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**SUBMISSION BY THE CHAIRMAN OF THE BOARD OF ESKOM  
TO THE ZONDO COMMISSION OF INQUIRY**

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I, the undersigned,

**JABULANE ALBERT MABUZA**

do hereby make oath and say that:

1. I am the Chairman of the Board of Eskom Holdings SOC Limited ("Eskom"). Eskom has been requested to answer certain questions posed by the State Capture Commission of Inquiry ("the **Commission**"). As the Chairman of the Board of Directors of Eskom ("the **new Board**") I have been asked by the new Board to make this Submission on behalf of the new Board.
2. In providing a response to the Commission Eskom has placed its personnel and resources fully at the disposal of the Commission and in this regard the Commission has interviewed various personnel from Eskom and has received statements from these personnel. The Commission has also informally requested and received a substantial volume of documents from Eskom. Much of this is documentation that has also been provided to the various other investigations and enquiries mentioned below. Some of the requested documentation has been attached to the statements and have already been given to the Commission by individuals interviewed by the Commission. An index of additional documents submitted to

the Commission is attached as **Annexure B**. In addition, Eskom is providing a flash disk with information to the Commission that is relevant to the matters specifically addressed in this Submission and is listed in **Annexure C**.

3. This Submission focuses on informing the Commission on the steps that the new Board has taken since its appointment. In so far as historic matters are concerned these are generally not within my own personal knowledge and experience or that of other members of the new Board.
4. This Submission provides an overarching framework and high-level summary of the matters which the Board has been asked to consider, it references the statements submitted by individuals (current or previous Eskom personnel) in response to the Commission's questions. These statements, however, by their very nature reflect the personal perspective of the individuals in question and are not Eskom's position or formal response to the Commission's questions and are not incorporated into this Submission itself.

## **I. BACKGROUND AND INTRODUCTION**

5. On 2 November 2016, the Office of the Public Protector of the Republic of South Africa released a *"Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's business"*, being the **"The State of Capture Report"**.



6. Among the recommendations made in The State of Capture Report was that a commission of inquiry headed by a Judge nominated by the Chief Justice of the Republic of South Africa should be established by the President to investigate matters raised in The State of Capture Report pertaining to malfeasance and maladministration in state owned companies.
7. Eskom is listed as a major public entity in terms of Schedule 2 of the Public Finance Management Act No.1 of 1999 ("PFMA"). The main business and objective of Eskom is to provide electricity and related services including the generation, transmission, distribution and retail thereof. Eskom is one of the state owned companies that are mentioned in The State of Capture Report.
8. Pursuant to the release of The State of Capture Report and after much public disquiet and scrutiny regarding The State of Capture Report, the President of the Republic of South Africa appointed a Judicial Commission of Inquiry Into State Capture, Corruption and Fraud In the Public Sector Including Organs of State in terms of section 84(2)(f) of the Constitution of the Republic of South Africa by way of Proclamation No.3 of 2018 published in the Government Gazette of 25 January 2018 (Government Gazette No. 41436).
9. The questions attached as **Annexure A** were posed to Eskom on 29 October 2018 (the **"Commissions Questions"**).

**II. CONTEXT FOR THIS SUBMISSION BY THE CHAIRMAN OF THE NEW BOARD ON BEHALF OF THE NEW BOARD**

10. The new Board was constituted on 19 January 2018, as set out in paragraph 15 below.
11. The members of the new Board face some difficulty in providing an "Eskom" response to the Commission's Questions as the majority of the persons involved in these issues are no





longer in the employ of Eskom. Furthermore, the Board members themselves do not have personal insight into the matters undertaken before their tenure.

12. There are a number of ongoing public investigations into the matters covered by the Commission's Questions. These include those conducted by Public Protector (in respect of The State of Capture Report), the National Treasury investigations as reflected in the Final Report: Forensic Investigation into Various Allegations at Transnet and Eskom in respect of Tender Number NT 022-2016 RFQ26-2017 commissioned by National Treasury and conducted by Fundudzi in November 2018 and the ongoing investigation of the Special Investigating Unit ("SIU"), the Parliamentary Report of the Portfolio Committee on Public Enterprises on the Inquiry into Governance, Procurement and the Financial Sustainability of Eskom, dated 28 November 2018, the Directorate for Priority Crime Investigation (the "Hawks") and the work undertaken by this Commission.

13. Eskom is cooperating with all relevant authorities regarding these ongoing investigations. The new Board needed to strike a balance between addressing the past problems at Eskom and moving forward to build a strong, solvent, motivated organization able to carry out its public mandate. The new Board has undertaken multiple "clean up" and consequence management processes related to past practices (described further below), these relate to a myriad of past governance failures and not all are related to matters within the Commission's mandate. In the context of all of the ongoing external enquiries and investigations the new Board did not consider it a prudent use of Eskom's limited resources to commence with multiple forensic investigations of the matters related to state capture in an instance where this may hamper the process, or lead to a duplication of efforts of the investigations already underway. The new Board has been advised that the SIU has requested that Eskom does not conduct further investigations into the matters relating to



state capture as this may interfere with and impede with the SIU's ongoing criminal investigation and may hamper official evidence collection efforts. As such, the new Board does not necessarily have specific insight into these matters beyond what is in the public domain and what has been specifically uncovered in the context of disciplinary processes and other internal audit recovery processes detailed further in this document.

14. The new Board has however undertaken a number of disciplinary processes and measures of reform in order to address the past unlawful practices and governance failures within the organization. Information on these is also provided with this Submission.

#### **Appointment of the New Eskom Board Members in January 2018**

15. In terms of the Eskom Conversion Act 13 of 2001 and the Companies Act 71 of 2008 ("the **Companies Act**"), Eskom is a public company and the sole shareholder of Eskom is the Government of the Republic of South Africa. In accordance with Eskom's Memorandum of Incorporation, the Government as the sole shareholder, acting through the Minister of Public Enterprises, has the exclusive power to appoint directors of Eskom pursuant to the provisions of section 66(4)(a)(i) of the Companies Act and section 63(2) of the PFMA.
16. At the time of the Board's appointment to Eskom on 19 January 2018 the company was undoubtedly facing one of the most difficult times in the organisation's 95-year history, experiencing a tumultuous year, characterised by weak financial ratios, coupled with leadership and governance issues. A number of the challenges were widely stated to have stemmed mainly from the qualified audit incurred in the year ended 31 March 2017, which were due to:



- a. incompleteness of the irregular expenditure information in terms of PFMA requirements;
- b. the many allegations of financial mismanagement and corruption against executives and senior management; and
- c. a myriad of other issues related to lapses in governance processes and other internal controls.

17. These challenges, amongst others, were widely stated as the biggest contributors to the deterioration of confidence in Eskom by financial markets which constrained access to funding, leading to a liquidity crunch and consequently being a contributory factor towards serious concerns regarding the long-term financial viability and the going-concern status of the group. Eskom needed to raise loans of R20 billion in the period 1 February 2018 to 31 March 2018 after having had no access to funding since July 2017.

18. It was against this backdrop - in the wake of various ratings downgrades, facing a potential JSE delisting of its bonds and funders calling for change in governance structure and leadership that the then Deputy President of the Republic of South Africa, Mr Cyril Ramaphosa announced the appointment of a new Board and Interim CEO on 20 January 2018 with a clear mandate to stabilise Eskom and to deal decisively with governance lapses.

19. The non-executive directors and members of the Board of Eskom in January 2018 were as follows including their dates of appointment:

Name of Director	Date of Appointment	Resignation Date
Jabulane Albert Mabuza	19 January 2018	n/a
*Jacky Molisane	19 January 2018	18 September 2018



Dr Pulane Molokwane	23 June 2017	n/a
Sifiso Dabengwa	19 January 2018	n/a
Busisiwe Mavuso	19 January 2018	n/a
Nelisiwe Magubane	19 January 2018	n/a
Sindisiwe Mabaso-Koyana	19 January 2018	n/a
Dr Rod Crompton	19 January 2018	n/a
*Mark Lamberti	19 January 2018	6 April 2018
*George Johannes Sebulela	19 January 2018	19 October 2018
Professor Malegapuru Makgoba	8 December 2017	n/a
Professor Tshepo Mongalo	8 December 2017	n/a
Dr Banothile Makhubela	23 June 2017	n/a

**Note:** Directors whose names bear asterisks have since resigned for various reasons, which will be shared with the Commission herein below.

20. Mr Mark Lamberti resigned on account of a High Court judgment which suggested that he discriminated and ill-treated a black woman and overlooked her for appointment when she was suitably qualified and had the requisite experience for the job.

21. Ms Jacky Molisane resigned owing to a decision taken by the Minister of Public Enterprises not to have any of his staff as Board members of state owned companies.

22. Mr George Johannes Sebulela resigned as a result of an undeclared conflict of interest related to his company, Sebtech (Pty) Ltd.

### **What the New Board Found at Eskom**

23. Immediately after its appointment in January 2018 the Board was confronted with the following challenges at Eskom:

- liquidity crisis with no access to funding;
- unsatisfactory sales revenue generated by Eskom;
- low investor confidence as evidenced by the credit rating downgrades;
- increasing municipal and Soweto debt;
- deteriorating EBITDA margins;
- ballooning capital expenditure;
- high operating expenditure;
- high debt servicing costs;
- high costs of maintenance;
- a myriad of allegations of mismanagement and corruption against Senior officials;
- breaches of the PFMA and lapses of governance systems and controls;
- delayed financial results on the back of going concern challenges; and
- low staff morale.

24. Eskom is a major driver of the South African economy and its direct impact on the South African GDP as a result of its operational and capital expenditure is approximately 3%. Eskom is a key driver of the development of new industries in South Africa, both through its localization programme and by providing electricity for the establishment of new businesses. It is also one of the largest employers, employing over 48 000 people directly, and one of the largest buyers of goods and services in the country.



25. The extent of the challenges was almost insurmountable. However, the Board decided to prioritise the following critical and inter-related issues seen as underpinning stabilisation:

- a. addressing the many governance-related matters as a matter of urgency – this was also a key condition to solve our lack of access to funding;
- b. finding solutions to the liquidity issues in the face of credit downgrades and zero funding appetite by markets; and
- c. releasing the then delayed interim results and in the process addressing the “going concern” issues which were at risk of triggering defaults on existing funding facilities.

26. To pass the “going concern” test, Eskom needed to be liquid and solvent. To meet its financial obligations, it needed to be capitalized. To obtain external capital, the providers of capital needed to gain comfort, not only about Government support and the new Board appointments, but in regard to action that was also going to be taken to improve the corporate controls and more importantly to deal decisively with the many allegations of malfeasance and corruption against a number of its executives and management.

27. In line with the above and to execute on its mandate, the Board looked to expedite investigations into the said allegations and to take corrective action within the legal framework. Immediately disciplinary processes were instituted against certain managers and are set out in the section below.

28. The Board also became aware that there were also various commercial transactions and disciplinary proceedings that were worrisome. The Commission has specifically asked Eskom for information regarding The New Age Media transaction and the Optimum Coal Holdings Limited (“Optimum”) and Tegeta Exploration and Resources (Pty) Limited (“Tegeta”) (Brakfontein Colliery) transactions. Others identified by the Board and referred to in this Submission include the McKinsey/Trillian transactions, dealings between Eskom



and Impulse International, Nkonki, the Huarong transaction. Others such as the SAP and T-Systems transactions previously raised in the public domain will be dealt with by Eskom at a future date. Although the Commission has not requested information on these at this stage, these are briefly discussed herein and can be canvassed in more detail if required by the Commission in future. There could well be other transactions of relevance and interest to the Commission and Eskom will provide all relevant information on such other transactions as requested by the Commission.

### III. CORPORATE GOVERNANCE PROTOCOLS AND PRACTICES FOLLOWED BY THE NEW BOARD

29. A set of the relevant Eskom Policies and Procedures referenced in this document is included in Annexure D of this Submission.

30. As is explained elsewhere the new Board's mandate is to stabilize Eskom. In its first year the new Board has undertaken this mandate through numerous interventions within the organization and taken forward this mandate across the various committees of the Board.

In this regard the following is a record of the meetings held by the Board and Board committees since January 2018.

BOARD	ARC Audit & Risk Committee	BTC Board Tender Committee	IFC Investment & Finance Committee	P&G People & Governance Committee	SES Social, Ethics & Sustainability Committee	STRATCOM Board Strategy Committee	TOTAL
19	11	9	7	8	3	4	61

**Probity checks required to be undertaken by the appointing authority**

31. In accordance with Eskom's Memorandum of Incorporation, the Shareholder appoints Board members. The appointment process as well as fit and proper testing of directors is conducted by the Department of Public Enterprises ("DPE") and guided by the:

- a. Protocol on Corporate Governance in the Public Sector and Board induction and orientation toolkit- issued by DPE.
- b. Handbook for the appointment of persons to Boards of SOE's and state controlled institutions- issued by the Department of Public Service and Administration.

**Probity checks required to be undertaken by Eskom**

32. Eskom is required by section 217 of the Constitution and section 51(1)(iii) of the PFMA to have an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. In order to ensure and manage full adherence to the legislative provisions above and the principles of the King IV Report, all potential conflicts of interests must be declared by suppliers and employees in the prescribed manner. Such declared interests must then be assessed to ensure that they do not prejudice the procurement process or negatively influence it in any manner. For this reason, probity reviews and other related reviews are performed to identify and report potential conflicts of interests and other risks throughout the Eskom procurement value chain.

33. At present, probity reviews are performed by the Assurance and Forensic Department of Eskom for all transactions valued at R500million and above. The Assurance and Forensic Department provides an assurance function in respect of compliance with legislation, policies and procedures, in accordance with Eskom's Code of Ethics 'The Way Policy'. The





probity reviews are performed to identify conflicts of interests between the supplier's directors and members, and officials of the Eskom governance and approval committee (board, board tender committee, Exco tender committee and divisional tender committee), cross functional team members (employees involved in the procurement transaction), commercial team members and all their respective spouses/partners. The probity also extends to any shareholder of the supplier who has a shareholding interest in excess of 20% (20% being the percentage that is considered reasonable to balance the number of shareholders reviewed and cost of the reviews).

34. Probity reviews are also performed for modifications (no modifications as to contract value are conducted but only for extension of time) for transactions entered into with Eskom subsidiaries or any state owned companies and any sole source. The Eskom group commercial department performs *ad hoc* probity reviews on commercial staff from time to time.

35. The Eskom Secretariat Management Procedure is attached as **Annexure E**.

#### **Declaration of Interests required by Board members**

36. The new Board members of Eskom are aware of the obligations imposed on them by the Companies Act in so far as declaration of personal financial interests and management of conflicts pertaining to those personal financial interests are concerned.

37. The new Board members of Eskom are also aware of the provisions of section 75(5) of the Companies Act which provides that if a director of a company, other than a company contemplated in subsection (2)(b) or (3), has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a related person has a personal financial interest in the matter, the director –



- (a) must disclose the interest and its general nature before the matter is considered at the meeting;
- (b) must disclose to the meeting any material information relating to the matter, and known to the director;
- (c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;
- (d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraphs (b) and (c);
- (e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);
- ;
- (f) must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the Board.

38. In addition to the provisions of the Companies Act dealing with personal financial interests, the new Board of Eskom is aware of the Conflict of Interest Policy and the Declaration of Interest Procedure of Eskom. The policy statement of the Conflict of Interest Policy (32-173) of Eskom, which is contained in paragraph 2.1, provides as follows:

## **“2. Policy Content**

### **2.1 Policy Statement**

*Eskom subscribes to ethical values and legal principles. This requires that Eskom, its directors, employees, customers and suppliers to act with integrity and create public confidence by conducting business in a fair, impartial and transparent manner. For this reason, Eskom makes every effort to ensure that conflicts of interest do not compromise or are not perceived to compromise its business decisions and actions.*

*Eskom is also committed to fair, objective and transparent business dealings, and for this reason care must be taken when accepting or offering any business courtesies. Business courtesies are used to build good relationships and are*

*offered as a kind gesture and to show courteousness or respect and may only be offered or accepted for these reasons.*

*The employee and director have the obligation to declare and manage conflict of interest. This process is critical to ensure that the objectivity and integrity of the employee or director are not compromised, that the employee or director acts in Eskom's best interest, and that Eskom avoids situations where it can be accused of improper or unfair conduct.*

*In support of its vision, values and statutory responsibilities, Eskom will take all steps within its reasonable control to manage conflict of interest throughout Eskom."*

39. Despite the clear and unambiguous provisions of the Conflict of Interest Policy of Eskom, the practice before January 2018 among Eskom employees, executives including erstwhile directors was the opposite. In terms of the Conflict of Interest Policy (and paragraph 2.6.2 of the Declaration of Interest Procedure), the monitoring of declarations submitted by the Board of Eskom rests with the Chairman of the Board, supported by the Company Secretary. The Conflict of Interest Policy clearly sets out the manner and nature of the declarations which are required to be made in respect of conflicts of interest, including that all conflicts of interests, directorships, related or inter-related persons must be disclosed and such conflicts must be managed appropriately and responsibly. Importantly, the employee or director may not participate in any decision relating to the matter in which there is a conflict.

**Declaration of Interests required of Board members prior to meetings:**

40. The *pro forma* agenda in respect of procurement transactions is sent to Assurance and Forensics and Governance to conduct a probity check and investigate for any conflict by a Board member.

41. In the event that there is a potential, perceived or actual conflict of interest, the Chairman of the Committee and the Group Company Secretary are advised. The Chairman then discusses the matter with the conflicted Board member. The treatment thereof is then in

terms of section 75 of the Companies Act. Should a conflict be identified, the Board member will not be provided with the information pertaining to that matter and will be required to recuse him/herself from the proceedings when the matter is discussed.

**Declaration of Interests required of Board members at meetings:**

42. The procedure for declaring conflicts of interest at meetings is set out in the Declaration of Interest Procedure. Directors of Eskom, including Executive Directors, have access to an electronic declaration of interest register through the Board website. In terms of this procedure, Directors are required to disclose a conflict of interest in respect of a matter to be considered at a meeting, before the matter is considered at the meeting, together with any material information related in respect of that matter. »
43. Board Members complete and sign a declaration of interest form before the commencement of every Board and Committee meeting. Further, the Board member is required to verify the information provided on the current Declaration of Interest form at every meeting. This is to ensure that the information at hand is current and that there are no conflicts, which may have arisen immediately prior to the meeting.
44. In addition to completing and signing the register, the Board members are required to formally state as part of the meeting proceedings if they have any conflict in relation to matters being discussed in the meeting as stated on the agenda or any items that may be agreed to be added to the agenda. In accordance with paragraph 3.1.2.2 of the Declaration of Interest Procedure, "Declarations of Interest" is a standing agenda item at all Eskom

<sup>1</sup> See paragraph 3.1.2 of the Declaration of Interest Procedure.

<sup>2</sup> see paragraph 3.1.1.1 of the Declaration of Interests Procedure.

<sup>3</sup> paragraphs 3.1.2.1.1 and 3.1.2.1.2 of the Declaration of Interests Procedure.

Board and Committee meetings to ensure that members have an opportunity to consider and declare any conflicts, as well as to discuss issues of ethics they might have at the start of each meeting. Any conflicts are recorded as part of the proceedings and in accordance with Eskom's policies and procedures and the applicable legislative and regulatory guidelines.

**Declaration of interests required of Board members after meetings:**

- 45. The register is reviewed by the designated Ethics Officer in the Office of the Company Secretary to establish whether there are any changes that members may have indicated on the register. If there are any changes, the electronic register is updated.
- 46. An electronic web based system is available to any of the Board members and can be accessed at any time to update and amend the information. This enables any member to access their own or other member's interest should the need arise. This is monitored by the designated Ethics Officer to ensure that records are up to date.

**Declaration of interests required by employees and related conflicts**

- 47. Whilst the policies and the law sought to deal with the declaration of personal financial interests, the Board discovered that it was a norm at Eskom for employees including executives to be directors and shareholders in entities who were also suppliers to Eskom without declaring these interests. Some executives would even receive directors' fees without disclosing the fees to Eskom.



48. Based on the Special Investigating Unit Report under Proclamation No.R2 of 2012 which was finalized in December 2017 but only released to Eskom on 4 October 2018 by the President of the Republic of South Africa through the Minister of Public Enterprises, some 3 475 (three thousand four hundred and seventy five) Eskom employees have faced disciplinary action for having failed to declare their personal financial interests over a number of years.

49. The new Board on 24 January 2018 passed a resolution prohibiting any Eskom employee from being a director and shareholder in entities that are suppliers to Eskom. The Eskom employees had to decide whether they wanted to be employees of Eskom or suppliers to Eskom, as they could not have it both ways. This decision culminated in numerous resignations by Eskom employees as directors from these supplier entities with some employees instead resigning from Eskom to pursue their business interests. As a result of this discovery, the new Board engaged the services of Bowman Gilfillan Inc. trading as Bowmans to assist with a review of the conflict of interests' policy to align it to international best practice. The revised conflict of interest policy is currently going through the internal governance structures of Eskom for approval.

50. In addition to the foregoing, the new Board took a decision that the Board members must not be involved in bidding for Eskom tenders and further that all Eskom employees, starting with the executives and senior management should be subjected to lifestyle audits. To this end, Edward Nathan Sonnenbergs Inc. trading as ENS Africa was appointed in July 2018 to conduct lifestyle audits of executives including senior management and Eskom awaits their final report before the end of March 2019. The interim report has revealed that some executives have thus far refused to comply with the instruction to submit themselves to a



lifestyle audit. Consequently, disciplinary proceedings are being brought against such employees.

#### IV. INITIAL DISCIPLINARY PROCESSES UNDERTAKEN BY THE NEW BOARD

51. When the Board took office in January 2018 there were Executives who had been identified in the public domain and in internal investigations undertaken previously within Eskom whose disciplinary processes had not been actively pursued by the previous Board.

52. The following Executives were facing serious allegations of misconduct, some believed to be linked to the controversial state capture related transactions and as such the process of finalizing their respective disciplinary processes was of critical importance:

- a. Matshela Koko (Former Acting Group Chief Executive and former Head of Generation)
- b. Edwin Mabelane (Former Chief Procurement Officer)
- c. Charles Kalima (Former Acting General Manager Sourcing)
- d. Anoj Singh (Former Chief Financial Officer)
- e. Prish Govender (Former Head of Group Capital)
- f. Abram Masango (Former Group Executive Group Capital)
- g. Suzanne Daniels (Former Company secretary and Head of Legal)

53. Except for Abram Masango and Suzanne Daniels all the other executives mentioned above resigned from Eskom in the face of disciplinary processes that were instituted. As a result it was only the initial charges against Mr Masango and charges against Suzanne Daniels





that were tested in an independent disciplinary process, these processes are discussed below.

54. Mr Maritz the former Acting Group Chief Executive was also placed in suspension and resigned shortly after the new Board took office and his disciplinary process is also discussed below.

55. The following table summarises the processes followed in relation to these executives facing charges in January 2018 – details on other executives who have faced disciplinary action since January 2018 are dealt with in different parts of this submission:

	<b>Individual</b>	<b>Hearing date</b>	<b>Status</b>
1.	<b>Mr MM Koko</b> Former Acting Group Chief Executive and former Head of Generation (Formal charges made against Mr Koko in 2018 related to various matters including failure to give an honest account to Parliament, disclosure of confidential information to a third party, McKinsey and Trillian and conflicts of interest. Additional charges brought in 2017 related to Impulse dealt with at discredited disciplinary hearing. Further charges related to Optimum and Tegeta have emerged since Mr Koko resigned and are under investigation by the authorities.)	Suspended 29 January 2018. Detailed charges and evidence bundle provided 7 February 2018 Disciplinary hearing scheduled for 16 and 17 February 2018 Mr Koko resigned with immediate effect half an hour into the disciplinary process.	<b>Completed</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Koko for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
2.	<b>Mr M Maritz</b> Former Acting Group Chief Executive, and former Chief Information Officer (Charges related to HEA/Huarong, McKinsey and Trillian)	Suspended 31 January 2018 Detailed charges provided 26 February 2018 Disciplinary Hearing Scheduled for 8 and 9 March 2018 Mr Maritz resigned with immediate effect 27 February 2017.	<b>Completed</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Maritz for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
3.	<b>Mr A Singh</b> Former Chief Financial Officer (Charges related to various matters including Optimum/Tegeta, Trillian and McKinsey and conflicts of interest.)	Suspended 2017 Resigned with immediate effect 22 January 2018.	<b>Completed – no referral to CCMA.</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Singh for



			losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
4.	<b>Mr P Govender</b> Head of Group Capital (Charges related to Trillian and McKinsey.)	Suspended 2017. Reinstated after suspension at the end of December 2017. Resigned with immediate effect approximately 24 January 2018.	<b>Completed – no referral to CCMA.</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Govender for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
5.	<b>Mr E Mabelane</b> Chief Procurement Officer (Charges related to Trillian and McKinsey.)	Suspended 2017 Letter of Termination sent 24 January 2018 following ultimatum. 22 February 2018 referral to the CCMA for unfair dismissal seeking reinstatement. Offered reinstatement and disciplinary hearing seeking summary dismissal. Offer refused. CCMA arbitration not pursued within the relevant time period. No communication since 14 March 2018.	<b>Completed</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Mabelane for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
6.	<b>Mr C Kalima</b> Former Acting General Manager Sourcing (Charges related to Impulse, Trillian and McKinsey.)	Suspended 2017 Resigned 23 January 2018 Claimed constructive dismissal. Initiated a CCMA process and reinstated following offer of disciplinary hearing. Final charges and evidence bundle provided to him 24 April 2018. Resigned 30 April 2018 with immediate effect.	<b>Completed</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Kalima for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.

7.	<b>Mr A Masango</b> Suspended Group Executive Group Capital (Mr Masango's initial charges were unrelated to the Trillian, McKinsey, HEA and Impulse matters.)	Suspended 2017 Disciplinary Charges put to him on 27 February 2018 Disciplinary Hearing heard in March 2018 before Independent Chairperson from the Johannesburg Bar. Independent Chairperson found Mr Masango not-guilty and he was reinstated in May 2018. Further charges put to him in November 2018. Resigned with immediate effect 16 November 2018.	<b>Completed</b> Outstanding matter: Eskom to determine whether it has a claim against Mr Masango for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
8.	<b>Ms S Daniels</b> Company Secretary and Head of Legal and Compliance (The charges related to Optimum/Tegeta, Trillian and McKinsey, sharing of confidential information with a third party and PFMA breaches related to payments on behalf of Mr Ben Ngubane.)	See below.	<b>Ongoing</b> Outstanding matter: Eskom to determine whether it has a claim against Ms Daniels for losses suffered as a result of her actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.

**Ms Suzanne Margaret Daniels – Head of Legal and Company Secretary**

56. As this matter progressed to a disciplinary hearing it is set out separately in this Submission.

57. Ms Daniels was on suspension with full pay when the new Board was appointed. She had approached the CCMA to challenge her suspension alleging that her suspension was substantively and procedurally unfair and the CCMA subsequently ruled in her favour and ordered that she be reinstated in March 2018.

58. Due to new and further evidence emerging, Ms Daniels was again placed on suspension on 19 March 2018 and subjected to a disciplinary hearing facing four charges of: (1) distribution of confidential and proprietary information belonging to Eskom to a third party

who ought not to have received the information, this was reasonably believed by Eskom to be to Mr Salim Essa, a Gupta associate; (2) authorizing Eskom to pay the legal fees of Dr Ben Ngubane pertaining to a Parliamentary enquiry into his role as the SABC Chairperson from Eskom funds; (3) her involvement in the Tegeta guarantee and prepayment for coal and various other transactions which extended the contractual dealings of companies in the Optimum and Tegeta group with Eskom; and (4) her involvement in the McKinsey and Trillian transactions, such as supporting payments to Trillian and settlement of the matter in the face of legal advice.

59. An independent chairperson, Adv. Nazir Cassim SC, was appointed to preside over Ms Daniels' disciplinary hearing and after the hearing he found Ms Daniels guilty on 20 July 2018 on all four charges. Ms Daniels was summarily dismissed on 20 July 2018 as recommended by Adv. Cassim SC.

60. Adv. Cassim SC in his findings further recommended that the Eskom Board should consider the role played by suppliers to Eskom such as Cliffe Dekker Hofmeyr ("CDH") in the Tegeta and McKinsey transactions. In considering this the Board took a decision that Eskom should sever ties with CDH. CDH is currently not a supplier to Eskom.

61. Ms Daniels is currently challenging her dismissal in the CCMA and referred Adv. Cassim to the General Council of the Bar.

#### Other disciplinary processes

62. The Submission has highlighted in the preceding section the disciplinary action taken immediately upon appointment involving Executives within Eskom. There were many other disciplinary processes which were undertaken during the Board's first year in office related

to questionable activities taken at all levels of the organization. Some of these are discussed in the sections that follow in this document and are included in the discussion of processes concerning individuals involved in Tegeta and Optimum transactions and the Impulse transactions (amongst others). The Submission also mentions below certain individuals involved in specific transactions in case the Commission wishes to call the relevant individuals or wishes to obtain more information where this is relevant to the specific transactions.

#### **V. FIDUCIARY BREACHES AND PFMA BREACHES BY PREVIOUS BOARD MEMBERS AND EXECUTIVES**

63. In the internal and external processes undertaken by Eskom to date, specific breaches of the fiduciary duties and obligations found under the PFMA of the previous Board of Eskom have been revealed and indicate that certain members of the previous Board and executives played an intrinsic role in ensuring that payments were advanced in circumstances where they should not have been advanced.

64. These breaches have been raised by Eskom where relevant in the context of the litigation and disciplinary processes which Eskom has initiated, including the Eskom Review Application (brought in the North Gauteng Division of the High Court under Case Number 22877/18) and the Koko and Daniels, disciplinary charges and hearings (the other disciplinary matters did not progress beyond the stage of the levelling of charges). These records will all be made available to the Commission.

65. The breaches identified related to a wide range of transactions including the Optimum and Tegeta transactions, the McKinsey and Trillian contracts and payments and the Huarong



transaction. A number of the records and recordings of the Board Tender Committee meetings and Board meetings which were accessed for purposes of these litigation and disciplinary matters, reveal the corporate governance failures within Eskom at the time and reveal the breaches of duties by a number of individuals within Eskom including members of the Board and Board Tender Committee. All implicated Board members had left Eskom by the time the new Board took office.

66. For the reasons set out above, once the relevant disciplinary processes discussed herein were completed and all implicated Executives had left the organization the Board handed the full record of such proceedings and related documentation over to the relevant authorities and to avoid duplication and fruitless expenditure did not undertake further independent investigations into the actions and omissions of the executives and previous Board members. Eskom has however opened its records up to the Commission and other State investigative bodies to allow all relevant investigations to be undertaken and is happy to offer further assistance in this regard.

## **VI. DEFICIENCIES WITH PAST PROCUREMENT SYSTEMS:**

### **Modifications and expansion of Eskom supplier contracts generally**

67. A particular deficiency in past practices that has been investigated and dealt with by the new Board is the manner in which the Eskom procurement policy framework allowed for contracts that have been concluded for various products and services to be modified or expanded within the legal and policy framework.

68. In practice such modifications and expansion can take the form of any of the following:



- a. time modifications being amendments to the envisaged duration to completion of a contract project or delivery of a service;
- b. value modification being a change in the originally quoted and contracted value of a project, product or service outside of any contingencies that may have been provided for;
- c. expansion of the agreed contract scope; and
- d. any other changes to what the originally contracted service offering or product including any related costs thereto.

69. Whilst modifications and expansions in themselves are not an incorrect or unknown practice, the volume and values of these became a cause for concern for the new Board, in light of the following:

- a. The definition of a modification in terms of the policy had no limitation which resulted in the new Board being asked to approve modifications as much as 300% of the original contract provisions.
- b. This means there was a culture of poor planning and contract management to begin with which amounts to poor business practice.
- c. This also lead to governance risks in that while contracts are approved in line with the Delegation of Authority but the modifications are not looked at in aggregate and as such not escalated to the correct approval platforms.

70. The new Board believes there is a high risk of mismanagement in that contracts may be priced incorrectly so as to obtain approval at lower levels of the delegated authority, with subsequent modification that see values increase to levels that, had they been priced in initially, would have required approval at higher levels of authority including the Board itself.



71. The modification and expansion of contracts were a norm and not an exception at Eskom.

Contracts were not managed properly and processes to replace existing contracts in a timely manner were not followed, because of the strong possibility that existing contracts would be extended or modified.

72. The previous Board was often under pressure to approve modifications and expansion because the contracts in question are for the so called 'essential services' which if not in place may have an adverse impact on the business' ability to effectively run operations.

73. In the past, modifications and expansions of contracts were undertaken without the National Treasury approval. Please see attached hereto a schedule of modifications and expansions of contracts for the period 2016 to 2018 marked **Annexure F**.

74. There was neither a culture nor a practice of consequence management relating to these transgressions – seemingly because this was considered a normal business practice.

75. The new Board, in light of the above and as a part of its clean-up programme, took a resolution to cease entertaining any modifications and/or expansions to contracts without sufficient justification of their exceptional nature. It also decided to enforce consequence management for breaches of governance and the PFMA.

76. Pursuant to this, 1049 historical cases relating to modifications and expansions of contracts were identified and reported to the new Board and to the Parliamentary Standing Committee on Public Accounts ("SCOPA") on 28 August 2018 attached. 822 of these 1049 cases have since been addressed through disciplinary processes resulting in 97 employees exiting Eskom. A remainder of 227 of the 1049 cases are not yet finalised. See **Annexure G** for a progress report on these processes.



77. The new Board found that Eskom's policies allow for what is termed "emergency procurement" which tended to be the tool used by executives when there was a push back by the new Board on approving modifications.

78. In response to all of the above, the new Board resolved to complete an overhaul of the procurement policy framework to ensure that it is supportive of the required business and financial discipline and less conducive to financial mismanagement and ill business discipline. This work is currently underway.

79. The new Board and Eskom management are also working closely with the National Treasury to align the policies of Eskom to the National Treasury practice notes and ensure adherence to the PFMA.

## **VII. SPECIFIC CONTRACTS ON WHICH THE ZONDO COMMISSION HAS REQUESTED INFORMATION**

### **The New Age Media (Pty) Ltd**

80. The new Board has not undertaken any independent investigation of the New Age Media (Pty) Ltd contracts which were not current when the new Board commenced.

81. Individuals who have knowledge of this matter have been asked to cooperate with the Commission and have had various interactions with the Commission. Various statements of the individual's knowledge of the matter have been submitted to the Commission, and these individuals would be able to provide further information and clarification if required. These will include statements from Mr Pieter Pretorius (Senior Manager: Corporate Affairs Division), Mr Freddy Ndou (formerly employee of Eskom - Divisional Executive: Strategy



Support) and Mr Chose Choeu (employee of Eskom at the time he made his statement - Divisional Executive: Corporate Affairs Division). Of these individuals only Mr Pieter Pretorius remains in the employ of Eskom, Mr Ndou and Mr Chose are no longer employed by Eskom. I understand that the Zondo Commission is obtaining additional statements from various individuals.

82. The new Board has been able to establish the following which has been shared with the authorities, the SIU and the Hawks are conducting further investigations:

- a. The New Age Media (Pty) Ltd ("TNA") was introduced to Eskom through the office of the then Group Chief Executive, Mr Brian Dames, by Messrs. Nazeem Howa, Jacques Roux and Ajay Gupta. The TNA had a newspaper publication whose circulation figures could not be verified through the Accredited Bureau of Circulation ("ABC").
- b. TNA was introduced to Eskom and became a supplier without an open procurement process through the Media Shop, a supplier to Eskom, and the arrangement between Eskom and TNA was disguised as a sponsorship agreement. The first so called sponsorship contract was entered into in 2012 for over R10 million.
- c. The corporate affairs division ("CAD") of Eskom in 2012 neither had a strategy nor a budget targeted at the kinds of services TNA offered, but the budget was nevertheless found through the then Group Chief Executive Officer's office paying for televised breakfast shows on SABC2, two 10 seater tables and 6 pull up banners at these breakfast, events. This was contrary to section 38(2) of the PFMA.
- d. The Public Protector on 3 September 2013 sent a letter to Eskom querying the funds spent by Eskom on TNA publications. Her view was that it was fruitless and wasteful expenditure. This view was disregarded by the then Eskom executives.



- e. The second so called sponsorship contract between Eskom and TNA was also not procured through an open tender process. Instead it was executed by Eskom directly with TNA and valued at R1.2 million. Mr Chose Choeu signed on behalf of Eskom for four breakfast shows.
- f. In 2014, Eskom, acting through Mr Colin Matjila who at the time was the Interim Group Chief Executive of Eskom executed a three year so called sponsorship contract with TNA valued at R43.2 million.
- g. To date the new Board has not taken further action regarding this matter which was not an ongoing matter when it took over but will follow the recommendations of the SIU and or the Zondo Commission in this regard.

#### Optimum and Tegeta

83. Eskom's dealings with Tegeta from approximately 2013/2014, Tegeta's acquisition of Optimum in 2015/2016 and Eskom's further dealing with the companies in the Optimum group thereafter have been the subject of numerous enquiries and investigations, including this latest investigation by the Commission.
84. Eskom has supplied a large volume of documentation to these various enquiries and investigations including to the Commission. The list of additional documents supplied to the Commission is attached as **Annexure B**.
85. The new Eskom Board has not undertaken any further independent investigation of Eskom's dealings with Tegeta, Tegeta's acquisition of Optimum and Eskom's further dealing with the companies in the Optimum group. These transactions were however relevant to and canvassed in the disciplinary proceedings and charges levied against



various people who have been dismissed or are no longer in the employ of Eskom, these include:

- a. Matshela Koko (various positions including Group Executive: Commercial & Technology, and / or Group Executive: Generation, and/ or interim Group Chief Executive resigned at the commencement of his disciplinary hearing into a range of disciplinary charges including related to communications with external parties reasonably believed to be Gupta associates. As Mr Koko resigned he did not face the further charges that emerged after the Board was able to access Eskom's records which showed Mr Koko's collaboration with various parties including private email communications with Department of Mineral Resources ("DMR") officials, communications with Mr Eric Wood and Mr Salim Essa regarding the R1,68 billion December 2015 prepayment/guarantee, Mr Koko was shown to be involved in the facilitation of this prepayment/guarantee internally and externally. Mr Koko is also implicated in a number of other dealings between Eskom and Gupta associated companies and their facilitation of his travel to Dubai);
- b. Anoj Singh (CFO resigned in the face of disciplinary charges, implicated in the issue of the R1.68billion guarantee in December 2015 without Board approval and the facilitation of the prepayment of R659 558 079.00 in April 2016);
- c. Ayanda Nteta (resigned in the face of disciplinary charges, the supply of coal fell under her portfolio at the time, and was involved in preparing the submission made to the previous Board in respect of the prepayment of R659 558 079.00 which was issued and various other dealings detailed in the Fundudzi report to National Treasury dated November 2018);



- d. Edwin Mabelane (various positions including Chief Procurement Officer employment terminated, involved in preparing the submission made to the previous Board in respect of the prepayment of R659 558 079.00 to Tegeta for coal);
- e. Suzanne Daniels (various positions including Senior Manager to the Office of the Chairman, Company Secretary, Head of Legal, dismissed following guilty finding of independent disciplinary hearing on a range of charges including preparation with Mr Koko, Mr Singh, Mr Mabelane and Ms Nteta of various Board and Board Tender Committee submissions related to the Optimum and Tegeta matters, such as involvement not previously disclosed in preparing the April 2016 Board Tender Committee prepayment submission and the procurement of a guarantee of R1.68 billion for Tegeta from Eskom in December 2015; communication with external parties reasonably suspected to be Gupta associates regarding these and other matters; failure to disclose the involvement of Mr Eric Wood/Regiments Capital/Trillian in advising on the December 2015 submission to the Board for the prepayment of R1,68billion to Tegeta in April 2016);
- f. Maya Bhana/Naidoo (General Manager – Office of the Chief Financial Officer) resigned in the face of an impending disciplinary process. Involved in and facilitated many of the Optimum, Tegeta, McKinsey and Trillian and Huarong payments and related transactions (amongst others).

Brian Molefe also appears to be implicated in this matter particularly the decision not to negotiate with Glencore regarding Optimum but left the employ of Eskom before the matter was properly canvassed. In addition, it appears that Regiments Capital/Trillian advised on the prepayment/guarantee of R1.68billion and various communications and arrangements were made between Eric Wood (who is also implicated at the heart of the



Trillian / McKinsey matter), Mr Koko and Mr Singh, in order to facilitate this in December 2015.

86. Of specific relevance to the Commission is the evidence and information which was found in emails on Eskom's server regarding communications between Mr Koko, Ms Daniels and members of the Eskom Board with third parties including persons reasonably believed to be associates of the Gupta family such as Mr Salim Essa and Mr Naseen Howa regarding these transactions and Eskom's public position on these transactions from at least July 2015 to August 2016. These server emails also show the involvement of Regiments Capital/Trillian (which was owned by Mr Salim Essa), represented by (amongst others) Mr Eric Wood in the formulation of these transactions and advice to the Board on the transactions in December 2015. In addition, the letter from the DMR in December 2015 which 'required' Eskom to prepay for the coal from the Tegeta/Optimum mine, was shown to be constructed between Ms Daniels, Mr Koko and an official from the DMR by way of an e-mail to the DMR official's private e-mail address.

87. Individuals still within Eskom who have knowledge of this matter have been asked to cooperate with the Commission and have had various interactions with the Commission. Various statements of the individual's knowledge of the matter have been submitted to the Commission, and these individuals would be able to provide further information and clarification if required. In this regard Eskom is aware of statements prepared by Dr Mark Van der Riet, Mr Dan Mashigo, Mr Gert Opperman and Mr Snehal Nagar. Eskom understands that the process of taking statements is ongoing.

88. A criminal case was opened regarding this transaction at the Sandton Police Station. The SIU and the Hawks are conducting further investigations.



89. The SIU issued proceedings in December 2018 to set aside certain of these contracts but to date Eskom has not been updated on these proceedings by the SIU and is in the process of sourcing the relevant information.

#### VIII. ADDITIONAL CONTRACTS WHICH ARE RELEVANT TO THE ZONDO COMMISSION

90. The new Board understands that the Commission's Questions posed to date are the first phase of its investigations and further matters will be dealt with in future. This section deals at a very high level with additional transactions in which the new Board has identified that previous executives and Board members allowed third parties particularly associated with the Gupta group of companies and others to unlawfully influence its decisions and or to facilitate substantial unlawful payments to parties within the Gupta group of companies.

##### McKinsey and Company Africa (Pty) Ltd ("McKinsey") / Trillian Management Consulting (Pty) Ltd (and other Trillian group companies) ("Trillian")

91. This matter is an important one for investigation by the Commission as substantial payments were made to a Gupta owned company unlawfully and without Eskom receiving value.

92. This matter has previously been investigated in some detail by Eskom and a detailed record of all documentation relevant to it has been prepared for the purposes of the Review Application which Eskom launched in March 2018. The full record and pleadings of this matter will be provided to the Commission with this Submission and is included in Annexure



C. This matter has also featured in a number of the disciplinary processes which Eskom undertook including those detailed below.

93. This matter involved numerous executives and Board members from Eskom in irregular activities. The matter concerned the misuse of the sole source basis of procurement of suppliers and the irregular and unlawful awarding of the contract to McKinsey for the provision of consulting services, (including under the Master Services Agreement (“MSA”)) and irregular and unlawful direct payments to Trillian which was apparently owned by Gupta associate Salim Essa.
94. The various contracts were negotiated and concluded without Eskom engaging in any open and competitive tender process. Under the MSA, McKinsey was to receive risk based remuneration entitling it to a share of any savings it secured for Eskom. This was a substantial departure from the National Treasury's Instructions for the remuneration of external consultants, but Eskom failed to seek or obtain National Treasury's approval for it. In addition, this matter pertains to unlawful and irregular payments effected by Eskom to Trillian with the connivance of a number of executives and the approval of Board and Board Tender Committee members when there was no contract between the two and no existing subcontracting arrangement between McKinsey and Trillian.
95. McKinsey was paid over R1 billion in “settlement” despite the substantial irregularities with the contractual and internal approval processes which were known at the time of the settlement. Trillian was irregularly and unlawfully paid R600 million without a contract with Eskom or McKinsey when the irregularities were known at the time of payment. Eskom, working together with the Asset Forfeiture Unit of the National Prosecuting Authority (“AFU”), managed to recoup a payment of R902 274 123.31 on 7 July 2018 from McKinsey



with an additional R99 741 407.00 on 23 July 2018 towards interest. In total Eskom recouped R1 002 015 530.31 from McKinsey.

96. Eskom, in March 2018 launched a review application at the Gauteng Division, Pretoria High Court aimed at setting aside its own decisions in terms of section 1(c) of the Constitution and recovering all funds paid out under the unlawful transactions. With the payment of R1 002 015 530.31 received from McKinsey Eskom is pursuing the recovery of R600 million irregularly paid to Trillian. Eskom, working with the AFU and Interpol are also looking for Trillian's assets at other jurisdictions outside the country.

97. This matter and charges related to this matter have featured in the disciplinary processes regarding at least the following Eskom Executives and Employees:

- a. Mr Matshela Koko (various positions including Group Executive: Commercial & Technology, and / or Group Executive: Generation, and/ or interim Group Chief Executive resigned at the outset of his disciplinary hearing at which he faced charges related to this transaction including initiating and facilitating Eskom's sole source dealings with McKinsey in September 2015, initiating and facilitating dealings with Trillian between July 2015 and December 2015, including with Mr Eric Wood and approving, alternatively failing to prevent payments to Trillian in February 2017 in the face of knowledge of their unlawfulness while Acting Group Chief Executive and carrying the Board mandate for these payments);
- b. Mr Anoj Singh (CFO resigned in the face of charges related to this transaction including Eskom's sole source dealings with McKinsey in September 2015, supporting various payments to McKinsey and Trillian in February 2017 in the face of knowledge of their unlawfulness);





- c. Mr Edwin Mabelane (various positions including Chief Procurement Officer dismissed in the face of charges related to this transaction);
- d. Mr Prish Govender (various positions including Executive: Group Capital resigned in the face of charges related to this transaction);
- e. Ms Suzanne Daniels (various positions including Senior Manager to the Office of the Chairman, Company Secretary, Head of Legal, dismissed following guilty finding of independent disciplinary hearing on a range of charges including facilitating and supporting payments to Trillian in December 2016 and February 2017 in the face of knowledge of their irregularity and unlawfulness.)
- f. Mr Sean Maritz (Interim Group CEO charged for his withdrawal of a letter of demand to McKinsey and Trillian and his involvement in undermining efforts to deal with these unlawful transactions, resigned with immediate effect.)
- g. Maya Bhana/Naidoo (General Manager – Office of the Chief Financial Officer) resigned in the face of an impending disciplinary process. Involved in and facilitated McKinsey and Trillian payments and related transactions (amongst others).

98. Criminal cases have been opened regarding these transactions at the Sandton Police Station. This case is currently being investigated by the SIU and the Hawks.

