus the number of copies stated in the Tender Data and provide an English translation for documentation submitted in a language other than English. Tenders may not be written in pencil and must be completed in ink.
- 21 Sign the original and all copies of the tender where indicated. Eskom will hold the signatory duly authorised and liable on behalf of the *tenderer*.
- 22 Seal the original and each copy of the tender as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state the Eskom address on the outside, the Invitation to Tender number stated in the Tender Data, as well as the *tenderer's* name and contact address.
- 23 Seal original and copies together in an outer package that states on the outside, only the Eskom address and Invitation to Tender number as stated in the Tender Data. The outer package must be marked "CONFIDENTIAL".
- 24 Where a two-envelope system is required in terms of the Tender Data, place and seal the returnable documents listed in the Tender Data in an envelope marked "Financial Proposal" and place the remaining returnable documents in an envelope marked "Technical Proposal". Each envelope shall state Eskom's address on the outside, and the identification details stated in the Tender Data, as well as the *tenderer's* name and contact details. The *tenderer* must ensure that both parts of the tender are delivered as a single package.
- 25 Accept that Eskom will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed and marked as stated.

Note:

Eskom prefers not to receive tenders by post, and takes no responsibility for delays in the postal system or in transit within or between Eskom offices.

Where tenders are sent by fax, Eskom takes no responsibility for difficulties in transmission caused by line or equipment faults.

Where tenders are sent via courier, Eskom takes no responsibility for tenders delivered to a site other than the tender office.

Eskom employees are not permitted to deposit a tender into the Eskom tender box on behalf of a *tenderer*, except those lodged by post or courier.

Closing time

- 26 Ensure that Eskom has received the tender at the address and in the tender box or fax specified in the Tender Data by no later than the *deadline for tender submission*. Proof of posting will not be taken by Eskom as proof of delivery. Eskom will not accept a tender submitted telephonically, by e-mail or by telegraph unless stated otherwise in the Tender Data.
- 27 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.

28 Any tenders not in the tender box at the closing time will be considered late.

A fax that is being received at the closing time will be accepted as on time. All faxes not received or in the process of being received at the closing time will be considered late. The time print on both the sending and receiving fax machines will be disregarded, as the Telkom time signal determines the official time.

Accept that if Eskom extends the *deadline for tender submission* for any reason, the requirements of these Conditions of Tender apply equally to the extended deadline.

Tender validity	29	Hold the tender(s) valid for acceptance by Eskom at any time within the <i>validity period</i> after the <i>deadline for tender submission</i> .
	30	Extend the <i>validity period</i> for a specified additional period if Eskom requests the <i>tenderer</i> to extend it. A <i>tenderer</i> agreeing to the request will not be required or permitted to modify a tender, except to the extent Eskom may allow for the effects of inflation over the additional period.
Clarification of tender after submission	31	Provide, on request from the Eskom <i>Representative</i> during the evaluation of tenders, any other material that has a bearing on the tender, the <i>tenderer's</i> commercial position (including notarised joint venture agreements), preferencing arrangements or samples of materials, considered necessary by Eskom for the purpose of a full and fair risk assessment. This may include providing a breakdown of rates or Prices. No change in the total of the Prices or substance of the tender is sought, offered, or permitted except as required by the Eskom <i>Representative</i> to confirm the correction of arithmetical errors discovered in the evaluation of tenders. The total of the Prices stated by the <i>tenderer</i> as corrected by the Eskom <i>Representative</i> with the concurrence of the <i>tenderer</i> , shall be binding upon the <i>tenderer</i>
Submit bonds, policies etc.	32	If instructed by the Eskom <i>Representative</i> (before the formation of a contract), submit for Eskom's acceptance, the bonds, guarantees, policies and certificates of insurance required to be provided by the successful <i>tenderer</i> in terms of the <i>conditions of contract</i> .
Sign Form of Agreement	33	Undertake to check the final draft of the contract provided by the Eskom <i>Representative</i> , and sign the Form of Agreement all within the time required by these Conditions of Tender.
Proof of authority to act as agent	34	Where an agent on behalf of a principal submits a tender, an authenticated copy of the authority to act as an agent must be submitted with the tender.
Fulfil BEE, ASGISA & CSDP requirements	35	Comply with Eskom's requirements regarding Black Economic Empowerment (BEE), the Accelerated Shared Growth Initiative – South Africa (ASGI-SA) and the Competitive Supplier Development Programme (CSDP), as set out in the Tender Data.

3 Eskom's undertakings

Eskom and the Eskom *Representative*, shall:

Respond to clarification	1	Respond to a request for clarification received earlier than the <i>closing time for clarification of queries</i> . The response is notified to all <i>tenderers</i> .
Issue Addenda	2	If necessary, issue Addenda that may amend, amplify, or add to the <i>tender documents</i> , to each <i>tenderer</i> . If a <i>tenderer</i> applies for an extension to the

deadline for tender submission, in order to take Addenda into account in preparing a tender, Eskom may grant such an extension and the Eskom Representative shall notify the extension to all *tenderers*.