**Impulse International (Pty) Ltd (“Impulse”) / ERI and Eskom**

99. This matter involved emergency purchases through round robin approvals by Eskom Executives, sole source procurement and fraudulent subcontracting. Eskom employees, particularly Mr Matshela Koko colluded to ensure that Impulse enjoyed unfair and continued enrichment at ERI (a subsidiary of Eskom) and at Eskom across multiple power stations

using their influence and position. Mr Matshela Koko, a group executive of Eskom and member of the ERI Board at the time failed to declare an interest that his step daughter was a shareholder of Impulse which was a beneficiary of lucrative contracts at ERI and Eskom.

100. A discredited disciplinary process in late 2017 cleared Mr Koko of charges related to Impulse but this remains under investigation by external parties and Eskom is cooperating in all such investigations.

101. Eskom took steps in July and August 2017 to terminate all agreements with Impulse and related companies.

102. Various disciplinary processes were followed and are ongoing against individuals within Eskom, across various power stations and ERI who allowed and facilitated Impulse transactions. More information on these disciplinary processes can be provided if necessary.

103. A criminal case was opened against employees involved in the fraudulent scheme. The SIU and the Hawks are investigating this matter further.

104. Please let us know if you would like us to make any documentation available to the Commission regarding these transactions.

**Nkonki Inc. Accountants (KPMG amongst others)**

105. It appears that Eskom executives sought to unduly influence the appointment of Nkonki Inc. Accountants as a subcontractor. Nkonki Inc was shown to be acquired by Gupta associates in approximately 2016/2017.

106. Eskom has concluded an investigation regarding Nkonki Inc's appointment as a subcontractor by KPMG. There may have been other questionable subcontractor appointments for Nkonki and enquiries into this are ongoing.



107. Eskom paid R63 005 770.00 to Nkonki Inc. as a subcontractor to KPMG which was flagged as an irregular expenditure.
108. A criminal case has since been opened regarding this transaction at the Sandton Police Station. The SIU and the Hawks are investigating this matter further.
109. The New Board noted the weaknesses on panel approvals and management of subcontracting processes and enhanced the control systems in the panels.
110. Please let us know if you would like us to make any documentation available to the Commission regarding this.

#### Huarong

111. Eskom commenced negotiation with the Chinese Huarong Energy Africa Proprietary Limited ("HEA") regarding a finance agreement styled as an Asset Development Framework Agreement ("ADFA") in late 2016 for funding from Huarong Asset Management ("Huarong"), one of the largest asset companies from China. The relationship between HEA and Huarong was not clear.
112. An RFI process was undertaken during this period. HEA submitted a response to this RFI but Eskom officials engaged with Huarong and HEA prior to this and concerns were raised internally with this process.
113. A Request for Proposals process was also followed in 2017 which in May 2017 authorized negotiation but not conclusion of an agreement with HEA. However, prior to this the former CFO, Mr Anoj Singh, signed a term sheet in March 2017 binding Eskom to a US\$1.5 Billion facility.



114. Under ongoing pressure from Mr Ben Ngubane the Chairman of the Eskom Board at the time and following a meeting with Ms Lynne Brown, former Minister for Public Enterprises the former Interim Group Chief Executive of Eskom, Mr Sean Maritz, executed the ADFA in October 2017 (shortly after Mr Johnny Dladla was removed as the Interim Group Chief Executive Officer) in the face of internal advice against this and without the requisite authority and approvals from the board, the Minister of Public Enterprises or National Treasury. The ADFA was for a framework to enable future negotiation on a US\$ 500 000 000.00 asset development loan facility with Huarong ostensibly to assist with Eskom's liquidity position at the time. Mr Maritz also signed a Fee Letter on the same day committing Eskom to an immediate payment to HEA of US\$21 888 000.00 or approximately R340 million.

115. Both Mr Singh and Mr Maritz resigned when they were confronted with this transaction, the latter after the commencement of a disciplinary process in which charges were made against him related to the conclusion of the ADFA and Fee Letter. No payments were made to HEA under the Fee Letter.

116. Eskom does not consider itself bound by the ADFA or the Fee Letter and this was communicated to HEA by the newly appointed CEO Mr Phakamani Hadebe.

117. This case is currently being investigated by the SIU and the Hawks.

118. Please let us know if you would like us to make any documentation available to the Commission regarding this transaction.



**Dongfang**

119. This matter is the subject of ongoing assessment and investigation including by the SIU and the Hawks.

120. Eskom awarded the tender for the Duvha Unit 3 Recovery Project to Dongfang after an open tender. The contract was signed on 28 March 2017. Alstom t/a General Electric (GE), an unsuccessful tenderer, brought an urgent court application against Eskom to stop Eskom and Dongfang from implementing the contract awarded to Dongfang pending the review application which seeks to set aside the award. Murray & Roberts Shanghai Electric Consortium (MRSEC), another unsuccessful tenderer, intervened in the application for the same purpose.

121. The BEE Commission also issued a draft report with findings that Dongfang did not comply with the BBBEE Act on 12 March 2018. The recommendation made in this draft report have been implemented by the New Board.

122. The matter is still proceeding in the Pretoria High Court and additional information can be made available on request.

**IX. CONCLUDING COMMENTS BY THE BOARD**

123. The new Board's observation is that there was previously a culture of corrupt practices, mismanagement and malfeasance that has been inculcated in Eskom by certain individuals in Eskom over a period of time. The issues of impropriety within Eskom seemingly extend



beyond the matters which are under investigation by the Commission. This was clearly a pervasive culture and was sanctioned from within the Board, the Executive and Senior Management. The 'fish rots from the head'.

124. The new Board had to strike a balance between dealing with the past irregularities which it found at Eskom and building a capable, strong organization able to carry out its public mandate.

125. In addition to what has been described above, the audit qualification recovery program was a key part of Eskom's efforts to rectify past irregularities, this has seen a greater number of irregularities surface, the new Board has come to understand the following:

- a. Procurement processes and people are at the centre of the challenges;
- b. The internal controls have not been effective;
- c. The system and practices are not set up for proper accountability and consequence management;
- d. Some of our policies are too vague and lend themselves to loopholes that can be abused; and
- e. There were lapses in governance wherein the roles of the shareholder, the board and the executive often overlapped and flouted best corporate governance practices.

126. Any process of renewal and ridding the organization of impropriety, whether state capture related or not, needs to solve the aforementioned. An Audit recovery Progress Report dated 24 December 2018 is attached for information marked **Annexure H**.

127. The new Board continues to focus on rooting out impropriety and dealing decisively with affected and implicated employees through internal processes and also in partnership with law enforcement agencies when our ambit is limited.



128. The new Board believes that much has been and will be revealed through the various inquiries but would recommend that the Executives listed above referred to law enforcement agencies, be brought to account as soon as possible. Not least as the financial markets upon which Eskom is dependent, desire to see legal consequences for the malfeasance revealed.

129. The new Board also believes that the previous board members of Eskom need to answer questions about their decisions that were not in compliance with the law and the fulfilment of their fiduciary duties questioned.

130. The challenges that Eskom faces today which pose systemic risks to the economy, have had a lot to do with decisions that were made, not in the interests of the company but instead to further certain other interests and for that reason there must be accountability by those involved.



**JABULANE ALBERT MABUZA**

I CERTIFY that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 16<sup>th</sup> day of January 2019 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".



**COMMISSIONER OF OATHS**

Name

Address :

Capacity :

MOHAMMED YOUSUF RAVAT  
LEGAL CONSULTANT LARGE BUSINESS  
 COMMISSIONER OF OATHS EX OFFICIO  
 SARS LARGE BUSINESS CENTRE  
 MEGAWATT PARK  
 MAXWELL DRIVE  
 SUNNINGHILL  
 2157

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4.	<b>Annexure D:</b> Eskom Policies and Procedures referenced in Submission		
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	• Eskom Code of Ethics 'The Way' Policy 32-527	29 Aug 2014	34-44
	• Eskom's Procurement and Supply Chain Management Policy 32-1033 dated 19 May 2014	19 May 2014	45-53
	• Eskom's Procurement and Supply Chain Management Policy 32-1034 dated 24 May 2014	24 May 2014	54-209
	• Probity Check Standard 240-132328517 dated 30 Nov 2017	30 Nov 2017	210-225
	• Memorandum re "Change in approach for proactive and probity reviews for commercial transaction" dated 24 April 2017	24 April 2017	226-228
5.	<b>Annexure E:</b> Secretariat Management Procedure 221-254	6 Feb 2018	229-249
6.	<b>Annexure F:</b> Schedule of Modifications and Expansions of Contracts for the period 2016 to 2018	Undated	250-272
7.	<b>Annexure G:</b> Progress Report on Consequence Management Project by Eskom's Assurance and Forensic Feedback Department	13 Nov 2018	273-287

No	Description	Date	Page
8.	<b>Annexure H: Eskom Procurement Audit Qualification</b> Turnaround Programme: Phase 2 Progress Report 2018/19	24 Dec 2018	288-342



# Annexure “A”



**SCC – ESKOM INVESTIGATION**

**ISSUES FOR CONSIDERATION BY ESKOM IN ITS SUBMISSION**

**A.TEGETA CONTRACTS AND ACQUISITION OF OCM BY TEGETA**

**B.TNA**

**A.TEGETA CONTRACTS AND ACQUISITION OF OCM BY TEGETA**

AREA	ISSUES TO CONSIDER IN THE ESKOM SUBMISSION	POSSIBLE ESKOM WITNESS
1. Who is Tegeta	<p>1.1 Eskom to state who their own understanding of Tegeta was at time of contracting (incl. directorship and ownership)</p> <p>1.2 Review of Eskom's processes to confirm beneficial ownership of Tegeta at point of appointment</p>	<p>Eskom to decide (ETD)</p> <p>Dan Mashigo</p>
2. Who is Glencore/OCH/OCM	<p>2.1 Eskom to state who their own understanding of Glencore/OCH/OCM at time of contracting (incl. directorship and ownership)</p> <p>2.2 Eskom to deal with the evolution of the contract</p>	<p>Eskom to decide (ETD)</p> <p>Dan</p>

**SCC – ESKOM INVESTIGATION**

	and changes in ownership	Mashigo
3. Tegeta initial appointment (Brakfontein/Majuba supply)	<p>3.1 Pre-2014 overtures and former chairman's influence</p> <p>3.2 Review 2008 mandate (to talk to its rationale, utilization, current status, audit findings on it, etc.)</p> <p>3.3 Appointment for Brakfontein contract</p> <p>3.4 Onboarding process (demonstrate compliance or lack thereof, to Eskom processes)</p> <p>3.5 Findings on the Financial DD and how it was dealt with</p>	<p>Eskom to decide (ETD)</p> <p>Dan Mashigo Kieran Maharaj</p>
4. Overview of Glencore/OCM contract (from inception, 1968 to Dec 2018)	<p>4.1 Origination, evolution, addenda, key T&amp; Cs, pricing</p> <p>4.2 OCM hardships (July 2013, June 2015)</p> <p>4.3 Co-operation agreement of 2013/14 and termination thereof (state reasons)</p> <p>4.4 Any changes in pricing after Tegeta takeover and if any, basis thereof</p> <p>4.5 Negotiations on price between Eskom and</p>	<p>Eskom to decide (ETD)</p>

**SCC – ESKOM INVESTIGATION**

	<p>OCM and the outcome</p> <p>4.6 Appropriateness of the Board referral of the PED negotiations submission to GE</p> <p>4.7 Timing of the referral back to CEO in relation to Molefe's appointment</p> <p>4.8 Whether there was report back to Board after rejection by Mr Molefe</p> <p>4.9 Relief as per the BR process (pricing, quantities, payment terms)</p>	
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5.OCM Penalties	<p>5.1 What penalties are</p> <p>5.2 Origination of OCM penalties</p> <p>5.3 Calculation of the R2.1 billion and why the accumulation (relief agreement, incomplete levying of penalties, any other)</p> <p>5.4 Negotiations, summonses relating to the R2.1 billion (under Glencore)</p> <p>5.5 Determination, levying and handling of penalties</p>	<p>Snehal Nagar</p> <p>Gert Opperman</p> <p>Johan Bester</p>
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**SCC – ESKOM INVESTIGATION**

	<p>under Tegeta</p> <p>5.6 Negotiations, arbitration, reduction of penalties and eventual settlement under Tegeta</p> <p>5.7 Detailed reconciliation from the R2.1 billion to the R254 million paid</p> <p>5.8 Status of the payment of the settlement amount (R133 million)</p> <p>5.9 Issue of exclusion of sizing</p>	<p>Mark van der Riet (coal samples)</p>
<p>6.OCM/OCH Business rescue</p>	<p>6.1 When it happened and the BRPs</p> <p>6.2 Impact of the BR process on the CSA for Hendrina</p> <p>6.3 Any contractual terms variations during the BR period</p> <p>6.4 Conclusion thereof</p>	<p>BRP</p>
<p>7.Sale of OCH to Tegeta and cession of CSA</p>	<p>7.1 Eskom's obligation and rights relating to the sale i.t.o the CSA</p> <p>7.2 Eskom's involvement</p> <p>7.3 Any influence by Eskom and/or its officials, and the propriety or lack thereof</p>	<p>Dan</p>





### SCC – ESKOM INVESTIGATION

	<p>7.4 Other potential buyers Eskom engaged with and outcomes</p> <p>7.5 Engagement between Eskom and DMR relating to the sale</p>	
<p>8. Events during the Intervening Period (10 Dec 2015 to 31 March 2016)</p>	<p>8.1 Rationale for Eskom contracting with Tegeta for coal supplied by OCM</p> <p>8.2 Validity of Eskom's response to this</p> <p>8.3 What did Eskom know of the underlying contracts between Tegeta and OCM (pricing and payment terms, in particular)</p> <p>8.4 Source of Arnot supply (Normal or export coal)</p> <p>8.5 Origination of the December 2015 emergency supply</p> <p>8.6 Any penalties raised on coal supplied through Tegeta</p>	Dan
<p>9. Additional Coal Supply and Prepayment (R600 mil)</p>	<p>9.1 Origination of the April 2016 Supply Plan (vs the Dec 2015 emergency procurement)</p> <p>9.2 Validity of the April 2016 Coal supply Plan</p>	<p>Dan Mashigo</p>

SCC – ESKOM INVESTIGATION

<p>10. R1.6 billion prepayment/guarantee</p>	<p><i>R600 million</i></p> <p>10.1 The use of prepayments by Eskom and circumstances under which used</p> <p>10.2 Any similar prepayments made in the past</p> <p>10.3 Rationale and validity of reasons provided by Tegeta for prepayment</p> <p>10.4 Ability of Tegeta to supply the additional coal in light of their reasons for prepayment</p> <p>10.5 Manner in which the prepayment was approved and processed</p>	
	<p>10.6 Any deviation from the manner it was processed to normal process</p> <p>10.7 Repayment terms of the prepayment and actual recovery</p> <p>10.8 Penalties provision and any penalties relating to the additional supply contract</p> <p>10.9 Validity of Eskom's previous Board responses given on the prepayment</p>	<p>Snehal Nagar</p>

**SCC – ESKOM INVESTIGATION**

	<p><i>R1.6 billion</i></p> <p>10.10 Origination and rationale for the R1.6 billion prepayment/guarantee</p> <p>10.11 Compliance with Eskom's policies, PFMA etc.</p> <p>10.12 Approval thereof</p> <p>10.13 DMR involvement in the origination of the guarantee/prepayment</p> <p>10.14 Validity of Eskom's previous responses given on the prepayment/guarantee</p>	
11. Prepayment guarantee/security	<p>11.1 Nature and any valuation thereof, including proof of such valuation</p> <p>11.2 Withdrawal of the guarantee/security and Eskom's response thereto</p> <p>11.3 Any replacement guarantee/security put in place after the withdrawal</p>	Andre Pillay
12. Cash flows	12.1 Payments to Tegeta by Eskom, also detailing any penalties withheld	

**SCC – ESKOM INVESTIGATION**

**B.TNA Media (only Eskom leg. Other legs would depend on work completed by relevant teams)**

AREA	ISSUES TO CONSIDER IN THE ESKOM SUBMISSION	POSSIBLE ESKOM WITNESS
1. Who is TNA	1.1. Understanding of who TNA was at contracting, including beneficial ownership	Pieter Pretorius
2. TNA initial appointment	2.1. Parties involved in the TNA appointment, including approval 2.2. Payments made and services received for the payments made 2.3. Compliance with Eskom's policies and PFMA 2.4. Was this a service/s Eskom would ordinarily procure and was this planned and budgeted for 2.5. Establish how Eskom Board dealt with this on being aware of the TNA matter	Peter Pretorius



## SCC – ESKOM INVESTIGATION

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# **Annexure “B”**





## ANNEXURE B:

## INDEX TO DOCUMENTS PREVIOUSLY SUBMITTED TO THE COMMISSION BY ESKOM LEGAL: 15 JANUARY 2019

No	Description	Date
<b>A. Documents submitted in respect of Tegeta and Optimum</b>		
1.	<b>Documents provided to other investigative bodies</b>	
1.1	A file of the documents submitted to the Public Protector re Tegeta and Optimum as per the attached Index	Undated
1.2	The National Treasury Report on the verification of compliance with the SCM Legal Framework – Appointment of Tegeta Explorations and Resources (Pty) Ltd as per the attached Index	Nov 2018
2.	<b>Information submitted to the Commission over E-mail</b>	
2.1	Excel – Koorfontein penalty calculation	Undated
2.2	Eskom Holdings SOC – primary energy department – supplier payment control form	Undated
2.3	Excel - Brakfontein under delivery penalty	Undated
2.4	Uncommissioned affidavit to be deposed to by Petros Mazibuko	Undated
2.5	Email from Jackwell Feris to Suzanne Daniels dated 4 November 2016 with two attachments: <ul style="list-style-type: none"> <li>- Memorandum from CDH to Suzanne Daniels re "Sequence of events in relation to communications with the public protector regarding the investigation and process in relation thereto"</li> <li>- Letter from Public Protector to Brian Molefe dated 2 August 2016</li> </ul>	4 Nov 2016
2.6	Letter to Optimum coal mine business rescue practitioners from CDH setting out Eskom's pre-business rescue claims	3 April 2018
2.7	Excel – Optimum claim	Undated
2.8	Letter to Optimum coal from Eskom notifying of payment reduction during January 2018	13 Feb 2018
2.9	Excel – Optimum revised calculation	Undated
2.10	Excel – penalty September 2016 – October 2017	Undated
2.11	Excel – penalty Feb 2018 – June 2018	Undated
2.12	Excel – quality penalty November 2017 – December 2017	Undated
2.13	Quantity penalty November 2017 – December 2017  Containing various excel sheets calculating penalties and reconciliations for calculation of penalties and excel sheets relating to claims and short delivery notices	Undated
2.14	Excel – quality penalty September 2016 – October 2017	Undated
2.15	E-mail from Snehal Nagar to Bartlett Hewu, Mohlago Masekela, Christo Kruger (Eskom) and Jabu M (sc commission) re changing statement made to the Hawks with attachments	5 Nov 2018

No	Description	Date
2.16	Letter to Optimum coal from Eskom notifying of short delivery for Hendrina in November 2017	15 Dec 2017
2.17	Letter to Optimum Coal from Eskom re OCM and Tegeta settlement agreement	20 Feb 2018
2.18	Excel – Tegeta recon on 5 September 2016	5 Sept 2016
2.19	Letter to Optimum Coal from Eskom re temporary relief agreement	28 Nov 2017
2.20	ABSA performance guarantee issued to Tegeta Exploration and Resources (Pty) Limited	11 Dec 2015
3.	<b>Minutes submitted to the Commission</b>	
3.1	<b>ARC 10 November 2014</b> <ul style="list-style-type: none"> <li>Minutes of the Audit and Risk Committee meeting held on 10 Nov 2014 re TNA</li> <li>Extract from the final minutes of the Audit and Risk Committee meeting held on 18 Nov 2014 re TNA</li> </ul>	Nov 2014
3.2	<b>BTC Minutes 16 Aug 2016</b> <ul style="list-style-type: none"> <li>Minutes of the Eskom BTC Meeting held on 16 Aug 2016 re Tegeta</li> </ul>	16 Aug 2016
3.3	<b>Minutes approving the Tegeta Cession of OCM</b> <ul style="list-style-type: none"> <li>Letter from Suzanne Daniels re board's approval of cession and assignment re Tegeta</li> </ul>	12 Feb 2016
3.4	<b>Minutes of Board Meeting approving Tegeta Contract</b> <ul style="list-style-type: none"> <li>Pages 2 to 4 of BTC meeting held on 16 Aug 2016 re Tegeta</li> <li>Submission to the Eskom Board on 27 Sept 2016 re Tegeta with an extract of an opinion Anoon Ninan dated 19 Jan 2016</li> <li>Extract from the final minutes of the special Eskom BTC meeting held on 11 April 2016 re Tegeta</li> <li>Extract from the final minutes of the BTC meeting held on 13 April 2016 re Tegeta</li> <li>Draft minutes of the board meeting on 31 May 2016</li> <li>Extract from the minutes of the BTC meeting held on 21 June 2016 re Tegeta</li> <li>Minutes of the BTC meeting held on 10 Feb 2016 re Tegeta</li> <li>Unsigned resolution of the BTC re Tegeta and additional documents including Submission Document re Cession and Delegation of coal supply agreement with Tegeta and Cession Report re recommendation to enter into cession and delegation contract between Tegeta and Eskom to Shiva Uranium</li> </ul>	Various
<b>B. Documents submitted in respect of the New Age transactions</b>		
4.	<b>Arc minute extracts TNA</b> <ul style="list-style-type: none"> <li>Minutes from the Audit and Risk Committee meeting held on 10 Nov 2014 re TNA</li> <li>Extract from the final minutes of the Audit and Risk Committee Meeting held on 18 Nov 2014 re TNA</li> </ul>	Nov 2014



No	Description	Date
5.	Report on the Review Process undertaken in awarding the Sponsorship contract to TNA	6 Nov 2014
6.	Summary Note on Recommendations of the TNA Review Report	4 Dec 2014
7.	TNA Contract Review – Measures to be implemented	27 Nov 2014
8.	TNA Media Agreement	30 April 2014
<b>C. Documents provided for additional information to the Commission</b>		
9.	List of Executive and Company Secretaries from May 2014 to October 2017	Undated
10.	<b>Board Committees provided</b> <ul style="list-style-type: none"> <li>• Extract of People &amp; Governance Committee Terms of Reference [2016/2017]</li> <li>• Extract of Social, Ethic and Sustainability Terms of Reference [2016/2017]</li> <li>• pages 19 to 22 of the Audit and Risk Committee Terms of Reference [2016/2017]</li> <li>• Board Tender Committee Terms of Reference (32-606)</li> <li>• pages 1 to 12 of the People and Governance Committee Terms of Reference (32-616)</li> </ul>	Undated
11.	<b>ARC</b> <ul style="list-style-type: none"> <li>• Board Committees 16 Jan 2015</li> <li>• Board Committees 24 April 2015</li> <li>• Board Committees 22 July 2015</li> <li>• Board Committees 25 Sept 2015</li> <li>• Board Committees 1 April 2016</li> <li>• Board Committees 19 April 2016</li> <li>• Eskom AGM 2016- Item 12B – Proposed board committees composition</li> <li>• Eskom Board Feb to April 2017</li> <li>• Eskom new interim board (23 June 2017)</li> <li>• Audit and Risk Committee Terms of Reference (32-606)</li> </ul>	Various

\* This is a list of the documents submitted by Eskom Legal to the Commission, but we understand a number of Eskom personnel have submitted documents directly to Commission personnel throughout the process of the Commission undertaking its investigations. Eskom is in the process of consolidating a list of this information with the assistance of the Commission.



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<b>2.</b>	<b>Subpoenas</b>
<b>3.</b>	<b>Correspondence from Eskom to Public Protector</b>
<b>4.</b>	<b>Correspondence to DPE</b>
<b>5.</b>	<b>Media statement</b>
<b>6.</b>	<b>Meeting Minutes</b>
<b>7.</b>	<b>Conflict of Interest</b>
<b>8.</b>	<b>Attorneys acting for Board members</b>
<b>9.</b>	<b>Legal Memorandums</b>

**ESKOM HOLDINGS SOC LTD****PUBLIC PROTECTOR REQUEST FOR DOCUMENTS****INDEX**

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3.	Eskom Procurement and Supply Chain Management Procedure	36-128
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<b>AGREEMENTS</b>		
5.	Coal Supply Agreement in respect of Optimum Colliery entered into by and between Eskom Holdings SOC Ltd and Tegeta Exploration and Resources (Pty) Ltd and annexures A-E thereto	174-304
6.	First addendum to the Coal Supply Agreement entered into by and between Eskom Holdings SOC Ltd and Tegeta Exploration and Resources (Pty) Ltd	305-309
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<b>AGREEMENTS</b>		
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26.	Letter from Eskom to Tegeta re: Upliftment of the suspension of coal supply: Brakfontein	

	Colliery and Brakfontein Colliery Extension dated 5 September 2015	
27.	Letter from Eskom to Tegeta re: Request for Independent Audit of Coal Pre-Certification Process dated 7 October 2015	
28.	Letter from Eskom to Tegeta re: Request for Independent Audit of Coal Pre-Certification Process dated 26 October 2015	
29.	Letter from Eskom to Tegeta re: Outstanding CSA Compliance Requirements and Operational Challenges at Brakfontein Colliery dated 8 February 2016	
30.	Letter from Eskom to Tegeta re: Cession and delegation of the coal supply agreement between Tegeta and Eskom to Shiva Uranium (Pty) Ltd dated 29 February 2016	
31.	Letter from Tegeta to Mr G Opperman re: Brakfontein Outstanding CSA Compliance Requirements dated 8 March 2016	
32.	Letter from Eskom to Tegeta re: Coal Supply and Off-Take Agreement entered into by and between Tegeta and Eskom: Termination of Force Majeure notification dated 11 August 2016	
33.	Letter from Eskom to Tegeta re: Coal Supply Agreement between Tegeta and Eskom: Termination of Force Majeure notification dated 16 August 2016	
34.	Eskom – Primary Energy Division Minutes: 13 May 2015	
35.	Eskom – minutes of meetings: 10 June 2015	
36.	Eskom – minutes of meetings: 8 July 2015	

37.	Eskom – minutes of meetings: 12 August 2015	
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**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**REPORT ON THE VERIFICATION OF COMPLIANCE WITH SCM LEGAL FRAMEWORK -  
APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.**

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# **Annexure “C”**



**ANNEXURE C: INDEX OF ADDITIONAL DOCUMENTS RELATED TO MATTERS SPECIFICALLY ADDRESSED IN ESKOM'S SUBMISSION TO THE STATE CAPTURE COMMISSION OF INQUIRY: 14 JANUARY 2019**

No	Description	Date
1.	<p>Documents related to the disciplinary proceedings instituted against Mathsela Koko including:</p> <ul style="list-style-type: none"> <li>• Disciplinary charges;</li> <li>• Index to the documents in Eskom's disciplinary bundle;</li> <li>• Eskom's bundle of documents; and</li> <li>• Summary of objective of information regarding certain allegations which had been made in the public domain regarding Matsela Koko based on server emails and Eskom Board Resolutions</li> </ul>	7 Feb 2018
2.	<p>Documents related to the disciplinary hearing of Suzanne Daniels including:</p> <ul style="list-style-type: none"> <li>• Disciplinary charges;</li> <li>• Index to documents in Eskom's disciplinary bundle;</li> <li>• Eskom's bundle of documents;</li> <li>• Transcripts of the disciplinary hearings held on 8 May 2018, 14 May 2018, 30 May 2018, 8 June 2018, 15 June 2018, 20 June 2018 and 5 July 2018;</li> <li>• Suzanne's plea explanation;</li> <li>• Suzanne's heads of argument;</li> <li>• Eskom's closing submissions; and</li> <li>• Chairman's findings</li> </ul>	11 April 2018
3.	<p>Documents related to the Eskom Review Application in Respect of McKinsey and Trillian under case number 22877, including:</p> <ul style="list-style-type: none"> <li>• The Record and the index thereto;</li> <li>• Pleadings in the matter;</li> <li>• Trillian's additional application; and</li> <li>• Applicant's heads of argument.</li> </ul>	14 Jan 2018

# Annexure “D”



**Annexure D****21**

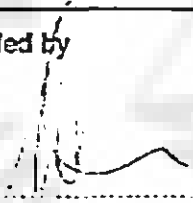
 <b>Eskom</b>	<b>Policy</b>	
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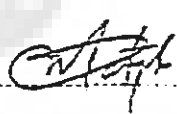
Title: **Conflict of Interest Policy**Document Identifier: **32-173**Alternative Reference Number: **N/A**Area of Applicability: **Eskom**Functional Area: **Regulation and Legal Division**Revision: **3**Total Pages: **13**Next Review Date: **July 2017**Disclosure Classification: **Controlled Disclosure**

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 Chairman

Date: **6/8/2014**Date: **26/8/14**Date: **24/08/2014**

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## 1. Introduction

The Conflict of Interest policy document sets out the obligations of employees and directors with regard to conflicts of interest and the declaration and management of these interests. While every employee and director has a duty to avoid conflicts of interest, these could arise. It is necessary to have a process in place to manage these conflicts of interest effectively in order to uphold good corporate governance and organisational integrity.

## 2. Policy Content

### 2.1 Policy Statement

Eskom subscribes to ethical values and legal principles. This requires that Eskom, its directors, employees, customers, and suppliers act with integrity and create public confidence by conducting business in a fair, impartial and transparent manner. For this reason, Eskom makes every effort to ensure that conflicts of interest do not compromise or are not perceived to compromise its business decisions and actions.

Eskom is also committed to fair, objective and transparent business dealings, and for this reason care must be taken when accepting or offering any business courtesies. Business courtesies are used to build good relationships and are offered as a kind gesture and to show courteousness or respect and may only be offered or accepted for these reasons.

The employee and director have the obligation to declare and manage conflicts of interest. This process is critical to ensure that the objectivity and integrity of the employee or *director* are not compromised, that the employee or director acts in Eskom's best interest, and that *Eskom* avoids situations where it can be accused of improper or unfair conduct.

In support of its vision, values and statutory responsibilities, Eskom will take all steps within its reasonable control to manage conflict of interest throughout Eskom.

### 2.2 Policy Principles

- 2.2.1 The duty to declare and manage conflicts of interest is not only in keeping with good governance practices, but is also a legal obligation. It arises in terms of the common law, the Public Finance Management Act, No. 1 of 1999 (PFMA), the Companies Act, No. 71 of 2008 (in respect of directors and prescribed officers), and in terms of Eskom's policies and procedures (in respect of employees).
- 2.2.2 Every employee and director has a duty to avoid conflict of interest that could adversely influence his or her judgement, objectivity or loyalty to Eskom when acting on its behalf.
- 2.2.3 Employees from TASK 09 and above (equivalent in subsidiaries), and directors, must submit declaration of interest forms at the beginning of every financial year.
- 2.2.4 In addition to the annual declaration, any conflict of interest must be declared as soon as the employee or director know that it has arisen, which requires that an amendment to the annual declaration be submitted within 5 (five) working days of knowing that such conflict has arisen.

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- 2.2.5 Even if there are no conflicts of interest, the prescribed electronic form must still be completed and submitted by the directors and employees with a TASK grading of 9 and above.**
- 2.2.6** Employees with a TASK grading of 4 to 8 (equivalent in subsidiaries) must, at the beginning of the financial year, complete a declaration form if they have conflicts of interest. This can be done either electronically (declaration eForm) or on the prescribed manual declaration of interest form (available from the corporate governance website) if they do not have access to a computer. For subsidiaries, this must be done in terms of the relevant subsidiary's declaration procedure.
- 2.2.7** The obligation is to declare all conflicts of interest, directorships, memberships, details of any related or inter-related persons or other associate that does business with Eskom, and all material personal interests, whether a conflict exists or not.
- 2.2.8** Employees and directors should disclose their interests in a particular field of business, even if it is not directly related to a specific contract/tender being considered by a committee or the Board or a committee of the Board, especially where strategies pertinent to that area of business are being discussed.
- 2.2.9** It should be noted that it is impossible to provide an exhaustive list of conflicts of interest and that the employee or director is, in most cases, in the best position to identify actual, potential and perceived conflicts of interest, which must be declared. If there is any uncertainty, individuals should contact the Ethics Office for advice.
- 2.2.10** The fact that a conflict of interest has been declared does not mean that it has been addressed and the conflict must further be managed responsibly. Where there is a conflict of interest (actual, potential or perceived), the employee or director must refrain from being part of any deliberations, document preparations, execution or meetings, and must not have access to information dealing with that particular matter. Also, the employee or director must not participate in any decisions relating to the matter.
- 2.2.11** Employees are prohibited from having a personal or other interest in an Eskom contract, whether as a supplier, an advisor, or by virtue of being a director or owner of a business, or in any other capacity. This includes third-party related transactions with an indirect link to an Eskom contract (for example, having a personal or other interest in a business that has an interest in a Supplier to Eskom).
- 2.2.12** A director must declare all possible conflicts of interests. The Board will always be entitled to determine that a particular interest of any director constitutes a conflict, and to recommend an appropriate way to manage such conflict.
- 2.2.13** Directors and employees should avoid conflicting interests as they may affect the employee or director's ability to perform his/her Eskom duties effectively.

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For example, if an employee performs private work during office hours, the private work (interest) is in conflict with the employee's duty to do Eskom work.

This results in unethical behaviour, as the employee or director may not act in Eskom or its stakeholders' best interest. Conflicting interests must not be confused with a conflict of interest, which arises when an employee or director's objectivity in decision-making is affected by personal interests.

- 2.2.14 Directors must exercise the powers and perform the functions of a director in good faith and for a proper purpose; in the best interests of the company; and with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director and having the general knowledge, skill and experience of that director.
- 2.2.15 Directors and employees must not accept or offer business courtesies that could create the impression that their judgement or the judgement of others could be affected if these courtesies are accepted or offered.
- 2.2.16 Directors and employees must not offer or accept *business courtesies* that are intended to improperly influence a person's objectivity or business decisions (conflict of interest), or to *bribe* someone, or to create a feeling of obligation, or to gain favour above another.
- 2.2.17 Business courtesies are used to build good business relationships, and are offered as a kind gesture and to show courteousness or *respect*. Business courtesies must only be offered or accepted for these reasons.
- 2.2.18 Directors and employees, Contractors and Graduates in Training (GITs) included, must declare courtesies offered or received when involved in Eskom business dealings.
- 2.2.19 Related parties of employees must not engage in, nor have interests in any Eskom contract where there is a conflict of interest. This includes third-party related transactions with an indirect link to an Eskom contract (for example, having a personal or other interest in a business that has an interest in a Supplier to Eskom).
- 2.2.20 An employee and a director must not disclose or use any information of Eskom or any information of third parties obtained through the carrying out of his/her duties for Eskom for any purposes other than to fulfil his/her Eskom duties.
- 2.2.21 Failure to comply with the obligations set out in this policy amounts to a breach of this policy and could amount to misconduct in terms of Eskom's disciplinary code and procedure. It may also amount to a contravention of the law in terms of the common law, the PFMA, or the Companies Act (for directors and prescribed officers), depending on the particular circumstances.

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### 3. Supporting Clauses

#### 3.1 Scope

##### 3.1.1 Purpose

The purpose of this policy is to set out the principles and the guidelines for managing the conflict of interest of directors and employees in Eskom and its subsidiaries.

##### 3.1.2 Applicability

This policy applies to all employees and directors of Eskom Holdings SOC Limited and its subsidiaries. In the event of a conflict between other policies

dealing with the issue of conflicts of interest and this policy, this policy will take precedence as far as conflicts of interest are concerned.

#### 3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

##### 3.2.1 Normative

Parties using this policy must apply the most recent edition of the documents listed below:

- 3.2.1.1 Code of Ethics; *'The Way'*, 32-527
- 3.2.1.2 Disciplinary Code, 32-1112
- 3.2.1.3 The Companies Act, Act 71 of 2008
- 3.2.1.5 Procurement and Supply Chain Management Policy, 32-1033
- 3.2.1.6 Whistle-blowing Policy, 32-250

##### 3.2.2 Informative

- 3.2.2.1 ISO 9001 Quality Management Systems.
- 3.2.2.1 The Constitution of the Republic of South Africa
- 3.2.2.2 The Protocol on Corporate Governance in the Public Sector (2002)
- 3.2.2.3 Prevention and Combating of Corrupt Activities Act (No 12 of 2004)
- 3.2.2.4 King Code and Report on Governance for South Africa 2009 (King III)
- 3.2.2.5 Public Finance Management Act (No 1 of 1999) (PFMA)
- 3.2.2.6 International standards, including the OECD Guidelines and the UN Convention on Prevention of Corruption.

#### 3.3 Definitions

The words used in this policy have the meaning set out below and appear in italics throughout this document:

- 3.3.1 **Business courtesies** means a gift or favour to an Eskom employee or director from a person or an entity, regardless of whether a business relationship exists between Eskom and that person or entity, for which fair market value is not paid by

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the recipient. A business courtesy may be a tangible or an intangible benefit, such as non-monetary gifts, meals, drinks, entertainment, hospitality, recreation, attendance prizes, transportation, discounts, tickets, passes, promotional items, or the use of a donor's time, materials or equipment.

**3.3.2 Companies Act** means the Companies Act, Act 71 of 2008, as amended from time to time, together with its regulations and schedules.

**3.3.3 Conflict(s) of interest:**

A conflict of interest arises when one's personal interests, personal financial interests or any other interests, **affect, or could be perceived to affect**, or has the **potential to affect**, one's objectivity and discretion and/or the objectivity and discretion of another in performing Eskom duties or making decisions on behalf of Eskom. This means that an employee or director is in a position to make a decision (or influences a decision) that is not fair and objective in order to benefit personally, or to benefit related and/or inter-related persons or other associates.

A personal interest may be an actual or potential, direct or indirect interest of an employee or a director, or of a related person or an inter-related person or other associate of the employee or director, in any business, entity, undertaking, or investment, as a shareholder, director, associate, member, adviser/consultant, prescribed officer or in any other capacity.

A **personal financial interest** when used with respect to any person means a direct material interest of that person or of a related person or inter-related person or other associate of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed. This does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment.

It is important to note that conflicts of interest can arise in various situations and are not confined to interests in contracts or direct financial interests.

Situations where conflicts could arise include, but are not limited to the following, which must be dealt with in terms of this policy:

- a) the acceptance and/or offering of business courtesies;
- b) directors and employees having private business interests in entities that do, or might do business with Eskom;
- c) directors and employees having affiliations with non-profit organisations that receive funding or any form of aid from Eskom; and
- d) private, professional, political, academic or other interest that may conflict with Eskom's interests.

**3.3.4 Conflicting interests:** means an interest that affects the employee or director's ability to perform his/her Eskom duties effectively. For example, if an employee performs private work during office hours, the private work (interest) is in conflict with the employee's duty to do Eskom work. This results in unethical behaviour,

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as the employee or director does not act in Eskom or its stakeholders' best interest. Conflicting interests must not be confused with a conflict of interest, which arises when an employee or director's objectivity in decision-making is affected by personal interests.

**3.3.5 Director:** means a member of the board of Eskom, or a board of its subsidiary, or an alternate director of such board and includes a person occupying the position of a director or alternate director, by whatever name designated, or a prescribed officer; or a person who is a member of a committee of the board or of the audit committee, irrespective of whether or not the person is also a member of such board.

**3.3.6 Employee(s):** mean individuals employed by Eskom on a permanent basis, Eskom learners, and fixed-term employees, which include temporary employees, part-time employees, casual employees, and occasional employees.

**3.3.7 Eskom:** means Eskom Holdings SOC Limited and its subsidiaries.

**3.3.8 Juristic person:** includes a foreign company and a trust, irrespective of whether or not it was established within or outside the Republic of South Africa.

**3.3.9 Knowing or Knows:**

Knowing or knows when used in respect of a person, and in relation to a particular matter, means that the person either:

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person ought reasonably to have –
  - i) had actual knowledge;
  - ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
  - iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter.

**3.3.10 Manager:** includes a supervisor and means any employee with staff reporting directly to him/her.

**3.3.11 Other associate:** means any person who has a relationship with an Eskom employee or director and may influence or be seen to influence the objectivity of the employee or director, and may, among others, include a business associate or a friend.

**3.3.12 Person:** includes a juristic person.

**3.3.13 Prescribed officer:** means a person who, within a company, performs any function that has been designated by the minister in terms of section 66 (10) of the Companies Act:

- 3.3.13.1 it is a person who, despite not being a director of a particular company, if that person

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- (a) exercises general executive control over the management of the whole or a significant portion of the business and activities of the company; or,
- (b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business activities of the company.

3.3.13.2 the above definition applies irrespective of any particular title given by the company

- (a) to an office held by the person in the company; or
- (b) to a function performed by that person for the company.

**3.3.14 Private work:** includes private interests, and means any employment or commercial activity, or any other interests embarked on by an employee outside the scope of his/her Eskom employment.

**3.3.15 Procurement and supply chain:** means all activities related to the procurement and disposal of assets and services and include business functions of procurement planning, purchasing, inventory control, transport, receiving, incoming inspection and salvage operations.

**3.3.16 Public Finance Management Act:** means the Public Finance Management Act, 1 of 1999, as amended from time to time, together with its regulations and schedules.

**3.3.17 Related and inter-related person(s) and control:**

**Related:**

- (1) When used in respect of two persons, means persons who are connected to one another in any manner contemplated below:
  - (a) an individual is related to another individual if they—
    - (i) are married, or live together in a relationship similar to a marriage; or
    - (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;
  - (b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with the definition of control as set out in subsection (2) below; and
  - (c) a juristic person is related to another juristic person if—
    - (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2) below;
    - (ii) either is a subsidiary of the other; or
    - (iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2) below.

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**Inter-related:** When used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in subsection 1 above, and one of them is related to the third in any such manner, and so forth in an unbroken series.

**Control:**

- (2) For the purpose of subsection (1) above, a person controls a juristic person, or its business, if—
- (a) in the case of a juristic person that is a company—
    - (i) that juristic person is a subsidiary of that first person, as determined in accordance with the Companies Act<sup>1</sup>; or
    - (ii) that first person together with any related or inter-related person, is—
      - (aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
      - (bb) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board;
  - (b) in the case of a juristic person that is a close corporation, that first person owns the majority of the members' interest, or controls directly, or has the right to control, the majority of members' votes in the close corporation;
  - (c) in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or
  - (d) that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c) of subsection (2).

**3.3.18 Stakeholders:** mean any group, individual, or thing (for example, the environment) that can affect, or is affected by, the achievement of the organisation's objectives. Eskom's stakeholders include, inter alia, its shareholder, Board of Directors, employees, trade unions, customers, suppliers, the public, the environment and the communities in which it operates.

**3.3.19 State Owned Entity:** means any entity owned or established by government at national, provincial or local government level, including but not limited to all the public entities identified in schedules 2 and 3 of the PFMA or any municipal entity established in terms of the Municipal Systems Act or the Municipal Finance Management Act.

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<sup>1</sup> section 3(1)(a)

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**3.3.20 Supplier:** means any person or entity that does business with Eskom or tenders to do business with Eskom, or is registered on Eskom's supplier database, such as consultants, contractors, sub-contractors and providers of goods and services.

### 3.4 Abbreviations

Abbreviation	Explanation
CE:	Chief Executive
DE:	Divisional Executive
EXCO	Executive management Committee
GE	Group Executive
HR:	Human Resources
OECD	The Organisation for Economic Co-operation and Development
SOC	State Owned Company
TASK:	Tuned Assessment of Skills and Knowledge

### 3.5 Roles and Responsibilities

#### 3.5.1 General responsibilities of managers and directors

- 3.5.1.1 Managers and directors need to be aware that their seniority results in perceptions of conflict more readily, and their conduct is, therefore, subject to greater scrutiny.
- 3.5.1.2 Directors must exercise the powers and perform the functions of a director in good faith and for a proper purpose; in the best interests of the company; and with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director and having the general knowledge, skill and experience of that director.
- 3.5.1.3 In addition to the general obligations that apply to all managers in their conflicts of interest are appropriately managed and declared within their areas of responsibility.
- 3.5.1.4 Managers, therefore, need to apply their minds to the declaration of interest forms before the forms are signed off and the declarations recorded in the central database.
- 3.5.1.5 Failure to manage employees according to the interests they have declared could be regarded as negligence.
- 3.5.1.6 All managers should take reasonable steps to be aware of the conflicts of interest pertaining to their direct reports.

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- 3.5.1.7 Similarly, managers need to apply their minds when approving applications for private work to ensure that the employee's private work does not create a conflict of interest.

### **3.5.2 Ethics Office responsibilities**

- 3.5.2.1 The management within the Ethics Office is responsible for ensuring that specific requirements are communicated timeously.
- 3.5.2.2 The Ethics Office shall be responsible for monitoring the implementation of this policy.

## **3.6 Process of monitoring**

### **3.6.1 Declarations submitted by employees**

- 3.6.1.1 Managers are responsible for ensuring that employees renew their declarations at the beginning of each financial year, that new employees submit their declarations within 10 working days of joining the organisation, as well as for assisting their staff members in effectively managing conflicts of interest declared.
- 3.6.1.2 The ethics co-ordinators within each Division are responsible for monitoring submissions for employees at TASK grading of T09 and above (equivalent level within subsidiaries) and reporting the submission statistics to the Ethics Office and respective Ethics Sponsors. This is done at the end of each month from April to July, to ensure 100% Divisional submission for the target group by end July each year.
- 3.6.1.3 Declarations submitted by Eskom's Executive Management Committee (EXCO) must be approved by the Chief Executive and the submissions monitored by the Ethics Office

### **3.6.2 Declarations submitted by the Board of Eskom**

The monitoring of declarations submitted by the Board of Eskom rests with the Chairman of the Board, supported by the Company Secretary.

### **3.6.3 Declarations submitted by subsidiary boards and employees**

The monitoring of declarations submitted by subsidiary Boards and employees rests with the relevant subsidiary.

### **3.6.2 Internal audit will conduct regular audits to ascertain compliance with this policy.**

## **3.7 Non-compliance**

- 3.7.1 Failure to comply with the obligations set out in this policy amounts to a breach of this policy and could amount to misconduct in terms of Eskom's disciplinary code

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and procedure. It may also amount to a contravention of the law in terms of the common law, the PFMA, or the Companies Act (for directors and prescribed officers), depending on the particular circumstances.

- 3.7.2 If an employee fails to disclose a conflict of interest, any other employee who is aware of the conflict should declare it to his/her senior manager or the Ethics Office. Employees who make such disclosures in good faith will have the necessary protection in terms of the Protected Disclosures Act (No 26 of 2000).

#### 4. Acceptance

This document has been seen and accepted by EXCO.

#### 5. Revisions

Date	Rev.	Remarks
July 2001	0	A directive with reference number ESKADABK8 was registered on the Eskom Documentation Centre database. No formal document was submitted for publication.
September 2006	1	A policy was put together to replace ESKADABK8. The policy was allocated with reference number 32-173 and formatted in compliance with the Eskom documentation requirements.
November 2010	2	Revised to align with the new Companies Act and the King Report on Corporate Governance for 2009. and also to incorporate specific requirements from Board and feedback from ethics co-ordinators and key stakeholders within the organisation.
July 2014	3	Periodic review

#### 6. Development Team

The original policy was developed with inputs from the following individuals:

- Eskom Board
- Task team chaired by Mohamed Adam

#### 7. Acknowledgements


- Ethics co-ordinators, Procurement and Supply Chain Management, Executive Management Committee members, organised labour and managerial-level employees.
- Language Services Team

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 <b>Eskom</b>	<b>Policy</b>	
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'The Way' Policy**

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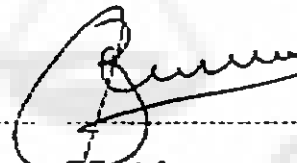
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Compiled by

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## 1. Introduction

The Code of Ethics 'The Way' outlines and provides for the ethical standards and behaviour that are required of all directors and employees of Eskom Holdings SOC Limited and its subsidiaries (Eskom).

## 2. Policy Content

### 2.1 Policy Statement

#### **The Way – Living the Eskom Values through the Code of Ethics**

The Eskom Code of Ethics: 'The Way', reflects the organisation's commitment to the highest ethical standards and principles in all Eskom business. It not only describes the acceptable behaviour and attitudes that are essential in living the Eskom values of Zero Harm, Integrity, Innovation, Sinobuntu, Customer Satisfaction and Excellence (ZIISCE), but it also establishes the foundation for the interaction of Eskom's Board of Directors and employees with colleagues, customers, suppliers, shareholders, the environment, the public and other stakeholders.

The Code shows the Eskom board members and employees (hereafter referred to as "we") the way "The Eskom Way" as a clear direction to ensure that we walk the talk.

Eskom commits itself to upholding its values and ethical standards and demonstrating this commitment to all its stakeholders. Therefore, Eskom's directors and employees are required to apply the Code in their day-to-day activities, especially if there are no rules governing the decisions.

Adhering to this Code is not optional; it is the way we do business at Eskom. This way, we will be role models for each other and Eskom, in turn, will be a role model amongst its peers.

The Code should be read together with other Eskom policies and legislation. Any contravention of the Code and applicable Eskom policies may result in disciplinary action, which is transparent, just and equal for all.

It is a duty of every director and employee to address and or report any unethical behaviour or non-compliance with this Code. Eskom will make every effort to protect anyone who reports suspected violations of the Code, against any form of victimisation or occupational detriment.

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## 2.2 Policy Principles

Together, we will build an ethical Eskom.

We, as the Eskom Board, Executive Management Committee and all Eskom employees commit to the following Eskom core values:

<b>ZERO HARM - Protecting the Eskom Way</b>	We support a safe and healthy work environment for our employees. We support a safe and healthy environment for our customers, suppliers, our country and its people. We comply with the safety, health and environmental legislation and ensure that the necessary Eskom policies are developed, implemented and monitored. We strive to continuously improve our impact on the environment.
<b>INTEGRITY – Acting the Eskom Way</b>	We are honest. We are trustworthy. We are fair. We are transparent.
<b>INNOVATION – Thinking the Eskom Way</b>	We continuously think of and implement new, ethical ways that will improve processes, service delivery, and satisfying our internal and external customers' needs. We continuously strive to find creative, ethical solutions when dealing with business challenges. We openly communicate our goals and successes in order to attract new ideas and talented individuals.
<b>SINOBUNTU – Caring the Eskom Way</b>	We show that we care by leading by example and providing each other with direction, support and a workplace which is free of sexual harassment, discrimination, nepotism and favouritism. We appreciate and value the diversity of our workforce and the uniqueness of each employee. We respect Eskom and our stakeholders' assets by using them for the purpose that they are intended; and not to gain personally through the abuse of assets and resources.
<b>CUSTOMER SATISFACTION – Serving the Eskom Way</b>	We are passionate and committed to service delivery of the highest standard for both our internal and external customers. We focus on understanding our internal and external customers' needs and expectations, in order to offer timely, reliable and quality service. We encourage customer feedback, both positive and negative, to improve our service.
<b>EXCELLENCE - Working the Eskom Way</b>	We perform our duties with care and dedication. We pay attention to detail, delivering what is expected on time, and giving our best every day. We take responsibility for our actions by holding ourselves accountable for what we say and do. We protect confidential information, and only share it with those who are authorised to have access. We report unethical behaviour in the workplace, and effectively address violations of the law, policies and procedures.

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### 3. Supporting Clauses

#### 3.1 Scope

##### 3.1.1 Purpose

The Code of Ethics explains what behaviour is acceptable within Eskom and highlights how the Eskom values should be lived within the workplace.

##### 3.1.2 Applicability

The Code shall apply throughout Eskom Holdings SOC Limited Divisions and its Subsidiaries, including the Eskom Board and Subsidiary Boards.

#### 3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

##### 3.2.1 Normative

- a) Ethics climate survey report (2005/2006)
- b) Disciplinary Code 32-1112.

##### 3.2.2 Informative

- a) Conflict of Interest Policy, 32-173
- b) The Constitution of the Republic of South Africa
- c) Basic Conditions of Employment Act
- d) Labour Relations Act
- e) Employment Equity Act
- f) The King Report on Governance for South Africa 2009 (King III)
- g) The Companies Act (No. 71 of 2008)
- h) Procurement and Supply Chain Management Policy, 32 1033
- i) Whistle-blowing Policy, 32-250
- j) Grievance Procedure 32-1114.

#### 3.3 Definitions

**3.3.1 Public domain:** Published in any public forum without constraints (either enforced by law, or discretionary).

**3.3.2 Code of Ethics:** A Code of Ethics is similar to an agreement on the standards for behaviour, which should be applied in the workplace. It sets the standard of behaviour within the organisation, and guides employees in making ethical decisions.

**3.3.3 Director(s):** Director means a member of the board of Eskom Holdings SOC Limited, or a board of its subsidiary, or an alternate director of such board and includes a person occupying the position of a director or alternate director, by whatever name designated, or a prescribed officer; or a person who is a member of

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a committee of the board or of the audit committee, irrespective of whether or not the person is also a member of such board.

**3.3.4 Employees:** Also referred to as staff members. These include individuals employed by Eskom Holdings SOC Limited and Eskom Subsidiaries on a permanent basis, contract labour, temporary employees, part-time employees, casual employees, occasional employees, learners and others acting for Eskom or its Subsidiaries.

**3.3.5 Eskom:** Eskom means Eskom Holdings SOC Limited and its Subsidiaries.

**3.3.6 Ethics:** Ethics refers to the process of distinguishing between what is right and wrong in my interaction with others, so that I can do what is right. Doing what is right, is also interpreted as doing what is good, or ensuring that I do no harm.

**3.3.7 Favoritism:** Favouritism refers to the practice of showing favour to, or giving preference to some person or group, to the detriment or expense of another person or group that is entitled to equal treatment or opportunity. This action normally entails discriminating against another person or group. Within Eskom, each person should be valued as an individual and as an important member of the team, and therefore favouritism will not be condoned.

**3.3.8 Nepotism:** Nepotism is a specific form of favouritism. It entails showing favour or preference towards relatives based upon that relationship, rather than on an objective evaluation of ability or suitability. For example, offering employment to a relative, despite the fact that there are others who are better qualified and willing to perform the job, would be considered a form of nepotism, which is not allowed in Eskom.

**3.3.9 Professionalism:** In Eskom, directors and employees demonstrate professionalism by paying attention to detail, demonstrating expertise in their fields, behaving above reproach and giving their best to Eskom at all times.

**3.3.10 Relative:** A relative in this context is someone who is related through blood, marriage or adoption.

**3.3.11 Respect:** Respect is demonstrated when you show consideration for, or appreciation of someone or something. For example, appreciating your colleagues and staff members; or being considerate towards your customers' needs and expectations. When you show respect, you treat others in the same manner in which you want them to treat you. You treat others' assets in the same way in which you expect others to treat your personal assets.

**3.3.12 Stakeholders:** Broadly defined, stakeholders refer to any group, individual, or thing (e.g. environment) that can affect, or is affected by, the achievement of the organisation's objectives. Eskom's stakeholders include its shareholder, its Board of Directors, its employees, its customers, its suppliers, the public, the environment and the communities in which it operates.

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**3.3.13 Suppliers:** Supplier means any person or entity that does business with Eskom or tenders to do business with Eskom, or is registered on Eskom's supplier database, such as consultants, contractors, sub-contractors, and providers of goods and services.

**3.3.14 Values:** Values refer to core beliefs, which define what one believes in and what is important. Values influence behaviour and motivate decisions. Values do not only apply to individuals but also to organisations.

Eskom's core values are referred to as 'ZIISCE' and are: Zero Harm, Integrity, Innovation, Sinobuntu, Customer Satisfaction and Excellence. These values describe what is important to the organisation, what it stands for and what it believes in, and are defined as follows:

- Zero Harm – Protecting the Eskom Way
- Integrity – Acting the Eskom way
- Innovation – Thinking the Eskom way
- Sinobuntu – Caring the Eskom Way
- Customer Satisfaction – Serving the Eskom way
- Excellence – Working the Eskom way

### 3.4 Abbreviations

Abbreviation	Explanation
BU	Business Unit
CE	Chief Executive
DE	Divisional Executive
EDC	Eskom Documentation Centre
EXCO	Executive Management Committee
GE	Group executive

### 3.5 Roles and Responsibilities

#### 3.5.1 Employee Responsibilities:

Eskom is committed to the highest ethical standards and principles in all Eskom business, and requires the same from Eskom employees in fulfilling their Eskom responsibilities. Compliance with the Code and ethics-related policies is therefore required of Eskom directors and employees, which include contract labour, temporary employees, part-time employees, casual employees, occasional employees, learners and others acting for Eskom.

**3.5.1.1** Ensure that you are familiar with the Code, and ethics-related policies, and that you receive proper training on these.

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- 3.5.1.2 Use the Code to guide your decisions, especially when you are in doubt, or if there are no rules or policies that address the specific situation.
- 3.5.1.3 If you have questions or concerns, ask for advice. (Refer 'Finding your way')
- 3.5.1.4 Request detailed information from managers, supervisors and policy custodians regarding policies and procedures affecting your work, and ensure that you understand and comply with these.
- 3.5.1.5 Use the appropriate channels to report unethical behaviour, crime, irregularities and grievances. Eskom will protect employees who have reported suspected illegal activities and violations of the policy, against any form of victimisation or occupational detriment, and will make every effort to protect the confidentiality of anyone reporting a breach. (Refer to the Whistle blowing Policy)

### 3.5.2 Managerial Responsibilities:

In addition to their general rights and responsibilities as employees of Eskom, managers and supervisors have additional responsibilities resulting from their seniority and the nature of their managerial/supervisory duties:

#### 3.5.2.1 Managers and supervisors are required to:

- a. make a personal commitment to act in accordance with the Code, communicate this commitment to staff members, and lead by example;
- b. guide staff members to behave in accordance with the Code;
- c. identify ethics risks in your business activities, and establish ways to mitigate these risks, and to address potential contraventions of the Code;
- d. take appropriate action to correct behavioural deviations, and
- e. enforce disciplinary action when appropriate.

#### 3.5.2.2 Managers and supervisors are required to ensure that their staff members, including temporary employees and contract workers in the department:

- a. are in possession of the Code, and/or the Quick reference guide 'How to find the Way';
- b. are sensitised to the policy, and ethics related policies, through staff dialogue sessions facilitated by managers and supervisors. Employees need to know how to apply the Code of Ethics and ethical standards in their specific work environments. (Presentation material is available from the ethics website and ethics office).

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**3.5.2.3 Managers and supervisors are accountable for ensuring** that all new employees and temporary or contract workers attend their Group/Division's induction programme, as well as formal ethics training workshops. The Ethics Office should be contacted to provide ad hoc ethics training on request.

**3.5.2.4 Managers and supervisors are required to give their staff members** opportunities to discuss ethics issues and concerns both formally (e.g. staff meetings) and informally (one-to-one meetings). It is recommended that 'ethics' is a standing agenda item for staff meetings, so as to encourage ethics dialogue.

**3.5.2.5 Managers and supervisors are required to assist staff members in:**

- addressing ethics issues and concerns, and/or
- reporting unethical behaviour and violations of the law and policies, so that incidents can be investigated and appropriate action be taken.

**3.5.2.6 Managers and supervisors may not, under any circumstances, victimize** staff members who report unethical behaviour, and/or violations of the law and policies.

### **3.5.3 Other Role Players' Responsibilities:**

**3.5.3.1 Human Resource practitioners are required to ensure** that new employees receive the policy brochure (formal one-pager available from the Ethics Office and ethics website) as part of the sign-on documentation that is given to them on the first day of employment. New employees must also be registered to attend an induction programme within one month of joining Eskom.

**3.5.3.2 All individuals acting on behalf of Eskom must be made aware of, and are** expected to adhere to, Eskom's standards of conduct. Therefore, Procurement and Supply chain departments are required to ensure that suppliers (*as defined in this document*) receive the policy brochure (*formal one-pager available from the ethics website*) as part of the contract documentation received from Eskom.

**3.5.3.3 The Code will be available to customers and other organisations on** request. These requests must be referred to the Ethics Office.

**3.5.3.4 The Ethics Office will develop ethics training material and presentations,** which will be published on the Ethics website (*Eskom intranet*). Managers, supervisors, communication practitioners, trainers and ethics co-ordinators are required to access this information in order to ensure on-going ethics awareness and training within their respective working environments.

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**3.5.3.5** Apart from employee commitment to ethical behaviour, and the role that managers and supervisors play in instilling an ethical culture through ethics awareness, communication, training and disciplinary action for non-compliance, the functions mentioned below are responsible for further entrenching an ethical culture within the organisation.

**3.5.3.6 Assurance and Forensic Department by:**

- a) providing an assurance function that the respective Group/Divisions subsidiaries are complying with legislation, policies and procedures of the organisation and that the organisational values are lived within the workplace;
- b) monitoring ethics training and awareness;
- c) investigating and reporting on ethics matters referred to them by the Ethics Office, and ensuring that disciplinary action is instituted against employees where evidence of non-compliance exists. Assurance and Forensics Department is also accountable for the confidential, externally managed, toll-free whistle blowing/hot line (0800-11-27-22), the investigation of incidents reported to them through various channels, and for maintaining accurate statistics on crime and irregularities within the organisation, and reporting these to EXCO and the Eskom Board.

**3.5.3.7 Employee Relations by:**

ensuring that grievances are effectively addressed and disciplinary action is taken against employees in terms of Eskom's processes.

**3.6 Process for Monitoring**

The Code will primarily be monitored and maintained by the Ethics Office within Regulation and Legal Division. The Ethics Office's role is to regularly review and monitor that the Code remains relevant and to assist the organisation with the effective implementation thereof.

The Group/Divisional Executives are accountable for compliance with the Code within their respective Groups and or Divisions with the support of the ethics co-ordinators within the Groups/Divisions.

The Regulation and Legal Division shall be assisted by other role players reflected under paragraph 3.5 above.

**4. Acceptance**

This document has been seen and accepted by: EXCO.

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## 5. Revisions

Date	Rev.	Remarks
July 2001	0	A directive with reference number ESKADABK8 was registered on the Eskom Documentation Centre database. No formal document was submitted for publication.
September 2006	0	A policy was put together to replace ESKADABK8. The policy was allocated with reference number 32-173 and formatted in compliance with the Eskom documentation requirements.
November 2010	1	The policy was revised to align with the new Companies Act and the King Report on Corporate Governance for 2009, and also to incorporate specific requirements from Board and feedback from ethics co-ordinators and key stakeholders within the organisation
July 2014	2	Periodic review that takes into account changes in the organisational structure

## 6. Development Team

The following people were involved in the development of this document:  
The Code of Ethics was developed by the Ethics Office, with inputs from the key role-players listed in item 7 below.

## 7. Acknowledgements

- Eskom Board of directors;
- Eskom executive management committee members;
- Eskom employees through the ethics climate survey (2005/2006);
- Eskom customers and suppliers through the ethics climate survey (2005/2006)
- Managerial employees' input into the draft Code of Ethics;
- Organised Labour through the Central Consultative Forum; and
- Ethics co-ordinators within the respective Divisions.
- Language Services Team.

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 <b>Eskom</b>	<b>Policy</b>	
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Document Identifier: **32-1033**

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Area of Applicability: **Eskom**

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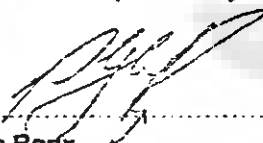
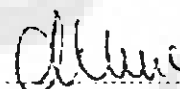
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Group Technology and Commercial - Risk & Governance

Technology and Commercial

Date: **16.05.2014**

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## 1. Introduction

This Policy creates the governance framework for all procurement and supply chain management activities within Eskom Holdings SOC Limited (Eskom).

The Technology and Commercial Group within Eskom has been mandated to align its operations with the strategic objectives of Eskom, and to moreover create a world class commercial organisation.

In order to achieve this, Group Technology and Commercial will carry out its mandate as a single centre-led procurement and supply chain management entity within Eskom, and will ensure standardisation of procedures and processes across procurement and supply chain operations, in order to meet customer requirements and minimise operational risks to Eskom.

Training and accreditation of the procurement fraternity with Eskom, standardisation and simplification of procedures and processes, and consistent application and decision-making is pivotal in order to ensure that the purchase, disposal and/or leasing of assets, goods and services are conducted legally, safely and ethically, in the shortest possible lead times and with the best possible financial and operational outcome for Eskom, while at all times upholding the constitutional principles of fairness, equitability, transparency, cost-effectiveness, and competitiveness, and the PFMA principles of avoiding wasteful and irregular expenditure.

## 2. Policy Content

### 2.1 Legislative Framework

As a wholly state-owned entity, Eskom is classified as an "organ of state" in accordance with the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution).

As an organ of state, Eskom is legally obliged, in terms of Section 217 of the Constitution to create and maintain a procurement system enabling the contracting of goods and services in a manner that is fair, equitable, transparent, competitive and cost-effective. It is furthermore a legal requirement that the procurement of goods and services by organs of state be regulated by law - (S217 (3)) of the Constitution.

The Preferential Procurement Policy Framework Act (PPPFA) 5 of 2000 and its associated Regulations give effect to S217 (3) of the Constitution by prescribing the legislative and regulatory framework to give effect to standardised tendering processes in the procurement of goods and services by organs of state. The PPPFA is intrinsically linked to the Public Finance Management Act (Act 1 of 1999), by subjecting all Schedule 2 PFMA entities (including Eskom) to the applicability of the PPPFA Regulations.

Both the Constitution and the PPPFA require organs of state to develop procurement policies that align with the prescribed framework set out in the PPPFA.

Eskom, as a Schedule 2 PFMA entity was previously exempt from the PPPFA and its Regulations, until December 2012. It thereafter became mandatory in terms of the law for Eskom to fully comply with all provisions of the PPPFA and its Regulations, with exemption only being received with respect to procurement authorised by Development Funding Institutions (DFIs).

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This revised Policy, and the revised Procedure (32-1034) therefore seeks to ensure constitutional and PPPFA alignment in all procurement processes.

Further to this, Eskom as an organ of state is further governed by the PFMA in the management of public funds. On this basis, in terms of Chapter 6 of the PFMA, regarding Public Entities, Eskom is obliged to have an 'accounting authority' which must be accountable for the obligations set out therein. Within Eskom, this accounting authority is its Board of Directors.

One of the responsibilities of the Eskom Board is to have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective, and in giving effect to this, the core fiduciary duties of the Eskom Board is to exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity; act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity; and to seek to prevent any prejudice to the financial interests of the state.

These obligations of the Eskom Board are further augmented by the provisions of the Companies Act, 71 of 2008 (as amended) and the principles of the King Code of Corporate Practices and Conduct contained in the King Report on Corporate Governance for South Africa 2009 (King III Report).

In accordance with the legislative framework and the required governance practices, Eskom's Delegation of Authority Policy 240-62072907 (as approved by the Eskom Board of Directors and updated from time to time) creates the financial and commercial parameters for decision-making, approvals and consents across Eskom and specifically within the procurement and supply chain environment, whereby purchases, disposals and/or leasing of assets, goods or services are authorised and approved strictly in accordance with the Delegation of Authority Policy, in order to ensure that the legal obligations of the Eskom Board are formalised and maintained at each and every transactional level.

Procurement and supply chain operations within Eskom are furthermore governed normatively by the latest revisions of Eskom's Conflict of Interest Policy, the Eskom Code of Ethics (The Way – Standard), and the Eskom Lifesaving Rules with respect to ethical and safe conduct, and all procurement and supply chain related activities must be managed in strict accordance with the aforementioned policies and standards, with a zero-tolerance approach to unethical and unsafe practices.

The development of the Approved Procurement Framework is based on the aforementioned legal and policy considerations. The specific processes and operational aspects of the procurement and supply chain environment within Eskom are set out in detail for use by its Procurement Practitioners within the latest revision of Eskom's Procurement and Supply Chain Management Procedure (32-1034) and the various Process Control Manuals (PCMs).

## 2.2 Policy Principles or Rules

Group Technology and Commercial will therefore seek to execute its mandate in accordance with the following policy principles:

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- 2.2.1** Avoid wasteful and irregular expenditure, and promote and maintain good corporate governance through a procurement system which is fair, equitable, transparent, competitive and cost effective, including with respect to its Internal Suppliers. This entails complying with Eskom's normative legislative, regulatory and policy frameworks, operating with simplified and streamlined procurement and supply chain management processes and procedures, designing appropriate delegations of authority, internal controls and segregation of duties, providing adequate spend visibility and providing an audit trail of procurement processes.
- 2.2.2** Ensure value for money when procuring assets, goods and services. This entails achieving continuous improvement in value for money as measured through savings and TCO (Total Cost of Ownership) reduction whilst reducing process cycle time and costs.
- 2.2.3** Acting as a customer-centric Group with its different stakeholders, by specifically providing adequate input for budget planning, rendering effective contract and supplier management and measuring stakeholder satisfaction.
- 2.2.4** Implement and monitor Supplier Development and Localisation initiatives (such as B-BBEE, New Growth Path and CSDP) and targets in accordance with Eskom's normative legislative, regulatory and policy frameworks. This entails managing adequate supplier evaluation hierarchies and non-exclusive procurement processes and procedures.
- 2.2.5** Act as a platform for learning as well as growing Eskom's skills and core competencies within the procurement and supply chain management profession.

The cumulative impact of the aforementioned policy framework must result in delivery of the right assets, goods and services at the right time, in a legal, ethical, safe and cost-effective manner, in order to meet Eskom's primary strategic objective of supplying electricity to its customers while still remaining financially sustainable.

### **2.3 Core Functions**

Group Technology and Commercial is accountable and responsible for the effective control and management of the following core procurement and supply chain functions for and behalf of Eskom:

- a) Sourcing of Primary Energy
- b) Project Sourcing
- c) Nuclear Sourcing
- d) Commodity Sourcing
- e) Tactical Sourcing
- f) Business Enablement
- g) Supplier Development and Localisation
- h) Supply Chain Operations, comprising:
  - Materials Management

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- Shipping Management
- Investment Recovery (Asset Disposals)
- Supply Chain Planning
- Business Support

The aforementioned core functions will in turn be supported by a Risk and Governance Department within Group Technology and Commercial.

### 3. Supporting Clauses

#### 3.1 Scope

##### 3.1.1 Purpose

The purpose of this Policy is to establish the broad governance framework and principles to enable legal compliance, alignment, standardisation of procedures and processes, and consistency in decision-making, of all stakeholders involved in procurement and supply chain operations.

##### 3.1.2 Applicability

This Policy applies throughout Eskom Holdings SOC Limited, its Divisions, wholly owned subsidiaries and entities wherein Eskom has a controlling interest, operating in terms of South African law, which are subject to the provisions of the PFMA.

#### 3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

##### 3.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] The Constitution of the Republic of South Africa, Act 108 of 1996
- [3] The Companies Act, 71 of 2008
- [4] Public Finance Management Act, 01 of 1999
- [5] The Preferential Procurement Policy Framework Act, 05 of 2000 and Regulations
- [6] Delegation of Authority Policy 240-62072907
- [7] The Eskom Code of Ethics (Standard 32-527)
- [8] Conflict of Interest Policy (32-173)
- [9] The Eskom Lifesaving Rules (240-62196227)
- [10] Eskom Disciplinary Code (Eskom Standard 32-1112).

##### 3.2.2 Informative

- [1] PFMA Framework for Supply Chain
- [2] King Code and Report on Corporate Governance for South Africa 2009 (King III Report).

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## 3.3 Definitions

Definition	Explanation
<b>Accredited Procurement Practitioner</b>	An Accredited Procurement Practitioner is a Procurement Practitioner who has been trained, assessed and accredited to execute, support and/or approve procurement strategies; and the awarding / modification of orders /contracts, and who has been formally delegated with such authority in writing. The exercise of delegated authority is done strictly in accordance with the Approved Procurement Framework.
<b>Approved Procurement Framework</b>	The Approved Procurement Framework refers to the approved Delegation of Authority Policy 240-62072907, this Policy (32-1033), Eskom's Procurement and Supply Chain Management Procedure (32-1034), approved internal PCMs, Standard Operating Procedures and Work Instructions governing the procure-to-pay processes within Eskom, and any other mandatory legislative and policy frameworks that govern and have a direct impact on Eskom's procurement and supply chain management operations.
<b>Internal Supplier</b>	A Division, wholly-owned or partly-owned subsidiary of Eskom Holdings SOC Limited that is a supplier of assets, goods or services to Eskom Holdings SOC Limited.
<b>Procurement Practitioner</b>	A Procurement Practitioner is an employee within Eskom appointed to manage and/or execute a procedure or process as contained in Procedure 32-1034, or within any of the approved PCMs relating to procure-to-pay processes forming part of the Approved Procurement Framework. A Procurement Practitioner is required to be trained, assessed and accredited within a reasonable time period as agreed to with his/her Procurement Manager, to become an Accredited Procurement Practitioner. A Procurement Practitioner does not have any delegation of authority to support or approve commercial transactions, but may still execute commercial transactions and make recommendations in respect thereof.

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### 3.4 Abbreviations

Abbreviation	Explanation
B-BBEE	Broad-Based Black Economic Empowerment
CSDP	Competitive Supplier Development Programme
DOA	Delegation of Authority
DFI	Development Funding Institutions
EXCO	Executive Committee
PCM	Process Control Manual
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SOC	State Owned Company
TCO	Total Cost of Ownership

### 3.5 Roles and Responsibilities

**Group Executive: Technology and Commercial:** The executive and member of the EXCO appointed by the Eskom Board of Directors to lead and manage Group Technology and Commercial within Eskom. In order to give effect and accountability to decision-making within the procurement and supply chain management environment, the Eskom Board of Directors has delegated the Group Executive: Technology and Commercial with the authority for all consents / approvals related to procurement and supply chain management activities across Eskom. This delegation will in turn be further delegated in writing to various general managers, senior managers, tender committees, and other Accredited Procurement Practitioners within Group Technology and Commercial.

The authority to bind Eskom into contracts for the supply, disposal, leasing of assets, goods and services is governed strictly by the Board-approved Delegation of Authority Framework for Procurement.

Only delegated individuals and specifically formed tender committees will have the authority to grant approvals for the awarding of contracts / orders.

**Risk and Governance Department:** Responsible for implementing the Approved Procurement Framework, including implementation of effective internal controls and measures to ensure risk mitigation and compliance thereto, and to facilitate investigations into related non-compliance.

### 3.6 Process for Monitoring

The Risk and Governance Department residing within Group Technology and Commercial will implement the necessary checks and balances on various aspects of the procurement and supply chain processes in order to manage and monitor compliance to the Approved Procurement Framework.

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Where analysis and audits reveal non-compliance to the Approved Procurement Framework, effective remedial corrective and / or disciplinary measures will be recommended by the Risk and Governance Department to ensure compliance thereto, and to prevent future non-compliance.

Group Technology and Commercial will ensure that all Procurement Practitioners and other relevant stakeholders involved in the procure-to-pay processes and other procurement and supply chain management operations of Eskom are regularly trained on the Approved Procurement Framework and any revisions / amendments relating thereto.

Once the necessary training has been received by Procurement Practitioners and other relevant stakeholders, serious and material breaches of the Approved Procurement Framework will be subject to investigation and, based on the outcome of these investigations, employees acting in contravention of the Approved Procurement Framework may be subject to disciplinary action based on the PFMA and Eskom's Disciplinary Code.

Internal Audit within Assurance and Forensics will conduct regular audits to ensure compliance with this Policy.

#### 4. Acceptance

This document has been seen and accepted by:

Name	Designation
EXCO	
Business Improvement Project	
Eskom Legal Department	
Internal Audit (Assurance and Forensics)	
Group Technology and Commercial Management Committee	

#### 5. Revisions

Date	Rev.	Remarks
October 2010	0	Back 2 Basics Programme (As-Is Phase).
April 2011	1	Revised to align to Back2Basics (To Be Process)
April 2014	2	Revised to align with revised Delegations of Authority, PPPFA application and revised supplier reconsideration processes

#### 6. Development Team

The following people were involved in the development of this document:

- Vishala Panday (Middle Manager: Risk and Governance)

#### 7. Acknowledgements

None


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 <b>Eskom</b>	<b>Procedure</b>	
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**Title:** Eskom's Procurement and Supply Chain Management Procedure

**Unique Identifier:** 32-1034

**Alternative Reference Number:** N/A

**Area of Applicability:** Eskom

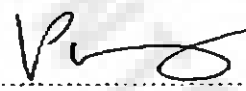
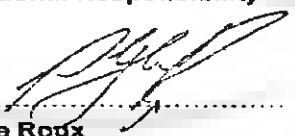

**Functional Area:** Group Technology & Commercial

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## 1. Introduction

This Procedure 32-1034 sets out the procedures and processes to be followed by various key operational areas within procurement and supply chain operations, under Group: Technology and Commercial within Eskom Holdings SOC Limited ("Eskom").

The key operational areas governed by this Procedure include:

- a. Sourcing of Primary Energy (coal, water and fuel)
- b. Project Sourcing
- c. Nuclear Sourcing
- d. Commodity Sourcing
- e. Tactical Sourcing
- f. Business Enablement
- g. Supplier Development and Localisation (SD&L)
- h. Supply Chain Operations (SCOPS), comprising:
  - i. Materials Management
  - ii. Shipping Management
  - iii. Investment Recovery (Asset Disposals)
  - iv. Supply Chain Planning
  - v. Business Support

## 2. Supporting Clauses

### 2.1 Scope

The purpose of this Procedure is to describe the processes and procedures to be followed by Procurement Practitioners across the various operational areas within Eskom when delivering the required outputs of the End-Users' / customers' requests with clarity, effectiveness and accountability. When applying the standard procedures within the Approved Procurement Framework, it is intended to achieve accuracy and consistency in decision-making, customer satisfaction as well as fulfilment of the strategic objectives of Group Technology and Commercial, and Eskom as a whole.

This Procedure may be subject to amendments from time to time (either in the form of signed and approved Position Papers issued by the Risk and Governance Department within Group Technology and Commercial, or through a formal revision to this Procedure), in order to align with changes in business strategy, legislation, policy, industry trends, recognised good practice, as well as any other considerations which are necessary to maintain the efficiency and integrity of Eskom's procurement and supply chain operations.

#### 2.1.1 Purpose

The overall intent is to ensure that application of the Approved Procurement Framework results in an outcome/solution that is commercially, financially, and technically sound and which in addition, does not contravene the constitutional principles of fairness, equitability, transparency, competitiveness and cost-effectiveness. On this basis, this Procedure must, in the event of a lack of clarity, or in the event of ambiguity or inconsistency, be interpreted in favour of complying with the aforementioned constitutional principles, based on existing jurisprudence, including latest precedent set by South African courts, to

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ensure an outcome that is legally sound, and which does not compromise the integrity or reputation of Eskom.

Prior approval from the EXCOPS or a higher Delegated Approval Authority is needed in the case of relaxation or amendment of this Procedure or a section thereof. Relaxations will be specifically applicable where deviations are required for purposes of the acquisition of loans / funding to support the procurement, and / or the achievement of substantial monetary and / or technical benefits to Eskom, which is supported by a Board-approved strategy. Deviations from this Procedure are still required to comply with the constitutional principles of fairness, equitability, transparency, competitiveness and cost effectiveness, which remain the overriding obligation.

### 2.1.2 Applicability

This Procedure applies uniformly throughout Eskom Holdings SOC Limited, its Divisions, wholly-owned subsidiaries and entities wherein Eskom has a controlling interest, operating in terms of South African law, which are subject to the provisions of the PFMA.

## 2.2 Normative / Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

### 2.2.1 Normative

- [1] The Constitution of the Republic of South Africa Act 108 of 1996
- [2] Public Finance Management Act 01 of 1999
- [3] The Broad-Based Black Economic Empowerment Act 53 of 2003
- [4] The Preferential Procurement Policy Framework Act 05 of 2000
- [5] PPPFA Regulations
- [6] The Construction Industry Development Board Act 38 of 2000
- [7] CIDB Regulations
- [8] The Eskom Delegation of Authority Policy 240-62072907
- [9] Eskom's Procurement and Supply Chain Management Policy – 32-1033
- [10] Conflict of Interest Policy (32-173)
- [11] The Eskom Code of Ethics (Standard 32-527)
- [12] Eskom Disciplinary Code (Eskom Standard 32-1112)
- [13] Eskom Disciplinary Procedure (32-1111)
- [14] The Eskom Life Saving Rules (240-62196227)
- [15] Safety, Health, Environment and Quality (SHE) Policy (32-727)
- [16] Construction Safety, Health and Environmental Management (Procedure 32-136)
- [17] SHE Requirements for Eskom Commercial Process (32-726)
- [18] ISO 9001: 2008, applicable SABS Standard
- [19] Supplier Contract Quality Requirements Specification (QM58)
- [20] Periods for Retention of Accounting and Other Records 32-202

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- [21] Foreign Exchange and Commodity Exposures Policy (32-10954)  
 [22] Foreign Exchange and Commodity Procedure for Importation and Exportation of Goods and Services (32-1096)

### 2.2.2 Informative

- [23] CIDB Standard of Uniformity  
 [24] Tender Office Standard 240-53717264  
 [25] Eskom's Purchasing Pact with Suppliers (To be registered)

### 2.3 Definitions

Definition	Explanation
<b>Accredited Procurement Practitioner</b>	An Accredited Procurement Practitioner is a Procurement Practitioner who has been trained, assessed and accredited to execute, support and/or approve procurement strategies; and the awarding / modification of orders /contracts, and who has been formally delegated with such authority in writing. The exercise of delegated authority is done strictly in accordance with the Approved Procurement Framework.
<b>Accredited Verification Agency</b>	An accredited verification agency is one that has fulfilled all prescribed legislative requirements for operating as a verification agency in terms of the B-BBEE Act and / or any other applicable legislation.
<b>Approved Procurement Framework</b>	The Approved Procurement Framework refers to the approved Delegation of Authority Policy (240-62072907); Eskom's Procurement and Supply Chain Management Policy (32-1033); this Procedure (32-1034); approved internal PCMs; Standard Operating Procedures and Work Instructions, governing the procure-to-pay processes within Eskom; authorised Position Papers, and any other mandatory legislative and policy frameworks that govern and have a direct impact on Eskom's procurement and supply chain management operations.
<b>Black</b>	African, Coloured, Indian or Chinese persons who are natural persons and who are: <ol style="list-style-type: none"> <li>Citizens of the Republic of South Africa by birth or descent; or</li> <li>Citizens of the Republic of South Africa by naturalization before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or</li> <li>Citizens of the Republic of South Africa by becoming citizens only after the commencement date of the Constitution of the Republic of South Africa Act of 1993, who, but for apartheid which had been in place prior to that date, would have been entitled to acquire citizenship by naturalization, prior to that date.</li> </ol>

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Definition	Explanation
<b>Black Women Owned (BWO)</b>	An EME or QSE that is more than 50% owned and effectively managed by Black women.
<b>Black Youth</b>	Black persons who are youth as defined in the National Youth Commission Act of 1996
<b>Blocked</b>	"Blocked" means the tagging of a supplier registered on the Eskom Supplier Database so as to indicate that the supplier is in the process of deregistration therefrom, with the possible pending of the completion and finalisation of any or all obligations remaining under existing contracts with Eskom, and that no further contracts may be entered into with that supplier.
<b>Case Investigator</b>	A Case Investigator means the person/s assigned by the Supplier Reconsideration Standing Committee to fully investigate the grounds for reconsideration of supplier registration as nominated by the Supplier Reconsideration Standing Committee, on behalf of Eskom.
<b>Delegated Approval Authority</b>	A Delegated Approval Authority refers to delegated individuals forming part of a dual or triple adjudication system, or a delegated tender committee (PTC).
<b>Delegation of Authority Policy</b>	The approved Delegation of Authority Policy with respect to the Approved Procurement Framework refers to the various delegations of authority passed from the Eskom Board of Directors to the Chief Executive, Finance Director, Group Executives and Divisional Executives, and further delegated to other appointed general and senior managers, to Accredited Procurement Practitioners and / or to tender committees in order to approve the purchase, disposal and/or leasing of assets, goods and services for and on behalf of Eskom.
<b>Designated E- Band Manager</b>	A designated E-Band Manager is a Senior Manager in Eskom managing an operational area where a need has been identified for a supplier to be categorised as a sole source supplier for reasons stipulated on the Sole Source Justification Form, and who is accountable for validating and authorising the motivation contained within the Sole Source Justification Form.
<b>Disabled Persons</b>	Disabled Persons refers to persons with a long term or recurring physical or mental impairment that substantially limits their entry into, or advancement in employment.
<b>Enquiry</b>	A collective and generic term for requests for information, expressions of interest, requests for quotations, invitations to tender or requests for proposals made to a supplier, a group of suppliers or the market at large.
<b>Eskom Supplier Database</b>	The Eskom Supplier Database refers to the electronic database created and maintained by Eskom for the purpose of assisting in the management and administration of its suppliers and/or the award of contracts or the placement of orders.

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Definition	Explanation
<b>Exempted Micro Enterprise (EME)</b>	EMEs refer to Suppliers with a total revenue not exceeding R5m, or as otherwise prescribed within relevant Sector Codes, who have an automatic B-BBEE Status of a "Level Four Contributor", or a BBEE Status of a "Level Three Contributor" where more than 50% Black Owned, without the requirement of a B-BBEE verification certificate being mandatory. <i>(NB: that the revision to the BBEE Codes will become effective within Eskom on or before 31 December 2014 and a Position Paper will be issued within Group Technology and Commercial, regarding the implementation of the updated BBEE Codes of Good Practice).</i>
<b>Flagged</b>	"Flagged" means the tagging of a supplier registered on the Eskom Supplier Database so as to indicate that the registration of the supplier on the Eskom Supplier Database is under re-consideration or temporary suspension and that for the time being no contracts may be entered into with that supplier.
<b>Hierarchy of Supplier Preference</b>	The Hierarchy of Supplier Preference (set out in 3.2.4) is an internal system of supplier selection used as a market analysis framework, based on giving first preference to existing suppliers (via existing contracts) before awarding new contracts / orders to new suppliers, and then, when looking at the award of new orders / contracts, to first give consideration to Internal Suppliers before giving consideration to external suppliers, and when giving consideration to external suppliers, to first consider small Black suppliers over larger Black suppliers, and to further consider local manufacturers over international manufacturers, and local distributors of locally manufactured products over local distributors of internationally manufactured products. The Hierarchy of Supplier Preference must be used as a framework when deriving commercial strategies, segmenting suppliers for informal sourcing processes, and setting specific goals and objective criteria as part of the PPPFA Framework.
<b>Internal Suppliers</b>	A Division, wholly-owned or partly-owned subsidiary of Eskom Holdings SOC Limited that is a supplier of assets, goods or services to Eskom Holdings SOC Limited.
<b>Large Black Supplier</b>	A Large Black Supplier refers to a LME that is more than 50% owned and effectively managed by Black persons.
<b>Large Black Women Owned Supplier</b>	An LME that is more than 50% owned and effectively managed by Black women.
<b>Large Measured Entity (LME)</b>	Large Suppliers with turnovers in excess of R35m (thirty five million Rand) will be measured against all seven elements of the Generic Scorecard as set out in the B-BBEE Codes of Good Practice. <i>(NB: that the revision to the BBEE Codes will become effective within Eskom on or before 31 December 2014 and a Position Paper will be issued within Group Technology and Commercial, regarding the implementation of the updated BBEE Codes of Good Practice).</i>

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Definition	Explanation
<b>PPPFA Framework</b>	The PPPFA Framework refers to the Preferential Procurement Policy Framework Act (05 of 2000), its Regulations, and any other formal and official notifications and guidelines issued by the National Treasury regarding the application thereof.
<b>Project Lifecycle Model</b>	The Project Life Cycle Model (PLCM) comprises five stage gates as follows: Concept Release Approval (CRA), Definition Release Approval (DRA), Execution Release Approval (ERA), Hand Over Approval (HO) and Finalisation Release Approval (FRA).
<b>Position Paper</b>	A formal amendment to the Approved Procurement Framework, approved by the EXCOPS or a higher Delegated Approval Authority, signed off by the Group Executive: Technology and Commercial, and issued by the Risk and Governance Department within Group Technology and Commercial.
<b>Procurement Practitioner</b>	A Procurement Practitioner is an employee within Eskom appointed to manage and/or execute a procedure or process as contained in this Procedure (32-1034), or within any of the approved PCMs relating to procure-to-pay processes forming part of the Approved Procurement Framework. A Procurement Practitioner is required to be trained, assessed and accredited within a reasonable time period as agreed to with his/her Procurement Manager, to become an Accredited Procurement Practitioner. A Procurement Practitioner does not have any delegation of authority to support or approve commercial transactions, but may still execute commercial transactions and make recommendations in respect thereof.
<b>Purchasing in Eskom (PiE) training</b>	PiE training is an official and mandatory training course for Procurement Practitioners regarding the execution of commercial transactions within Eskom. Procurement Practitioners must attend the complete course and be assessed in order to become Accredited Procurement Practitioners. A pass mark of eighty per cent (80%) is required in the assessment for a Procurement Practitioner to qualify to become an Accredited Procurement Practitioner. PiE is endorsed by executive management within Eskom and its content will be subject to revision from time to time.

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Definition	Explanation
<b>Related Person</b>	<p>"Related person" means any person who is required to be a signatory of a Supplier Application Form, offer, tender or proposal, and any other person who, directly or indirectly:-</p> <p>(i) Controls in any manner whatsoever a supplier or a subsidiary thereof (if any);</p> <p>(ii) Controls in any manner whatsoever the performance and execution of a contract concluded or order issued between Eskom and a supplier; or</p> <p>(iii) Is being controlled in any manner whatsoever by the person contemplated in sub-clause (i) or (ii),</p> <p>Provided: that where there is any dispute concerning such control, that dispute shall be referred to a senior legal adviser or higher within Eskom's Legal Department for resolution, whose decision shall be final.</p>
<b>Small Black Enterprise (SBE)</b>	SBEs refer to an EME or QSE that is more than 50% owned and effectively managed by Black persons.
<b>Sole Source Justification Form (SSJF)</b>	The SSJF is an internal control form completed by an End-User and authorised by the Designated E-Band Manager, an SD&L functionary, and a Senior Commercial Manager (or higher) as a motivation that a supplier is a sole supplier, for one or more reasons specified on the form. It may be used on a per order /contract basis by an End-User when there is a specific requirement for assets, goods, or services, or it may be used as a motivation for a longer term "blanket" approval of a sole source. This form is required to be submitted together with the Commercial Transaction Approval Form to the applicable Delegated Approval Authority, depending on the value and contract period of the transaction.
<b>Supplier</b>	A supplier is a current or potential supplier, vendor, contractor, consultant, or service provider. A supplier may be a natural or legal person, and includes any employee acting within the course and scope of his/her employment, or any agent or manager acting for or on behalf of, or in the interests of the person registered as supplier on the Eskom Supplier Database.
<b>Tender</b>	A tender refers to a written competitive offer, quotation or proposal made by a supplier, in a prescribed or stipulated form, in response to an invitation to tender / competitive enquiry for the provision of assets, goods or services, and/or the disposal thereof.

## 2.4 Abbreviations

Abbreviation	Description
<b>B-BBEE</b>	Broad-Based Black Economic Empowerment
<b>BEAST</b>	Business Evaluation and Analytical Services Team

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Abbreviation	Description
BU	Business Unit
BWO	Black Woman Owned
CARAT	Complete, Accurate, Relevant, Accessible and Timely
CE	Chief Executive
CFA	Clearing and Forwarding Agent
CFC	Customer Foreign Currency
CIC	Capital Investment Committee
CIF	Cost Insurance Freight
CIDB	Construction Industry Development Board
CIPC	Companies and Intellectual Property Commission
CNC	Customer Network Centre
COIDA	Compensation for Occupational Injuries and Diseases Act
CPA	Contract Price Adjustment
CPI	Consumer Price Index
CRA	Concept Release Approval
CSDP	Competitive Supplier Development Programme
DCF	Delegation Consent Form
DE	Divisional Executive
DFI	Development Funding Institution
DFSP	Demand Forecasting and Supply Planning
DOA	Delegation of Authority
DOE	Department of Energy
DPE	Department of Public Enterprises
DRA	Design Release Approval
DTI	Department of Trade and Industry
ECC	Engineering and Construction Contract
ECCMA	Electronic Commerce Code Management
ECSC	Engineering and Construction Short Contract
EME	Exempted Micro Enterprise
EOCD	ECCMA Open Catalogue Dictionary
EOI	Expression of Interest
EOQ	Economic Order Quantity
ERA	Execution Release Approval
ESDEF	Eskom Development Foundation
EXCO	Executive Committee
EXCON	Exchange Control
EXCOPS	Executive Committee Procurement Sub-Committee
FD	Finance Director
FEP	Front-End Planning

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Abbreviation	Description
FIDIC	International Federation of Consulting Engineers
FOREX	Foreign Exchange
FPS	Finance Project Services (A department within Group Finance)
GE	Group Executive
GM	General Manager
GR	Goods Receipt
GSC	General Services Contract
HR	Human Resources
ICAS	Investment and Capital Assurance
IDM	Integrated Demand Management
IDSP	Integrated Demand and Supply Plan
IFC	Investment Finance Committee
INCOTERMS	International Commercial Terms
INTCOV	International Cover
IPP	Independent Power Producer
IR	Industrial Relations
IRBA	Independent Regulatory Board for Auditors
ISO	International Standards Organisation
JBCC	Joint Building Contracts Committee
JV	Joint Venture
LME	Large Measured Entity
LPO	Local Purchase Order
MANCO	Management Committee
MRO	Maintenance, Repair, Operations
MRP	Materials Requirement Planning
NDA	Non-Disclosure Agreement
NEC	New Engineering Contract
NT	National Treasury
OEM	Original Equipment Manufacturer
OHSA	Occupational Health and Safety Act
P&SCM	Procurement and Supply Chain Management
PAIA	Promotion of Access to Information Act
PAYE	Pay as You Earn
PCM	Process Control Manual
PFMA	Public Finance Management Act
PIE	Purchasing in Eskom
PLCM	Project Lifecycle Model
PO	Purchase Order
POD	Purchase Order Description

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Abbreviation	Description
PPA	Power Purchase Agreement
PPI	Producer Price Index
PPPFA	Preferential Procurement Policy Framework
PMBOK	Project Management Body of Knowledge
PR	Purchase Requisition
PSC	Professional Services Contract
PTC	Procurement and Tender Committee
QSE	Qualifying Small Enterprise
RFI	Request for Information
RFP	Request for Proposal
ROE	Rate of Exchange
SANAS	South African National Accreditation System
SAP	Systems Application Processes
SAPFI	SAP Financial Accounting
SAPHR	Systems Application Processes Human Resources
SARS	South African Revenue Service
SBE	Small Black Enterprises
SCOPS	Supply Chain Operations
SCOT	Steering Committee of Technology
SD & L	Supplier Development and Localisation
SHEQ	Safety, Health, Environment, Quality
SEIFSA	Steel and Engineering Industries Federation of South Africa
SFD	Short Form Description
SLA	Service Level Agreement
SSJ	Sole Source Justification Form
TCO	Total Cost of Ownership
TOR	Terms of Reference
TPA	Treasury Portfolio Assessment
TSC	Term Services Contract
UMC	
USD	United States Dollar
VAT	Value-Added Tax
VMI	Vendor Managed Inventory

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## 2.5 Roles and Responsibilities

### 2.5.1 Eskom's Board of Directors (Board)

The Eskom Board from time to time approves amendments to the Eskom-wide Delegation of Authority Policy. This delegation of authority and its application to procurement / disposal approvals is set out in Appendix A herein, and is a fundamental component of the Approved Procurement Framework.