Return late tenders	3	Return tenders received after the <i>deadline for tender submission</i> unopened to the <i>tenderer</i> submitting a late tender. Tenders will be deemed late if they are not received at the designated fax or in the designated tender box at the date and time stipulated as the <i>deadline for tender submission</i> .
Tender opening	4	Open the tenders in the presence of the <i>tenderers'</i> representatives who choose to attend at the time and place stated in the Tender Data. Tenders for which an acceptable notice of withdrawal has been submitted will not be opened.
	5	Announce at the opening the name of each <i>tenderer</i> whose tender is opened. Tendered Prices will only be read out for the main tender and only if specifically provided for in the <i>tender documents</i> .
Two-envelope system	6	Where stated in the Tender Data that a two-envelope system is to be followed, open only the technical proposals in the presence of <i>tenderer's</i> representatives and announce the name of each <i>tenderer</i> .
	7	Evaluate the quality of the technical proposals and advise <i>tenderers</i> on who remains in contention for the award of the contract. Return unopened financial proposals to <i>tenderers</i> whose technical proposals failed to meet the minimum criteria.
Non-disclosure	8	Unless required to do so by law, not disclose to <i>tenderers</i> , or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tenders and recommendations for the award of a contract, until after the award of the contract to the successful <i>tenderer</i> .
Grounds for rejection	9	Consider rejecting a tender if there is any effort by a <i>tenderer</i> to influence the processing of tenders or contract award.
Disqualification	10	Instantly disqualify a <i>tenderer</i> (and his tender) if it is established that the <i>tenderer</i> offered an inducement to any person with a view to influencing the placing of a contract arising from this Invitation to Tender.
Test for responsiveness	11	Determine before detailed evaluation, whether each tender properly received <ul style="list-style-type: none"> • meets the requirements of these Conditions of Tender, • has been properly signed, and • is responsive to the requirements of the <i>tender documents</i>.
	12	Judge a <i>responsive tender</i> as one which conforms to all the terms, conditions, and specifications of the <i>tender documents</i> without material deviation or qualification. A material deviation or qualification is one which, in Eskom's opinion would <ul style="list-style-type: none"> • detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Contract Data, • change Eskom's or the <i>tenderer's</i> risks and responsibilities under the contract, or • affect the competitive position of other <i>tenderers</i> presenting responsive tenders, if it were to be rectified.
Non-responsive tenders	13	Reject a non-responsive tender, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.
Arithmetical errors	14	Check responsive tenders for arithmetical errors, correcting them as follows:

		<ul style="list-style-type: none"> • Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern. • If a bill of quantities applies and there is a discrepancy between the rate and the line item total, resulting from multiplying the rate by the quantity, the rate as quoted shall govern. Where there is an obviously gross misplacement of the decimal point in the rate, the line item total as quoted shall govern, and the rate will be corrected. • Where there is an error in the total of the Prices, either as a result of other corrections required by this checking process or in the <i>tenderer's</i> addition of prices, the total of the Prices, if any, will be corrected. • The corrected price will be communicated to the <i>tenderer</i>. The <i>tenderer</i> may withdraw the tender, but may not change the tendered price.
	15	Reject a tender if the <i>tenderer</i> does not accept the corrected total of the Prices (if any).
Evaluating the tender	16	Evaluate responsive tenders in accordance with the <i>procedure and criteria</i> stated in the Tender Data. Unless required to do so by law, the evaluated tender price will be disclosed only to the relevant Eskom tender committee and will not be disclosed to <i>tenderers</i> or any other person until after the award of the contract to the successful <i>tenderer</i> .
Clarification of a tender	17	Obtain from a <i>tenderer</i> clarification of any matter in the tender which may not be clear or could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified.
Acceptance of tender	18	Notify Eskom's acceptance to the successful <i>tenderer</i> before the expiry of the <i>validity period</i> , or agreed additional period. Provided that the notice of acceptance does not contain any qualifying statements, it will constitute the formation of a contract between Eskom and the successful <i>tenderer</i> .
Notice to unsuccessful tenderers	19	After the successful <i>tenderer</i> has acknowledged Eskom's notice of acceptance, notify other <i>tenderers</i> in accordance with Eskom's current procedures that their tenders have not been accepted.
Prepare contract documents	20	Revise the contract documents issued by Eskom as part of the <i>tender documents</i> to take account of <ul style="list-style-type: none"> • Addenda issued during the tender period, • inclusion of some of the <i>tender returnables</i>, and • other revisions agreed between Eskom and the successful <i>tenderer</i>, before the issue of Eskom 's notice of acceptance (of the tender). • The schedule of deviations attached to the Form of Agreement, if any.
Issue final contract	21	Issue the final contract documents to the successful <i>tenderer</i> for acceptance within 1 (one) week of the date of Eskom's notice of acceptance.
Sign Form of Agreement	22	Arrange for authorised signatories of both parties to complete and sign the original and one copy of the Form of Agreement within 2 (two) weeks of the date of Eskom's notice of acceptance of the tender. If either party requires the signatories to initial every page of the contract documents, the signatories for the other party comply with the request.
Complete Adjudicator's Contract	23	Unless alternative arrangements have been agreed, arrange for both parties to complete and sign the Form of Agreement and Contract Data for the NEC Adjudicator's Contract with the selected adjudicator.
Provide copies of the contracts	24	Provide to the successful <i>tenderer</i> the number of copies stated in the Tender Data of the signed copy of the contracts within 3 (three) weeks of the date of Eskom 's acceptance of the tender.