### 2.5.2 Executive Committee (EXCO)

The Chief Executive has delegated procurement authority to the EXCO and some of this authority has, in turn, been further delegated to the EXCO Procurement Subcommittee (EXCOPS) to approve procurement / disposals which exceed head office operational / capital expenditure PTC delegations.

### 2.5.3 Group Executive: Technology and Commercial

The executive and member of the EXCO appointed to lead and manage the Technology and Commercial Group within Eskom.

### 2.5.4 Divisional Executive: Primary Energy

The executive delegated by the Eskom Board and appointed to lead and manage the procurement of all primary energy within Eskom. For the purposes of this Procedure, any reference to the Divisional Executive: Primary Energy is specific to all primary energy related procurement and/or disposals. The Divisional Executive: Primary Energy may, at his / her discretion, nominate any other general or senior managers to fulfil any of the roles and responsibilities set out herein on his / her behalf.

### 2.5.5 Tender Committees (PTCs)

All tender committees are delegated by the Eskom Board (in accordance with Appendix A) to authorise purchases / disposals exceeding the delegations applicable to dual and triple adjudication delegations of authority. The constitution of regional / site-based PTCs is done with the written consent of the FD or relevant GE/DE, with prior consultation of the GE: Technology and Commercial. The operation of a PTC is governed by its Terms of Reference which must be regulated by the Risk and Governance Department within Group Technology and Commercial.

### 2.5.6 Cost Centre Manager

The Cost Centre Manager is the End-User or the manager of the End-User who is responsible for ensuring that any procurement requested or financial commitment made on the cost centre he/she manages is approved by him/herself based on a valid need and availability of the necessary funds to ensure that the procurement is neither wasteful nor irregular, as defined in the PFMA, and is in accordance with the requirements of the Approved Procurement Framework.

### 2.5.7 End-User

The End-User is responsible for providing adequate descriptions and quantities for planning and procurement of business needs within his sphere of responsibility. The End-User is also responsible for quick response to any requests for clarification by or through the relevant procurement department within Group Technology and Commercial. Since the purchases are based on an End-User's request and are paid for by the End-User's cost centre or project, the End-User has the responsibility and authority to

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determine that Eskom's needs will be met before a recommendation is made to a Delegated Approval Authority or before an order /contract is placed, by providing his /her written consent to the recommendation being presented to the Delegated Approval Authority.

### 2.5.8 Procurement Manager

The Procurement Manager is responsible for ensuring that PRs that are entered in the procurement system are dealt with expeditiously, efficiently and effectively. He/she is responsible for the performance quality of the procurement function. This includes reduced turnaround times regarding resolution of PRs, consolidation of requests to achieve economies of scale and optimisation of savings opportunities where possible, ensuring training and accreditation of Procurement Practitioners, liaison with End-Users as internal customers, performance measurement against specified key performance indicators and standards, and quality assurance of the formal recommendations made to Delegated Approval Authorities.

### 2.5.9 Non-Buyers /LPO Buyers

Eskom employees who are not appointed Procurement Practitioners, i.e. non-buyers /LPO Buyers, may at the discretion of authorised delegates of Group / Divisional Executives who are Cost Centre Managers at a minimum of E-Band level, be authorised through a written letter of appointment, to serve as LPO Buyers and execute procurement of specific categories of assets, goods or services, of a low value (i.e. less than R30 000 per transaction, including VAT and all applicable taxes, or as otherwise stipulated by the Group Executive: Technology and Commercial from time to time), through the use of LPOs. The uses and constraints of using LPOs will be determined jointly by Group Technology and Commercial and Group Finance and will be set out in authorised policies, procedures, divisional and individual Delegations of Authority.

### 2.5.10 Disposal Officer

Disposal officers are, by virtue of a written appointment and any stipulated training and accreditation requirements deemed necessary by SCOPS senior management, responsible for the execution of the disposal of moveable assets and goods in accordance with this Procedure.

### 2.5.11 Eskom Agent

The Eskom Agent is the appointed Project Manager in the ECC, the Employer's Representative in the ECSC and the GSC, Employer's Agent in the PSC, the Supply Manager / Purchaser's Representative in the Supply Contract, the Services Manager in the TSC or the Engineer in terms of FIDIC. The Eskom Agent is responsible for ensuring that all stipulated contractual deliverables are received on behalf of Eskom in accordance with the terms and conditions of the relevant contract. The Eskom Agent is generally defined with associated roles and responsibilities within Eskom's standard forms of contract. An Eskom Agent must be appointed by a relevant Middle Manager for all contracts not exceeding R10m, and by a relevant Senior Manager (E-Band) or higher level of authority for all contracts exceeding R10m, within the relevant area of operations, using the appointment letter relevant to the form of contract.

### 2.5.12 Commercial Senior Manager:

A generic term for an E-Band Manager within Group Technology and Commercial, who leads the development and implementation of sourcing strategies, and manages the procurement, for a group of identified strategic commodities or transactions falling within a category of supply, within a project, or area of operations.

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### 2.5.13 Contract Manager

A Contract Manager is the Eskom Agent appointed in terms of the applicable NEC or FIDIC contract, or a person assigned by the Eskom Agent, to manage and administer the post-award phase of the procure-to-pay process. A Contract Manager must undergo the necessary training as prescribed by the Contract Management Department within the Group Technology and Commercial Business Enablement function, and be able to demonstrate the necessary prior experience of managing similar contracts of a similar magnitude prior to appointment as a Contract Manager. It is the accountability of the appointing Senior Manager (or higher), and the Eskom Agent (if not the Contract Manager), to verify that the Contract Manager being assigned is suitably trained and experienced.

### 2.5.14 Cross-Functional Team

A cross-functional team consists of a group of End-Users and other subject-matter experts pertaining to a specific commercial transaction. A cross-functional team is assigned by the Procurement Practitioner to ensure that execution of the agreed commercial strategy is commercially, technically (including SHEQ considerations), legally, and financially sound. Cross-functional teams are led and co-ordinated by the Procurement Practitioner. Cross-functional teams must, as minimum, comprise technical, financial and commercial representatives, for purposes of strategy development, tender evaluations and negotiations.

### 2.5.15 Supplier Development and Localisation (SD & L)

Supplier Development and Localisation (SD & L) as a function within Group Technology and Commercial incorporates all governmental socio-economic requirements, including, but not limited to Broad-Based Black Economic Empowerment (B-BBEE), localisation, skills development, industrialisation, and job creation under a single centralised function in order to maximise local supplier development opportunities within the supply chain, through consolidated strategies.

### 2.5.16 Risk and Governance Official

A Risk and Governance Official is an official of Eskom reporting into the human resource structure of the Senior Manager: Risk and Governance (Group Technology and Commercial) who is responsible for the management of commercial risk and governance matters relating to the Approved Procurement Framework, within an Eskom operating unit, province / region, or at Eskom's head office.

### 2.5.17 Senior Manager: Risk and Governance

The Senior Manager: Risk and Governance (Group: Technology and Commercial) is an official of Eskom appointed by the Group Executive: Technology and Commercial to manage commercial risk and governance matters relating to the Approved Procurement Framework, including matters relating to the grounds for reconsideration of supplier registration statuses.

### 2.5.18 Standing Committee (Supplier Reconsideration):

The Standing Committee (Supplier Reconsideration) means a permanent committee chaired by a nominated Senior Manager or higher, and consisting of at least four (4) members with mandatory representatives from:

- a) The Supplier Development and Localisation Department within Group Technology and Commercial;
- b) The Legal Department of the Legal and Regulatory Division;
- c) The Sustainability Division (SHEQ); and
- d) Any one or more of the sourcing departments across Group Technology and Commercial;

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Appointed and mandated by the Group Executive: Technology and Commercial to adjudicate on matters regarding the reconsideration of supplier registration statuses.

#### **2.5.19 Supplier Evaluation Manager**

The Supplier Evaluation Manager is an employee of Eskom reporting into the human resource structure of the SD&L function, designated or appointed as the official responsible for managing the administration of the application and registration process for persons to become registered as suppliers on the Eskom Supplier Database, either in general or in respect of a particular application or class of applications.

#### **2.5.20 Tender Office**

The Tender Office based at Eskom's Head Office (Megawatt Park) and at various other Eskom sites is responsible for the administration and co-ordination of the receipting of competitive tenders and other formal submissions requested by Eskom in response to enquiries issued. Notwithstanding this, all Eskom sites with official and authorised Tender Offices will be subject to the same procedures and processes for the issuing, receipting and administration of tenders / submissions as set out in this Procedure, and in the Tender Office Standard 240-53717264.

#### **2.5.21 Cataloguer**

The cataloguer is responsible to name, describe, classify and number goods (whether stocked or non-stocked) or services in accordance to the criteria of fit, form and function, which is captured in the material master module of SAP.

#### **2.5.22 Materials Management Manager**

A Materials Management Manager directs, coordinates and plans the warehouse storage and further distribution of procured assets, goods and materials at Eskom sites under his / her area of management.

#### **2.5.23 Supply Chain Planning Manager**

The Supply Chain Planning Manager is responsible for managing, consolidating and analysing the total supply and demand needs of the business as per approved rolling plans, and organises the timely availability of the required goods and materials for the maintenance of Eskom sites within his / her area of management.

#### **2.5.24 Tactical Sourcing Department**

The Tactical Sourcing Department will purchase assets, goods or services where the requirement generally cannot be consolidated with other identical requirements procured by other Groups / Divisions within Eskom. It is generally applied when requirements do not have significant long term demand, requirements are non-complex and have low savings opportunities, or where consolidation opportunities are limited. Should there be a need for procurement in support of a project to be implemented by an End-User, and the value thereof is less than R300m, then the relevant team within the Tactical Sourcing Department will be responsible to execute the transaction with support from the Project Sourcing Department.

#### **2.5.25 Commodity Sourcing Department**

The Commodity Sourcing Department executes purchases where multiple End-Users across Eskom Divisions or within a Division have requirements identified as critical (high complexity / risk with low impact / cost), strategic (high complexity risk with high impact / cost) or leveraged (low complexity / risk

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with high impact / cost), and where the requirements can be consolidated and procured via enabling / framework agreements, in order to achieve standardisation and realise significant savings opportunities.

### 2.5.26 Project Sourcing Department

The mandate of the Project Sourcing Department is the effective sourcing and contracting of capital assets, goods, services and projects for Group Capital, execution of project procurement across Eskom for all projects greater than R300m, support and advice on project procurement for projects less than R300m, management of all procurement funded by Development Funding Institutions (DFI) including the World Bank, African Development Bank etc., and procurement and commercial support in electricity retail transactions from IPP's (local and cross border PPA's) including energy savings initiatives (required by IDM).

## 2.6 Processes for Monitoring

Group Technology and Commercial has defined processes in place to ensure that commercial transactions in Eskom are controlled, monitored and executed in accordance with applicable legislation. These processes for monitoring can be classified into the following categories:

### 2.6.1 PFMA

Eskom is required by law, in terms of the PFMA, to have *"an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective"*.

The PFMA requires that Eskom is represented by accountable persons at every level, who must *"prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity"* and *"manage available working capital efficiently and economically"*.

In terms of the PFMA, one commits an act of financial misconduct if one:

- **Makes or permits an irregular expenditure or a fruitless and wasteful expenditure; or**
- **Wilfully or negligently fails to exercise [delegated] power or perform [delegated] duty.**

The PFMA also requires that Eskom's accounting authority (being the Board of Directors) takes effective and appropriate disciplinary steps against any employee who:

- Contravenes or fails to comply with the provisions of the PFMA;
- Commits an act which undermines the financial management and internal control system of the public entity; or
- Makes or permits an irregular expenditure and / or a fruitless and wasteful expenditure.

Employees within Eskom, who become aware of a breach or a failure to comply with any aspect of the PFMA with respect to procurement and supply chain management activities, or with the Approved Procurement Framework, on the part of another employee, are required to immediately report such breach or failure in writing to the Senior Manager: Risk and Governance within Group Technology and Commercial to initiate further investigation.

### 2.6.2 Ministerial Reporting in Terms of the PFMA

Section 54(2) of the PFMA requires that before a public entity such as Eskom concludes any of the following transactions, the Board of Directors, must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its shareholder, being the Minister, for approval of the transaction:

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- (a) Establishment or participation in the establishment of a company;
- (b) Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) Acquisition or disposal of a significant shareholding in a company;
- (d) Acquisition or disposal of a significant asset;
- (e) Commencement or cessation of a significant business activity; and
- (f) A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

For the purposes of sections 54(2) and 55(2)(b), "significant" and "material" are not defined in the PFMA. Treasury Regulation 28.3.1 provides for the Board to develop and agree a framework of acceptable levels of "significance" and "materiality" with the Minister ("Significant Transactions"). This framework is referred to as the Significance and Materiality Framework (SMF).

The purpose of section 54 of the PFMA is to enable the Minister as shareholder to exercise effective oversight over those affairs of the public entity that have a significant impact not only on its business but also on the economy in the context of an appropriate and clear model of governance.

To the extent that clarity is required as to whether a transaction requires ministerial approval in terms of the PFMA, the Procurement Practitioner is required to contact the PFMA Office within the Legal and Regulatory Division for guidance in terms of the aforementioned SMF.

### 2.6.3 Ethics

All Procurement Practitioners are obliged to attend training on the Conflict of Interest Policy (32-173), and the Eskom Code of Ethics (Standard 32-527), in order to ensure that all commercial activities are conducted in a manner that gives priority to ethical practices.

Managers within Group Technology and Commercial must review all declarations of conflicts of interests made by their employees, and ensure that appropriate measures are put into place to eliminate any perceived, potential or actual conflicts of interest within the procurement and supply chain environment.

A formal declaration of interest must be signed by all members of evaluation and negotiation teams prior to the commencement of formal competitive tender evaluations and formal mandated negotiations (being all transactions greater than R1 million). It is the responsibility of the Procurement Practitioner to ensure that such declarations of interests are completed and filed for audit purposes.

Suppliers will be required to comply with the Eskom Code of Ethics as set out within the Purchasing Pact with Suppliers, as well as in terms of Eskom's standard conditions of contract regarding ethical practices. Suppliers will be required to complete a formal declaration of interests (on a Declaration of Interests Form) as a condition of registration and as a standard tender returnable when participating in formal tendering processes, or as a mandatory pre-requisite to formal mandated negotiations with no prior tendering (mandates greater than R1 million).

All Eskom employees are also required to complete a Declaration of Interest e-form annually. All completed e-forms are available from the Ethics Department within the Legal and Regulatory Division.

Failure to comply with the obligations set out in Eskom's Conflict of Interests Policy and the Eskom Code of Ethics will constitute misconduct in terms of Eskom's Disciplinary Code (32-196).

The Risk and Governance Department within Group Technology and Commercial will set up and manage internal systems to determine the relationships between Eskom employees and suppliers with whom Eskom intends to contract with. This system includes probes into shareholding and directorships of suppliers, as well as probes into private work conducted by Eskom employees, and specifically Procurement Practitioners. It must be noted that all Eskom employees require specific managerial

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consent in writing to engage in any private work, and that such private work cannot be related to any business conducted within Eskom.

#### 2.6.4 Safe Practices

Eskom has a zero tolerance approach to unsafe practices, and this zero tolerance approach is required to be expressed within commercial transactions as conditions to register as a supplier with Eskom, criteria for evaluation of tenders, conditions of contract award, and conditions of contract.

Compliance to SHE requirements as contained within the contracts with Suppliers is mandatory in terms of the law.

Suppliers will be required to comply with the Eskom Lifesaving Rules as set out within the Purchasing Pact with Suppliers. Suppliers failing to comply with SHE requirements may be subject to a process of reconsideration of their registration statuses with Eskom, dependent on the severity of the non-compliance.

Failure of Eskom employees executing commercial transactions to comply with the obligations set out in the Eskom Lifesaving Rules will constitute misconduct in terms of Eskom's Disciplinary Code.

#### 2.6.5 Budget / Investment Approval

For all procurement of assets, goods and services through various procurement methods and sourcing mechanisms the necessary budgetary / investment approvals must first be obtained, which is the responsibility of the End-User.

Investment approval refers to the approval of funds within the financial planning process, to be utilised for a specific financial commitment that Eskom intends to enter into, whereas the term "ERA" refers to one of five stage gates in the Project Life Cycle Model [PLCM], and which is also used in broad terms for the investment decision sought from the relevant Investment Committee to enter into the execution phase of a project. Notwithstanding the distinction in terminology, procurement to enable the execution and delivery of a project may not commence unless investment/ERA approval has been obtained for the project.

It should be noted that funds required to develop prototypes, samples, concepts, specifications, scopes, or to procure long-lead time items (being those components of a system or piece of equipment for which the times to design and fabricate are the longest, and for which an early commitment of funds may be necessary in order to meet the earliest possible date of system completion) before the ERA phase of a project (i.e. during CRA or DRA phases), will require the relevant budgetary / investment approval, prior to any formal competitive procurement being conducted. Funding for such procurement must form part of the CRA or DRA approval and will require motivation to the relevant governance committees, which approval must be recorded as a formal resolution in writing. Accuracy of scope will be a further prerequisite in order to proceed with procurement in these instances.

Business Evaluation and Analytical Services Team (BEAST) from Finance Project Services may be contacted for advice as to when submissions are to be prepared for submission to the Investment Committees.

#### 2.6.6 Promotion of Access to Information Act 02 of 2000 (PAIA)

PAIA provides the means to exercise the public's right to have access to any information held by the state. This includes information relating to tendering processes.

Certain processes need to be followed and statutory requirements have to be met.

A PAIA request must be made on a statutory request from "Form A" to constitute a PAIA request. Anybody receiving such a request must notify the PAIA office.

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All requests for information in terms of PAIA must be referred to Eskom's PAIA office based at the Eskom Academy of Learning in Midrand (telephone 011-6552130, facsimile on 0866679952, or e-mail [PAIA@eskom.co.za](mailto:PAIA@eskom.co.za)).

Further information on the handling of a PAIA request can be found on the following internet link:

[http://www.eskom.co.za/OurCompany/PAIA/Pages/Promotion\\_Of\\_Access\\_To\\_Information.aspx](http://www.eskom.co.za/OurCompany/PAIA/Pages/Promotion_Of_Access_To_Information.aspx)

### 2.6.7 Condonation of Irregular Procurement

Whenever any Eskom employee procures assets, goods or services by any means without adherence to the Approved Procurement Framework, the condonation process must be followed in order to give effect to the irregular procurement and enable payment to the supplier.

The irregular procurement must be dealt with as follows, involving 3 separate but simultaneous steps:

- The disciplinary / remedial process where the employee who committed an act of financial misconduct, may be disciplined according to the approved HR/IR policies and procedures. This is in compliance with the PFMA requirement for the effecting of disciplinary action if irregularities have occurred within the execution of procurement;
- The internal governance process due to a deviation from the Approved Procurement Framework: All condonations must be logged by the PTC Secretariat with the (Risk and Governance) Trends Analysis and Commercial Risk Control Departments within Group Technology and Commercial where a risk assessment must be conducted in consultation with the line management of the defaulting employee in order to determine the risks faced by Eskom as a result of the procurement irregularity and any specific actions that need to be taken in order to rectify or prevent the irregularity from re-occurring. The R&G Department will follow up with the relevant line managers on the status of the corrective / preventative / disciplinary processes to be taken within the agreed time frames, and will report thereon via the Senior Manager: Risk and Governance to the Group Commercial Management Committee, the PFMA office, and Group and Divisional Executives.
- The payment process to the supplier: The relevant PTC is required to approve the payment to the supplier against a valid invoice, and to the extent that Eskom has a valid contractual obligation to pay for the assets, goods or services delivered. Unless otherwise advised by the Eskom Legal Department, a PTC is not permitted to unduly delay or withhold payment due to a supplier, based on internal governance issues.

The execution of the 3 steps must take place as follows:

- Once an employee's line manager becomes aware of a possible condonation, he/she must investigate the procurement and based on the outcome of the investigation, determines whether corrective or disciplinary action must be taken against the employee. The line manager must be assisted by IR/HR in executing the disciplinary action, and this process is independent from the process of authorising payment to the supplier, which is a commercial transaction authorised by a PTC.
- In order to seek condonation from a PTC to enable payment to the supplier, the defaulting employee and his/her line manager must present the facts regarding the irregular procurement together with valid invoices to the appropriate PTC on a Commercial Transaction Approval Form. This is the responsibility of the line manager and the defaulting employee, and not the responsibility of the local procurement department. The procurement function is not responsible for the processing of condonations to the PTCs.
- If the irregular procurement occurred against an approved existing contract, but in a manner which was irregular, the request for condonation must be made to the PTC that approved the original contract/order (subject to its delegation of authority, which if exceeded by the cumulative value of

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the contract value and condonation value, must then be tabled at the next higher level of delegation). If the original order / contract had been approved through dual or triple adjudication, then the condonation must still be sought from a relevant PTC with an appropriate level of delegation of authority. If the procurement occurs in the absence of an approved contract/order, then the value and duration of the executed supply determines which PTC to approach.

- The PTC applies its mind to the request for condonation of the irregular procurement, including addressing matters such as whether the amount payable is contract or market-related, the impact as a result of foreign currency (if any) and/or whether interest may be payable, etc., and based on this, may condone the irregular procurement as a commercial transaction and authorise payment to be made to the supplier.
- When condonation of the irregular procurement has been granted, the line manager (or his/her authorised nominee) must create a PR in the SAP system which must be routed via the Cost Centre Manager to the relevant procurement department in order to facilitate creation of a purchase order and to enable payment to be made to the supplier.
- The line manager concerned (or his /her authorised nominee) arranges for payment to be effected by sending the minutes of the PTC, a copy of the invoice and the PR number to the assigned Procurement Practitioner who will create a purchase order for payment purposes.
- The authorisation of payment as condonation for an irregular procurement is reported by the co-ordinating official/Secretariat of the PTC committee to the Risk and Governance Department for PFMA reporting and monitoring purposes. The Secretariat of the PTC will update the relevant internal monitoring data repository with the relevant details of the condonation approved.
- Risk and Governance Department will monitor the progress of the disciplinary / corrective actions taken by the line manager, within a stipulated and agreed time frame.
- All condonations will be reported by the Senior Manager: Risk and Governance on a regular basis to the Group Commercial MANCO, the EXCO, and / or relevant sub-committees thereof.

### 2.6.8 Risk Assessments

It is mandatory for the assigned cross-functional team to conduct mandatory risk assessments at various stages of the commercial process, such as strategy development, contract selection, and contract negotiations, and during contract management. Evidence of risk assessments taking into account factors such as pricing risks, scope-related technical risks, time-related risks, human resource risks, supplier and market risks, as a minimum, must be identified and stipulated within the approved strategy, with associated risk mitigation plans and mechanisms. Identified risks can only be effectively mitigated during procurement and contract execution, through the early identification of risks.

Requests for contingency funds and time, as well as the selection of the appropriate suite of contracts, and conditions of contract must also be based on the aforementioned formalised risk assessment.

### 2.6.9 Use of Non-Disclosure Agreements (NDAs)

Eskom uses NDA's to control confidentiality during execution of the procurement process. This is necessary to safeguard Eskom's information, and to avoid breaches in confidentiality that may impact on future competitive tenders as well as have an impact on the selection of suppliers for contract award.

NDA's are to be completed by every Eskom representative, including fixed term employees, third party contractors and external consultants involved in the execution of significant commercial transactions on behalf of Eskom, (being any commercial transaction greater than R100m). It may be completed on a discretionary basis for transactions below R100m, depending on the risks relating to confidentiality. It is

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the responsibility of the Procurement Practitioner to appropriately manage all NDAs relating to the transaction that he /she is executing.

The NDA needs to be completed irrespective of the phase of the procurement process the Eskom representative will participate in (e.g. developing strategy, developing the enquiry, etc.). NDA's must be approved by a Commercial Senior Manager on the standard prescribed NDA, and saved onto the electronic Documentation Management System by the Procurement Practitioner.

It is the responsibility of the Procurement Practitioner to ensure that all NDAs are completed in full with all required information and appropriately recorded, filed and stored for audit trail purposes.

Once a NDA has been completed and approved for an Eskom representative for a specific commercial transaction, the hard copies may be stored off-site after electronic scanned copies are saved onto the centralised Group Technology and Commercial Documentation Management System under a general file for NDA's. All NDA's (for Eskom representatives and suppliers) must be saved in a centralized location, using the project, or commodity as the unique identifier.

NDA's for suppliers must be completed and signed once an order / contract (greater than R100m) has been awarded to the supplier. The Procurement Practitioner must store the NDA's on the Group Technology and Commercial centralised Documentation Management System under the project or commodity name and may send the hard copies to be stored off-site.

#### **2.6.10 Proactive Auditing of Commercial Transactions**

Internal Audit (within Assurance and Forensics) is required to proactively audit and provide assurance regarding the manner of executing procurement/disposal processes for all commercial transactions greater than R300m. The use of independent external auditors will be at the discretion of Internal Audit, taking into account factors such as independence, transaction sensitivities and issues such as conflicts of interest. For transactions less than R300m, Internal Audit may be required to audit a transaction at the request of a Risk and Governance Official, or on a sample basis.

In all instances, a formal report detailing the audit methodology, findings, risks and recommended corrective actions must be submitted to Group Technology and Commercial via the Risk and Governance Department, duly signed and authorised by authorised Internal Auditors, in order to inform decision-making by a Delegated Approval Authority.

#### **2.7 RELATED/SUPPORTING DOCUMENTS**

This procedure replaces and supersedes all previous Practice Notes and Briefing Notes issued by the Risk and Governance Department.

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### 3. Eskom Procurement and Supply Chain Management Procedure (Detailing Processes from End-User Need (PR) to Disposals)

#### 3.1 Delegation of Authority to Authorise Commercial Transactions

##### 3.1.1 General Principles of Delegation of Authority

The Eskom Delegation of Authority Policy forms part of the Approved Procurement Framework and is published by the Legal and Regulatory Division from time to time, upon the approval by the Eskom Board of Directors.

The core principle is that individual employees may be permitted by a written delegation of authority to bind Eskom into contracts of purchase / sale regarding assets, goods or services, either acting in a dual, triple or as part of a tender committee. Furthermore, delegations of authority for the procurement / disposal of assets, goods or services, must be exercised with the recommendation and approval of another delegated and Accredited Procurement Practitioner as part of a dual or triple adjudication system of approval, or with approval from a delegated PTC. The only exception to this principle will relate specifically to the use and approval of LPOs (as set out in 3.1.2 hereunder).

It is the responsibility of the Commercial Senior Manager to ensure that all Procurement Practitioners under his /her management undergo training and accreditation in order to give meaningful effect to participating within the systems of dual and triple adjudication, thereby reducing commercial transaction approval lead times. Where Procurement Practitioners are still awaiting accreditation (to be obtained within a stipulated time as arranged with their respective Procurement Managers), such Procurement Practitioners may only recommend a transaction for approval, and not authorise a transaction.

Sole adjudication (sole signature) authorities are no longer permitted, except in the case of LPO approvals granted by Cost Centre Managers, which are processed and authorised via workflow on SAP.

Commercial transactions are not permitted to be split into smaller values in order to circumvent or target certain levels of delegation, merely for convenience or undue preference, and the Risk and Governance Department will conduct ongoing monitoring of commercial transactions in order to assess for trends of splitting of transactions.

Based on the outcome of the PiE training and accreditation programmes managed by the Risk and Governance Department within Group Technology and Commercial, a pool of Accredited Procurement Practitioners eligible for the receipt of dual and triple adjudication will be notified to each General Manager: Commercial, within Group Technology and Commercial.

Allocation of dual and triple adjudication authorities to Accredited Procurement Practitioners across sites and categories of supply must be managed by each General Manager: Commercial within Group Technology and Commercial, in consultation with the relevant officials of the Policy and Compliance Department (within Risk and Governance), who will co-ordinate the issuing of letters approving the relevant delegations of authority to Accredited Procurement Practitioners from the office of the Group Executive: Technology and Commercial. Dual and triple adjudications of authority can only be approved by the Group Executive: Technology and Commercial, or the Divisional Executive: Primary Energy Division (specifically to Accredited Procurement Practitioners operating within Primary Energy Division).

Senior (E-Band level) Managers from other Groups or Divisions within Eskom, but external to Group Commercial are also entitled to participate in the PiE training and accreditation programme, or may alternatively be accredited against an online Delegation of Authority (DoA) assessment. Such non-Commercial E-Band Managers who pass the required assessment may be conferred with triple adjudication authority (up to R5m and for a maximum contract duration of 2 years), which will be conferred by the Group Executive: Technology and Commercial, with co-approval from the relevant Group / Divisional Executive to whom such non-Commercial E-Band manager reports.

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### 3.1.2 Local Purchase Orders

Eskom employees who are not Procurement Practitioners, may be identified by End-Users or Procurement Managers, and appointed to execute the procurement of assets, goods or services less than R30 000 including VAT and any other applicable taxes, via a Local Purchase Order (LPO).

This authority to execute procurement as a LPO-buyer must be conferred in writing by the relevant E-band Cost Centre Manager, and accepted in writing by the LPO-buyer. The E-band Cost Centre Manager may stipulate certain limitations on the authority of the LPO-buyer, if so required, and such appointment may further be subject to the receipt of appropriate training. It must be noted that the LPO-buyer is the executor of the procurement, and is distinct from the Cost Centre Manager who authorises the procurement in terms of cost centre and financial delegations of authority, as conferred within Group and Divisional DoAs.

All LPO appointments must be notified to the local Risk and Governance office for purposes of verification and monitoring of LPO transactions.

### 3.1.3 Dual Adjudication

Dual adjudication applies to commercial transactions not exceeding R1m in value (excluding VAT) and not exceeding 1 year in contract duration. This constitutes a total approval value including contingency, travel and subsistence allowances, and any other allowances (such as provisional sums).

If a Procurement Practitioner is not yet accredited, then such a Procurement Practitioner may still recommend the approval of a commercial transaction to an Accredited Procurement Practitioner for approval. This is however a transitional arrangement, as it is an approved internal requirement that all Procurement Practitioners are required to become Accredited Procurement Practitioners in order to enhance the effectiveness of the procurement system, and in order to expand the pool of available Delegated Approval Authorities in order to ensure speedier approvals of commercial transactions and reduced procurement lead times.

The objective of a dual adjudication system is to enable one Accredited Procurement Practitioner (no TASK grading limitation) to execute the commercial transaction and to make recommendations on the approval of the transaction, while another Accredited Procurement Practitioner (minimum TASK grading of G14 or higher) that is independent of the execution of the transaction, is required to approve /authorise the transaction, in order to ensure segregation of duties, and objectiveness in decision-making.

Within a system of dual adjudication only an Accredited Procurement Practitioner of TASK grading G14 or higher may authorise /approve a commercial transaction.

It is mandatory for all Procurement Practitioners involved in the execution and approval of transactions within dual adjudication to be trained and accredited. This accreditation is valid for a maximum of period of two (2) years at a time after which delegates must undergo and pass another assessment / accreditation in order to retain his / her dual adjudication authority. An Accredited Procurement Practitioner cannot, under any circumstances, authorise commercial transactions beyond the expiry date of the validity of his / her delegated authority, and the process of re-accreditation should commence at least 3 months before delegation expiry.

Dual adjudication authority is limited to the following approvals:

- Contracts / order awards for procurement / disposal of assets, goods or services based on a tender process, with an order / contract value not exceeding R1m in value (excluding VAT) and not exceeding a contract duration of 1 year;
- Mandates to negotiate for contract/order award for procurement / disposal of assets, goods or services, not exceeding R1m in value (excluding VAT) and not exceeding contract duration of 1

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year. This includes mandates to negotiate with sole sources, but excluding appointments of strategic and management consultants who can only be appointed by a PTC, irrespective of contract /order value;

- Strategies from R10m onwards, but not exceeding R50m (excluding VAT), limited to a contract period of 5 years;
- Contracts / orders with professional (but NOT strategic or management) consultants (e.g. engineering, legal, audit and the like) not exceeding R1m in value (excluding VAT) and not exceeding a contract duration of 1 year, which are not within the scope of divisional / national framework agreements, subject to approval of the motivation by the Internal Consulting Department within Group Finance;
- Contracts /orders with Internal Suppliers not exceeding R1m in value (excluding VAT) and not exceeding a contract duration of 1 year;
- Modifications which cause the contract value and duration to still fall within the delegation of a dual adjudicator, but which cannot exceed 20% of the originally approved contract value or contract duration (in which case approval must be obtained from a PTC); and
- Transactions that constitute low value purchases less than R30 000 (including VAT and all applicable taxes), which cannot be processed via an LPO, and where, for example, forex or CPA may be applicable.

Approval requests for a mandate to negotiate with a sole source must be accompanied by a completed Sole Source Justification Form.

It must be noted that condonations and ratifications cannot be granted within dual adjudication.

The authorising Accredited Procurement Practitioner may request information not contained in the Commercial Transaction Approval Form, and may at his/her discretion, call for the original documents for verification of certain aspects of the transaction.

If a difference of opinion should arise between the authorising Accredited Procurement Practitioner and the recommending Accredited Procurement Practitioner, then the submission must be referred to another Accredited Procurement Practitioner to reconsider the matter and resolve the difference of opinion. Only where the second Accredited Procurement Practitioner cannot resolve the matter and grant approval of the transaction, must the transaction then be referred to the next higher level of delegation, being triple adjudication. The referral to triple adjudication must be recorded on the Commercial Transaction Approval Form for reference purposes. Notwithstanding this, it will not be permissible for any authorising Accredited Procurement Practitioners to make such referrals to other Accredited Procurement Practitioners on a regular basis, as each Accredited Procurement Practitioner must take accountability for approvals granted in order to ensure speed and efficiency in procurement lead times. The aforementioned mechanism of further referral is an exception and not the norm.

Note: All dual adjudication approvals must be reported on the prescribed reporting templates, on a monthly basis, by all Procurement Practitioners, to their respective Procurement Managers, who in turn are accountable for the consolidated reporting of transactions to the first tier of delegated PTC within the relevant BU / site, for compliance monitoring and audit purposes.

### 3.1.4 Triple Adjudication

Triple adjudication applies to the approval of commercial transactions not exceeding R5m (excluding VAT), and not exceeding a contract duration of 2 years. This constitutes a total approval value including contingency, travel and subsistence allowances, and any other allowances (such as provisional sums).

Triple adjudication is a 3-tiered process involving three participants, namely an Accredited Procurement Practitioner who executes the procurement /disposal and recommends the approval of the transaction,

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another independent (from execution) Accredited Procurement Practitioner (TASK level G14 and above) who signifies support to proceed with the approval, and an accredited Commercial Senior Manager or non-Commercial E-Band Manager who authorises /approves the transaction.

It is required that all parties participating in the triple adjudication system must have successfully completed the required training and accreditation programme, and to the extent that non-accredited Procurement Practitioners may be participating in a triple adjudication system, their participation will be limited only to executing transactions and making recommendations, and will not be permitted to support or authorise a commercial transaction while still unaccredited, as it is a requirement that all Procurement Practitioners become accredited within time frames agreed to with their respective Procurement Managers.

This accreditation is valid for a maximum period of two (2) years at a time after which delegees must undergo and pass another assessment / accreditation in order to retain his / her triple adjudication authority. An Accredited Procurement Practitioner cannot, under any circumstances, authorise commercial transactions beyond the expiry date of the validity of his / her delegated authority, and the process of re-accreditation should commence at least 3 months before delegation expiry.

Triple adjudication authority is limited to the following approvals:

- Contract / order awards for the procurement / disposal of assets, goods or services based on a tender process, with an order / contract value not exceeding R5m in value (excluding VAT) and not exceeding a contract duration of 2 years;
- Mandates to negotiate for contract / order award for procurement / disposal of assets, goods or services not exceeding R5m in value (excluding VAT) and not exceeding contract duration of 2 years. This includes mandates to negotiate with sole sources, but excludes appointments of strategic and management consultants who can only be appointed by a PTC;
- Strategies from R50m but not exceeding R300m (excluding VAT), limited to a contract period of 10 years;
- Contracts / orders with professional (but NOT strategic or management) consultants (e.g. engineering, legal, audit, and the like) not exceeding R5m in value (excluding VAT) and not exceeding a contract duration of 2 years, which are not within the scope of divisional / national framework agreements, subject to approval of the motivation by the Internal Consulting Department within Group Finance;
- Contracts /orders with Internal Suppliers not exceeding R5m in value (excluding VAT) and not exceeding a contract duration of 2 years;
- Modifications which cause the contract value and duration to still fall within the delegation of a triple adjudicator, but which cannot exceed 20% of the originally approved contract value or contract duration (in which case approval must be sought from a PTC); and
- Transactions that constitute low value purchases not exceeding R30 000 (including VAT and all applicable taxes), which cannot be processed via an LPO, and where, for example, forex or CPA may be applicable.

Approval requests for a mandate to negotiate with a sole source must be accompanied by a completed Sole Source Justification Form.

It must be noted that condonations and ratifications cannot be granted within triple adjudication.

The authorising Accredited E-Band Manager may request information not contained in the Commercial Transaction Approval Form, and may at his/her discretion, call for the original documents for verification of certain aspects of the transaction.

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If a difference of opinion should arise between the authorising Accredited E-Band Manager and the recommending and / or supporting Accredited Procurement Practitioners, then the submission must be referred to another Accredited E-Band Manager to reconsider the matter and resolve the difference of opinion. Only where the second Accredited E-Band Manager cannot resolve the matter and grant approval of the transaction, must the transaction then be referred to the next higher level of delegation, being a PTC. The referral to a PTC must be recorded on the Commercial Transaction Approval Form for reference purposes. It is not permissible for Procurement Practitioners to approach other Accredited E-Band Managers in such a situation to seek approval of the same submission where the second Accredited E-Band Manager is not in a position to grant approval. Notwithstanding this, it will not be permissible for any authorising Accredited E-Band Manager to make such referrals to other Accredited E-Band Managers or to PTCs on a regular basis, as each Accredited E-Band Manager must take accountability for approvals granted in order to ensure speed and efficiency in procurement lead times. The aforementioned mechanism of further referral is an exception and not the norm.

Note: All triple adjudication approvals must be reported on the prescribed reporting templates, on a monthly basis, by all authorising E-Band Managers, to the local Procurement Managers within their area of operations, who in turn are accountable for consolidated reporting of the transactions to the first tier of delegated PTC within the relevant BU / site, for compliance monitoring and audit purposes.

### 3.1.5 Tender Committees (PTCs)

Where the value and / or duration of a procurement / disposal exceeds the delegations of dual and triple adjudication, the procurement / disposal must be approved by a delegated tender committee. In all instances, a tender committee must comprise employees of Eskom, as defined in the latest revision of Eskom's HR policies.

The reference to PTCs within this Procedure excludes reference to the EXCOPS and BTC which are governed by different Terms of References due to the difference in constitution of members, and based on specific (additional) governance requirements relating to the fiduciary duties of the Board and other prescribed officers in terms of the Companies Act.

The delegation of authority granted to the tender committee is over and above, and distinct from budgetary approval which is obtained as part of the financial planning process, approval by a CIC, other delegated investment committees or the like, as well as authorisation of the purchase request (PR) by the Cost Centre Manager which provides the Procurement Practitioner with an instruction to initiate a commercial process.

The delegation conferred to PTCs includes the specific approvals of condonations, ratifications, and appointments of strategic and management consultants, all of which cannot be authorised within dual / triple adjudication, irrespective of value.

The Eskom Board delegates such authority to specific tender committees as set out in Appendix A hereto.

The delegations for head office PTCs have been specifically delegated by the Board, and are authorised by the Group Executive: Technology and Commercial.

With respect to site-based PTCs, the FD or relevant GE / DE will give effect to the stipulated Delegations of Authority, by making nominations for the appointments of Chairpersons and members to the various site-based tender committees in consultation with the Group Executive: Technology and Commercial, and the Risk and Governance Department within Group Technology and Commercial. The FD or relevant GE/DE authorises the appointment of the members, Chairman and Alternate Chairman in writing. The duties and responsibilities of the Chairman and individual members are set out in writing within letters of appointment and the Terms of Reference, in consultation with the Regional Delivery Manager (within Risk and Governance). The members consent to their participation by signing letters of

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appointment conferred by the appointed Chairman, together with the Terms of Reference. The same process is followed when changes to tender committee membership become necessary.

The Chairman's appointment applies until withdrawn by the Group Executive: Technology and Commercial (for head office PTCs) or the FD or relevant GE/DE in consultation with the GE: Technology and Commercial for site-based PTCs.

The appointment of the Chairman is not position-bound but is personal to a specific holder. If this delegate should leave the BU, department, Division or Eskom's service, the delegation of authority may no longer apply, and may, in certain instances, automatically fall away. In this event, another person will be delegated the necessary authority as Chairman.

The Chairman must be assisted by a minimum of 3 (three) other functionaries to form a quorum, who must constitute commercial / procurement, financial and technical representation, and who are appointed in writing as members of the specific tender committee. There may be more than one commercial, financial and technical member appointed to the PTC, to ensure enough members are available to form a quorum at any given time that a meeting may be convened. This is a minimum quorum requirement, and any other functionary (e.g. Legal) may also constitute a quorum requirement if so specifically required by the PTC, and specifically indicated by the Terms of Reference (TOR). The Secretariat of the PTC must be notified upfront by the Regional Delivery Manager (Risk and Governance) at the time of appointment, of the specific role that members are intended to serve on the PTC for purposes of establishing the quorum for the purposes of each meeting.

The number of members of a tender committee is not limited, but the quorum to constitute each meeting is at least 4 (four) members including the Chairman. The Chairman is required to be independent with respect to the transactions being adjudicated at the PTC. It is required as far as reasonably possible that the majority of members are independent of the Chairman and do not have direct line management reporting relationships with him / her, with a maximum of three direct reporting relationships being permissible, where this may be unavoidable (e.g. at site-based PTCs).

Every tender committee must have an identified Alternate Chairman, and is entitled to appoint more than one Alternate Chairmen. Alternate Chairmen must be appointed in the same way as the appointment of the Chairman.

The members of the tender committee are appointed to serve for a period not exceeding 2 (two) years. The letter of appointment states the name, position, role of the individual and the date of appointment to the tender committee. The signed letter of appointment is retained on file by the assigned Secretariat of the tender committee for purposes of compliance monitoring and control. Members may be re-appointed to the tender committee in the same manner.

Other officers attending *ex officio* (e.g. co-ordinating and other officials) to assist the tender committee are appointed in the same manner as members, but do not participate in voting and decision making, and may serve only in an advisory capacity.

The Secretariat managing and co-ordinating the PTC must be a Risk and Governance official, in order to ensure independence, provide advice consistent with the Approved Procurement Framework, and to ensure the necessary controls in terms of submission data for purposes of trend analysis.

The tender committee is responsible for:

- Meeting regularly, as scheduled. PTC meetings must get preference over any other meeting that a member may have, especially for purposes of establishing a quorum. Meetings are to be held regularly and cancellation of meetings must be kept to the minimum to ensure that the PTC is not causing delays to operational requirements;
- Chairman, members and officials applying their minds to the matters that will be considered, with advance preparation; and

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- Ensuring that the entire commercial process is within the parameters of the Approved Procurement Framework.

The PTC ensures that approval of commercial transactions is carried out within the parameters of Eskom's Approved Procurement Framework. Decisions are taken at an official sit-down meeting, but submissions / reports may, in exceptional circumstances, with the prior written consent of the Chairman and in accordance with the TOR, be submitted to all members in person or electronically, for consideration, as a round robin without meeting. A round robin needs to be approved by the Chairman/Alternative Chairman plus a majority of tender committee members, who are immediately available in office, as determined by the Secretariat of the PTC. Notwithstanding this, a round robin approval cannot proceed if there are less than 3 available members. Round robin approvals may be co-ordinated electronically via e-mail, and can only be co-ordinated by the Secretariat of the PTC. A decision taken during a round robin must be ratified at the next sitting of the PTC.

The tender committee examines the recommendation and, considering all factors that may influence the procurement / disposal, decides whether Eskom will enter into a contractual commitment with the recommended supplier/s. The Chairman or members may request information not contained in the submission / report, and may at their discretion, call for the original documents for verification of certain aspects of the transaction.

If a difference of opinion should arise between the Chairman and the majority of members, then the submission must be referred to the next (higher) level of PTC for approval.

Any conflicts of interests as defined in the Conflict of Interest Policy, which members or the Chairman may have with respect to a particular transaction being adjudicated must be declared upfront. An interest includes both a personal interest and / or a direct line management interest in a particular submission. Where a Chairman / member has declared a personal or direct line management interest in a particular submission and/or is a signatory to the Commercial Transaction Approval Form, then such a Chairman / member must recuse himself / herself from participating in the voting and decision-making regarding that transaction. In the case of a direct line management interest, the member may present the recommendation to the PTC as part of the presentation team making the recommendation, but will not have decision-making powers regarding the approval of the recommendation.

The final decision and responsibility in respect of the award of contracts/orders lies, however, with the Chairman, supported by a majority of members present in committee. It is essential that all actions and decisions taken by the Chairman as supported by a majority of the members present are fully recorded and documented, as the decision taken is subject to audit, and may serve as evidence in legal proceedings. In order to facilitate the process, the Chairman signifies approval of a transaction by recording all decisions as minutes via the assigned Secretariat, which must be confirmed by the members, finalised by the Secretariat and approved and signed-off by the Chairman at the next sitting of the PTC.

The Secretariat is required to distribute the final signed minutes to the relevant Procurement Managers for purposes of records/audit trail and execution alignment.

The Secretariat of the PTC ensures that all records pertaining to the requests and approval of transactions are filed and stored electronically on the centralised Group Technology and Commercial Document Control System. Hard copies of minutes must be filed within minute books and may, with other records, be stored off-site for a period of 5 years, as prescribed by the Eskom Document Retention Policy.

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### 3.1.6 EXCO Dual and Triple Adjudication and Specific Procurement Delegations for EXCO Members

The intent of the EXCO dual and triple adjudication systems is to facilitate emergency / urgent procurement where requirements are unforeseeable and appropriate planning was not possible, or due to a relevant PTC not being able to convene a meeting immediately.

The use of the EXCO dual and triple adjudication authorities must be applied in exceptional circumstances only, and not with the objective of by-passing generally available PTC structures.

It will be the responsibility of the General Manager: Commercial recommending the transaction for approval, to report every transaction approved via EXCO dual and triple adjudication to the EXCOPS for noting, monitoring and tracking.

### 3.1.7 Approval of Strategies

The purpose of a commercial strategy is to identify the most appropriate sourcing / disposal mechanism to follow given the specific circumstances of the transaction and to alleviate risks for Eskom. Strategies need to be developed and approved prior to execution of the procurement / disposal process.

Strategies are not required for commercial transactions up to R1m (excluding VAT).

Strategies formally approved by a Delegated Approval Authority are not required for procurement greater than R1m and not exceeding R10m, with a contract duration not exceeding 3 years, but must still be developed and approved by the line manager of the Procurement Practitioner executing the transaction.

All formally approved strategies developed for transactions between R10m and R300m must be approved by a Delegated Approval Authority as set out in the table below:

Rand Value	Duration	Approval Authority
R1m – R10m	Maximum 3 years	Procurement line manager of Procurement Practitioner executing strategy
R10m – R50m	Maximum 5 years	Dual Adjudication
R50m – R300m	Maximum 10 years	Triple Adjudication
> R300m	> 10 years	EXCOPS or higher approval authority as applicable

### 3.1.8 Process of Approval by a Delegated Approval Authority

Approval given by a Delegated Approval Authority is not a mere formality, but a process that demands thorough examination and consideration of all the issues that could influence the decision. When granting approval, the Delegated Approval Authority must provide approval based on the analysis of the recommendation and any other information that may be requested by the Delegated Approval Authority to assist in making a decision that upholds the principles of fairness, equitability, transparency, competitiveness and cost-effectiveness, taking into consideration of each of the following aspects, forming part of the approval granted:

- The correct procurement method, and application of the correct sourcing mechanism;
- The assets, goods or services to be supplied;
- The recommended supplier;

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- The best estimate of contract value at the time of contracting, both in South African Rand and any foreign currencies involved;
- The CPA formula/e;
- The terms and conditions of contract such as advance payments to the supplier;
- Allowances for contingency, and travel and subsistence;
- The order/contract duration;
- The delegated signatory of the contract; and
- The negotiation team.

In the case of foreign purchases, the Delegated Approval Authority also approves the foreign currency, approval value/s of the foreign currency amount, and the contract being covered forward in terms of the relevant Eskom Treasury Department's foreign exchange policies and procedures.

If the Delegated Approval Authority is unable to make a sound decision because the information presented, i.e. the submission is incomplete or inaccurate, the Delegated Approval Authority refers the submission back to the Procurement Practitioner concerned.

If the value or time requested exceeds the delegated limits of the Delegated Approval Authority, it can only support the recommendation before submission to the appropriate higher Delegated Approval Authority. However, the Delegated Approval Authority that makes a recommendation to a higher Delegated Approval Authority must ensure that the report / submission is complete and adequate to enable the higher Delegated Approval Authority to make a decision.

Having considered all relevant issues, the Delegated Approval Authority decides whether the recommendation is in the best interests of Eskom. There are only 6 (six) courses of action open and the Delegated Approval Authority chooses only 1 (one):

- Approve the recommendation as submitted;
- Approve the recommendation conditionally;
- Approve an alternative recommendation as submitted;
- Approve an alternative recommendation conditionally;
- Support the recommendation and refer it to a higher level; or
- Reject the recommendation.

Where an approval is conditional, the conditions must be specified in the minutes recorded by the Secretariat, or on the Commercial Transaction Approval Form for dual/triple adjudication. It is the Procurement Practitioner's responsibility to ensure that all stipulated conditions are complied with prior to order/contract award, and that the Delegated Approval Authority is duly informed of the outcome via a Feedback submission. Where a recommendation is rejected, a clear indication of the course of action required must be given by the Delegated Approval Authority. The same process and rules apply whether the approval will result in a new order/contract or a modification to an existing order / contract, or any other type of recommendation sought.

Where permission to negotiate is not requested, but the Delegated Approval Authority deems it necessary to negotiate for better terms and conditions, the Delegated Approval Authority instructs the Procurement Practitioner at his/her/its discretion to negotiate, in order to achieve the desired result. Results of negotiations must be reported back to the Delegated Approval Authority in a Feedback submission.

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### 3.1.9 Delegation of Authority to Sign Contracts

Contracts and orders may only be signed by authorised Eskom employees who have been delegated the authority to do so by the Delegated Approval Authority in accordance with the various levels of signing authority set out in Appendix B herein, and by authorised representatives of the Supplier which must be verified by the Procurement Practitioner through receipt and validation of the Authorisation Form.

### 3.1.10 Reporting

All transactions placed before a PTC for approval must be reported on a monthly basis by the Secretariat (who is a Risk and Governance Official) to the relevant Risk and Governance (Trends Analysis) Department for compliance monitoring and audit purposes.

### 3.1.11 Revocation of Delegations of Authority

Dual adjudication, triple adjudication delegated authorities and membership / chairmanship to a PTC may be revoked at any time in its entirety by the CE/FD or relevant GE/DE, upon the recommendation of the Senior Manager: Risk and Governance.

Revocation of this delegation (either indefinitely or for a stipulated period of time) will be done in writing and will take place where:

- There is repeated non-compliance with the Approved Procurement Framework on the part of the Accredited Procurement Practitioner / member / Chairman;
- The Accredited Procurement Practitioner / member / Chairman does not, on a continuous basis, exercise reasonable care or skill in carrying out his / her duties despite undergoing the relevant prescribed training;
- The Accredited Procurement Practitioner / member / Chairman fails to timeously report on all approvals granted;
- The Accredited Procurement Practitioner / member / Chairman has committed an act of misconduct in accordance with the Eskom Disciplinary Code; or
- Business / operational reasons dictate that an individual is no longer required to serve on a particular PTC, or as a dual / triple adjudicator.

## 3.2 General Principles of Procurement in Eskom

### 3.2.1 Forecasting/Estimating Requirements

It is a legal obligation in terms of Section 3 of the PPPFA Regulations for requirements being procured to be estimated as accurately as possible. Failure to receive an accurate estimate /forecast of requirements may result in the use of the incorrect preference points system, which may further result in the unnecessary cancellation of tenders and delays in procurement lead times.

Front-End Planning (FEP) is the first stage of the sourcing process which is conducted to determine and consolidate the business needs to formulate demand, establish the market capacity and capability, to enable the development of an appropriate commercial strategy. FEP is mandatory for all commercial strategies linked to commercial transactions of R10m or more.

All planning, forecasting and estimation must be facilitated by the End-User with the appropriate specialists (e.g. cost engineers, quantity surveyors), and in consultation with the SCOPS function within Group Technology and Commercial, based on the supply chain planning principles set out in 3.9 herein.

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National contracts /enabling agreements affected by contract price adjustments due to foreign exchange and currency implications, will only be put in place on receipt of the minimum 90% volume commitment and a signed-off draw-down plan from the End-User. The forecasts provided by the various End-Users, will be confirmed within the Divisions, and consolidated and reviewed by the Supply Chain Planning representative. These volumes will be used by the relevant Procurement Practitioner to establish national contracts or enabling agreements.

NB: The total estimated Rand value of the order /contract must be a price INCLUSIVE of VAT, and any other applicable taxes, for purposes of selection of the appropriate preference points system.

### 3.2.2 Front-end Planning (FEP) Process

The Front-End Planning (FEP) process is the key driver to maximising socio-economic development including strengthening of an integrated cross functional team.

As set out below, the FEP process shall include but will not be limited to the following activities. Refer to Appendix F for a depiction of the process:

i) Demand Analysis

- Consolidate Eskom's, and if possible other SOC's demand for the assets, goods or services;
- Link Eskom's demand requirements with supply industry understanding to drive development.

ii) Commodity Analysis

- Conduct a detailed breakdown of a commodity/product life cycle model based on the total cost of ownership (TCO) principles;
- Conduct a detailed breakdown of the scope of work using the total cost of ownership (TCO) principles;
- Establish the procurement budget for the assets, goods or services that is based on the TCO.

iii) Industry / Sector Analysis

- Development of a detailed understanding of industry and sectors in order to identify opportunities for socio-economic development;
- Conduct an in depth understanding of industry (supplier) capability and capacity;
- Establish the demographic representation of the market participants and their market share;
- Develop an understanding of the barriers to entry;
- Understand the industry's infrastructural support for socio-economic development and market transformation, e.g. Government agencies such as Kula Enterprise Development Agencies.

iv) Develop a Supplier Preference Model

- Establish a commodity-related Supplier Preference Model, using the Hierarchy of Supplier Preference as a basis;
- Develop an understanding of principles governing Eskom's Supplier Preference model and how it can be adjusted to enable socio-economic development and market transformation.

v) Supplier Positioning Model

- Establish a commodity-related Supplier Positioning Model;
- Develop an understanding of principles governing Eskom's Supplier Positioning Model and how these can be adjusted to enable socio-economic development and market transformation.

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vi) Benefits of Applying Front End Planning

- Improve effectiveness of cross functional team and SD&L integration;
- Improved SD&L / SD / Technology integration and function;
- Integration and collaboration with internal Eskom Departments, DTI and suppliers.

### 3.2.3 Establishing and Specifying a Need / Requirement / Scope

The procurement process starts with the identification of the need by the End-User or the Inventory Optimiser in the case of stocked items. The Inventory Optimiser may use SAP functionalities to automatically raise a request.

Irrespective of the value of the proposed purchase, the End-User is responsible to provide adequate information to the Procurement Practitioner to proceed with the transaction. The End-User does this by generating a Purchase Requisition (PR) which describes the estimated value, duration and specification /scope of the assets, goods or services and other information as required.

The Cost Centre Manager approves the PR, taking into consideration the budget, scope of works and business need. After his/her approval, the PR will be released electronically to the relevant procurement department. When creating a PR, the End-User must allow sufficient lead times for execution. This is especially important where non-competitive enquiries such as Expressions of Interest (EOI) or Requests for Information (RFI) may be used to clarify requirements or where the market has to be further researched.

Unnecessarily stringent or brand-specific descriptions must not be used with the intention of excluding certain suppliers from participation, thereby preventing competition. Where simple and generic descriptions suffice, they must be used.

Suppliers' specifications must not be used as a standard except where a single source / monopoly situation exists. Standards and specifications from recognised professional/industry associations may be used. Where an appropriate specification does not exist, an Eskom specification may be developed. Where Eskom employees are not qualified to develop the specification, a supplier / consultant may be paid to do so, but this would exclude that supplier/consultant from participating in at least the first competitive tender / enquiry for the procurement of the assets, goods or services concerned, unless supported by a strategy that requires the participation of such supplier in the supply phase, which must be approved by the relevant Delegated Approval Authority, taking into account the constitutional principles for public procurement and the avoidance of conflicts of interest.

The End-User identifies his need by writing the specifications / scope in a technical specification document, which includes all designs and drawings, and may be assisted by other specialist functionaries such as the Engineering Department. The technical specification / scope must be submitted to the Procurement Practitioner, together with a formal approval /sign-off of the requirements. The End-User includes all applicable and relevant standards, such as welding standards, quality standards, etc., in the documentation submitted to the Procurement Practitioner.

In the case of a project, the End-User (normally the Project Manager) will follow the Project Life Cycle Model and obtain the necessary approvals during the CRA, DRA and ERA stages. Procurement for the execution of the project will not proceed without ERA approval. Should it be necessary to deviate from this principle, specific approval to proceed with the procurement must be given by the relevant Delegated Approval Authority, in consultation with the GM: Project Sourcing. The Project Manager and team are also responsible to obtain PFMA ministerial approval for the project by following the process for significant transactions as set out in 2.6.2 above. This entails pre-PFMA ministerial approval to proceed with the execution of the commercial process and then the application for final PFMA ministerial approval before proceeding with the awarding of the contracts.

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Once the relevant sourcing department receives a PR and other supporting documents, the Procurement Manager confirms the validity of the PR and allocates the PR to the relevant Procurement Practitioner. The Procurement Manager must reject incomplete or inaccurate PR's and must include comments on why the PR is rejected before routing back to the End-User.

### 3.2.4 Application of the Hierarchy of Supplier Preference

After receipt of a Purchase Requisition, the Procurement Practitioner must first establish if requirements can be met from the following already established sources of supply (i-iii hereunder), in the following order, before sourcing from external sources of supply (v hereunder), being the market at large:

**i) An existing Framework Agreement;**

The Procurement Practitioner investigates and decides first whether the requirement can be met in whole or in part from existing Framework Agreements within the BU, Division or nationally.

Where the requirement can be met from an existing contract, draw-downs for the requirements may be made against the contract by an authorised official, who is generally an End-User or appointed Contract Manager.

**ii) Internal Suppliers:**

Framework Agreements with Internal Suppliers, as defined in this Procedure, must be put in place for a minimum period of 5 years by the Commodity Sourcing Department for all known and required assets, goods or services that the Internal Supplier can adequately supply as part of its day to day core business. The normal process for draw-downs will then be followed once the assets, goods or services are needed. Rates must be negotiated for each item within the contracts against the relevant conditions of contract, which must deal with all commercial considerations, including CPA, forex, etc. where applicable.

Should there be a requirement for assets, goods or services which are not part of the scope of the Framework Agreements with an Internal Supplier, then the Internal Supplier must be treated like any other (external) supplier in the market, i.e. they may be invited to tender or they may respond to a public advertisement to tender.

A transitional period of 12 months, from date of application of this revision of the Procedure, is allowed for the Commodity Sourcing Department to put the required Framework Agreements in place.

Until appropriate Framework Agreements are in place, the use of an Internal Supplier as a sole source must be motivated within a strategy and approved by a Delegated Approval Authority, against a mandate to negotiate (no prior tendering). A Sole Source Justification Form is not required to motivate the use of Internal Suppliers.

**iii) Other State-Owned Companies:**

The Procurement Practitioner must determine if the assets, goods or services can be supplied by another State Owned Company e.g. Transnet. If this is the case, then he/she must ascertain if there are any existing contracts in place with the specific State Owned Company (SOC) and, must determine whether the requirement can be sourced from the existing contract. The normal draw-down process will be followed if the existing contract can be used.

If there is no existing contract, the Procurement Practitioner must request the End-User to complete a Sole Source Justification Form in a case where one has not already been approved for a stipulated period, and applicable to the specific assets, goods or services.

It is preferable that approval of the SOC as a sole source for the specific category of supply be submitted to the relevant Delegated Approval Authority to be approved for a maximum period of

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3 years. This will mean that no further Sole Source Justification Forms are required with respect to the SOC's supply of the required assets, goods or services for the approved period on a per transaction basis.

The Procurement Practitioner must follow the mandate to negotiate (no prior tendering) process to establish a contract with the SOC. The name of the SOC and the approved SSJF must be saved onto the centralised Group Technology and Commercial Documentation Management System.

#### iv) External Suppliers / Market at Large

Where existing and /or internal sources of supply (i-iii) are not available, suppliers within the external market /market at large must be sourced, in the following order of preference, to the extent available, and capable:

From Black suppliers, in the following order:

- Black Disabled Persons or groups operating as Level 3 EMEs, or QSEs (Level 1-3);
- Black Youth operating as Level 3 EMEs or QSEs (Level 1-3);
- Black Women-Owned Businesses (BWOs) being Level 3 EMEs, or QSEs (Level 1-3);
- Small Black Enterprises (SBEs) being Level 3 EMEs, or QSEs (Level 1-3);
- Large Black Suppliers (LMEs Level 1-3);
- From a South African based manufacturer or service provider;
- From a South African distributor of local South African manufactured products;
- From a foreign supplier, directly imported by Eskom; and
- From a Value-adding Agency (as defined in this Procedure), being a local supplier of imported products / services.

***(NB: that the revision to the BBBEE Codes will become effective within Eskom on or before 31 December 2014 and a Position Paper will be issued within Group Technology and Commercial, regarding the implementation of the updated BBBEE Codes of Good Practice).***

### 3.2.5 Developing a Commercial Strategy

Commercial strategies are procurement / disposal and contracting execution plans, which detail the steps to be taken in establishing the appropriate contract to meet the End-User requirement. The development of a commercial strategy requires Procurement Practitioners, in consultation with the assigned cross-functional team to further determine the various possible risks faced by Eskom and the supplier in engaging in a contract, and to develop strategies / plans in mitigation thereof. Examples of the common types of risks that may be considered within a commercial strategy are: technology selection, lead time risks and associated delays, the effect of people / human resources and their skills on the contract, and the possibility of increases in the cost /price of the contract.

The development of formal strategies will be mandatory for all commercial transactions exceeding R10m (excluding VAT) and will be completed and formally approved by a Delegated Approval Authority in terms of section 3.1.7 herein, based on the submission of a Commercial Strategy Approval Form.

While strategies are still required for all procurement /disposals less than R10m, they do not require formal approval by a Delegated Approval Authority and must be authorised by the line manager of the Procurement Practitioner / Disposal Officer executing the procurement / disposal.

Strategies are not required for transactions less than R1m.

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In all cases, a cross-functional team must be assigned to assist in the development of the commercial strategy, and must be involved in the squad-checking thereof prior to submission for approval. A Finance business partner must be involved as part of the cross-functional team, evaluation team, and the assigned negotiation team, where applicable.

The commercial strategy may be developed during the DRA stage in the case of a project, or may be developed once it is clear that investment approval will be obtained. Once the Procurement Practitioner has determined that there are no available internal sources of supply that can adequately provide the assets, goods or services, then formal market research must be conducted on the external supply market. Market analysis must be carried out before sending out a competitive enquiry so that the correct supply market is targeted. Market analysis is also necessary to develop a formal sourcing and contracting strategy, benchmark pricing, and to inform preparation for negotiations with a supplier. The use of EOIs and RFIs may facilitate such market analysis, and determine supplier interest, capability and capacity in the category of supply / services.

Once market analysis has been completed, the outcome will determine if a competitive tender / enquiry will be sent to an open or closed (limited) supply market, or whether there are only one or two suppliers capable and available to supply, in which case a mandate to negotiate (no prior tendering) may become appropriate.

***Where the supply market is vast and saturated, pre-qualification enquiries sent to the open market and / or the use of stipulated gate-keepers / thresholds within open tenders / enquiries may be necessary to short-list suppliers to a closed list in order to compete in final evaluations and/or negotiations for contract award. It is not a recommended practice to issue open tenders where the market is vast and saturated due to the limited capacity to receive, process and evaluate large volumes of tenders. Alternatively, if market research shows that there are only a few exclusively capable and available suppliers in the market, then a closed / limited tender may be justified.***

Where market analysis does not present a complete view of the market, or reveals uncertainty about the solutions available, or the capabilities and availability of suppliers, it may be best to advertise Eskom's requirements in the open local, national and/or international market in order to maximise opportunities for competition, and to ensure that all alternatives and possibilities are evaluated before committing Eskom to a particular outcome / solution.

Another aspect that needs to be built into the Commercial Strategy is the "Design for Local" strategy.

Development of local industries will be maximised through the Design for Local concept which implies "front end loading" or upfront planning which is key to the impact that SD&L has on a commercial transaction as well as the local supply industry as a whole.

The responsibility for localisation imperatives (Industrialisation, Localisation, Skills Transfer, Job Creation and BBBEE) is not the exclusive responsibility of the SD&L department, and every Procurement Practitioner giving effect to a commercial transaction is required to give full consideration to the possibility of SD&L initiatives for purposes of executing the transaction.

The role of the SD&L Department as subject-matter experts is primarily to facilitate and give effect to the legislative and policy framework as it pertains to the socio-economic imperatives of the country through common links with industry associations as well as government departments involved with legislation / policy development relating to socio economic imperatives.

"Design for Local" is a mechanism to describe the strategic nature of SD&L, with target setting based on the functionality of the requirement and the associated value chain.

Front-end loading of SD&L levers may be done through various activities prior to contracting with examples of what may be done regarding various elements of a commercial transaction set out below:

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- **Technical /Functionality**

A technical design or consideration must look at ways in which a change in technical specification will facilitate the participation of the local industry in the transaction. Examples may include the following:

- If the number of line items can be reduced then the manufacturing process can be automated, as opposed to "jobbing" which may be the current method of production. With already low volumes available in SA it is vital to not only consolidate demand to increase manufacturing volumes, but to streamline the number of line items per commodity;
- If a local manufacturer can make a certain product successfully, the current technical specification must be investigated to determine if "two smaller units", that can be made locally, can serve the same function as one large unit that would require importation.

- **Project Strategies**

Package structures and project time lines must be investigated with local capability / capacity in mind.

Local industry may have the capability to manufacture and supply, but not the capacity to meet project time lines. Extending the time lines may increase local participation. Lack of upfront planning, resulting in projects being executed under pressure has a direct and negative impact on local supplier participation in projects.

Project structure, i.e. size of the package must be considered. Full turnkey projects normally reduce the ability of local participation, leading to a situation where a foreign supplier has to be "obligated" in terms of the contract to make use of local subcontractors with Eskom being unable to nominate subcontractors.

Geographical location or proximity to site may be used to appropriately and justifiably segment the supply market and allow preference for local suppliers if speed of service is imperative, and /or where the development of the local community where the project is located is necessary to support the overall success of the project.

- **Financial**

The sourcing of funds from financial institutions has a direct impact on the ability of local suppliers to participate in tenders / enquiries.

External sources of funding usually come with certain conditions that directly impact on local participation. Financial proposals should carry a "pro vs. con" approach to external funding. One should be able to potentially compare different projects for approval based upon the source of funding and the resultant impact that this would have on the participation of local suppliers.

Where external funding is used for a project, it is important to analyse the rules of the funders with a view of understanding the available options.

- **Commercial**

The selected contracting type/regime, with associated main and secondary options, and any special conditions, impacts on the ability to drive localization.

Enabling contracts with no commitment to draw-downs is not conducive for investment purposes. Investors do not respond favourably to such contracting regimes and financial institutions do not recognize such contract types for funding purposes. Local industry can thus not expand or invest in new technology to grow and become more competitive.

Enabling contracts should have, as an integral part of the contract, a commitment to a rolling window of accuracy for demand. This will go a long way towards allowing suppliers to plan production cycles. Draw-downs must be made for a product as per the projections. The SCOPS function within Group Technology and Commercial must assist in such projections.

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Performance bonds / retention bonds that do not address real risks of non-performance or non-delivery negatively impacts on local industry. The cross-functional team must apply their minds as to whether it is feasible to request for bonds /security for performance in all instances. Alternatives may include incentive bonuses rather than penalties in the contract as an incentive for meeting local content targets.

Payment terms, free issue, part or upfront payments are all mechanisms that may be investigated, in context, per transaction. Cash required up front to procure input material is probably the single biggest limiting factor for emerging, and even some established suppliers. One must consider that there may be months between first procurement of raw material to final payment received, and the impact thereof on the supplier's business.

### 3.2.6 Non-Competitive Enquiries (EOIs and RFIs)

An "expression of interest" is a non-competitive enquiry issued / advertised to the external market to establish market interest in offering the required assets, goods or services to Eskom.

An EOI cannot request pricing, even on an indicative basis, and is generally used as a basis to establish a closed tender list prior to initiating a formal competitive tender / enquiry, as the onus rests on suppliers to indicate their intentions to participate or not.

The reliance solely on an EOI to determine a closed tender list must be guided by the proximity of time that has elapsed between responses to the EOI and intended issue of the tender / enquiry (bearing in mind that the longer the time that has elapsed, the greater the likelihood that the landscape of the market may have changed), as well as the accuracy and level of detail provided to the supplier within the EOI to inform its decision to participate or not.

Where the market to fulfil a certain need is not known, because this is the first time the assets, goods or services need to be procured, or because significant time has passed since procuring the assets, goods or services, a RFI may be issued to ascertain which suppliers and what assets, goods or services are available in the market, in order to inform the sourcing strategy. This is focused market research and does not constitute a competitive tender / enquiry, and therefore cannot be used directly as a basis for placing a contract or order, or preclude a supplier's participation in a competitive tender / enquiry. The RFI may request any information, including indicative pricing and timing. If the End-User opts to procure the assets, goods or services after receipt and consideration of the information, the applicable sourcing mechanism (competitive tendering or mandated negotiations) must be followed to enable the procurement. The End-User may use the information gained to improve the design or specification of the solution to his need, but must avoid binding Eskom to any one supplier's offering or brand where possible.

For purposes of transparency, the EOI / RFI enquiry must be administered (i.e. issued and received) in the same manner as a formal tender / enquiry, subject to an official closing date and time, based on the parameters set out in the enquiry / request.

### 3.2.7 Pre-qualification Enquiries

The commercial strategy must authorise the execution of a pre-qualification enquiry. Pre-qualification may be used when it is costly to process large volumes of tenders; when the contract is complex; or when suppliers with a common specialised skill and knowledge are required to participate on a panel and subsequently compete in tenders for the awarding of task orders.

The pre-qualification enquiry clearly stipulates the requirements/criteria for a supplier to be pre-qualified and the relevant information/documents to be submitted. A closing date and time is stipulated, responses are to be lodged formally to the relevant Tender Office and no late pre-qualification responses must be accepted.

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The pre-qualification enquiry document must clearly stipulate the pre-qualification criteria and the sourcing process to follow the pre-qualification. There should furthermore be no duplication of criteria between the pre-qualification and the competitive tender which may follow.

Where functionality may be a pre-qualifying criterion, the pre-qualification enquiry must stipulate the technical capability and capacity that the supplier must have or the required specification and SHEQ requirements that the assets, goods or services must adhere to. Participating suppliers must be required to submit documents as evidence that they meet the required technical criteria, including SHEQ criteria. This may include evidence of projects/contracts executed for similar works or samples to indicate that they meet the specifications of the required assets, goods or services.

In complex transactions, Eskom may conduct a due diligence on the suppliers by visiting the plants /sites of the suppliers to assess the appropriate technical processes followed or to test the materials used in the manufacturing of the goods. Eskom may also decide to visit project sites given as reference by the suppliers, to determine the quality and safety standards of the work done.

Once the pre-qualification responses have been received at the Tender Office and the formal receipting and tender opening process has been followed (only the names of the suppliers who submitted a pre-qualification response is read out), the pre-qualification documents are handed over to the Procurement Practitioner to commence with evaluations. The evaluation team applies the criteria stipulated in the pre-qualification enquiry to the responses received and establishes a shortlist of pre-qualified suppliers.

A formal competitive tender may then be sent to the short-listed suppliers or a request for a mandate to negotiate with one or more of the short-listed suppliers may be obtained from the relevant Delegated Approval authority, based on the approved strategy and the process set out in the pre-qualification enquiry.

### 3.2.8 Competitive Tenders (RFQs, RFPs)

Where the End-User's requirements cannot adequately be described or specified, or where innovative solutions to a problem are sought, a competitive RFP process may be followed.

A RFP deals with a difficulty that Eskom faces and would like to approach flexibly and innovatively using the expertise available in the marketplace. A RFP is generally a document setting out the requirement (outcome / output required) in as much detail as possible, without unnecessary limitations as to the solution. Suppliers are requested to propose a solution or viable alternatives that result in a solution, based on the available information. Generally a site meeting may be conducted at which information is shared and inspections allowed, and in the case where services are provided, appropriate reference checks, site visits, sampling and testing may be done before acceptance of a proposed solution.

Evaluation criteria around the functionality of the supply / service, with pre-determined weightings (as agreed with the End-User / cross-functional team) are stipulated in a RFP as a gatekeeper associated with a minimum scoring threshold, and suppliers may be required to make presentations around their proposed solutions, for which they may be allocated points toward their total score for functionality, as indicated in the tender / enquiry.

RFPs are administered (issued and received) in the same manner as formal tenders.

The RFP may be followed by a further competitive tendering process around acceptable proposals, or mandated negotiations with one or more of the qualifying suppliers in order to place a contract. The process following a RFP must be clearly stipulated in the RFP enquiry.

In contrast, a RFQ is a request for a quotation for supply which is clearly defined, specified, quantified, and typically off the shelf, and where price is the primary consideration for contract /order award. RFQs are the only types of enquiries issued when executing informal tendering, but may also be used when executing formal tendering.

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A tender is a collective term used to describe either a Request for Quotation (RFQ) or a Request for Proposal (RFP).

### 3.2.9 Application of the Preferential Procurement Policy Framework Act and Regulations (Refer to Appendix C)

#### 3.2.9.1 Introduction

The Preferential Procurement Policy Framework Act (PPPFA) No. 5 of 2000 came into effect on 03 February 2000 and gives effect to section 217(3) of the Constitution by providing the framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and provides for matters connected therewith.

Eskom, as a Schedule 2 PFMA entity, is required to apply the PPPFA and its Regulations when applying the formal and informal tendering processes. The PPPFA does not apply to tenders / procurement below R30k (including VAT and all applicable taxes). The PPPFA may also not apply to tenders that target an international supply market, or where in the interests of national security, or in the public interest, it is not practical to apply the provisions of the PPPFA, in which case an exemption from the PPPFA may be sought.

A request for exemption must be made to the Minister (National Treasury). Where a cross-functional team determines via a formal strategy that an exemption from the PPPFA is required for the aforementioned reasons (as stipulated in legislation), a motivation, contained within the approved strategy, must be sent through to the relevant Commercial GM for approval, and written consent to seek such exemption must be provided by the said Commercial GM (in consultation with the GM: SD&L), before the relevant Senior Manager Commercial proceeds with the request for exemption. The request for exemption must be contained in a formal document, supported by the Group Executive: Technology and Commercial, before being authorised by the Chief Executive and Chairman of the Board, and routed to the National Treasury.

It must be noted that requests for exemption on strategic or critical procurement may significantly delay procurement due to awaiting the outcome of an exemption request.

In the case of funded contracts by the Development Funding Institutions where exemption from the PPPFA has already been obtained, the loan agreements with funders will determine the procurement process to be followed.

In the case of non-funded contracts where exemption has been obtained, the processes as described in 3.2.9.5 below for PPPFA-exempt procurement will be followed.

The PPPFA is based specifically on the sourcing mechanism of competitive tendering, and it is therefore common cause that the PPPFA will NOT be applicable to non-competitive sourcing mechanisms, such as negotiations (no prior tendering).

#### 3.2.9.2 Application of Specific Goals

Specific goals are limited to criteria based on contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability, or regarding implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette 16085 dated 23 November 1994. Any specific goal for which a point may be awarded, must be clearly specified in the invitation to tender / enquiry.

Inclusion of specific goals must be distinct from any criteria already being evaluated under BBBEE, and cannot be a repetition / duplication of such criteria.

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A specific goal may be expressed as a special condition of tender with application as a pre-qualification gatekeeper to threshold evaluation, or may be applied as an objective criterion to be considered after tender evaluation, and may influence the awarding of the contract to a supplier other than the highest ranked.

Many of the SD&L objectives such as industrialisation, skills development, localisation and job creation, which are distinct from the elements contained in the BBBEE score-card may be applied as specific goals. Refer to Appendix E.

### 3.2.9.3 Application of Thresholds

The thresholds that are applied within the PPPFA Framework are that of functionality and local content. The local content threshold is only applicable to assets, goods or services which are part of designated sectors (as set out in Appendix C hereto).

It is not permissible to create too many other thresholds / gatekeepers to evaluation within the PPPFA Framework, as this becomes onerous /unfair, and may result in a barrier to entry for new or developing suppliers, or may result in inhibiting competition altogether.

Functionality is applied as a threshold to confirm technical acceptability in terms of reliability, quality, viability, durability of services and a Supplier's technical capacity and ability to execute a contract, especially applicable to projects and other complex procurement.

Any criteria included under the functionality threshold must be **non-negotiable** requirements core and intrinsic to the operation / performance (fit for purpose) of the assets, goods or services required. Where quality and SHE is core and intrinsic to the operation / performance of the assets, goods or services required, this too must form part of the functionality threshold criteria. With respect to SHE, all high risk categories of supply as set out in Annexure D hereto must include SHE as part of the functionality threshold.

In other words, all criteria included under the functionality threshold must render the supply fit for purpose, and is hence deemed non-negotiable and mandatory.

Criteria forming part of functionality threshold requirements identified as "non-negotiable" or mandatory **cannot** be reconsidered or relaxed at a later stage. Factors or elements which may be "negotiable", or which are not core / intrinsic to the operation / performance of the assets, goods or services required, and which may be considered "nice to have"/discretionary, may be dealt with as objective criteria post-evaluation, as pre-requisites of contract award (which gives a supplier time to meet the additional requirements), or as negotiation objectives to be agreed to as conditions of contract.

If SHE and quality elements are part of functionality threshold criteria, an **"all or nothing"** approach must be applied. Suppliers must meet the FULL requirements of the criteria to score the FULL points for SHE and quality (at a minimum 30% weighting for each), failing which, suppliers must score zero against the sub-criterion. Pro-rata allocation of points for quality and SHE will result in partially compliant suppliers meeting the overall functionality threshold, which is not the objective of non-negotiable requirements. Only fully compliant suppliers, with respect to SHEQ must be able to pass the threshold.

The inclusion of SHE specifically into the functionality threshold must only be for specifically identified (high risk) categories where SHE is a pre-requisite "fit for purpose" requirement going to the core of the operation / performance of the assets, goods or services required, e.g. construction, engineering, electrification work, transportation, etc. The above model will not work for every category of procurement, and for your typical professional and general type services (low risk categories of supply), SHE legal compliance (e.g. COIDA) must be an objective criterion, included as a pre-requisite for contract award, post-evaluation. The categories of supply, for which SHE must be included as part of functionality, is set out as high-risk within Appendix D hereto. The inclusion of medium risk category criteria as part of the functionality threshold must be determined by the cross-functional team, in consultation with a SHE

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functionary, while low risk category criteria should not form part of the functionality threshold, but must be included as objective criteria.

Including SHE and quality under the functionality threshold with a "diluted" effect where it is only 10 or 20 points out of 100 points, again defeats the purposes of the required SHE /quality compliance. For those categories where SHE and quality are included within the functionality threshold, a minimum of 30 points must be allocated to SHE, and quality respectively, to have a total effect, on an overall threshold of a minimum of 75 points.

This still leaves a minimum of 40 points available for the pure technical aspects of the supply. On the technical aspects what is included must be mandatory and non-negotiable. It is best to apply a **penalty system** for the technical aspects where, for example, 10 points may be deducted for any requirement partially met, and 15 points may be deducted for any requirement not met at all. This is a more objective basis to assess the meeting of non-negotiable and mandatory requirements rather than the subjective system of allocating pro-rata points. The determination of the penalty deduction system to be used must be a decision of the cross-functional team, and such penalty deduction system must be clearly set out in the tender for purposes of transparency.

On this basis, the outcome should be that suppliers failing to meet either the SHE or quality criteria cannot pass the overall functionality threshold even if technically acceptable, while a technically unacceptable supplier cannot pass the overall functionality threshold even if meeting all SHE and quality requirements.

***Before application of the "all or nothing" approach with SHEQ, together with the penalty/deduction approach for technical, it is best for the cross-functional team to test the evaluation methodology against the stated threshold before inclusion in a tender, so that the objective of this prescribed model as stated above is met.***

The tender must clearly set out the application of the "all or nothing" principle applicable to SHE and quality, and the method of penalisation (points deduction applicable per requirement) for partial and / or non-compliance on technical requirements.

**Example: Functionality Application with SHEQ:**

Criteria	Weightings
Technical (Design, Drawings, Samples, Specification, Measurements, etc.)	40
SHE	30 (must be minimum 30 points if included)
Quality	30 (must be minimum 30 points if included)
Total	100
Overall Minimum Threshold for Qualification	75

**Example:**

Criteria	Weighting	Supplier A	Supplier B	Supplier C
Technical (Design, Drawings, Samples, Specification,	40	40	30	10

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Measurements, etc.)				
SHE	30	0	30	30
Quality	30	30	30	30
Total	100	70	90	70
<b>Overall Minimum Threshold for Qualification</b>	<b>75</b>	<b>DISQUALIFY</b>	<b>PASS</b>	<b>DISQUALIFY</b>

- Supplier A fails the overall threshold due to scoring zero on SHE, by failing to meet one or more non-negotiable SHE requirements;
- Supplier B meets the threshold, though being penalised (10 points) for only partially meeting one of the stated technical requirements, but fully complying with all other requirements including SHE and quality;
- Supplier C fails the overall threshold due to not meeting, either partially or fully one or more of the stated technical requirements, and was penalised 30 points either for not fully meeting 2 stated requirements (deduction of 15 points each), or only partially meeting 3 stated requirements (deduction of 10 points each).

#### 3.2.9.4 Application of Objective Criteria

In terms of the PPPFA, the application of objective criteria may be a valid and justifiable reason why a tender is not awarded to the highest scoring / highest ranked supplier, after application of the 80:20 or 90:10 preference points system. Objective criteria will generally be applied after evaluation, and are generally the criteria / conditions specifically linked to contract award (viz., legal compliance, adherence to contract terms and conditions, financial viability, specific goals, etc.), and may not necessarily be linked to the allocation of points for further scoring.

In the interests of ensuring transparency all objective criteria must be clearly set out in the tender, with the associated returnables required for purposes of assessment / evaluation.

#### 3.2.9.5 PPPFA Exempt Tenders

To the extent that exemption from the application of the PPPFA to the specific procurement has been granted, the determination of evaluation criteria and the methodology for evaluation must be determined and agreed upon with the assigned cross-functional team and incorporated as part of a strategy for approval prior to issue of the tender. The only exception to this is where the Procurement Procedure and Guidelines for the World Bank or any other Development Financing Institution is followed, due to the specific requirements contained in the loan agreements.

Every evaluation framework must, as a minimum, evaluate tenders on a technical (including SHEQ), financial (price), commercial (conditions of contract, compliance with legislative requirements) and socio-economic (B-BBEE and other supplier development and localisation initiatives) basis, using the Board-approved 70:30 evaluation framework, unless otherwise specifically amended through a special resolution of the EXCOPS or higher Delegated Approval Authority.

The use of the 70:30 framework is based upon a standard thirty (30) per cent being allocated to SD&L objectives (generally with ten (10) per cent being allocated to BBBEE Status, and twenty (20) per cent being allocated to localisation objectives), while seventy (70) per cent of the criteria may be apportioned between pricing and technical (including SHEQ) criteria, with no one criteria between price and technical exceeding forty (40) per cent in total.

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The criteria for evaluation, the weightings of each criterion, and applicable sub-criteria must be clearly stated in the tender, and without ambiguity. Evaluation criteria must not be derived with the intention of giving any one supplier or a group of suppliers an unfair advantage in the competitive process.

The applicability and weighting of socio-economic sub-criteria must be confirmed with a relevant SD&L functionary for every formal tender. The applicability and weighting of SHEQ criteria must be confirmed with the relevant Sustainability functionary for every formal tender.

Mandatory gate-keepers must be used with caution, and not with the intention of eliminating competition or certain suppliers. Where mandatory gate-keepers have been included in the tender, prior approval and sign-off for the use thereof must be obtained as part of the strategy approval from the relevant Delegated Approval Authority, before the tender is issued. The imposition of more than two (2) gatekeepers per tender is not recommended, unless special written permission has been obtained by the relevant Senior Commercial Manager.

All documents necessary to evaluate gatekeepers must be clearly stipulated in the tender documents and if not received by the deadline for tender submission, will disqualify the supplier from further evaluation.

B-BBEE status may be used to further promote supplier development and localisation initiatives through the following mechanisms which must be clearly stated in the competitive tender in order to be applied for purposes of contract award:

- The award of certain tenders, in whole or in part, for BWOs and SBEs only. In this instance LBSs and other small and large Suppliers will not be allowed to tender and it must be stated in the advertisement and enquiry as such.

The use of the above mechanisms must be included only in consultation and written consent from the relevant SD & L functionary and the Eskom Legal Department, and as part of a formally approved strategy.

Where BBBEE is stipulated as a gatekeeper, or where eligibility to qualify as a BWO/SBE can only be determined through receipt of a valid BBBEE certificate, the receipt of the BBBEE certificate then becomes mandatory for purposes of evaluating the gatekeeper, and failure on the part of the supplier to provide the BBBEE certificate by the time of tender closing will disqualify the supplier from further evaluation.

The inclusion of SD & L criteria is mandatory for all formal competitive tenders which are PPPFA exempt. The definition of the criteria and the methodology for the evaluation thereof must be approved in writing by the SD & L functionary forming part of the cross-functional team.

### 3.2.10 Approved Standard Forms of Contract

#### 3.2.10.1 Contract Types (NEC/FIDIC)

Eskom-approved standard forms of contract and conditions of contract are used for placing all orders or contracts. The New Engineering Contract (NEC) suite of contracts, the FIDIC suite of contracts (use limited to Project Sourcing and for new build projects only, where deemed appropriate by the Eskom Legal Department) and selected Eskom in-house contracts are used as conditions of purchase in Eskom. The Procurement Practitioner in consultation with the cross-functional team, where applicable, selects the appropriate contract to best mitigate the risks of the procurement as part of the approved strategy and such selection is confirmed prior to the issue of the tender.

Where there is no suitable standard form of contract or a Supplier proposes use of its own standard contract, the Procurement Practitioner may request Eskom Legal Department to:

- Draft a special contract; or

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- Approve the Supplier's standard contract.

The Procurement Practitioner must interface with the members of the cross-functional team, other specialists and with the Eskom Legal Department in order to ensure that all relevant data and information has been included by the cross-functional team members to ensure validity, accuracy and enforceability of the contract.

The following contracts are standard contracts that are generally used within Eskom, and transaction-specific additions and amendments to standard conditions of contract (including amendments to standardised 'Z' clauses) cannot be made without consultation and written consent from the Eskom Legal Department, and approval by the relevant Delegated Approval Authority:

- NEC Supply Contract (SC)
- NEC Supply Short Contract (SSC)
- NEC Professional Services Contract (PSC)
- NEC Engineering Construction Contract (ECC)
- NEC Engineering Construction Short Contract (ECSC)
- NEC Term Services Contract (TSC)
- NEC Term Services Short Contract (TSSC)
- NEC Framework Contract (FC) (This should ONLY be used in consultation with the Eskom Legal Department)
- NEC Adjudicator's Contract (AC)
- Eskom General Services Contract (GSC) – only applicable to historical transactions being modified and not for new transactions
- Eskom's General Conditions of Purchase – for transactions up to R1m
- FIDIC suite of contracts (Use limited to Project Sourcing only, with prior approval from Eskom Legal Department), comprising:
  - FIDIC Yellow Book (Design and Construction);
  - FIDIC Red Book (Construction); and
  - Other FIDIC Books.

NOTE: When using the standard NEC suite of contracts, the Contract Management Department within Group Commercial Business Enablement, prescribes templates for use, and will include Eskom-specific commercial and legislative requirements as part of the 'Z' clauses. The NEC suite of contracts cannot be used without the prescribed templates or the standard approved 'Z' clauses. Existing Z clauses or new Z clauses cannot be amended or drafted without prior consultation with and approval from the Eskom Legal Department.

### 3.2.10.2 Partnering and Fleet Arrangements

Where strategic/critical assets or goods are specifically manufactured for Eskom or where strategic/critical maintenance, engineering or other services are contracted out due to special and scarce skills and competency requirements, the development of long term partnering agreements and/or the establishment of a "fleet" arrangement with suppliers (where Eskom will procure multiple units of assets or goods from one supplier as a standard across multiple projects / sites) may be the preferred method of contracting. Partnering agreements/"fleet" arrangements may be set up with original equipment manufacturers (OEMs) and are generally motivated on the basis of standardisation, economies of scale allowing for favourable pricing, SD & L initiatives and security of supply. Strategic partnering and fleet

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arrangements must be approved as part of a strategy authorised by the EXCOPS or a higher Delegated Approval Authority.

### 3.2.10.3 Panel Contracts

The appointment of a panel of service-providers must be executed against a signed and approved strategy, and approval for contract award, must be obtained from a relevant Delegated Approval Authority.

The appointment of a panel of service providers must follow a two-stage process. The first stage is conducted as a pre-qualification enquiry where suppliers are first screened and pre-qualified for general compliance to technical, SHE, quality, and SD&L requirements, including specific goals, if applicable. Price is generally not requested as part of the pre-qualification enquiry, unless a standard rate is prescribed for acceptance.

Once pre-qualified, suppliers on the panel may then compete on a per task order basis as part of the second stage, where they may tender based on the 80:20 or 90:10 preference point system as may be relevant to the task order, or where capacity /capability /location, treated as objective criteria, may become factors in task order award.

Panels may be used as a mechanism to support the development of emerging suppliers where task order allocations are based on principles of rotation.

Contract Managers are responsible for putting in place appropriate systems and controls to ensure that:

- Work / task orders are distributed fairly and equitably among the panel of suppliers;
- RFQs for task orders not exceeding R5m must be received and administered via the same process for the receipt of informal tenders;
- All RFPs relating to task orders must be formally received and administered via the relevant Tender Office;
- All RFQs relating to task orders greater than R5m must be received and administered via the relevant Tender Office;
- Criteria for the selection of a particular supplier for the allocation of work / task orders are defined and documented within the RFQ / RFP and enabling agreement, and made known to panel suppliers and End-Users;
- There is a documented and approved task order approval process;
- Task orders are placed against contracts with sufficient funds and time available for the completion of the supply / services;
- Task orders are supported by a SAP 45 number confirming the order / commitment; and
- SD&L targets and objectives are being monitored and tracked.

All of the above controls must be dealt with upfront as part of the approved strategy, and executed during the contract management phase.

### 3.2.10.4 Other Contract Types

Should it be determined that the standard suites of contracts will not meet the requirements of the specific transaction, the Eskom Legal Department must be approached to either draft a special bespoke agreement appropriate to the transaction, or to advise on whether another suite of contract such as the JBCC, may meet the requirements. Approval to use other non-standard suites of contracts must be obtained from the General Manager: Legal.

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### 3.3 Applications of Low Value Informal Sourcing Mechanisms

#### 3.3.1 Use of LPOs (<R30k)

LPOs can only be used for **non-complex, ad hoc, non-repetitive, non-stock** goods or services which are not included within the ambit of existing contracts / Framework Agreements. LPOs cannot be used as a mechanism to procure the same categories of items on a repetitive or ongoing basis. CPA and/or forex will not be applicable to LPO transactions.

**Only the following goods or services may be procured through the use of LPOs:**

- Consumable materials;
- Groceries for a work site (but NOT alcoholic beverages);
- Meals, limited to a maximum of R500 (excluding VAT), and authorised by the site financial verifier / financial manager;
- Assets, which cannot be procured off existing national /divisional contracts, up to a maximum of R2500 (excluding VAT), and subject to the written authorisation of the site financial verifier or financial manager;
- Rateable services (where rates are quoted per hour or per call-out, etc.);
- Un-priced services (e.g. emergency repairs), to be ratified by the relevant PTC concerned before payment, if an emergency;
- Minor works for which planning permission by a local authority is not needed, e.g. painting; and, capital items that will be written off on purchase and not listed in an asset register, such as small power tools;
- Accommodation, but not for overseas trips;
- Removal and transportation of furniture relating to employee transfers and appointments;
- External training and conferences; and
- Promotional items.

The LPO procurement process is as follows:

- i. The LPO-buyer receives a written request from an End-User which falls within the parameters for LPO procurement. A single request must not be split into multiple orders so as to avoid using the informal tendering process for transactions from R30 000 and R1m, which must be processed by Procurement Practitioners within the relevant procurement department.
- ii. The LPO-buyer identifies a supplier who can meet the demand and need. Sourcing of a supplier must be done using suppliers already registered on the Eskom Supplier Database, in order to avoid unnecessary delays in supplier registration where suppliers are sourced through other means. During the sourcing process, the LPO-buyer must endeavour to support BBBEE suppliers as far as possible, and in terms of the Hierarchy of Supplier Preference.
- iii. A fax form may be used to request a quote from the suppliers. The LPO-buyer must avoid using only one supplier on a repetitive and ongoing basis. The Supplier responds with a quote and if verbally given, the LPO-buyer requests a written quotation which can be submitted via e-mail or fax.
- iv. Once the quotation is received, the LPO-buyer compares the price with previous prices, if possible. The LPO-buyer ascertains if the prices are fair, reasonable and market related. If he/she is satisfied with the prices, he/she contacts the End-User who has to approve the goods or services offered

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from a technical perspective, and who must also confirm acceptance of the quoted price(s). The End-User then informs the LPO-buyer to proceed with order placement.

- v. Should the LPO-buyer determine that the prices are not fair after comparing with other suppliers' prices, or if the End-User rejects the prices or rejects the goods or services offered for technical reasons, the End-User must confirm whether he/she still needs the goods or services. If the goods or services are still needed, then the LPO-buyer approaches another supplier. In the case that no other supplier is found, the LPO-buyer may then create a shopping cart for the relevant procurement department to assist in sourcing the goods or services. If the requirement is no longer needed then the process is cancelled in which case the LPO-buyer files all documents and marks the file as cancelled.
- vi. The LPO-buyer then creates a "LPO Order" (starting with a "43..." number) on SAP making reference to the Eskom General Conditions of Purchase and instruction on where to obtain it. He/she includes the address where the goods or services must be delivered. The LPO order will then be routed to the Cost Centre Manager via workflow for approval of the procurement.
- vii. After approval of the procurement by the Cost Centre Manager, the LPO-buyer prints the order, signs it and forwards it to the supplier.
- viii. The supplier must notify the LPO-buyer when delivery is going to take place. Once the goods or services have been delivered at the stipulated address, the LPO-buyer requests the End-User to do a quality inspection of the goods (if required) and to do a goods receipt in SAP. The relevant Materials Management department does a goods receipt in SAP if the order was delivered to the stores. The LPO-buyer cancels goods or services not received and returns damaged goods to the supplier. Where goods are partly delivered, a copy of the delivery documents is retained until the delivery is complete. Part-deliveries of the same order over an extended period of time are not permissible. Any part orders remaining after delivery must be cancelled and replaced by a new order (one delivery note for each LPO).
- ix. The LPO-buyer must ensure that the total value of all deliveries for one single order remains below the threshold of R30 000, including VAT and all applicable taxes. Non-standard payment terms including upfront payments, partial payments, staggered payments or progress payments are not permitted.
- x. The Supplier sends the invoice directly to Finance who will effect payment only after the goods receipt in SAP has been completed. Finance allocates the costs to the relevant cost centre. A three-way matching of the documents will be done automatically by the system. Any discrepancies will be followed up by Finance.
- xi. The LPO-buyer must file all documents in a file for audit purposes.
- xii. The Risk and Governance Department will analyse monthly reports drawn from SAP to determine compliance to the requirements of this Procedure with respect to LPOs. Any possible irregularities or breach of controls will be further investigated.
- xiii. The Procurement Manager within the relevant procurement department may also run reports from SAP on a monthly basis to verify whether LPOs are being executed within the parameters as set out herein. Should the Procurement Manager determine that the same goods or services are being bought on a repetitive basis the Procurement Manager must allocate a request (PR) through to a Procurement Practitioner who must consolidate the requirements for purposes of a contract.

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### 3.3.2 Informal Tendering – Request Minimum one Quote (<R30k)

***NB: The process hereunder may be subject to further review and may be subject to further optimisation for improved controls after publication of this revision of the Procedure.***

Low value transactions (less than R30 000, including VAT and all applicable taxes) may also be executed by Procurement Practitioners when there are no LPO-buyers who are authorised or available to execute LPOs, or when assets, goods or services fall outside the ambit of the categories of supply permissible for the use of LPOs.

The informal tendering process must be executed by Procurement Practitioners as follows, for transactions that do not contain any forex, CPA or CIDB implications:

- i. Once the End-User has a need for assets, goods or services which cannot be purchased through use of an LPO, he/she creates a PR in the electronic purchasing system which is automatically routed via workflow to the relevant Cost Centre Manager for approval. As far as possible, the End-User inserts a materials number (if a non-stock item) or a service number in the text field, obtainable from the cataloguing system, which describes the assets, goods or services. The End-User obtains confirmation from the relevant Finance department that there are enough funds in the budget to purchase the required assets, goods or services. The Cost Centre Manager approves the estimated value of the assets, goods or services required. When approving the estimated value, the Cost Centre Manager may also verify from the CO module in SAP, that there is enough money in the budget for the transaction.
- ii. Should the requirement be for an asset, the End-User has to obtain an asset number from the relevant Assets department and include it in the applicable field on the PR. Once the Procurement Practitioner receives the PR, he/she will use the asset number in the RFQ and PO for recording purposes.
- iii. On approval of the request by the Cost Centre Manager, the PR is routed to the Procurement Manager who will review the PR for validity and completeness, and allocate the PR to the applicable Procurement Practitioner. Rejected PR's will be communicated to the End-User who will re-enter/correct it in the electronic purchasing system if so required.
- iv. The Procurement Practitioner must always first check if there is an existing Eskom national / Divisional Framework Agreement already in place for the required assets, goods or services. If a Framework Agreement is in place, the Procurement Practitioner must confirm with the assigned Contract Manager if the procuring BU is allowed to draw-down from the agreement, and may then proceed with a draw-down if permitted to do so.
- v. If there is no national / Divisional Framework Agreement in place or a draw-down from an existing Framework Agreement is not permissible, the Procurement Practitioner needs only to identify one supplier from the Eskom Supplier Database that will meet the requirement. In this process, the Procurement Practitioner must identify suppliers based on the Hierarchy of Supplier Preference in order to support BBBEE suppliers as far as possible.
- vi. The Procurement Practitioner communicates the requirement to the supplier telephonically or via fax or e-mail. The RFQ functionality in the electronic system may be used to send through RFQs electronically. The Procurement Practitioner instructs the supplier on how to go about submitting the quotation through to Eskom, the delivery date and place, and that the Eskom General Conditions of Purchase will apply.
- vii. The Supplier faxes or e-mails a quote through to Eskom based on the instructions received in the RFQ. In the case of a telephonic enquiry, the Procurement Practitioner records the details like the price of the assets, goods or services and the delivery costs, and then requests a written response at a designated fax machine or e-mail address from the Supplier as confirmation of what was communicated telephonically.
- viii. The Procurement Practitioner completes the relevant Commercial Transaction Approval Form and requests approval via dual adjudication from an Accredited Procurement Practitioner (TASK grading G14 and above) to authorise order placement.

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- ix. Upon receipt of approval from a dual adjudicator, the executing Procurement Practitioner then creates an order against the Supplier already registered on the Eskom Supplier Database, and sends a printed order to the Supplier, or if possible, sends an electronic order through the system to the supplier.
- x. The Supplier delivers the assets, goods or services at the address instructed in the order, at the stipulated quantities and quality.
- xi. If goods were delivered at the stores, the Materials Management official receives the goods and contacts the End-User to conduct a quality check. The goods are then entered into the system as received.
- xii. The Supplier issues an invoice to Finance for payment. The three-way matching process will be done automatically by the system. Any discrepancies will be followed-up by Finance.
- xiii. The Procurement Practitioner must file all relevant documents for audit purposes, such as the request (RFQ), the fax/e-mail to the Supplier, the quote received, the signed Commercial Transaction Approval Form and the order. He/she also files monthly reports for audit purposes.
- xiv. The Procurement Manager must draw monthly reports from the electronic purchasing system for scrutiny, in order to identify any irregularities or trends that indicate undue preferences for specific Suppliers. The Procurement Manager must also ensure that all contracted values are below R30 000 including VAT and all applicable taxes, and that the transactions contain no forex, CPA or CIDB implications. The Procurement Manager must also check if the quote received is in line with the evaluation, approval granted, and the order placed. The Procurement Manager informs the Risk and Governance Department within Group Technology and Commercial of any suspected irregularities or breaches of controls. Once satisfied with the report, the Procurement Manager signs off the report, and the Procurement Practitioner files it as part of the audit trail.
- xv. The Procurement Manager must do spot checks from time to time on the processes followed to determine the levels of compliance to approved processes. The Procurement Manager will further determine the need to conclude contracts for repetitive purchases and may request Procurement Practitioners to proceed with commercial processes in this regard.
- xvi. Apart from these checks by the Procurement Manager, the Risk and Governance Department (Trends Analysis) will also draw monthly reports to measure the compliance of the processes followed.
- xvii. An annual audit will be conducted by Internal Audit on such transactions to ensure compliance to this Procedure.
- xviii. The documents and reports forming the audit trail for the transactions are archived for the period required in accordance with Eskom's Document Retention Policy.

### 3.3.3 Informal Tendering – Request Minimum Three Quotes (R30k up to R1m)

***NB: The process hereunder may be subject to further review and may be subject to further optimisation for improved controls after publication of this revision of the Procedure.***

This process must be executed only by Procurement Practitioners.

The nature of these transactions may vary from low complexity transactions for off-the-shelf goods with minimum requirements where a once-off order will suffice, to more complex transactions for services/works with additional requirements, where a NEC short contract may be appropriate, and may further include disposals of moveable assets (refer to Section 3.12).

It will not be permissible to execute RFPs through an informal tendering process due the number of returnables that may be required for evaluation, and the possible complexity thereof. Any requirement for an RFP can only be executed via a formal tendering process. The same principles may be applied to certain RFQs. Where it is anticipated that multiple thresholds will be applied and multiple returnables requested for detailed evaluation, it is recommended that the formal tendering process be used. The informal RFQ process is not designed for complex procurement requiring lengthy detailed evaluations,

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and is intended primarily for non-complex assets, goods or services which must be procured with speed and efficiency, with turnaround times preferably not exceeding 5 working days.

The Procurement Practitioner applies the informal tendering process based on the criteria set out below.

- The value and duration of the contracts or orders are from R30k (including VAT and all applicable taxes) but do not exceed R1m (including VAT and all applicable taxes) and 1 year;
- The Delegated Approval Authority is generally a dual adjudicator;
- Transactions which are less than R30 000 (including VAT and all applicable taxes) but which cannot be sourced via LPO or low value purchasing processes (using a minimum of 1 quotation) due to implications of forex, CPA or CIDB must be subject to this informal tendering process (minimum 3 quotes);
- The price may include foreign currency which will necessitate EXCON approval. Forward cover must be taken out if the foreign portion of the price is R150 000 or more;
- There must be at least 3 (three) capable and independent (non-related) suppliers to ensure competition for purposes of a competitive tender;
- The expenditure must be budgeted for;
- Tender evaluation must be applied in accordance with the 80/20 preference point system as required in terms of the PPPFA. Functionality is generally not required as a threshold for these transactions;
- Assets, goods or services required may be considered to be from a designated sector, and the required threshold for local content must be included as part of the tender in this case.

The enquiry process to be followed for transactions processed via informal tendering is as follows:

- i. The End-User describes his need and does the necessary planning to ensure that the assets, goods or services required will be delivered at the right time, place, price, quantity and quality. As far as possible, he/she accurately estimates the costs for the provision of the assets, goods or services required. This is in order to determine and stipulate the appropriate preference point system to use, which in this case should be the 80/20 preference point system.
- ii. The End-User creates a PR in the electronic purchasing system. As far as possible, the End-User inserts a material number or service number from the cataloguing system in the text field. This number describes the assets, goods or services required. If the need is for an asset, the End-User obtains an asset number from the relevant Asset Department and inserts it in the applicable field on the PR. The relevant Cost Centre Manager approves the PR which is then routed to the relevant procurement department where the Procurement Manager will allocate it to a specific Procurement Practitioner after he / she has checked the PR for validity and completeness. If the PR appears incomplete or incorrect, the Procurement Manager rejects the PR which will be sent back to the End-User, who will have to rectify it and send it back to the procurement department if the assets, goods or services are still required.
- iii. The Procurement Practitioner must always first check if there is an existing Eskom national / Divisional Framework Agreement already in place for the required assets, goods or services. If a Framework Agreement is in place, the Procurement Practitioner must confirm with the assigned Contract Manager if the procuring Division /BU requiring the assets, goods or services is allowed to draw-down from the Framework Agreement, and may then proceed with a draw-down if permitted to do so.
- iv. If no existing national /Divisional Framework Agreement exists, or a draw down from an existing Framework Agreement is not permissible, the Procurement Practitioner compiles a list of a minimum of 3 capable and independent (non-related) Suppliers obtained from the Eskom Supplier Database or by finding Suppliers through any other recognised means (e.g. internet, purchasing directories,

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recommendations from End-Users, etc.). In sourcing for a minimum of 3 capable and independent suppliers, the Procurement Practitioner must endeavour to target Suppliers in accordance with the Hierarchy of Supplier Preference, as far as possible. The Procurement Practitioner also determines if an order based on the General Conditions of Purchase will suffice, or if a NEC Short Contract is more suitable to the requirements.

- v. The Procurement Practitioner must also confirm whether the required assets, goods or services are part of a designated sector as prescribed in the PPPFA for purposes of promoting local content. If the assets, goods or services are part of a designated sector, then the appropriate local content threshold must be indicated as a condition of the RFQ.
- vi. When using the 80:20 preference point system for non-complex procurement, it will generally not be necessary to utilise the functionality criterion as a threshold, in the interests of reducing lead times for evaluation, unless the assets, goods or services required have a major impact on SHEQ as specified by the End-User, in which case, functionality, inclusive of SHEQ sub-criteria must be used as a threshold. In the case of more complex transactions and where contracts are used, the Procurement Practitioner must determine, in consultation with the End-User, whether functionality as a threshold is required.
- vii. The RFQ may be sent via fax or e-mail to a minimum of 3 capable and independent suppliers. The Procurement Practitioner must make reference to the Eskom Standard Conditions of Tender, Eskom General Conditions of Purchase, and stipulate any applicable thresholds (e.g. functionality or local content), and the evaluation criteria (80/20 preference points system) that will apply, within the RFQ. Reference must be made to the electronic website link where the participating suppliers can obtain the Standard Conditions of Tender and the General Conditions of Purchase, if not attached to the RFQ. The Procurement Practitioner must include such documents that are not electronically available on Eskom's website within the RFQ when issuing it to the Suppliers. The Procurement Practitioner must also ensure that order data required by the General Conditions of Purchase (such as delivery address, penalties etc.) are requested in the RFQ.
- viii. In the case of more complex transactions that justify the use of a NEC Short Contract, the Procurement Practitioner ensures that the necessary scope, price schedules, applicable thresholds and evaluation criteria are included and stipulated as part of the RFQ. A contract document, consisting of the required Contract Data is then compiled with the necessary information and issued with the RFQ, and associated Tender Data.
- ix. All RFQs, irrespective of complexity, must request the following: a valid BBBEE certificate in order to evaluate the 20 points applicable to BBBEE; a valid tax clearance certificate, and, to the extent that the services / works are classified as engineering or construction works governed by the CIDB Act and Regulations, proof of CIDB registration together with the required CIDB level in the applicable category of works. It must be noted that an order / contract cannot be awarded without a valid tax clearance certificate or, for construction and engineering works, without CIDB registration at the applicable level or within the required category of works.
- x. The Procurement Practitioner must notify the Suppliers of the closing date and time for the submission of tenders, and must instruct the suppliers in writing within the RFQ on the method of delivering the tenders to Eskom, which in this instance may only be via e-mail or fax. Although a closing date and time will be stipulated, the receipting of the tender will not follow the same formal tender opening process as formal tenders which are required to be placed within the Eskom tender box. Independent authorized officials will be assigned to manage the receipting of informal tenders via fax and e-mail for purposes of recording, tracking and monitoring, and for distribution to the respective Procurement Practitioners.
- xix. Once the informal tenders have been distributed to the Procurement Practitioner, the Procurement Practitioner must proceed to evaluate the informal tenders by applying any applicable thresholds, and

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then applying the 80/20 preference point system and any other objective criteria as was stipulated in the RFQ.

- xx. If functionality was not stipulated as a threshold, then the Procurement Practitioner determines if the required threshold was met for local content, if applicable. If functionality was stipulated as a threshold then evaluation will be conducted by the End-User who must determine if the informal tender meets or exceeds the threshold and thus qualifies for further evaluation. Only those tenders that meet the functionality threshold will be evaluated further.
- xxi. Where stipulated thresholds have not been met, the informal tender must be disqualified. If stipulated thresholds are met, then the Procurement Practitioner proceeds to evaluate against the 80 points for price by awarding 80 points to the lowest priced tender and awarding pro rata scores to the other higher prices, based on the prescribed formula. The other 20 points will be allocated based on the level of BBBEE contribution, according to the table in Section 5 of the PPPFA Regulations. These two scores (score out of 80 and 20 respectively) must be added together and the tender with the highest score must be recommended for order / contract award, in the absence of applying any other objective criteria (if stated in the tender) which may result in the highest scoring tender not being recommended.
- xxii. The Procurement Practitioner will use the evaluation price to determine the scoring out of 80. To assist the Procurement Practitioner in determining the different scores for the different tenders, an Excel spreadsheet (attached hereto within Appendix C) is recommended. The tender with the highest combined scores for Price and BBBEE, based on the 80/20 preference points system (in the absence of applying any other objective criteria), will be recommended for award on the Commercial Transaction Approval Form to an Accredited Procurement Practitioner with dual adjudication authority, who may either approve or reject the recommendation.
- xxiii. Once the recommendation is approved, the Procurement Practitioner creates either an order or a contract in the electronic purchasing system and forwards the contract/order to the successful Supplier. If a NEC contract has been used, the Procurement Practitioner must obtain the signatures for the contract from the supplier and from the relevant authorized Eskom delegates. The Procurement Practitioner must also transmit the PO through the electronic system to the successful supplier.
- xxiv. Once the contract has been signed or the order been awarded to the successful supplier, the Procurement Practitioner will notify, on request of the unsuccessful supplier(s), the reasons why they were unsuccessful. The name of the successful supplier may be given to other participating suppliers who may request it.
- xxv. A Contract Manager must be appointed to manage the contract in accordance with the conditions of contract. The Supplier submits invoices to the contact details given in the order/contract. In the case of an order for goods, the End-User must do a quality check on the goods received and must do a "goods receipt" (GR) or service entry (SE) in SAP if he is satisfied with the quantity and quality of goods. It is also required for the person doing the GR/SE in SAP to enter the relevant SAP document onto the delivery note/invoice. Damaged goods must be returned to the Supplier.
- xxvi. Payment (within 30 days of invoice and within 15 days of invoice for SBEs/ BWOs) to the supplier will be processed by Finance and the Procurement Practitioner or the procurement department will not be involved in the processing of payment to the supplier.
- xxvii. The Procurement Practitioner and the Contract Manager maintain a file of the transaction for audit purposes.
- xxviii. The tenders, signed Commercial Transaction Approval Form and order/contract documents are archived and retained for a period as specified in the Eskom Document Retention Policy.

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### 3.4 Application of Formal Competitive Tendering (>R1m)

#### 3.4.1 Criteria for Application

Although this section deals with formal competitive tendering for transactions greater than R1 million (including VAT and all applicable taxes) and /or greater than 1 year in duration, the formal competitive tendering process may also be executed for orders / contracts less than R1 million and/or less than 1 year, due to the complexity and nature of certain contracts below R1m, or where an RFP is required.

Procurement Practitioners are the only employees in Eskom mandated to execute formal competitive tendering processes.

The criteria to determine whether formal competitive tendering must be applied to commercial transactions are as follows:

- The value of these contracts or orders generally exceed R1m (including VAT and all applicable taxes);
- The contract duration generally exceeds 1 year;
- Forex and / or CPA may be applicable;
- Requirements for manufacturing, design, supply, commissioning, construction of works, goods or a plant must generally be procured via formal competitive tendering, irrespective of value, unless a sole source has been authorised in terms of 3.5.1 herein;
- The expenditure must be budgeted for and ERA /investment approvals must be obtained prior to execution of the process;
- Evaluation will generally be based upon the 90/10 preference point system as required in terms of the PPPFA;
- Commercial strategies are mandatory for transactions greater than R10 million (excluding VAT) and needs to be completed and authorised on a standard Commercial Strategy Approval Form prior to execution of the process. Delegations of Authority applicable to strategies are set out in section 3.1.7, and will apply accordingly.

In order to support supplier development and localisation initiatives, it is Eskom's preferred position to publicly advertise tenders as far as possible to enable open market participation. Notwithstanding this preference, it may be permissible to proceed with a tender on a closed/limited basis where only selected suppliers are targeted, provided that this is supported by an approved strategy, which motivates why use an open tender system is not possible or not practically feasible.

#### 3.4.2 Execution of Closed/Limited Tenders

A closed tender refers to a process where there are only a limited number of suppliers selected to whom Eskom will issue the tender without inviting the market at large.

In this case, public advertising of the tender is not required.

Where strategy approval is obtained to proceed with a closed/limited enquiry, the Procurement Practitioner, assisted by the End-User/cross-functional team and the relevant SD&L functionary confirm the list of a minimum of three (3) capable and independent (non-related) suppliers, but preferably more, who will be invited to participate in the tender, based on the outcome of a RFI, EOI, pre-qualification enquiry, and / or the supplier's existing profile on the Eskom Supplier Database, provided that selection of the closed list can be justified against the constitutional principles of fairness, equitability, transparency, competitiveness and cost-effectiveness.

Closed tendering may be applied if:

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- There is an approved strategy authorising sourcing via closed/limited tender, and authorising the suppliers selected for participation;
- It has been established through market research that there are only a few known suppliers that are capable and available to provide the assets, goods or services, due to the specialised field they operate in;
- The market is too large and suppliers may be pre-qualified against specific criteria before participation in a closed tender process, in order to avoid a lengthy and costly evaluation process.

### 3.4.3 Execution of Open Tenders

Open tenders refer to requirements for the procurement /disposal of assets, goods or services which are advertised to the public /market at large and is open for participation by any interested supplier who meets the minimum requirements to become eligible to compete in such a process.

If an open tender to the market is to be executed, the need must be advertised in Eskom's Tender Bulletin and /or local, national or international media (such as newspapers, radio, television, websites, magazines, etc.), dependent on the segment of the market being targeted, and the costs of advertising involved, which must be justified for the category of procurement /disposal involved.

### 3.4.4 Advertising of Open Tenders

If the approved commercial strategy authorises that the open market will be invited to tender, then an advertisement will be published in the Tender Bulletin and may further be advertised through other local, national or international media (depending on the anticipated target market for the supply, and the costs of advertising which must be considered).

- When advertising in the Tender Bulletin, the Procurement Practitioner completes all necessary fields on the screens developed for advertisement creation;
- When advertising in the media, a standard template for advertisements must be used. The advertisement needs to be signed off by a Commercial Senior Manager within the relevant sourcing department executing the procurement. This must be forwarded to the Risk and Governance Department for a final review, before submission to the Communications Department, together with a briefing note detailing the reason for advertising and the date for publication.

The advertisement must clearly specify the competitive process to be followed, the scope of work, the closing date and time, the contact person in Eskom, an e-mail address to direct enquiries on the tender, and the address of where to deliver the tender.

All construction and engineering procurement falling under the ambit of the CIDB Act and its Regulations, must also be advertised on the CIDB i-Tender system, where the estimated contract value is R10m or higher.

In terms of PFMA Regulations, competitive tenders are required to be open / advertised for at least 30 days. Although Eskom is not currently bound by the PFMA Regulations, it is still required to provide suppliers with a fair amount of time to respond to a tender.

On this basis, the following are the minimum recommended times for which a formal competitive tender may be advertised:

- Minimum of 21 calendar days (under normal circumstances, and for tenders which will result in contracts to be authorised by the EXCOPS or higher);
- Minimum of 14 calendar days (under urgent circumstances, where the urgency has been confirmed by the relevant Procurement Manager).

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The duration must take into consideration factors such as complexity of the procurement, project programme and milestones, and operational requirements, and to the extent that Procurement Practitioners may be required to deviate from the minimum prescribed guidelines, specific authorisation for such deviation must be obtained in writing from the relevant Procurement Manager.

### 3.4.5 Issuing and invitation to Tender

#### 3.4.5.1 Documentation Required for Compiling a Tender

The Procurement Practitioner prepares the tender documentation with the input of the End-User, or in the case of more complex transactions, the assigned cross-functional team.

The tender documents must comprise of the following minimum documentation:

- Letter of Invitation to Tender
- Eskom's Standard Conditions of Tender
- Tender Data
- Contract conditions (NEC or FIDIC) with completed contract data and additional/particular conditions as authorised by the Eskom Legal Department
- Drawings (if applicable)
- Technical specifications and standards
- Local Content Schedules (if applicable)
- SHEQ standards and forms
- Insurance documents
- CPA and/or CPA(IG) forms
- Price Schedules (Note: all tenders must state that suppliers are not, under any circumstances, to deviate from the required stipulated format for the provision of pricing)
- Supplier Evaluation Pack for Service Providers - PAYE (Pay As You Earn) Questionnaire
- Tenders for the procurement of goods/products must request an affidavit stating that the supplier is providing Eskom with a good / product as opposed to a service and is not a Labour Broker as defined in the Income Tax Act (58 of 1962)
- Conditions of Supplier Registration with the Supplier Application Form
- List of other tender returnables, including:
  - Authorisation Form (Confirms the authority of the Supplier's representative to act as an authorised agent on behalf of the Supplier)
  - Declaration of Fair Bidding Practices
  - Proof of CIDB Registration (for construction and engineering services)
  - Declaration of Shareholding and Directorship
  - Supplier Declaration of Interest
  - Valid certified copy of SARS Tax Clearance Certificate
  - Financial Statements of the Supplier
  - One complete hard copy of the tender for purposes of evaluation

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- JV Agreement or Letter of Intent to form a JV
- Any other document which may be relevant as a pre-requisite for evaluation or a pre-requisite for contract award must be requested in the tender.

**Tax Clearance:** Procurement Practitioners must ensure that every tender issued contains the requirement that suppliers must, as a tender returnable, submit a valid certified copy of the tax clearance certificate issued by the South African Revenue Service (SARS). Failure to submit the required certificate by the time a recommendation is made for contract award will render a tender commercially unacceptable.

Procurement Practitioners must confirm that suppliers are registered as VAT vendors if VAT is being charged and/or if Eskom's contract/s with the supplier exceeds the VAT exemption allowed by SARS.

**CIDB:** The Construction Industry Development Board Act, 38 of 2000, requires Eskom as a state-owned entity to adhere to the Procurement Regulations passed by the Construction Industry Development Board (CIDB). When contracting for construction and engineering works, the applicable grading and class of construction works applicable to the procurement must be specified in the Tender Data. All information pertaining to the grading of suppliers and the classes of construction works may be obtained from the CIDB website: [www.cidb.org.za](http://www.cidb.org.za).

**PAYE:** Procurement Practitioners must ensure the Evaluation Pack for Service Providers is issued with competitive tenders for the procurement of services or labour and is submitted by the supplier as a tender returnable in order to determine the correct tax status of the supplier to ensure the correct treatment for PAYE purposes.

**Price / CPA:** Eskom has standard forms for CPA for general goods (CPA (G)) and for imported assets / goods (CPA (IG)). The relevant form must be issued with the tender to ensure that Eskom has a proper base for evaluation. Eskom's finance functionaries, engineering staff, cost estimators and quantity surveyors must assist the Procurement Practitioner in ensuring that the most applicable CPA formula is selected, and that the allocated percentage of each element corresponds with the technical components.

**BBBEE:** Suppliers classified as EMEs have the option of submitting a BBBEE certificate from an Accredited Verification Agency, or may confirm their BBBEE status through accounting officers, and registered auditors, which are options which must be indicated within the tender. Suppliers other than EMEs must submit certificates issued by an Accredited Verification Agency.

All tenders must request for a valid certified copy of the original BBBEE certificate from an Accredited Verification Agency, irrespective if it is a JV, trust, public entity or tertiary institution.

**Documents Confirming Participation as a Joint Venture:** Suppliers may choose to respond to a tender in the form of a joint venture / consortium. Tenders must make provision for requesting joint ventures to provide Eskom with the following, in addition to the mandatory standard tender returnables:

- A valid joint venture agreement confirming the rights and obligations of each of the joint venture partners and their profit-sharing ratios. If a JV Agreement has been submitted, the Eskom Legal Department must review it and provide confirmation of acceptability. A contract will not be awarded to a joint venture in the absence of the joint venture agreement, which is a pre-requisite to contract award. A Letter of Intent to form a JV if the JV is awarded the tender is only acceptable for purposes of proceeding with evaluation, but is not acceptable as a basis for contract award;
- Written confirmation that the joint venture will operate as a single business entity for the duration of the contract (this may be included as an obligation within the JV agreement);
- A valid BBBEE Verification Certificate confirming the B-BBEE status for the joint venture as a single entity where incorporated, or as a group structure, where unincorporated; and
- Details and confirmation of a single designated bank account in the name of the JV and independent of the individual JV partners, as set out in the joint venture agreement, as Eskom will pay the joint

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venture as a single business entity into this bank account only. Eskom will load a joint venture as a single business entity on the Eskom Supplier Database and purchasing system.

**Requesting Copies of Tenders as Returnables:** Every formal tender must contain a request for only one (1) complete hard copy of the tender. It is not permissible or a fair practice to request multiple copies of tenders in multiple formats at the expense of the supplier, for the convenience of Eskom, and to disqualify a supplier on this basis.

Original tenders are marked as such and stored within the relevant Tender Offices in order to avoid the risks of tender tampering, to provide security for the tenders during evaluation, and to maintain an audit trail of the tender, while hard copies are released to the relevant Procurement Practitioner for the purposes of evaluation.

Electronic (soft) copies of tenders may only be requested in exceptional circumstances, based on a motivation around the volume of pricing and technical information reasonably expected based on the instructions issued with the tender. Necessary controls around the receipt, storage and verification of information submitted electronically (such as the format, password protection, and verification of information) will be determined by the Group Commercial Risk and Governance Department, and communicated accordingly.

**Supplier Registration Documents:** The Procurement Practitioner must ensure that Supplier Application Forms together with the Conditions of Registration are sent to participating suppliers as part of the tender. The registration documents must be completed by the Supplier and submitted prior to Eskom making a recommendation for contract award. Suppliers failing to meet standard registration requirements as required within the Conditions of Registration and Supplier Application Form will not become eligible for contract award. Supplier registration is a pre-requisite for contract award.

**Classification of Returnables:** *The aforementioned returnables, to the extent applicable, must be clearly requested within the tender, with a clear and unambiguous stipulation as to whether the returnable is mandatory for evaluating threshold/gatekeeper requirements (and which ones), mandatory for scoring points against criteria for evaluation (and the criteria applicable) and / or a mandatory pre-requisite for contract award, and will, on this basis be used to determine the responsiveness of a tender.*

*Returnables linked to evaluating price and BBBEE status will be scored against criteria for evaluation and used for purposes of determining competitive ranking. All returnables which are mandatory for the determination of meeting stipulated gatekeepers / thresholds and mandatory for evaluation in the allocation of points, must be indicated as such in the tender document and must be submitted by the deadline for tender submission, failing which the supplier will be deemed non-responsive or penalised for the failure to submit the returnable, depending on the conditions stipulated within the tender.*

*Returnables that are not required for the purposes of meeting gatekeepers / thresholds or the allocation of points, but which are a requirement for legislative compliance, or a requirement of due diligence, must be submitted and assessed for commercial acceptability as objective criteria (post evaluation) prior to the finalisation of the recommendation to a Delegated Approval Authority, as it determines eligibility for contract award.*

### 3.4.5.2 Formulating a Tender

- In compiling the tender document, the Procurement Practitioner considers all aspects of the transaction and consults with the relevant specialist functionaries of the assigned cross-functional team.

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- *A list of mandatory tender returnables must be identified, classified (mandatory for gatekeeper /threshold evaluation; mandatory for scoring against criteria for evaluation; mandatory for contract award) and listed accordingly within the tender.*
  - Contract Terms and Conditions: The Procurement Practitioner compiles the relevant contract by selecting the appropriate main and secondary options (based on the approved commercial strategy) and completing all Contract Data relevant to the Employer (Eskom). The Procurement Practitioner must consult with the End-User and the cross-functional team for their inputs. Squad check meetings with the various cross-functional team members will also be necessary in order to complete the Contract Data and to ensure that all input from specialist functions such as insurance, tax, shipping, legal, finance, engineering, and SHEQ are obtained and incorporated into the tender both as conditions of tender and conditions of contract.
  - Incoterms: The Procurement Practitioner must ensure that he/she understands the implications of incoterms and that the most appropriate is selected when assets or goods will be imported. The Eskom Shipping Department within Group Technology and Commercial SCOPS function must be consulted in this regard. Use of a particular incoterm must not duplicate obligations, e.g. using an incoterm that includes insurance (e.g. CIF), when Eskom may, for example already have a marine insurance policy in effect. NOTE: For additional information on the use of INCOTERMS, the following website is recommended: [www.iccwbo.org/incotermsrules](http://www.iccwbo.org/incotermsrules).
  - Mode of Delivery: Although it is usually the Supplier's responsibility to ensure that goods are delivered to Eskom's sites or stores, Procurement Practitioners may face problems with goods which may be lost or damaged in transit. By specifying the mode of transport to be used in the tender, Procurement Practitioners may be able to minimise transport costs, save time and prevent damage in transit, and further be able to assist Suppliers and End-Users regarding special categories of goods e.g. abnormal loads.
- Goods can be transported in different ways, e.g. ship, air, rail and road. Ship and air transport is generally used when goods are imported. When using rail transport for local deliveries the following services may be used: i) for ordinary goods, the most commonly used rail service, but it increases the chance of damage and takes longer time; ii) through containerisation which reduces the risk of damage; and iii) fast freight services which are faster but a surcharge may be applicable.
- When using road transport for local deliveries, it can be via SATS (South African Transport Services), private (e.g. Frasers), or via postage services.
- Air cargo services are rendered by the SAA which is fast, but expensive. Procurement Practitioners need to be aware of certain limitations when using this, namely floor loading size, door size, weight of items and dangerous cargo such as combustible liquids, explosives, magnetised materials, radioactive materials and compressed gases.
- Transportation of imported goods must be procured via the Shipping Department within Group Technology and Commercial through Eskom national contracts or through Shipping Agent contracts. All turnkey shipping contracts must be concluded in consultation with the Shipping Department, and with the prior written consent of the Shipping Manager.
- Insurance: In the case of project procurement, an insurance specialist must be part of the cross-functional team to advise the cross-functional team on the best way to include insurance obligations, so that it will be cost effective for Eskom and not duplicate obligations.
  - Security For Performance: Where Eskom needs to mitigate the financial risks involved in ensuring performance of a contract, security for proper performance in the form of a bond or a guarantee may be requested as part of the competitive tender, as contained in the proposed conditions of contract forming part of the tender.

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A performance bond is an on-demand security for non-performance, whereby the financial institution issuing the bond, will compensate Eskom, on demand, for specific circumstances as provided for in the contract, up to the maximum amount stipulated on the bond, should the supplier fail to perform in terms of the contract.

Under a parent company guarantee, the parent/holding company of the supplier undertakes to complete ("step into the shoes" of the supplier) or rectify the works or services, or supply the assets / goods should the supplier fail to perform. This guarantee is not a financial document. There are no costs associated with the issuance of a parent company guarantee. This guarantee is issued by the parent company as an irrevocable undertaking, standing as surety for the supplier for the compliance of all of their obligations under the contract. This guarantee cannot be used when the supplier does not have a parent company.

In unique circumstances and in the instance of high risk profile contracts, if the supplier does not have a parent company, Eskom may request for a "third party" guarantee from an independent third party (as sourced by the supplier) willing to provide a guarantee in the form of a parent company guarantee.

SBE/BWO suppliers may be financially less secure and alternative forms of security may be used to mitigate the risk of non-performance, as the cost of a guarantee or a bond may not be financially sustainable for such suppliers, thereby placing Eskom at a greater risk. Ensuring that contracts are aligned with supplier turnover may mitigate this risk.

Low performance or delay damages may be used as a form of security where the technical risk is great.

Eskom does not encourage the provision of advance payments. An advance payment may be an acceptable strategy for Eskom in certain circumstances. This may be considered in cases where the Supplier will have to make a big capital outlay before starting with the contract. This may be necessary when assets or goods are to be ordered and paid for and where assets or goods have a long lead time or where manufacturing slots need to be booked and paid for well in advance of the goods being delivered. An advance payment will only be issued on condition that an advance payment bond (on the Eskom pro-forma working document) can be provided by the supplier. The relevant contractual provisions relating to advance payments also need to be included in the contract. Approval to proceed with a contract containing advance payment conditions must be supported by the relevant financial functionary and approved by a PTC (not within dual or triple adjudication).

Automatically requesting any of the above forms of security without consideration for their need will increase the cost of contracting, without providing any additional benefits to Eskom. Where these forms of security are requested, the commercial strategy must contain evidence that the Procurement Practitioner and End-User/cross-functional team actually applied their minds to the need for such security, against a demonstrated risk analysis process.

Eskom Treasury Department is appointed by the Treasury Committee to facilitate and manage the Eskom-wide guarantee process. The Treasury Committee, chaired by the Finance Director, is responsible for ensuring that Eskom, through Eskom Treasury Department, has an effective credit risk exposure management process in place, including the centralised administration of guarantees issued in favour of Eskom. The process also includes the monitoring of the guarantees' exposures against Treasury's set credit limits of the guarantors.

Where bonds / guarantees are required to secure the performance of a contract, the tender must request suppliers to provide the names of a minimum of two (2) financial institutions that the Supplier may approach to obtain the required bond / guarantee, which require the approval of the Eskom Treasury Department.

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- **Functionality:** The cross-functional team determines the functionality criteria to be applied and the appropriate functionality threshold. Functionality serves as a threshold / gatekeeper prior to commencing with evaluation, and determines if a tender is eligible to proceed with evaluation. All procurement greater than R10m must include functionality (as defined in the PPPFA and Regulations) as a threshold / gatekeeper, with a minimum stipulated threshold expressed as a percentage, that must be determined on a per tender basis, and stipulated within the tender. Where safety and quality are core components within the functionality threshold, the model set out in 3.2.9.2 must be used.
- The tender must clearly stipulate the specifications that the supplier's product / service must adhere to. In the case of a product, all applicable standards, manuals and specifications such as welding specifications, valve specifications etc., need to be submitted for compliance by the supplier, as a requirement of functionality. In the case of works/services, the tender may request for proof that the supplier has done similar works/services on similar contracts/projects involved within the last 5 years. Suppliers may be requested to stipulate in what role/capacity they participated in a project/contract.
- Aside from purely technical /functional criteria, other criteria linked to safety, health, environment, quality and support to local industrialisation, skills development and job creation, may also be included under the functionality threshold, dependent on the priority that the criterion holds with respect to the type of procurement, and the functionality model set out in 3.2.9.3 must be used as the basis to include such criteria.
- **SHEQ:** The SHEQ Policy creates an obligation on Group Technology and Commercial to ensure that SHE objectives and criteria are included in tenders for orders and contracts. In order to adhere to Eskom's SHEQ Policy, Procurement Practitioners must ensure that the relevant Divisional Safety Risk Manager or his/ her representative must form part of the cross-functional team and provide the relevant signed-off SHE specifications for incorporation into the SHE specification / overall scope of work (Works Information).
- The Divisional Safety Risk Manager or his/her representative is also required to provide the cross-functional team with the SHE evaluation criteria specific to the design and scope of work, for incorporation into the enquiry. The weighting of SHE as an evaluation criterion must be determined by the cross-functional team in consultation with the SHE functionary, and may form part of the overall technical/functionality evaluation criteria with a weighting of 30% if relating to road transportation, construction and engineering works, sourcing of nuclear requirements, live-line work and any other categories of procurement set out in Annexure D hereto, considered to be high risk from a SHE perspective. Where SHE is not considered to be a high risk factor in relation to the type of procurement (e.g. general services, supply and delivery of goods, professional services, etc.), then SHE will NOT be included as weighting under functionality, but the minimum mandatory SHE requirements linked to legislative compliance must instead be set out as objective criteria and applied as pre-requisites to contract award, post evaluation.
- The Procurement Practitioner must ensure that the proposed conditions of contract contained in the tender include the standard Eskom-specific clauses with respect to SHEQ (as a minimum), as well as inclusion of the Eskom Life-Saving Rules which must be incorporated into the contractual framework as an obligation for the Supplier.
- The Procurement Practitioner must ensure that the requirements of the Eskom Supplier Contract Quality Requirements Specification are considered for every formal tender issued. A Supplier Quality Assurance representative from the Quality Management department must form part of the cross-functional team and ensure that the contract quality requirements are addressed within specifications and criteria for evaluations. Quality criteria must be included as part of the technical / functionality criteria when quality is core to the operation /performance (fit for purpose) of the assets, goods or services required, using the model set out in 3.2.9.3 above.

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- **Local Content:** The cross-functional team in consultation with the SD&L representative must determine if the assets, goods or services required are designated by the National Treasury and the Dti for local production and content, in which case the appropriate local content threshold must be stipulated within the tender, expressed as a percentage. The local market's capacity and capability to meet the required minimum local content threshold must be confirmed by the SD&L representative. The local content threshold is set as a second mandatory threshold, in addition to functionality.
- Where a threshold is included for local production and content, the tender documentation must include the following documentation: 1) SABS approved technical specification number ST 1286: 2011; 2) Guidance on the Calculation of Local Content together with the Local Content Declaration Templates being the a) Local Content Declaration: Summary Schedule, b) Imported Content Declaration: Supporting Schedule and c) Local Content Declaration: Supporting Schedule. The tender must clearly stipulate all applicable forms must be provided, where procurement targets for assets, goods or services falling within designated sectors are to be met.
- Only the South African Bureau of Standards (SABS) approved technical specification number ST 1286:2011 must be used to calculate local content. The formula to calculate local content must be disclosed in the tender documentation. The local content (LC) as a percentage of the tender price must be calculated in accordance with the SABS approved technical specification number ST 1286: 2011.
- The exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the tender, of which must be stipulated as a condition of tender.
- The cross-functional team may also decide to apply local content and production thresholds to non-designated sectors, provided that it forms part of an approved strategy in consultation with a relevant SD&L functionary, and that the necessary written consent, in the form of specific directives, has been obtained from the National Treasury in consultation with the DTI. In this case the required percentage to be met, must be determined by SD&L and stipulated in the tender, based on the directives received from the National Treasury.
- Where a directive is required from National Treasury to apply local content and production thresholds to non-designated sectors, the requirement must be contained within the commercial strategy, for approval by the relevant GM: Commercial in consultation with the GM: SD&L. The Senior Commercial Manager is required to facilitate the process of self-designation, and upon receipt of approval from the relevant GM: Commercial, is thereafter required to develop a formal document for the support of the GE: Technology and Commercial, where-after authorisation must be obtained from the CE, and Chairman of the Board, before being submitted for a directive from the National Treasury and DTI. Upon receipt of a directive from National Treasury (in consultation with the DTI), Eskom may proceed with the inclusion of specified local content and production thresholds within the tender, for the relevant non-designated sector.
- The appropriate 80:20 or 90:10 preference points system to be applied as per PPPFA must be stipulated in the tender. The application of price and BBBEE as criteria for evaluation, and the allocation of 80/90 and 20/10 points respectively is mandatorily prescribed in terms of the PPPFA evaluation framework, and allocations as prescribed cannot be altered or changed.
- **Price:** Group Technology and Commercial Finance Department within Business Enablement must be consulted during the tender formulation stage to ensure that the correct pricing mechanisms and methodologies for evaluation are included in the tender. Should it be necessary for specialist advice, then the Business Evaluation and Analytical Services Team (BEAST) in the Finance Project Services (FPS) Department within Group Finance will render an advisory service to the cross-functional team.

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*It must be noted that for purposes of selecting the appropriate preference points system and evaluating price in terms of the PPPFA, prices must be inclusive of VAT and all other applicable taxes. It is therefore recommended that the format of the pricing schedules submitted as tender returnables makes provision for VAT inclusive and VAT exclusive pricing in order to allow for accurate common base price evaluations. Notwithstanding the provisions of the PPPFA for purposes of evaluations, Eskom will continue to award contracts based on the VAT exclusive contract price.*

*For purposes of the PPPFA price evaluation, the price (including VAT and all applicable taxes) applied to the prescribed formula must be adjusted for CPA and any unconditional discounts before being applied to the formula.*

Procurement Practitioners must ensure that the correct and most relevant CPA indices are clearly specified in the contract conditions. The cost implications on a multi-million Rand contract may be huge if the incorrect index is used. A CPA formula stating that inflation will be negotiated is unacceptable. The following is prescribed with respect to the inclusion of CPA.

- The source of indices/prices/rates nominated as a base for movement shall be from a recognised publishing authority, e.g. SEIFSA;
- In-house supplier indices are not acceptable;
- The exact index number and name must be specified in the CPA formula, as there are a multitude of CPI, PPI, SEIFSA and other indices, including those from other countries;
- A base date must be specified, as well as the subsequent dates or the frequency when the CPA will be applicable. It must be noted that if the adjustment is applicable on a specific date, the index and base date used must be that of a month prior to tender closing, as there is generally a month lead time for publishing the indices;
- The CPA must also apply where movements in the base rate results in a reduction of the price; and
- The Procurement Practitioner must ensure that any breakdown of items supporting CPA formulae is reasonable. Attempts must be made to identify components of the price that will not be subject to CPA, such as overheads.
- **BBBEE:** The cross-functional team must comprise of a relevant SD & L functionary, who must advise and assist the cross-functional team with the determination and allocation of BBBEE points (20/10 points) in accordance with the PPPFA Regulations. To the extent that evaluation and ranking are based on the receipt of the said verification certificate, a supplier will not be awarded any points for B-BBEE if a valid original or valid certified copy of the verification certificate has not been received by the deadline for tender submission, as a supplier cannot be disqualified for failing to submit a valid BBBEE certificate. This must be clearly stipulated in the tender.

Eskom must further reserve the right as a condition of tender, to request the BBBEE certificate prior to contract award, or not to contract with a supplier that does not submit a valid B-BBEE Certificate for purposes of contract award.

Further to this, every tender must request suppliers to indicate the percentage of subcontracting, the list of proposed subcontractors together with the B-BBEE statuses of such subcontractors, and the sources of assets, goods or services when local content and production criteria are applicable.

- **SD&L:** Eskom will continue to promote and achieve the objectives of SD & L through as many contracts as possible where opportunities for the use of local capacity through enterprise development, local supplier development, and industrialisation, skills development and / or employment and job creation can be identified and leveraged within the supply chain.

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All SD & L criteria contained within competitive tenders must be derived in consultation with the SD & L Department within Group Technology and Commercial, and must form part of an approved strategy before inclusion in a tender.

SD & L evaluation criteria may form part of the functionality criteria, or may be included as separate objective criteria to be considered as pre-requisites to contract award, or may be expressed as specific goals, which may be treated as special conditions of tender.

SD&L criteria may include one or more of the following elements:

- Skills Development with the objective of increasing the skills base of South African workers in areas relevant to the energy sector, and where there is a national scarcity of skills. For a contract to be awarded in the construction industry, the prescribed method for skills development must be followed in line with the CIDB Regulations;
- Employment and job creation with the objective of ensuring the creation of new jobs by suppliers as a direct result of being awarded Eskom contracts;
- Localisation with the objective of ensuring that Eskom and suppliers' procurement spend is utilised to develop South African based suppliers relevant to the energy sector;
- Industrialisation with the objective of ensuring that Eskom and suppliers' procurement spend is utilised to advance the establishment of new competitive industries in the energy sector; or
- Supplier Development with the objective of providing a platform for South African based suppliers to develop into national and international suppliers.

When applying skills development for transactions governed by the CIDB Act and its Regulations, in the construction industry, the skills development matrix and methodology as prescribed by the CIDB Regulations, must be used as the basis for evaluations. The objective criteria linked to specific goals must be clearly set out in the tender, and cannot be a duplication of criteria that already exists within the primary PPPFA evaluation framework, namely price and elements of the BBBEE scorecard.

Competitive Supplier Development Programme (CSDP) must be applied to all procurement transactions above R10m USD. The request for the CSDP Plan may be in the form of a specific goal expressed as a special condition of tender, or may be as an objective criteria used as a pre-requisite for contract award. The CSDP Plan proposed by the supplier must be submitted as a contractual commitment, and must be aligned with Eskom's Supplier Development Plan. The CSDP Plan must be quantifiable and measurable for purposes of being included as a contractual commitment, in order to measure compliance thereto.

- Alternative Tenders: If alternative tenders are allowed, the cross-functional team must determine the criteria that will be applied to alternative tenders. This needs to be specified in the tender. According to the Eskom Standard Conditions of Tender, alternative tenders will only be allowed and evaluated if a main tender has been submitted that meets the criteria of the tender documents.
- Requirement for Compulsory Site Meetings: The tender must clearly stipulate the need and reasons for a compulsory tender clarification meeting. Compulsory tender clarification meetings are only relevant when it is necessary for suppliers to physically view / measure a site or a part or component thereof, or receive some form of demonstration, etc. and, without which information, a supplier will not be able to submit a meaningful tender. If a tender makes provision for a compulsory tender clarification meeting, then suppliers failing to attend this meeting will be disqualified from further participation in the tender. This must be clearly stipulated within the tender.
- Reservation of Rights in Terms of the PPPFA: Where objective criteria are applicable, it may be necessary to include the following standard clause as a condition of tender:

*"Eskom reserves the right to award to a supplier who may not be the highest scoring or highest ranked supplier, in line with Section (2) (1) (f) of the PPPFA."*

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Procurement Practitioners are required to consult with the Eskom Legal Department as to the need for its usage prior to the inclusion of such clause as a condition of tender.

- Short-listing for Post-Tender Negotiations: It is best practice and in the interests of transparency to indicate whether post-tender negotiations will form part of the overall competitive process. To the extent that it may be necessary to engage in post-tender negotiations, the tender should be clear on the aspects that may be negotiated and the criteria /basis for selecting one or more suppliers to engage in post-tender negotiations.

### 3.4.5.3 Issuing a Tender

- The Procurement Practitioner also obtains a date from the relevant regional Tender Office for the closing of tenders. The Tender Office will provide an enquiry number to use as reference for the tender.
- The Procurement Practitioner issues the tender to the selected /short-listed suppliers for a limited /closed tender in hard copy (by arranging a pick-up at the relevant Tender Office) or soft copy format via a designated e-mail address. To the extent that a Procurement Practitioner opts to issue a tender via e-mail, the Procurement Practitioner must ensure that both delivery of the e-mailed tender to the supplier, and receipt of the e-mail by the supplier have been confirmed, and that such confirmation is recorded and maintained for audit purposes.
- For highly complex and sensitive tenders which are voluminous, and which are only being issued to a very select list of suppliers, it is recommended that the Procurement Practitioner arrange for the printing of the tender, and must further arrange for the selected suppliers to pick up the tender from the applicable regional Tender Office. Such an arrangement must be regulated by relevant Tender Office controls.
- Tenders which are processed as open tenders are not issued, but published / advertised on the Tender Bulletin and the relevant media (if applicable) on an agreed date and for a reasonable duration based on the complexity of the tender.
- Amendments to the tender document must be issued to all participating suppliers in a closed tender and published on the Tender Bulletin and where necessary, the same media/advertising platforms used to advertise the initial tender, with respect to open tenders.

### 3.4.5.4 Responding to the Tender

Participating suppliers may provide their responses based on the type of tender issued. Responses may be received in the form of quotations, tenders or proposals, which may collectively be referred to as tenders.

Participating suppliers must be given adequate time to respond, dependent on the complexity of the tender. Enough time should be allowed for the suppliers to prepare meaningful quality responses to the tender.

While preparing their responses to the tender, participating suppliers may request clarification from Eskom regarding aspects of the tender. The Procurement Practitioner must be the single point of contact regarding queries associated with the tender, and this must be clearly set out in the tender. No other Eskom employee may communicate directly with the suppliers while they are in the process of responding to the tender. The questions and answers to the clarifications are recorded in writing and sent to all participating suppliers, without divulging the names of the suppliers requesting the clarification. With respect to open tenders, the recordal of the questions and the associated answers must be published on the Tender Bulletin and, where practical and cost-effective, the same advertising platform/s that was/were used to advertise the initial tender.

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If any participating supplier asks for an extension of time at least 5 working days before the deadline for the submission of tenders, or an Eskom need dictates that the deadline be extended, the Procurement Practitioner must obtain permission in writing from the relevant Procurement Manager for tenders up to R50m, the Procurement Middle Manager for tenders greater than R50m and up to R100m, the Commercial Senior Manager for tenders greater than R100m but less than R300m, and from the relevant General Manager: Commercial in the case of contracts more than R300m.

The Procurement Practitioner must first discuss extended deadlines and the impact thereof with the End-User to establish if operations or projects will be negatively impacted by the extension. All participating suppliers must be informed of any extensions to the deadline for submitting tenders immediately, by the most convenient method, and this must further be communicated formally in writing.

Suppliers whose tenders were submitted and received by Eskom before the extension was granted must be informed that they may leave the tender submission as valid, withdraw the tender submission (by sending a withdrawal notice) or they may send in an amended tender submission (marking the envelope "Amended Tender").

Any amendment to the tender must be issued to the participating suppliers well in advance to enable suppliers to adequately address such changes within their tender submissions, and consideration may have to be given to extending the deadline for submission. The Procurement Practitioner and the End-User /cross-functional team must ensure that the amendment is correct before issuing it. A good practice is to number the amendments issued so that participating suppliers can be sure that they have received all amendments.

#### 3.4.5.5 Compulsory Clarification Meetings

The Procurement Practitioner, may, only where necessary, arrange for a clarification meeting with participating suppliers to provide a common understanding and clarity on the requirements for the tender. A site clarification meeting may also be necessary in order for participating suppliers to familiarise themselves with the environment where the assets, goods or services require delivery. The Procurement Practitioner arranges for the site visit as well as the clarification meeting. This normally takes place after about 2 weeks of initially issuing /advertising the tender in order to give participating suppliers enough time to familiarise themselves with the tender and its specific requirements. Where site meetings have been stipulated as being compulsory for purposes of responding to the tender, those suppliers failing to attend, must be disqualified from further participating in the process.

#### 3.4.5.6 Tender Receipting and Opening

Each location where tenders are received will have a secure tender box. The box will have 2 (two) locks and keys (including spare keys). One set is kept by an assigned Tender Officer and the other set by an authorised security official based at the site of the Tender Office (for sites with tender boxes are not directly managed by Risk and Governance e.g. power stations). The tender box will be opened only at tender/enquiry opening times, in the presence of one other official from the Tender Office and where possible, in the presence of a Procurement Practitioner. Protective/Security Services personnel based at the site of the Tender Office are required to observe the tender opening process only for sites where tender boxes are not under the direct management of Risk and Governance e.g. power stations.

The suppliers submit their tender submissions to the relevant Tender Office on the stipulated closing date and time. Late submissions will not be accepted under any circumstances. The Tender Officer ensures that the clock at the tender box location is synchronised with the Telkom time signal before the closing time. The Telkom time signal is used to establish when the tender has closed. Within Eskom's tender documentation, any reference to time will mean South African Standard Time (SAST), i.e. GMT+2 hours. This will be determined by the Telkom time signal.

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If any correspondence or amendment of the tender affecting a tender submission that has already been deposited in the tender box, is issued by Eskom prior to the deadline for tender submission, the supplier concerned will be advised that an amended tender submission or a tender submission withdrawal be submitted before closing time. Amendments or withdrawals must be clearly marked on the tender submission and must indicate the supplier's name and the enquiry number. In order to avoid even the possibility of impropriety, no correspondence regarding adjustments, corrections or restrictions will be considered unless it has been deposited in the tender box on or before the deadline for tender submissions.

The Tender Officer ensures that all tender submissions received in the tender submission box by the deadline for tender submission are taken to the venue where the tenders will be opened. Participating suppliers may have a representative present at the location to witness the opening of the tenders.

At the stated time, as measured by the Telkom time signal on the telephone witnessed by those present, the Tender Officer makes the following statement: *"Tenders / enquiries (state the numbers) have now closed, and no late submissions will be accepted."*

Any tenders received by any means after that time are treated as late submissions and endorsed as such, regardless of the date and time of posting, delivery by couriers, delivery to some other Eskom site. (Proof of posting is not accepted as proof of delivery since Eskom does not acknowledge the South African Post Office or any other postal/courier service as its agent for the receipt of tenders).

The Tender Officer ensures that the names of suppliers who submit late tenders are recorded in a register. This record of late tenders is to be further recorded in the contract file by the Procurement Practitioner.

The Tender Office must notify suppliers in writing of their late tenders. The late tenders are returned to the supplier unopened and endorsed "Late Tender". Late tenders must be collected by suppliers within 30 calendar days of notification from the relevant Tender Office, failing which they will be destroyed. The late tenders are returned to the supplier unopened and endorsed "Late Tender".

The Tender Officer ensures that all tenders arriving after the closing time but during the tender opening process are recorded by supplier name only in the register, but returned unopened to the supplier, stamped or endorsed "Late Tender".

The Tender Officer reads out the following disclaimer: *"Eskom may decide to award only part of a contract or not to award a contract at all. Normally Eskom awards the contract to a supplier who proves to be fully capable of handling the contract, and whose tender is the highest ranked tender or economically the most advantageous tender to Eskom, in terms of the evaluation criteria stipulated in the advertisement or the tender documentation. Eskom's decision is based on an evaluation price, among other stipulated criteria, which takes a number of factors into consideration, and is often substantially different from the tendered price."*

The Tender Officer announces the number and short description of the tender that will be administered and processed.

The Tender Officer handling the receipt of tenders sorts all tenders in the tender box by enquiry number and separates envelopes marked "Withdrawal" and "Amendment".

The Tender Officer then opens all envelopes marked "Withdrawal" and/or reads out all withdrawal notifications issued to Eskom, states that these tenders will be withdrawn, and reads out the names of the suppliers concerned, but no further details. The Tender Officer then opens all envelopes marked "Amendment to Tender", and states that the tender submissions concerned have been amended, and reads out the names of the suppliers concerned, but no further details.

After removing the withdrawn tenders, he/she then opens each remaining tender in turn, and reads out the name of the supplier and does not read out the price of the main offer, unless the requirement to read out prices has been specifically included in terms of the tender documentation. Where the tender

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documentation stated that no price will be read out, this is announced, and only the names of the participating suppliers are read.

Where a submission does not bear the name and address of the supplier, it is an unidentified tender and it is rejected as non-responsive. NOTE: This process is repeated in turn for all tenders closing at the same closing time.

As soon as possible after the tender opening process, the Tender Officer ensures that all pages containing information supplied by the supplier, including prices, and any pages containing amendments to the original tender documentation sent out by Eskom, are appropriately marked, in accordance with approved Tender Office protocols and standards, as having been authorised by the Risk and Governance Department within Group Technology and Commercial.

The conditions of contract together with the main and secondary clauses are not marked.

The Tender Officer will further verify that the tender submission contains one complete hard copy of the original as required in the Standard Conditions of Tender. The Tender Office is not permitted to make copies of the original tender submissions for distribution to Procurement Practitioners where suppliers have omitted to provide the requisite copy, or where an incomplete copy, was submitted.

The Tender Office will mark and verify copies, and notify the Procurement Practitioner of those suppliers who have omitted to provide the requested copy, required for purposes of proceeding with evaluations. Marked and verified complete copies in the required format will be formally handed over to the Procurement Practitioner for purposes of proceeding with evaluation. The Procurement Practitioner arranges for the submissions to be immediately transferred to the venue where the evaluations will take place. In MWP, C-Max will be used for evaluations for all tenders of R300m or more, and /or where the approval authority will be the EXCOPS or higher.

Original tenders are stored in sealed tamper proof bags in a secure location by the Tender Office, and the marked copy of the original submission is used for evaluation purposes.

Any deviation from the approved tender office marking and verification protocols due to size and volume of tenders / offers must be approved by the Senior Manager: Risk and Governance.

At Eskom sites, Procurement Practitioners must ensure that the venue to be used for evaluations is secure and that all necessary security rules are implemented to ensure the confidentiality of the tenders. Once submissions are released from the Tender Office, the evaluation process has duly commenced. Tender submissions must be securely retained on an official Eskom site at all times, and under no circumstances are confidential tender documents to be held at an employee's home, or anywhere outside an official Eskom site.

Soft / electronic copies (CD), if requested and provided, will be handed over to the Procurement Practitioner to be used in evaluations. The Procurement Practitioner will be responsible for the loading of the electronic information onto independent and secure laptop(s) used solely for the purposes of evaluation, and that will not be removed from the evaluation venue for the duration of the evaluation. It must be noted that where soft or electronic copies of submissions are requested, it must be in addition to the complete hard copy of the original. Failure by the supplier to provide a complete hard copy of the original tender will still disqualify the supplier even though soft /electronic copies may be provided.

#### **3.4.5.7 Cancellation and Re-issuing of Tenders**

Cancellation/re-issuing of tenders may occur any time after the tender has been issued to the market and before contract award.

Should it be necessary for a formal tender to be cancelled, approval needs to be obtained from the relevant Procurement Manager for tenders up to R50m, the Procurement Middle Manager for tenders greater than R50m and up to R100m, the Commercial Senior Manager for tenders greater than R100m

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but less than R300m, and from the relevant General Manager: Commercial in the case of contracts more than R300m.

After approval has been obtained, the Procurement Practitioner informs all participating suppliers of the cancellation. Where an open competitive tender requires cancellation, suppliers must be notified of the cancellation through the same media / advertising platform through which the invitation was published (i.e. newspapers, tender bulletin, CIDB's i-tendering, etc.), provided that the costs of advertising in the media is not excessive. Where the invitation to tender was to a closed list of suppliers, then written notification of cancellation must be sent to each of the invited suppliers.

The following rules apply with respect to the cancellation and re-issuing of a tender:

- Competitive tenders cannot be re-issued with the purpose of changing the outcome that would have arisen from valid responses to the original tender;
- If the End-User changes his requirement significantly, based on a revised approved strategy, the tender must be cancelled and re-issued. This must be supported by a sound technical and / or business case, including budgeting and / or investment approvals, or where required, by legislation;
- A tender may be cancelled due to changed business circumstances where there is no longer a need for the assets, goods or services.
- If funds are no longer available to cover the whole envisaged expenditure for the assets, goods or services, the tender may also be cancelled;
- If no acceptable tenders are received, the tender may also be cancelled;
- Where fewer than 50% (fifty per cent) of invited suppliers respond to a closed tender, or where more than 50% of responses to an open or closed tender are disqualified for one or more reasons, the responsible Commercial Middle Manager (minimum level) must investigate and establish the reason for the poor response, and / or unacceptability of responses. This may be indicative of an invalid tender list, use of an incorrect sourcing mechanism, a need to further research the marketplace, and/or unfair tendering practices. In this case, the enquiry may be closed and re-issued to a valid tender list, upon the prior written consent of the Commercial Senior Manager or GM: Commercial (if applicable);
- Where invited suppliers to a closed enquiry choose not to respond, but the tender list is valid and all procurement processes have been fairly and correctly followed, the receipt of 1 (one) acceptable tender means that the tender is valid and may not be re-issued;
- If it was mentioned in the tender that the 80/20 preference point system will be applied and, where all prices received from participating suppliers exceed R1 million (including VAT and all applicable taxes), then the tender must be cancelled. If one or more of the responsive and acceptable tenders received are within the R1 million threshold (including VAT and all applicable taxes), all tenders received can continue to be evaluated on the 80/20 preference point system;
- If it was mentioned in the tender that the 90/10 preference point system will be applied and all prices received from participating suppliers are equal to or below R1 million (including VAT and all applicable taxes), the tender must be cancelled. If one or more of the responsive and acceptable tenders received are above the R1 million threshold (including VAT and all applicable taxes), all prices received must be evaluated on the 90/10 preference point system;
- If a tender is cancelled as indicated above, the correct preference point system must be stipulated in the criteria of the re-issued tender;
- All tender cancellations must be reported to the relevant General Manager: Commercial, in order to manage issues of poor forecasting / estimation, poor sourcing techniques and possible irregularities in the execution of commercial processes.

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### 3.4.5.8 Handling of Unsolicited Tenders

Eskom is not obliged to consider unsolicited offers received outside a competitive tender process, or outside mandated negotiations.

There are two (2) types of unsolicited offers that may be received:

- The first type is an offer that is made by a supplier when there is no procurement process; and
- The second type is made during a closed /limited competitive process (tender or competitive negotiations) where an "uninvited" supplier has approached an Eskom employee / director before the closing date requesting to submit a tender /offer.

Eskom employees that are approached with the first type of unsolicited offer should immediately refer the supplier to the SD & L Department within Group Technology and Commercial to engage in this registration process without further representation, engagement or commitment. Only once evaluated and pre-qualified after application against the Eskom Conditions of Registration, the supplier may then be given a vendor number confirming registration on the Eskom Supplier Database, and may be considered for any future tenders.

In the case of the second type of unsolicited offer where an uninvited supplier approaches Eskom with an offer during a closed tender / closed negotiation process, there is no obligation on Eskom to accept such an offer, but there may be genuine reasons for acceptance as well. If an Eskom employee is approached with this type of offer, then it must be immediately referred to the authorised Procurement Practitioner responsible for the administration of the closed tender / negotiation process.

The Procurement Practitioner should then refer the matter to the relevant General Manager: Commercial, for decision-making. A management decision, documented for audit purposes, should then be taken as to whether to allow the unsolicited offer if it is made before the official closing time for submissions, or before conclusion of closed mandated negotiations.

An unsolicited offer may be allowed if it will not in any way compromise the fairness, transparency, equitability, cost-effectiveness and competitiveness of the process. If any of the aforementioned principles will be compromised, an unsolicited offer should not be allowed.

If permission is granted to the supplier to submit a tender/offer, then the same rules regarding the issuing, receipting and deadline of tender submissions will apply. If there is a possibility that pricing information may have been shared, or there are suspicions of collusion, then an unsolicited offer should not be allowed.

If the relevant GM: Commercial, decides to consider an unsolicited offer, the following considerations must be taken into account:

- The assets, goods or services offered in terms of the unsolicited tender /offer is a unique innovative concept that is proven to be exceptionally beneficial to, or proven to have exceptional cost advantages for Eskom; and / or
- The supplier making the offer is the sole provider of the assets, goods or services in the circumstances; and/or
- The need for the assets, goods or services by Eskom has been approved during its strategic planning, budgeting and / or investment processes.

### 3.4.6 Evaluation of Tenders

#### 3.4.6.1 Preparation for Tender Evaluations

Once tenders have been administered and processed by the relevant Tender Office and officially released to the Procurement Practitioner, the process of evaluation commences.

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The Procurement Practitioner must ensure that tenders are stored and evaluated in an environment where the confidentiality of documents is not in any way compromised. A dedicated, lockable room with access limited to evaluation team members must be allocated for the evaluation of tenders. Tenders will not be allowed to be removed from or evaluated outside an official Eskom site (e.g. an employee's home). Where tenders or copies thereof need to be moved between Eskom sites or locations, this must be co-ordinated by the relevant Tender Office and the Procurement Practitioner, using an efficient document control system that will be able to account for the location of the originals and copies at any given time.

Where computers and other electronic equipment / hardware are being used to facilitate evaluations, such computers and hardware must be independent of all members of the evaluation team, and must remain within the confines of the dedicated lockable room for the duration of the evaluation. The use of cellular phones, laptops that are personal to holder and any other electronic devices should be restricted during the course of tender evaluations, and it is the accountability of the Procurement Practitioner to regulate such practices during evaluations.

In the case of more complex transactions, an evaluation team will be assigned. The evaluation team may consist of more than one person per area of specialisation. Each member of an evaluation team, whether an employee of Eskom or a third party to Eskom, has to complete a NDA (Non-Disclosure Agreement) for all tenders exceeding R100 million. Once all members of the evaluation team have signed the NDA, the Procurement Practitioner must save all NDA's on the electronic Documentation Management System. The following signatories are required on a NDA: the employee, a witness, and a Commercial Senior Manager. The full names and unique numbers of each of these persons must be included on the agreement.

All evaluators are furthermore required to sign formal declarations of interest for every formal evaluation of tenders of R1m and above.

All communication with the supplier about a specific tender during the evaluation process must be in writing and co-ordinated only through the designated Procurement Practitioner managing the transaction.

In case of complex enquiries, the Procurement Practitioner and End-User must ensure that the evaluation team understands the procurement and evaluation process and criteria to be evaluated and are familiar with the tender documentation.

The evaluation team must prepare their score sheets for evaluation. The score sheet should contain all criteria, weights as well as the values that will apply, based on an approved evaluation methodology.

#### 3.4.6.2 Checking Tender Acceptability and Responsiveness

The purpose of checking for responsiveness is to determine whether tender submissions meet the basic minimum requirements for acceptability and are generally compliant with the conditions of tender in order to qualify for evaluation against thresholds and criteria for scoring and ranking. Before the actual evaluation process is started the Procurement Practitioner in collaboration with the End-User/cross-functional team assesses the responsiveness of tender submissions by assessing the following:

- More than one tender submission: Where more than one tender is received under the same supplier name, this is recorded.

If the tenders are substantially the same, the latest dated one will be presumed to replace the earlier dated tender.

If tender submissions are not substantially the same, or are of the same date, and if alternative submissions were allowed, both submissions will be accepted and evaluated after clarification with the supplier. If alternative submissions were not allowed and it was clearly stated in the tender, then none of the tenders will be considered and the tenders will be rejected as non-responsive.

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- **Material Deviations:** A responsive tender is one which conforms to all the terms, conditions, and specifications of the tender documents without material deviation. The tender will stipulate whether qualifications to the contract conditions will be allowed. If it is not allowed, then it will be a deviation and the Procurement Practitioner must determine whether it is material deviation or not.

A material deviation is one which will:

- Detrimentially affect the scope, quality, or performance of the works, services or supply identified in the specification / scope;
- Render a tender submission not capable of being fully evaluated for purposes of passing a stated minimum threshold, or not capable of evaluation for the purposes of the allocation of points and competitive scoring;
- Change Eskom's or the supplier's risks and responsibilities under the contract; or
- Affect the competitive position of other suppliers presenting responsive tender submissions, if it were to be rectified.

If a material deviation is identified, it will render the tender non-responsive.

- **Completed and Signed Authorisation Form:** A supplier must declare that the information provided within the tender submission is true and correct; that the signatory to the tender submission is duly authorised and that the supplier will provide documentary evidence on request and to Eskom's satisfaction in the event of clarification. If the signatory and name on the tender differs from the name in the Authorisation Form, then the tender may be rendered non-responsive if, after clarification with the supplier, authority cannot be confirmed or established. Only those suppliers who have duly completed and signed the Authorisation Form with accurate information will be considered to be responsive.
- **Supplier Declaration of Interests:** Where a supplier fails to complete the required declaration of interests, or, where a declaration of interests is made such that there is an actual, potential or perceived conflict of interest (determined in consultation with the Risk and Governance Department), such a tender may be deemed unacceptable to the extent that the conflict of interest cannot be removed with appropriate measures.
- **Mandatory Tender Returnables:** Should the supplier fail to provide any mandatory tender returnables as stipulated in the tender, which are required for purposes of evaluating gatekeepers /thresholds or for the purposes of awarding points against a stipulated criterion for evaluation, then the tender submission may be deemed non-responsive, where a material /significant portion of the evaluation is affected thereby.

With respect to B-BBEE certificates in particular, where there is a failure on the part of the supplier to submit a valid certificate for purposes of evaluation and scoring by the stipulated deadline for tender submissions, the tender submission will not be deemed non-responsive exclusively for this reason, but will automatically score zero on B-BBEE for purposes of scoring and ranking, if otherwise deemed to be responsive and acceptable in all other aspects. Notwithstanding this, to the extent that the supplier is still considered for contract award after evaluations, then a valid B-BBEE certificate must be requested from the supplier as a condition of contract, and in order for Eskom to comply with the legislative requirements in terms of the B-BBEE Act and its Codes of Good Practice.

If a supplier does not submit a valid B-BBEE certificate or the B-BBEE certificate is no longer valid for purposes of contract award, Eskom may elect to still award a contract with such a supplier, provided that an obligation to submit such certificate within a period to be agreed to by the contracting parties is a stated condition of contract as well as the rights or remedies that Eskom will have in the event that the supplier fails to meet such obligations.

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Where any certificate (e.g. SARS, B-BBEE, ISO certifications, etc.), proof of registration (e.g., CIDB) or the like is required to be submitted as a tender returnable, the supplier must ensure that Eskom is in possession of a valid certificate or proof of registration for the duration of the validity period of the tender, and, if the supplier is successful, up to contract award. Invalid certificates will not be considered for purposes of evaluation and may render a tender non-responsive/ineligible for contract award, depending on the materiality of the certificate to the overall scoring and ranking of the supplier.

- Copies of tenders: The supplier is required to submit only one complete hard copy of the original tender submission. A submission will be rendered non-responsive where the one complete hard copy is not submitted. Suppliers submitting copies which are materially incomplete for purposes of evaluation will also be disqualified.

### 3.4.6.3 Tender Clarification

The Procurement Practitioner in collaboration with the End-User/cross-functional team clarifies and resolves any minor deviations that do not impact on the competitive position of other suppliers that have submitted responsive tender submissions, by recording in the contract file all clarification discussions and resolutions. The cross-functional team may request the Procurement Practitioner to clarify an issue with a supplier. Should the Procurement Practitioner not be sure how to appropriately word the clarification, advice needs to be obtained from the Procurement Manager and / or a Risk & Governance official. A clarification should not be used to make a tender responsive or to change the outcome of scoring or ranking, but should be used to clarify information already presented within the tender submission. Clarifications must not be requested in such a way that it seeks to trigger changes in the price, scope, lead times or risk position of Eskom or the supplier. Certifications and documents stemming from legislative bodies for purposes of demonstrating legal compliance, and which are not used for the purposes of scoring and ranking, may be clarified, and may still be requested from the supplier during the period of evaluations, but must already be submitted and assessed by the time the final recommendation for contract award is being made to a Delegated Approval Authority.

### 3.4.6.4 Evaluation of Functionality Threshold

All responsive tenders are further evaluated by using the scoring framework and associated criteria as stipulated in the tender, to determine if tenders meet the overall threshold based on the functionality criteria.

The technical specialists within the cross-functional team independently evaluate tenders against the functionality criteria in line with the criteria and scores as stipulated in the tender. A weight will be allocated to each criterion and each technical evaluator will allocate points against each criterion based on the agreed evaluation methodology. The methodology set out in 3.2.9.3 will be applicable to functionality evaluations using the PPPFA.

Where SHE and quality are sub-criteria under functionality, the Procurement Practitioner must refer the submission to the Divisional functionaries responsible for SHE and quality in order to evaluate against tender-specific criteria.

Specifically with respect to SHE, a signed-off SHE evaluation report from the relevant SHE functionary who conducted the SHE evaluation must be provided to the Procurement Practitioner in order to confirm the outcome of the SHE evaluation.

The technical / functionality evaluator is generally one of the following persons:

- The End-User, only where he has the technical or other expertise to fulfil this role;
- A technical expert nominated by the End-User; or
- A Divisional technical functionary with the necessary expertise appointed within the Division.

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The Division may procure external expertise (e.g. consultants) for the purposes of conducting independent evaluations, in accordance with the relevant and applicable processes for the appointment of external service providers.

The technical/functionality evaluation is not used to put forward supplier, product or brand preferences of the End-User or the technical evaluator/s, or to justify the tender and required technical specification, but should only reflect the technical merits of the tender in relation to the scope and associated criteria set out in the tender documentation.

The technical evaluator compares the assets, goods or a service offered, to the technical specification, and assesses them against the stipulated technical / functionality criteria for purposes of scoring against the minimum stipulated threshold.

The technical / functionality evaluator does not attempt to remedy a poor quality tender document. If the tender documents provided by Eskom are technically unsound, the technical / functionality evaluator does not attempt an evaluation but returns the documentation to the Procurement Practitioner with the recommendation to re-issue the tender with the correct requirements.

The technical / functionality evaluator may formally raise any salient facts about the supplier in the signed technical / functionality evaluation report which may impact on the final evaluation of the tenders, and may result in not awarding to the highest ranked tender. This will normally be based on documented performance-related issues, e.g. non-conformance reports and rectification.

The technical / functionality evaluator identifies issues that need clarification for a proper technical / functionality evaluation and scoring to be done. This clarification is done through the Procurement Practitioner, prior to the technical / functionality evaluation report being drafted and may not influence any price, scope, lead time or risk position of Eskom or the supplier.

Where the assets, goods or services tendered do not fulfil the requirements of the End-User as described in the tender documentation, and after assessment against the stipulated criteria, as subsequently clarified, the technical / functionality evaluator does his/her scoring and gives detailed technical reasons for any low scoring or penalties applied.

Where the value of the transaction exceeds R10 million, the technical / functionality evaluation must be conducted by a minimum of two (2) technical representatives for the technical aspects of the evaluation, excluding SHE and quality, and cannot be conducted by a single technical representative.

The amendment of functionality criteria, weights, applicable scoring methodologies and/or the minimum threshold for functionality after the deadline for tender submissions will not be allowed as this will compromise the fairness of the procurement system, and may be deemed unconstitutional.

If a tender meets the required minimum functionality threshold, it is regarded as acceptable for further evaluation for local production and content (if it was applicable and included as part of the tender), price and BBBEE. If a tender submission fails to score enough points to meet the stipulated threshold, the tender is disqualified, and will not proceed to further evaluation.

#### 3.4.6.5 Evaluation of Local Content Threshold

Suppliers must complete the Local Content forms as prescribed by the PPPFA Regulations. Based on the information submitted in the forms, the SD&L members of the cross-functional team must determine if the required threshold percentages have been met.

To the extent that the procurement belongs to a designated sector or where special permission / a directive has been obtained to include local content thresholds and conditions for non-designated sectors, tenders must be evaluated in terms of the evaluation criteria stipulated in the tender. The amendment of the stipulated minimum threshold for local production and content after the close of tenders will not be permitted as this will compromise the fairness and integrity of the system.

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A tender is regarded as acceptable for further evaluation if it achieves the stipulated minimum threshold for local production and content.

Tenders that fail to achieve the stipulated minimum threshold for local production and content will be disqualified. In relation to a designated sector, a supplier must not be permitted to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

### 3.4.6.6 Evaluation of Price

A supplier can score a maximum of 90 points on price if the estimated Rand value of the contract is more than R1m (including VAT and all applicable taxes), or a maximum of 80 points where the value of the contract is less than R1m (including VAT and all applicable taxes). The PPPFA prescribes that the lowest acceptable tender will score 80 or 90 points for price. Tenders that quote higher prices will score lower points for price on a pro-rata basis, based on the formula prescribed. The PPPFA Evaluation Sheet in Annexure C will assist Procurement Practitioners in the evaluation of the price.

Business Evaluation and Analytical Services Team (BEAST) from FPS must evaluate all submissions falling within the delegation of EXCOPS or higher for approval.

In respect of all other evaluations on price, once the financial evaluation has been completed by the Commercial Finance / Group Finance Business Partners / Project accountants, such evaluation may be sent to BEAST for an independent review of the evaluation of price.

Points scored must be rounded off to the nearest 2 decimal places.

The prices used for purposes of evaluations are prices where arithmetical errors have already been corrected, CPA is applied, unconditional discounts are taken into account and foreign currencies are converted into Rand. Where applicable, the assigned financial functionary calculates the present value of contract prices using Eskom's current discount rate, the tendered programme and prices, estimated CPA factors and rate of exchange fluctuations. The price evaluated must be including VAT, and all applicable taxes, for purposes of the application of the PPPFA.

Should arithmetical errors be found and corrected in terms of the prices, the Procurement Practitioner notifies the supplier of the applied corrections and requires that the supplier accepts these corrections in writing or that the tender be withdrawn.

If the supplier does not accept the corrections, the tender is withdrawn from evaluation. The Procurement Practitioner does not give the supplier the opportunity to stand by a lower or higher but uncorrected price.

Escalation, currency implications and other conditions as well as the time value of money or alternative technical solutions may affect the tendered price to such an extent that the higher priced tender may be attractive in the order of merit. It may also be that the lower priced tenders did not include all Eskom's requirements in their tender submissions.

The prescribed Calculation Sheets are used to calculate the contract and evaluation prices. When completing the Calculation Sheets, the Procurement Practitioner ensures that a complete audit trail of all calculations is maintained on file.

Where tendered prices subject to CPA are lower than fixed and firm prices tendered in response to the same tender, the evaluation should be done with great care to ensure that the most commercially beneficial tender is scored the higher mark out of 90.

In the case of rate based tenders, the price to be used for evaluation purposes is the rates multiplied by estimated quantities to come to a subtotal for each item. All subtotals are added to give a final total. This final total will be used to establish a score against the 80 or 90 points allocated for price. All prices offered in foreign currencies must be converted into Rand for evaluation purposes. Should a supplier

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omit to provide prices for non-material items, then the highest rate / price tendered by the other suppliers for that item, is applied and calculated. This is necessary to evaluate all tenders on the same basis.

Tenders must be sent to BEAST within the Finance Project Services (FPS) Department - Group Finance for an independent financial evaluation of the tendered price or at least concurrence with the financial evaluation where:

- Approval to place a contract is required from the EXCO Procurement Sub-committee (EXCOPS) or higher Delegated Approval Authority as a result of the total contract value including foreign portion or time. (In these cases, the Finance Director or his/her representative at a level of a GM or higher, must also concur with the recommendation);
- Tenders /offers with the foreign currency exceeding USD 1 million or equivalent, irrespective of the total value;
- The supplier offers a financing package.

For tenders falling within the R50m to R300m contract value, including foreign portions, the following tenders may be referred for independent financial evaluation based on an agreed Service Level Agreement (SLA) concluded between Eskom Finance Project Services (FPS) Department and Group Technology and Commercial:

- Tenders in which alternative CPA parameters or formulae are offered;
- Where a tendered price adjusted for CPA is lower than a tendered fixed price;
- Where alternative payment terms are tendered;
- Where CPA must be calculated for hedging purposes; or
- Where net present value and /or lifecycle costing is used to establish the evaluation price.

Whenever foreign currencies are allowed or tendered, the Procurement Practitioner follows the processes as described in the Eskom Treasury policies and procedures.

Where prices are quoted in foreign currency, Eskom considers Payment Method 1 (a) (i.e. payment in foreign currency to a nominated foreign bank account) to be the standard payment method.

Where Payment Method 1 (b) (i.e. payment of foreign currency into a local CFC account) is the chosen method of payment, it is the responsibility of the supplier, and not Eskom, to open the required CFC account in accordance with SARB requirements, and to ensure that such CFC account remains valid for the period of the contract, to enable payments. Payment method 1(b) will only be accepted and EXCON approval granted once Eskom Treasury Department is in receipt of the necessary supporting documentation regarding the CFC account. The use of Payment Method 1(b) is not permitted for the procurement of services.

Payment Method 2 (payment of the foreign portion of the price in Rand into a local bank account) is allowed in terms of a special dispensation from the South African Reserve Bank. The right to use Payment Method 2 is therefore not automatic, and is not permitted for the procurement of services. Payment Method 2 can only be used where the supplier has agreed to comply with all the terms and conditions for the use of Payment Method 2 as stipulated on the CPA (IG) form. On enabling agreements and Eskom-wide contracts, a fixed and ascertained commitment must be demonstrated by confirming at least a 90% take-up of the estimated usage / forecast.

The Middle Manager: Policy and Compliance (or his / her nominee) within the Risk and Governance Department within Group Technology and Commercial must be consulted and must consent in writing to the use of Payment Method 2 for purposes of evaluation of tenders and contract award. Eskom Treasury Department will ratify the decision of the Policy and Compliance Manager by arranging for the necessary forward cover on the procurement. Where approval is not granted for the use of Payment Method 2,

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Payment Method 1 will be deemed the applicable payment method. A supplier will not be permitted to change the selected payment method after close of tender.

Where Payment Method 2 is selected, Eskom will require the supplier to provide substantiating proof of importation at the time of invoicing. Eskom will arrange for the relevant forward cover to mitigate the risks of exchange rate fluctuations. The supplier must, however, expressly declare in writing that the goods included for payment under Payment Method 2 have not already been or will not be covered forward by the supplier, its principal, agent, subsidiary or any other related person or body, in the foreign exchange market.

Procurement Practitioners must, under no circumstances, accept any deviation from suppliers with regard to the wording applicable to Payment Method 2 as contained in the latest revision of Form CPA (IG).

The following conditions must be agreed to when evaluating suppliers opting for the use of Payment Method 2:

- Payment will be made in South African Rand at the selling spot rate of exchange obtained by Eskom's Treasury Department on the date that the forward cover is cancelled;
- Eskom, via the Contract Manager will notify the supplier of the forward cover cancellation date and the intended payment date, which is as per the agreed payment terms contained in the contract;
- Any exchange rate adjustments after Eskom has notified the supplier of the date of payment and the exchange rate at which the forward cover was cancelled will be for the account of the supplier.

#### 3.4.6.7 Evaluation of BBBEE

Verification of the validity of BBBEE certificates may be done by visiting the SANAS and / or IRBA websites.

The sliding scale as published in the PPPFA Regulations (Appendix C hereto) must be followed for the evaluation of tenders for BBBEE. The BBBEE scores as per the PPPFA Regulations must be filled in the Calculation Sheet. This score will be out of 10 points according to the PPPFA Regulations for tenders more than R1 million (including VAT and all applicable taxes) and out of 20 points for tenders less than R1m (including VAT and all applicable taxes).

For tenders exempt from PPPFA application, B-BBEE evaluation is based on an allocation of points which are allocated per level of contribution to B-BBEE as confirmed by a B-BBEE certificate obtained by an Accredited Verification Agency, or by an auditor or accounting officer (specifically with respect to suppliers classified as EME). The allocation of points is based on Eskom's Hierarchy of Supplier Preference, where smaller Black suppliers (BWO / SBE / Disabled EMEs and QSEs) may be allocated more preference points for developmental purposes over larger Black (LBS) and other suppliers, in conjunction with the principle that higher levels of contribution to B-BBEE are awarded more points.

Contracts funded by the Development Funding Institutions (DFI), are exempted from adhering to the PPPFA and will follow the Commercial Guidelines of a DFI depending on the relevant clauses in the loan agreement.

Where there is a failure on the part of the supplier to submit a valid verification certificate for purposes of evaluation and scoring by the stipulated closing time of the tender, the supplier will automatically score zero on B-BBEE for purposes of evaluation. Notwithstanding this, to the extent that the tender is still the highest ranked responsive and competitive tender and / or is still recommended for contract award, then a valid B-BBEE certificate must be requested from the supplier as a condition of contract award, and in order for Eskom to comply with the legislative requirements in terms of the B-BBEE Act and its Codes of Good Practice. If a supplier cannot submit a BBBEE certificate by the time of contract award, it may be permissible to allow the supplier a stipulated period after contract award to submit such a certificate,

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failing which Eskom may reserve the right to terminate or re-negotiate the terms and conditions of contract.

A supplier must not be awarded the points claimed for its B-BBEE status if it is indicated in the tender that such a supplier intends sub-contracting more than 25% of the contract value to any other enterprise / supplier that does not qualify for at least the same number of points that the participating supplier qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

A supplier is therefore not allowed to sub-contract more than 25% of the contract value to another enterprise / supplier that does not have equal or higher B-BBEE status, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract, in order to claim the points for BBBEE as set out in Annexure C hereto.

#### 3.4.6.8 Scoring and Ranking of Tenders

After completion of all aspects of the evaluation, the Procurement Practitioner and cross-functional team rank the tenders based on the total points allocated against all stipulated criteria and weightings as set out in the tender documentation and contract strategy. Changes are not made to the evaluation criteria once tenders are issued or have been formally received. Records of ranking are kept, and point allocation against evaluation criteria must be reflected in the Commercial Transaction Approval Form submitted to the Delegated Approval Authority in support of the recommendation contained therein.

The points scored for price must be added to the points scored for B-BBEE status in order to obtain the supplier's total points scored out of 100.

In the event that two or more suppliers have scored equal total points, the successful tender must be the one that scored the highest points for B-BBEE.

If two or more suppliers scored equal points, including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.

In the event that two or more tenders are equal in all respects, the award must be decided by the drawing of lots.

#### 3.4.6.9 Evaluation of Specific Goals and Objective Criteria

The tender must stipulate if there are any objective criteria that the suppliers must meet, over and above stipulated thresholds and criteria for purposes of scoring of points.

Objective criteria may be any other requirement which justifies the award of the contract to the supplier who did not score the highest number of points on the 90/10 or 80/20 preference points system, and are generally compliance or risk-related criteria for which points cannot be allocated.

The reason for selection of another supplier who is not the highest ranked must be motivated to the Delegated Approval Authority, and based on the objective criteria as stated in the tender.

Objective criteria, which are pre-requisites for contract award, after the evaluation of tenders include:

**Financial viability:** The outcome of a financial analysis of the supplier's financial statements is an objective criterion that must be conducted as a due diligence and risk mitigation step as a pre-requisite to contract award. This is required to determine if the supplier is financially stable enough to execute a contract/order of the magnitude to be awarded.

The latest approved annual financial statements as per requirements of corporate / company law must be submitted. The analysis of a supplier's financial statements is not a criterion for the purposes of the scoring and awarding points, or the determination of competitive ranking. However, the analysis is

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conducted as part of a due diligence, for the purposes of establishing a supplier's viability and ability to meet all of its contractual obligations for the duration of the contract. To the extent that such risks are identified as part of the analysis of the financial statements, a risk mitigation strategy must be included as part of the recommendation. If the risks cannot be mitigated to ensure performance against the contract, the contract may have to be awarded to another supplier, which may not be the highest ranked.

All transactions to be approved at the EXCOPS or higher the assessment of financial viability of the suppliers to execute a contract will be done by BEAST in the Finance Project Services (FPS). BEAST maintains a database with supplier analysis reports and it can extract information from it if need be.

For all other Delegated Approval Authorities, financial viability of the supplier may be analysed by the FPS to the extent that the risk to Eskom justifies it.

**NOTE:** An analysis of a particular supplier's turnover and financial viability is valid for 6 (six) months at a time. This means that if the supplier participates in more than one tender within a 6 (six) month period, then the first evaluation for that period will apply. It will not be necessary to repeat the financial evaluation for the particular supplier over that 6 (six) month period, except where the recommendation is being made to EXCOPS or higher, in which case the analysis must be done for every approval required for the award of an order / contract. Where a supplier has been awarded multiple contracts with Eskom, the financial analysis from BEAST in FPS must include the cumulative effect of all contractual commitments with Eskom in order to determine Eskom's risks, and to determine whether the supplier has the financial viability, resources and infrastructure to take on further contractual commitments with Eskom.

**Terms and conditions of contract:** The Procurement Practitioner, with the assistance of the Eskom Legal Department, is responsible for the evaluation of contractual terms and conditions offered based on Eskom's standard forms of contract.

If a supplier does not accept Eskom's conditions of contract or deviates from the requirements thereof, the Procurement Practitioner must obtain advice from the Eskom Legal Department, in order to determine the risks to Eskom if the conditions proposed by the supplier are to be accepted. If it is determined that the risk to Eskom is too big and a clarification with the supplier does not resolve the mitigation of the risks, then the tender will be rejected as commercially unacceptable, and therefore ineligible for contract award.

**SHEQ:** Where SHEQ is NOT included under functionality, but is still a legal / contractual requirement for the execution of the ensuing contract, all legal/ contractual requirements pertaining to SHEQ must be demonstrated to be in place and legally valid, as a pre-requisite to contract award, and prior to the recommendation being made to a Delegated Approval Authority. Failure of a supplier to comply with legal/contractual requirements pertaining to SHEQ as stated in the tender will render a tender ineligible for contract award.

**Registration on Eskom's Supplier Database:** The Procurement Practitioner must determine if the supplier/s are already registered on Eskom Supplier Database. Where a contract is particularly complex and / or has to be submitted to the EXCOPS or higher for approval, the Procurement Practitioner must in every case ensure that the recommended suppliers are re-assessed by the SD & L function against registration and pre-qualifying requirements, before recommendation to the Delegated Approval Authority, and as a pre-requisite for contract award. Suppliers that do not meet all registration and pre-qualifying requirements associated with registration, cannot be awarded new contracts until all requirements for registration and / or all pre-qualification requirements are duly met.

To the extent that a supplier who is not registered on the Eskom Supplier Database is being considered for contract award, or, where registered suppliers are requested to re-apply for registration, the supplier is required to meet all the necessary conditions of registration as a pre-requisite to contract award. A supplier who does not meet Eskom's mandatory requirements for registration cannot be recommended for contract award.

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**CIDB:** Procurement Practitioners may also utilize the CIDB website to confirm a supplier's CIDB registration. Confirmation of CIDB registration in the appropriate class and level is required before awarding a contract for construction and /or engineering works.

Eskom is obliged to comply with the requirements of the CIDB Act that prohibits the award of a construction works contract to an unregistered supplier. This means that a Delegated Approval Authority will not be allowed to approve the appointment of suppliers for the rendering of construction and engineering works (as per the classes of construction / engineering works set out in Schedule 3 of the CIDB Regulations) where the supplier is not registered with the CIDB.

Tenders received from suppliers that are not "capable of being registered" with the CIDB prior to evaluation must be deemed commercially unacceptable, and excluded from evaluation. Suppliers that are "capable of being registered" prior to evaluation may be evaluated, but must be registered prior to making the recommendation for contract award.

"Capable of being registered" means that there is a reasonable chance that the unregistered supplier (who complies with all the legal requirements to be registered) will become registered in the required contractor grading designation. In order to establish whether or not a supplier has a reasonable chance of being registered in the appropriate grading designation, the supplier must have at least made an application for registration to the CIDB and submitted all required information by the time of participating in the tender. The supplier must be advised in this instance to provide proof of application as a tender returnable.

**Legal Compliance:** The supplier must be able to meet all legal requirements pertaining to the supply of the assets, goods, or services, including compliance with all tax-related obligations. A supplier cannot be awarded a contract where it has not submitted a valid tax clearance certificate from SARS confirming that all of its taxes are deemed to be in order, by the time the recommendation is being made to a Delegated Approval Authority for contract award.

**Specific Goals:** Specific goals linked to skills development, industrialisation, job creation, localisation, if not embedded within functionality criteria as part of a Design for Local strategy or set out as a special condition of tender, will be evaluated as objective criteria, based on an assessment of targets proposed. On this basis, Eskom may award a tender to a supplier that is not the highest ranked (in terms of price and BBEE), but which may most favourably meet the specific goal requirements and targets as required by Eskom, in addition to meeting any other objective criteria.

#### 3.4.6.10 Dealing with Bonds /Guarantees

Upon receipt of tenders, the names of the proposed financial institutions (as requested in the tender) must be submitted to the Treasury Portfolio Assessment (TPA) Department together with a completed approval form (available electronically on the Eskom Treasury Department website on the Eskom Intranet) in order to obtain approval regarding the use of the proposed financial institutions, for purposes of securing a bond/guarantee.

TPA will advise whether the proposed financial institutions are acceptable or not. This will be informed by the list of Approved Guarantors which TPA maintains. The Procurement Practitioner must also advise the guarantee amount to TPA in order for TPA to confirm the headroom on the credit limit of the Approved Guarantors.

Where proposed financial institutions are not on the Approved Guarantors' list, TPA will advise the use of alternative guarantors or request from the Procurement Practitioner the information needed to assess potential guarantors for a credit limit recommendation to the Treasury Committee. The Treasury Committee meetings are quarterly and the turn-around time on new financial institutions' decisions can take up to three (3) months.

TPA will advise the acceptance of the guarantee on condition that:

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- It is issued by an Eskom Treasury approved guarantor;
- The guarantee amount is within the approved limit of the guarantor;
- All necessary legal approvals have been obtained by the Procurement Practitioner; and
- The guarantee terms and conditions meet the Eskom standard template requirements, including the relevant contract conditions pertaining to such guarantee being included in the contract.

#### 3.4.6.11 Evaluation of Alternative Tenders

If submission of alternative tenders is allowed, the Procurement Practitioner and/or End-User must determine whether a main tender was also submitted that meets the basic requirements of the tender. If a main tender was submitted, then the alternative tender will be evaluated against the criteria set in the tender for alternative tenders, and if no alternative criteria were mentioned, the alternative tender will be evaluated against the criteria for a main tender.

#### 3.4.6.12 Short-listing for Post-Tender Negotiations

Based on the outcome of evaluations, the Procurement Practitioner and End-User/cross-functional team determine whether it is necessary to negotiate post-tender. If so, they must obtain a mandate to negotiate from the appropriate Delegated Approval Authority. The request for a mandate to negotiate must set out the mandate objectives, such as commercial, technical and financial parameters for the negotiation.

Post-tender negotiations may be conducted with suppliers only under the following circumstances:

- Where it was indicated in the tender documentation that negotiations will be entered into with one or more short-listed suppliers after completion of evaluations. The criteria for the eligibility to participate in post-tender negotiations must be clearly set out in the tender documentation (e.g. negotiations only with the highest ranked supplier, or the lowest priced tender, the three highest ranked suppliers, all technically acceptable tenders, etc.). Failure to stipulate qualifying criteria for post-tender negotiations may render all responsive and technically, financially and commercially acceptable tenders after evaluations, as qualifying for negotiations;
- When all tenders have been evaluated and there is no tender which stands out as the most advantageous in terms of the evaluation criteria detailed in the tender documentation;
- When Eskom's price estimation is substantially lower than that of the lowest priced tender; and / or
- When all or the majority of the tenders received deviate in one or more ways from the published requirements, and it is in the interests of cost-effectiveness and the meeting of critical milestones that the tenders be negotiated rather than re-issued due to the deviations, provided that the decision to proceed with negotiations is still fair, equitable, competitive, cost-effective and transparent to all participating suppliers.

The following general rules apply to post-tender negotiations:

- Negotiations cannot be entered into without a mandate from a relevant Delegated Approval Authority;
- A negotiation team must be assigned by the Delegated Approval Authority, comprising of at least commercial, technical and finance representation, as a minimum, and one of whom who must be assigned the role of lead negotiator;
- No employee may engage in negotiations on their own;
- Suppliers are excluded from negotiations if their tenders were non-responsive or disqualified, or if they have not met the stipulated criteria in the tender to qualify further for post-tender negotiations;

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- Explanations of the criteria, technical or other requirements and/or changes to the tender and tender documentation are communicated to all the remaining suppliers participating in negotiations;
- All remaining suppliers are given the opportunity to submit final offers as part of the negotiations which will result in the continuation of the evaluation, final ranking and approval processes. All negotiated offers stemming from formal tenders must be formally received and logged at the relevant Tender Office.
- Mandated post-tender negotiations with multiple suppliers must not result in the awarding of a contract without approval from the Delegated Approval Authority accepting the outcome of the negotiations.

#### 3.4.6.13 Validity of Tender for Acceptance

If it is likely that the validity of the tender will expire before a contract can be awarded, the Procurement Practitioner must obtain permission in writing from the Procurement Manager for tenders up to R50m, the Procurement Middle Manager for tenders greater than R50m and up to R100m, the Commercial Senior Manager for transactions greater than R100m and up to R300m, and for transactions more than R300m, from the General Manager: Commercial, in order to extend the tender validity period.

The extension of a tender validity period means that the supplier maintains its original pricing as tendered. If a supplier cannot maintain original prices as tendered after expiry of the tender validity period, then the tender may not be considered for financial evaluation, and the supplier therefore cannot be awarded a contract based on the tendered price. It must be noted that such extension of the validity period is not an invitation to the supplier to amend the tendered price, scope and / or the delivery period.

If extensions to validity periods occur frequently, the efficiency of the evaluation process needs to be assessed by the relevant Commercial Senior Manager, so that necessary steps are taken to improve the efficiency of the evaluation process, as one of the identified KPAs of the procurement function.

#### 3.4.6.14 Dealing with Suspicions of Bid-Rigging /Price-Fixing

When conducting an evaluation of tendered prices, signs of collusion, price-fixing, or bid-rigging which is intended to eliminate the benefits of a competitive tender must be investigated. Indicators that tenders may be collusive or "rigged" include:

- Out of a batch of tenders, only one can be evaluated because the others have submitted "non-responsive" tenders that cannot be evaluated, or have not responded to the tender by the closing date;
- Prices tendered by certain suppliers are very high without technical justification in comparison to one particular supplier, making only that supplier eligible to be awarded the contract;
- The same pool of suppliers participate in several tenders, and there appears to be some sort of "rotation" with whom is awarded the contract;
- Participation of Related Parties within the same tender thereby eliminating independence and inhibiting competitiveness;
- Tenders from different suppliers have almost identical pricing, and information provided has similar or identical wording.

Price-fixing / bid-rigging, if proven, is a contravention of the Competition Act (89 of 1998), and will constitute a trigger for the reconsideration of a supplier's registration status on the Eskom Supplier Database for which a supplier may be suspended / de-registered from the Eskom supplier database in accordance with 3.8.9 herein. Suspicions of bid-rigging must be reported to the local Risk and

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Governance office within Group Technology and Commercial, who will facilitate investigation into the matter.

Tenders that are found to be collusive or fixed / rigged will be automatically disqualified.

### 3.4.7 Obtaining Approval to Award a Contract

Once the evaluation process has been completed, the Procurement Practitioner and the cross-functional team (in the case of complex transactions) complete the Commercial Transaction Approval Form.

Since the transactions are based on an End-User's request and are paid for by the End-User's cost centre or project, the End-User has the responsibility and authority to determine that Eskom's needs will be met before a recommendation is made to a Delegated Approval Authority or before an order / contract is placed, by providing his /her written consent through sign-off of the recommendation being presented to the Delegated Approval Authority. The End-User may not engage with Suppliers in the absence of a Procurement Practitioner prior to a contract being awarded for the scope of works / specifications being the subject-matter of a tender. Post-contract award End-User engagements with suppliers must be in strict accordance with the provisions of the relevant contract.

It is important that the full legal and registered name of a supplier is used in the Commercial Transaction Approval Form, so that the Delegated Approval Authority is able to approve the correct contracting party. It must be noted that the supplier approved for purposes of contract / order award cannot be different from the supplier who was represented on the successful tender.

When approval is sought for engineering, construction and professional services contracts, the best estimate of time and expenditure at completion is recommended. This encompasses the contract amount and duration (as tendered) plus any additional amount or time requested to cover contingencies based on the materialisation of foreseeable and unforeseeable risks managed through requests for compensation events / variation orders (FIDIC) in accordance with the contract. The additional amount / time is delegated to the appointed Eskom Agent using a Delegation Consent Form (DCF). This amount may be applied by the Eskom Agent to manage compensation events / variation orders (FIDIC) without further reference to a Delegated Approval Authority for a modification of contract, provided that it is not used to fund any additions / amendments to the approved scope of the contract.

The Procurement Practitioner, in consultation with the assigned cross-functional team compiles the Commercial Transaction Approval Form addressed to the relevant Delegated Approval Authority. If a tender is to be awarded to multiple suppliers, then the contract awards are required to be made by a single adjudication authority based on the cumulative value of the contracts.

The Procurement Practitioner obtains all the necessary signatures on the Commercial Transaction Approval Form. In the case of:

- Orders / contracts to be approved by EXCOPS and/or a higher Delegated Approval Authority, the GE: Group Technology and Commercial and his/her counterpart in the End User's Group / Division, is required to sign the submission;
- Orders / contracts to be approved by the R50m to R300m PTC, the relevant GM: Commercial or a nominated Commercial Senior Manager and his/her counterpart in the End-User's Group/ Division is required to sign the submission; and
- Orders / contracts less than R50m, the relevant Procurement Manager and the End-User's line manager are required to sign the submission.

After obtaining the necessary signatures, the Procurement Practitioner arranges for the submission to be placed on the agenda if approval is required by a tender committee. A team is nominated to present the submission at the tender committee, but it must consist of the Procurement Practitioner and the End-User as a minimum.

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If approval is required from a dual or triple adjudicator, the Procurement Practitioner takes the Commercial Transaction Approval Form for support and /or approval by relevant persons who are Accredited Procurement Practitioners assigned to approve such transactions, after formally recording and signing off the recommendation, together with the End-User.

### **3.4.8 Administration of the Awarded Ordered / Contract**

#### **3.4.8.1 Notification of Award**

Once approval has been given to the award of the contract to the successful supplier, the Procurement Practitioner notifies the successful supplier of the acceptance of his tender. The Procurement Practitioner must ensure that this notification is received by the successful supplier, because notification of acceptance will become legally binding upon Eskom. E-mailed notifications will be subject to the Electronic Communications and Transactions Act.

#### **3.4.8.2 Compiling the order /contract**

The Procurement Practitioner is responsible for the compilation, administration and finalisation of the contract / order.

If a contract (NEC/FIDIC) has been used, the Procurement Practitioner together with the cross-functional team, ensures that the contract documents are correct and complete with all drawings and specifications and included as part of the contract. The Tender Data and tender conditions do not form part of the contract and must not be included. The Procurement Practitioner must use the signed price lists that were part of the supplier's tender, or if the prices have changed (due to arithmetical corrections, or negotiations), a revised, signed pricelist. The contract number, description of the assets, goods or services, and the full legal names of the contracting parties (Eskom and the supplier) must be on the cover page of the contract. The Procurement Practitioner arranges for the printing of the contract for purposes of signature.

#### **3.4.8.3 Signing the contract**

Once the contract is printed, the Procurement Practitioner takes the contract to the official and authorised Eskom signatory as nominated by the Delegated Approval Authority to sign the contract on Eskom's behalf. The nomination is done in terms of Eskom's Delegation of Signing Authority as set out in Appendix B hereto. It is the responsibility of the Procurement Practitioner to ensure that the contract is signed by the duly authorised delegates of Eskom and the Supplier before order placement against the contract. In other words, orders cannot be executed against a contract where the contract has not been signed by the parties, and any orders placed against the contract in the absence of contract signature may place Eskom at legal risk in the event of a breach of contract, a claim against the contract or a dispute with the supplier. To the extent that orders may have to be placed before contract signature, consent must be obtained in writing from the relevant GM: Commercial, or his / her nominated representative, or the DE: Primary Energy, or his / her nominated representative.

The authority of the Supplier's representative is confirmed within the Authorisation Form, which is completed and returned by the Supplier as part of the tender returnables.

A copy of the signed contract must be given to the Supplier and the Eskom Agent / Contract Manager who will manage the contract. The Procurement Practitioner maintains a copy of the contract for quick reference and saves a copy on the Electronic Documentation Management System.

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#### **3.4.8.4 Notification to Unsuccessful Suppliers**

The Procurement Practitioner informs all unsuccessful suppliers who competed in formal tenders that they were unsuccessful only after the successful supplier/s and Eskom have accepted and signed the awarded contract/s.

Unsuccessful suppliers are by law entitled to enquire as to the reasons why their tenders were unsuccessful. The Procurement Practitioner involved in the procurement may on request inform unsuccessful suppliers of any defects in their tenders, or where their tenders fell short of the other tenders. The successful tender and the amount at which the contract was placed may be divulged. It is very important, however, that no proprietary information that is confidential to one supplier (e.g. proprietary processes or designs) is passed on to another supplier.

#### **3.4.8.5 Loading of Contracts onto the Purchasing (SAP) System**

All contracts/orders must be loaded onto the SAP system which facilitates the monetary and time-related control of contracts and is used to monitor and effectively manage usage / draw-downs against contracts. The Procurement Practitioner must ensure that all conditions (i.e. contract value, contract terms, etc.) are loaded correctly and according to the original signed contract document, before the End-User or any other authorised official can place orders against the contract. It is required of the Procurement Manager to conduct spot checks to determine the correct loading of contracts/orders.

Draw-downs must be released by the Contract Manager, or a nominated authorised representative thereof before it can be sent to the Supplier. A draw-down off an existing contract cannot be made without a Contract Manager's approval.

When loading contracts on SAP, Procurement Practitioners must determine if the supplier is deemed an "employee" for tax/"Pay as you Earn" (PAYE) purposes, by virtue of being a dependent contractor, personal service provider or a labour broker, based on the responses received from the questionnaires submitted as tender returnables.

Special attention must be given to labour brokers that are natural persons where a valid IRP 30 tax certificate is required. The Procurement Practitioner must specifically request this certificate when loading the supplier's contract on SAP. If the supplier submits a valid IRP 30 certificate, PAYE will not be deducted. If the supplier is deemed to be an "employee" for tax purposes then the Procurement Practitioner must indicate that PAYE must be deducted. If the supplier is a Personal Service Provider, Finance Shared Services must be informed to activate the tax indicator on the SAPFI system. Completed copies of the PAYE Pack i.e. signed summary sheets and signed affidavits must be attached on communication to Finance Shared Services.

If the supplier is a Labour Broker and the supplier does not have a valid IRP30 certificate, or a supplier is a dependent contractor, HR Shared Services must be informed to upload the supplier on the SAPHR payroll system. Completed copies of the PAYE Pack i.e. signed summary sheets and signed affidavits must be attached on communication to HR Shared Services. Group Tax must be copied on all communication to the Finance or HR Shared Services units.

Eskom must register its construction contracts i.e. those contracts with a value in excess of R200 000 (two hundred thousand Rand), including VAT, via SAP onto the CIDB website (Register of Projects), thereby saving time and costs. Inter-divisional contracts do not need to be registered.

#### **3.4.8.6 Receipt of Bonds and Guarantees**

Upon the supplier providing the required form of security to the Eskom Agent in accordance with the contract, a copy of this security must be retained on file by the Contract Manager. The original must be sent to Eskom Treasury Department by the Procurement Practitioner for safe custody, together with the approval form (found on the Eskom Treasury Department's web-page) signed off by Treasury Portfolio

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Assessment (TPA) Department. It is the responsibility of the Procurement Practitioner to either hand over the original of the bond / guarantee in person, or to ensure that the original is safely sent to Eskom Treasury Department by using an Eskom-appointed courier service. A pre-numbered safe custody receipt will be issued to the Procurement Practitioner either in person or electronically, and must be retained in order to retrieve the guarantee in future.

Upon TPA's advice that the guarantor and guarantee amount are acceptable, the guarantee will have to be lodged with TPA in original form together with the Treasury Safe Custody Lodging Form ("the Form"), to be completed by the Procurement Practitioner. Upon receipt of the Form and original guarantee, TPA will acknowledge receipt of the documents by executing the Form and later issue a pre-numbered safe custody receipt to the Procurement Practitioner. The receipt must be retained by the Procurement Practitioner for future retrieval of the guarantee.

The documents will be lodged in the Treasury Safe Custody for safe-keeping and TPA will maintain a register of the Guarantees. The Procurement Practitioner can request an updated register of Guarantees from TPA as and when required.

#### 3.4.8.7 Advanced Payments

If an advance payment is approved as a condition of contract, then Eskom must within a certain time period as specified in the contract, make advance payments to the Supplier, based on the Supplier having to issue an advance payment bond to Eskom in terms of the contract. The Supplier claims the advance payment via an invoice to the Eskom Agent. The Procurement Practitioner must ensure that if there is foreign currency within the advance payment, then forward cover must be taken out. The Procurement Practitioner must follow the normal FOREX policies and procedures in this regard. The bond will be kept in safe custody by the Eskom Treasury Department.

#### 3.4.8.8 Maintaining an Audit Trail

The Procurement Practitioner opens a contract file for every PR that is executed via a formal or informal tender. The Procurement Practitioner ensures that the following documents are filed and also that electronic copies are filed in the Electronic Documentation Management System for audit purposes:

- The approved strategy (all transactions over R1m);
- Worksheets;
- All hard copies of tenders, or an indication of where such hard copies are stored and located;
- The signed and approved Commercial Transaction Approval Form, together with an extract of the minutes where approved by a PTC;
- A copy of the system order /contract;
- The supplier's acknowledgement of the award of the order /contract;
- Modifications to the contract together with all DCFs;
- Notes on any telephonic discussions or minutes of any meetings affecting the tender and contract;
- A list of suppliers to whom the tender was issued;
- A list of suppliers that have responded to the tender;
- A list of suppliers who were non-responsive / disqualified;
- A list of tenders that were found to be technically, commercially, and/or financially unacceptable after evaluation; and

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- The successful supplier.

Where the Procurement Practitioner is not the appointed Eskom Agent and/or Contract Manager, the Procurement Practitioner must nevertheless keep the original contract file up to date. The Eskom Agent or Contract Manager must keep a separate contract file containing all relevant documentation, including concurrent notes or minutes of meetings affecting the contract, compensation events, non-conformance reports and rectification records. The standard Checklist for the file of the Procurement Practitioner is attached hereto as Annexure F.

Both these files must be available for scrutiny by internal and/or external auditors, by the Risk and Governance Department within Group Technology and Commercial, or any other interested party within Eskom and / or within the legislative framework (e.g. via the PAIA process or by a court order). These files should be combined at contract termination or due to natural completion and / or after the expiry of the defects notification period and retained for 5 (five) years after conclusion thereof, to ensure an audit trail.

Copies of tenders from unsuccessful suppliers may be discarded / destroyed (normally via shredding) after contract award. The original tenders are kept by the Tender Offices for a period of 5 years.

### 3.5 Other Approved Sourcing Processes

#### 3.5.1 Negotiations – No Prior Tendering

The circumstances under which a Procurement Practitioner and End-User may make a recommendation to negotiate without prior tendering are as follows:

- The use of the current supplier as a sole source only in cases when no other financially, commercially or technically acceptable tenders were received in response to a previous valid competitive tender and where the competitive tender was either sent to the open market or to a valid list of three (3) or more capable and independent suppliers as verified in writing by the relevant Commercial Senior Manager;
- Assets, goods or services can be supplied only by one particular supplier and no reasonable alternative or substitute exists, for example for reasons connected with patents or copyright, or in the absence of competition for technical reasons;
- A change of supplier would compel Eskom to obtain spare parts or additional assets, goods or services that are not compatible or interchangeable with existing assets, goods or services that were obtained from an original supplier or original equipment manufacturer (OEM);
- Eskom procures prototypes, goods or services that are developed, at Eskom's request, under contract for research, experiment, study or original development, and Eskom obtains the rights to the design. After the development contract has been fulfilled, further purchases (re-buys) are subject to Eskom's normal procurement procedures, using the design so obtained;
- Eskom buys commodities on a commodity market; and
- Eskom has the opportunity to buy under exceptionally advantageous conditions that only arise in the very short term. This provision covers unusual disposals by entities that are not normally suppliers, and the disposal of assets of businesses in liquidation or receivership. It does not allow for routine purchases from regular suppliers, and specifically excludes purchases of remaining stock after the expiry of a Framework Agreement or from unsuccessful suppliers.

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### i. Sole Source

Where, as a result of proven in-depth market analysis, only one supplier in the market has been identified as being capable or available to supply the assets, goods or services in the existing circumstances, it may then become necessary to deviate from competitive tendering and follow the sole source process.

Alternatively, the SSJF can be used to identify a supplier as a general sole source for a specified category of assets, goods or services to Eskom for a maximum period of 3 years. In this case the approval for the appointment of the supplier as a general sole source supplier for the identified category of supply /services needs to be obtained from the relevant PTC, as this is considered to be a "blanket" approval with no specific value attached to the total number of orders / contracts to be placed with the supplier over the specified 3 year period. Suppliers falling into this category are generally OEM's. Once the "blanket" approval has been granted by the relevant PTC to categorise the supplier as a general sole source for the category of supply /services, a SSJF will not be required for every order /contract placed with the supplier within the validity period of the "blanket approval". A list of these suppliers with their approved Sole Source Justification Forms, and corresponding validity periods, will be stored on the Documentation Management System for accessibility to all Procurement Practitioners.

The management of sole suppliers is an important part of ensuring fairness, equitability, transparency, competitiveness and cost-effectiveness.

It is unacceptable for an End-User to refuse to use alternatives to a preferred supplier/brand where there is no valid technical or business case for such a decision.

Procurement Practitioners and End-Users are not permitted to negotiate without prior tendering in order to avoid competition, to discriminate against certain suppliers or groups of suppliers, or to give unwarranted protection to selected suppliers.

Sole Source Justification Forms will not be required in the case of negotiation with an Internal Supplier, or where the request for mandated negotiations is with two suppliers, which precludes execution of a competitive tender.

It is furthermore a material breach of this Procedure for any employee to engage in negotiations with a supplier without an approved mandate to negotiate, or to participate in any negotiation on their own. The same general rules for negotiations apply to negotiations as set out in 3.4.6.12 above.

There are a number of ways in which a supplier may be justified as a sole source:

#### a. True Sole Source (Monopoly)

Assets, goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exist such as reasons connected with intellectual property rights (e.g. patents or copyrights), or in the absence of competition.

Thorough market research must be done to ensure that a true monopoly exists both in the local, national and international markets. In the longer term, Eskom should consider alternatives or try to encourage development of competition.

#### b. Installed Base [Original Equipment Manufacturer (OEM)]

A change of supplier would compel Eskom to obtain spare parts or additional assets, goods or services that are not compatible or interchangeable with existing assets, goods or services that were obtained from an original supplier. Spares can only be bought from the OEM, unless risk analysis shows that the use of parts from alternative manufacturers is feasible, and this has been confirmed in writing by the applicable technical experts.

The implications of installed base should be factored into procurement decisions, based on the initial TCO analysis which has been confirmed in writing by the applicable technical experts.

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### c. Incompatible Material

Changing the source or type of materials, such as chemicals, lubricants or fuels, would necessitate the complete exchange of material due to incompatibility of material from different sources.

The Procurement Practitioner together with the End-User / cross-functional team should conduct a market analysis and apply a TCO model to establish whether the complete change of material, "flush-out" and opportunity costs will be beneficial over time.

### d. Established (On-site) Supplier

At times, additional works or services not forming part of the initial contract become necessary in order to complete the plant, system or structure. If separating the additional works / services from the original contract will be difficult for technical or economic reasons and/or the separation will cause significant cost or time constraints to Eskom, a valid sole source motivation exists.

The Procurement Practitioner together with the End-User / cross-functional team must do a formal cost/benefit analysis to establish whether it is more cost-effective to continue with the established supplier, or whether to request competitive tenders/ proposals. This must form part of the motivation for the use of the supplier as a sole source. If negotiation only with the established supplier is envisaged, the negotiations must be based on a best estimate of the cost of the works / services excluding site establishment costs and a properly motivated request for a mandate to negotiate must be presented to the Delegated Approval Authority.

The following steps must be followed when a sole source supplier is identified:

- The cross-functional team led by the Procurement Practitioner, developing the commercial strategy arrives at the conclusion /deduction that a sole source supplier situation exists.
- The strategy indicating a sole source supplier situation must be compiled on the Commercial Strategy Approval template and approved by the line manager of the Procurement Practitioner or the relevant Delegated Approval Authority, based on the strategy delegations set out in 3.1.7 herein.
- Where the sole source is an Original Equipment Manufacturer (OEM) or a sole distributor of the OEM, who provides spare parts to Eskom, the cross-functional team must determine whether to proceed directly to negotiations or whether to follow an enquiry process. It is not permissible to request a quotation /proposal from a sole source supplier without first presenting the mandate request to the Delegated Approval Authority, as Eskom employees (including Procurement Practitioners) are not permitted to engage with suppliers in negotiations without a formal mandate from a Delegated Approval Authority.
- After approval of the commercial strategy, the Procurement Practitioner, together with the cross-functional team, must complete a Commercial Transaction Approval Form requesting a mandate to negotiate from the Delegated Approval Authority. The approval of the commercial strategy and the request for a mandate to negotiate may be handled together by the Delegated Approval Authority.
- A formal supporting motivation for use of the supplier as a sole source must be provided by the End-User and approved by his/her designated E-band Manager, who is responsible for the technical and operational integrity of the assets, goods or services required. This motivation is set out within a Sole Source Justification Form which must be duly signed and validated by all required signatories and which must accompany the Commercial Transaction Approval Form for approval by the Delegated Approval Authority.
- Prior research into the prices needs to be conducted by the cross-functional team in order to determine a real and aspiration base for negotiations on price, and any other parameters which may become a negotiation objective, forming part of the mandate request.

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- The Procurement Practitioner and End-User, together with any other members of the cross-functional team present the Commercial Transaction Approval Form, together with the signed Sole Source Justification Form to the relevant Delegated Approval Authority for approval.
- Once the mandate is approved, the Procurement Practitioner either proceeds directly with negotiations or prepares a Request for a Quotation / Proposal, based on the approved mandate, and in consultation with the cross-functional team, and then issues the enquiry to the sole supplier for a quote/proposal. The offer /quotation is requested and submitted in the same way as for an informal tender up to R5m, and processed in the same way as a formal tender if greater than R5m. The cross-functional team then develops and plans their strategy for negotiation based on the Supplier's proposal / quotation.
- In order to proceed with negotiations, the Procurement Practitioner arranges a venue, invites the relevant supplier and the negotiation team as per the approved mandate, formulates an agenda and ensures that minutes of the negotiations are recorded in writing.
- The lead negotiator, as assigned by the Delegated Approval Authority granting the mandate, will lead the negotiations and ensure that all mandated parameters are discussed and agreed upon. After each session of negotiations, the supplier and Eskom sign off the recorded minutes, as proof of what has been agreed to and what remains outstanding for resolution.
- The Group Commercial Finance Department (within Group Commercial Business Enablement) or a site-based Finance Business Partner representative must form part of the negotiation team for the evaluation of any prices offered for contracts less than R300m. Should the offered price comprise foreign currency of more than USD 1 million, or the equivalent thereof, then BEAST from FPS must form part of the negotiation team to render advice and validate that the negotiated price is financially acceptable.
- Should negotiations not transpire as per the negotiation strategy or where negotiations result in failing to achieve the required mandate, the lead negotiator must seek advice from the assigned negotiation controller who must advise and direct the negotiation team toward resolution of the issues or toward an alternative negotiation strategy.
- If the outcome of the negotiations is within the ambit of the approved mandate parameters, the Procurement Practitioner submits feedback of negotiations against the relevant section of the Commercial Transaction Approval Form to the Delegated Approval Authority outlining the results of the negotiations against the mandate parameters.
- If the outcome of negotiations is outside the mandated parameters, the Procurement Practitioner, in consultation with the negotiation team /cross-functional team may request an approval of a negotiated outcome, a revised mandate or may request cancellation of the transaction from the Delegated Approval Authority.
- Where the Delegated Approval Authority grants approval to proceed with contract finalisation, the Procurement Practitioner in consultation with the cross-functional team prepares the contract documents and arranges for the signing thereof.
- The Procurement Practitioner ensures that all relevant documents are filed for audit purposes.

#### ii. Competitive Negotiations – Two Suppliers (No Prior Tendering)

In certain situations, where thorough market research establishes that there are only two capable and independent suppliers available to supply the assets, goods or services, thereby precluding use of a competitive tender (where a minimum of three independent suppliers are required) it is permissible to request a mandate to negotiate with both suppliers, without prior tendering.

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The enquiry and negotiation process is the same as that for a sole source supplier, without the need for a Sole Source Justification Form. However, all offers / quotations greater than R5 million must be formally received by the relevant Tender Office.

### iii. Negotiations – 6 month rule

It is permissible to enter into negotiations with a supplier, without a receipt of a mandate to negotiate, where a previous (once-off/stand-alone) purchase order was placed with such a supplier, provided that the purchase order was placed with such a supplier within the last six (6) months. Another purchase order may be placed on this basis, subject to:

- The previous purchase order being based on a formal or informal competitive tender;
- There is evidence of the market being properly tested;
- The supplier has agreed to supply the assets, goods or services at a price less than or equal to that of the previous order; and
- The placement of the new order must be authorised by a Delegated Approval Authority.

This mechanism applies only to stand-alone/once-off purchase orders, and does not apply to contracts.

One cannot rely on the use of the 6 month rule more than twice after placement of the original purchase orders.

### 3.5.2 Emergency Procurement / Disposals

Emergency procurement must be differentiated from an "urgent" requirement which may be deemed foreseeable and not necessarily immediate in need, as opposed to an imminent / immediate and unforeseeable requirement without which, an emergency, as defined below, will arise.

Requirements for foreseeable "urgent" procurement where any of the below-mentioned threats / risks to Eskom will only materialise after a period of time and therefore cannot be considered immediate, must still be administered via a PR in the SAP system, using the normal procurement methods and sourcing mechanisms. Urgent requirements may be approved via "special meetings", round-robin approvals, or within systems of general or EXCO dual/triple adjudication, and should be immediately prioritised by the relevant Procurement Manager, and the Delegated Approval Authority.

When emergencies arise and there is no procurement function immediately available, i.e. after working hours or at a remote location, or when a procurement function is available, but there is limited time to initiate a normal procurement process via one of the acceptable procurement methods or sourcing mechanisms, the emergency procurement procedure may be used to resolve the emergency through the procurement of the required assets, goods or services.

An emergency is a situation that may imminently / immediately (i.e. within 24 hours) give rise to the following threats / risks to Eskom which cannot be readily alleviated through any other means or interim measures, unless the relevant assets, goods, services are procured:

- Threats to human life or safety;
- Threats of interruptions in the supply of electricity to customers or load loss;
- Threats of substantial ecological damage;
- The threat of major consequential expense to Eskom; or
- The threat of serious damage to Eskom's reputation and good name.

The emergency process is executed as follows:

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- i. Where an emergency arises, the End-User contacts the most senior available Eskom official (minimum E-Band level) responsible for the site and notifies him / her of the emergency situation. ("Available" means present on site or available by telephone, cellular phone or other means);
- ii. The senior official decides on the action needed to prevent the threat from materialising, and if procurement is required, he/she authorises the required procurement, without any further authorisation from a Delegated Approval Authority;
- iii. The End-User contacts the applicable supplier to deliver the assets, goods or services;
- iv. The End-User, together with the senior Eskom official authorising the emergency procurement is required to formally request a ratification of the emergency procurement on a Commercial Transaction Approval Form (together with the invoice for payment), for approval by a Delegated Approval Authority which must be a PTC;
- v. Only once ratification for the emergency procurement has been received by the End-User (and confirmed via recorded minutes of the PTC) then only can a PR be created by the End-User and routed to an assigned Procurement Practitioner to create a purchase order, thereby enabling payment of the invoice;
- vi. To the extent that the PTC determines that the procurement was not warranted by an emergency as defined in this Procedure, condonation must be sought for the procurement, as per the process for condonation set out in this Procedure.

The same principles and procedures applicable to emergency procurement will also be applied to emergency disposals.

Where an emergency is declared in terms Eskom Interconnected Power System Emergency Response Procedure (32-224), and an emergency response committee is required to formulate a strategy for the resolution of the emergency situation in an integrated manner, including the establishment of medium term and longer term plans, which do not meet the immediacy / imminence for a general emergency situation as defined above, the procurement process to support the implementation of a recovery strategy must be authorised by the EXCOPS, or alternatively, by the relevant EXCO dual or triple adjudication authority. Subsequent ratification by the Board Tender Committee will follow if required as per the provisions of the Board Delegation of Authority.

### 3.6 Contract Management

The appointed Contract Manager, if not the Procurement Practitioner, is generally the appointed Eskom Agent in terms of the contract, or a person assigned to manage the contract by the appointed Eskom Agent. The Contract Manager must be trained, as a minimum, on the PCM's for Contract Management, the NEC and /or FIDIC suite of contracts (depending on the type of contracts being managed), SAP and Eskom Treasury policies and procedures.

A Contract Manager's primary role is to be the first and single point of contact between Eskom and the Supplier during the execution / delivery phase of the contract. The Contract Manager manages the contract such that risks to Eskom are minimised and that the contract is executed in a legally sound and safe manner within time, cost and quality requirements.

#### 3.6.1 Shipping

If assets or goods are being transported by ship, then the relevant marine shipping procedures must be adhered to for purposes of insurance. Requests for shipping services must be accompanied by a shipping declaration form. The Contract Manager must notify Eskom Insurance Management Services (EIMS) of the shipment at least four (4) weeks in advance so that a marine survey can be conducted and all potential risks are identified and covered.

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The Group Commercial Shipping Department will be responsible for the expediting of shipments between the Contract Manager and the supplier in accordance with agreed delivery dates. Any changes to delivery dates both at FOB (Free-on-Board) level and during shipment will be communicated by the Shipping Department to the Contract Manager in order for the applicable forward cover to be extended to reflect the new delivery and payment dates. Notwithstanding this, it must be noted that the responsibility for taking out and extending the forward cover remains with the Contract Manager that is responsible for managing delivery of the required imported assets or goods in terms of the contract.

### 3.6.2 Tax Implications & SARS Deferment Accounts

The Tax department within Group Finance must be involved where materials such as steel, will form part of the transaction and where importation taxes are applicable as per the Customs and Excise Duties Act.

Eskom has Customs Duty and Import Value Added Tax ("Import VAT") Deferment Accounts with the South African Revenue Service (SARS) Ports of Entry/ Customs Offices. Through this account, Eskom has permission to defer the payment of Customs Duty and Import VAT at the time of importation for a minimum of 7 (seven) days and maximum of 37 (thirty seven) days without incurring interest charges.

The process on how Deferment Accounts should be used for the payment of Customs Duty and Import VAT on all imported Eskom consignments, inclusive of turnkey projects, for all modes of transportation must be obtained from the Shipping Department. Eskom should be reflected as the importer of record on all shipping documents.

The relevant Finance Department processes payment to SARS on behalf of all BUs and passes journal entries to recover customs duty paid from the relevant BU cost centre.

Contract Managers must liaise with the Shipping Department to ensure full utilisation of Deferment Accounts and that a proper process is followed in accordance with Practice Note 02 of 2009 – Deferment Accounts and Managing Tax Compliance Procedure Manual. Further, it is important to note that all clearing and forwarding agents (CFAs), including those authorised to make clearances using Eskom's Deferment Accounts, must be specifically authorised by the Shipping Department to transact on the Eskom Deferment Accounts. This process applies to both turnkey and non-turnkey shipping.

Failure to adhere to the prescribed requirements will result in closure of the Deferment Accounts which will negatively impact Eskom's cash flow management and reputation.

In the case of contracts involving labour broking, contracts with service-providers or consultants, PAYE may be deducted from the suppliers. Specialist advice must be obtained from Eskom's Tax Department in this regard.

### 3.6.3 Importations and Foreign Exchange

It is mandatory for all Procurement Practitioners and Contract Managers applying the Eskom Treasury Department's foreign exchange or commodity exposure control policies and procedures to successfully complete the necessary training offered by the Eskom Treasury Department in this regard. Procurement Practitioners and Contract Managers are **not** permitted to handle transactions containing foreign exchange and / or commodity exposures on behalf of Eskom without the successful completion of such training.

All procurement involving foreign exchange and / or commodity exposures must be in strict accordance with the latest revision of Eskom Treasury Department's Foreign Exchange and Commodity Exposures Policy (32-1095) and its Foreign Exchange and Commodity Procedure for Importation and Exportation of Goods and Services (32-1096).

All foreign currency exposures exceeding R150 000 (one hundred and fifty thousand Rand) at the time the exposure originates, must be hedged by establishing an internal hedge contract with Eskom

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Treasury Department. Notwithstanding this, the costs of shipping and any duties associated therewith must be quoted for and paid in Rand only.

In the case of framework agreements where foreign currencies are involved, the Contract Manager must apply upfront to the Eskom Treasury Department for forward cover in order to hedge against foreign exchange risks once the Contract Manager receives the signed-off commitment from all business units requiring the assets, goods or services.

A nominated functionary will liaise with the various foreign exchange co-ordinators to receive INTCOV reports which contain the national contract / enabling agreements and must, in consultation with the appointed Contract Manager and End-Users put in place an appropriate reporting mechanism for the rolling over of the forward cover or cancellation thereof.

The management of foreign exchange and commodity exposures on contracts remains the responsibility of the appointed Contract Manager for the duration of the contract.

Where a supplier fails to submit an invoice within 1 (one) month of receipt of the goods, the Contract Manager must arrange with the Eskom Treasury Department for the cancellation of the forward cover and payment to the supplier at the selling spot rate of exchange obtained from Eskom's Treasury Department on the date of cancellation.

It must be noted that the cancellation of forward cover at any rate other than the spot rate on the date of cancellation of forward cover will be deemed by Eskom Treasury Department to be fruitless and wasteful expenditure, and will be reported as such by Eskom Treasury Department in accordance with the PFMA.

Payment will only be made directly to the supplier with whom Eskom has contracted or to the party nominated in terms of the contract.

### 3.6.4 Managing Bonds and Guarantees

In managing the bonds or guarantees, the Contract Manager must liaise with Eskom Treasury Department who ensures the safe-keeping of the original bonds / guarantees as well as maintains a register of these bonds / guarantees for each contract.

The calling of a bond / guarantee must be used as a remedy of last resort in order to secure performance against a contract. However, where it becomes necessary for Eskom to call a bond/ guarantee, the Contract Manager must first seek advice from the relevant Senior Manager: Commercial in consultation with the Eskom Legal Department in order to assess the risks on the contract should the bond / guarantee be called. Once a decision has been taken to call a bond / guarantee, Eskom Treasury Department will only make the original bond / guarantee available to the Contract Manager upon receipt of written notification from the Contract Manager counter-signed by the relevant GM: Commercial, or DE: Primary Energy Division, together with the safe custody receipt originally issued by Eskom Treasury Department. Should the value of the bond / guarantee exceed R1 billion (one billion Rand), such written notification must also be counter-signed by the Group Executive: Technology and Commercial.

In order for Eskom Treasury Department to release the original bond / guarantee upon expiry of the bond/guarantee and/or when the contract has been duly performed, written notification signed-off by the Contract Manager confirming that the contract has been duly performed by the supplier and that Eskom is obliged to release the bond / guarantee in terms of the contract, must be sent to Treasury Safe Custody. The Contract Manager returns the original bond /guarantee to the supplier.

### 3.6.5 Managing Delivery

Except where it is at Eskom's request, early delivery against an order is not acceptable unless terms of payment are re-negotiated to suit Eskom's cash flow requirements. Late delivery must be managed in accordance with the conditions of contract. The procurement system must be updated accordingly.

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Where Eskom needs to roll forward cover due to late delivery not requested by Eskom, the cost will be for the supplier's account and the supplier must be notified thereof.

In the event that a supplier delivers assets, goods or services that are incomplete, of a lower quality, or quantity than agreed to, a non-conformance report must be raised, and the necessary steps taken to remedy the quality or quantity. The defect must be remedied in terms of the contract.

When goods are returned for credit, the necessary transaction must be made in the procurement system to ensure that credits are received. Even when goods are returned as unacceptable on delivery, the necessary transactions must be made on the procurement system. A non-conformance report must be raised in every case. Endorsing only the supplier's delivery note is not acceptable.

### 3.6.6 Management of Task Orders

In the case of panel contracts, a Task Order Committee may be appointed by the Delegated Approval Authority to oversee and approve the issuing of task orders. Such committees must ensure that suppliers/consultants are utilised on an equitable basis and that no one supplier/consultant is given any undue preference. Approval must first be given by the committee before the Contract Manager may proceed with the issuing of a Task Order.

Where a Task Order Committee has not been appointed by the Delegated Approval Authority, the Contract Manager responsible for the awarding of task orders must ensure that the awarding of task orders is done in a manner which is fair, equitable, competitive, transparent, and cost-effective.

The issuing of task orders on the eve of expiry of a contract will not be allowed unless the contract is appropriately modified with the time and money required to complete the task orders. It is the responsibility of the Contract Manager to request the necessary contingency time to close-out the contract, and/or to arrange timely modifications to contracts prior to expiry, where the issuing of task orders are anticipated on the eve of expiry of the contract. Task orders still being executed beyond contract expiry automatically increases the authorised and delegated duration of a contract, which is a deviation from Delegation of Authority and internal governance principles for which condonation must be sought, and may further expose Eskom to legal risks in the event of disputes regarding contract execution.

### 3.6.7 Modifications to the Contract

In the Commercial Transaction Approval Form submitted to the Delegated Approval Authority, the total value and time approved (total approval value) may comprise the contract value and contract duration, and may further include contingency value and time, and in other cases provisional sums and travel and subsistence. The request for contingency funds and / or time, as well as provisional sums must be motivated with reasoning based on a risk assessment of the transaction. It is not necessary to request contingency funds and / or time for contracts that are of very low risk, and / or are unlikely to result in claims / compensation events / variation orders (e.g. short term contracts for supply and delivery of goods).

The contract value and time is used to execute the contract according to the approved scope of work or the description of the assets, goods or services according to the contract/order.

The contingency funds and/ or time is approved to allow the Eskom Agent to manage compensation events/variation orders as per the NEC/FIDIC contracts without requesting approval of further funds / time associated with such claims, from the Delegated Approval Authority. This specific delegation to manage contractual claims is granted to the Eskom Agent, on a Delegation Consent Form (DCF) and must be approved by the relevant Delegated Approval Authority. The DCF thus gives the Eskom Agent the authority to duly assess, manage and authorise claims relating to time and money in the contract, which may arise out of unforeseen or unplanned circumstances, and which may result in amendments to the approved scope /specifications.

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The Eskom Agent may utilise the money and time up to the limit of the contingency value and time approved by the Delegated Approval Authority.

For contracts exceeding R5m, where the total of the contract amount and/or the contingency amount is increased by more than 20% of the original approved values respectively or cumulatively, then it must be motivated in writing by the relevant End-User Senior Manager in consultation with the relevant Senior Commercial Manager as to why a new contract cannot be considered based on a new commercial process, if market and / or contract related prices have been quoted for the modification and if the solution to modify the scope is the most optimal way to proceed with the contract. A Procurement Practitioner may only proceed with processing the modification for approval by a Delegated Approval Authority (exceeding 20% of original approval value) on the written consent of the relevant Senior Commercial Manager.

A modification to the contract may apply in the following circumstances:

- Increase in the approved contract value or contract duration due to the contract being required for longer periods than originally required, which will also have a corresponding effect on contract value;
- Material / significant changes to the conditions of contract which may result in an increase/decrease in the contract value or duration, and thereby changes the risk position of Eskom or the supplier. An example is if the supplier requests to change retention (cash) for a retention bond;
- Changes to the contracting parties, such as name changes or changes of legal persona of suppliers in the case of a merger or acquisition by another legal entity, or cession / delegation to another legal entity;
- Changes to specification, design, or scope which were unforeseeable at the time of tender and contract award;
- Increase in the quantities of assets, goods or services already contained within the scope of the contract, but where the quantities thereof could not be correctly estimated or envisaged at the time of the tender or at the time of contract award; or
- Changes in the country of origin / manufacture of assets or goods which affect the foreign currencies in the contract, including changes in the currencies of the contract.

The Contract Manager must request a modification via the relevant procurement department when there is still sufficient time to obtain approval for the modification, which must be before expiry of the contract. Once a contract expires, it cannot be modified, and a new contract must be put in place through a new sourcing process, if need be.

A compensation event is one of the conditions of contract described in the NEC contract (core clause 60.1) and a variation order is the process in terms of clause 13.1 of the FIDIC to manage any change to the Works Information or the Employer's Requirements/Specifications respectively, which is instructed or approved as a variation.

For purposes of this Procedure, a scope change is deemed to be where new or additional assets, goods or services that were not envisaged at the time of tender or original contract award are now required, but which does not warrant a new contract, where, for example, the supplier is currently operating on the site and the assets, goods or services are needed urgently, and is related to the specific contract. If it is not possible to derive the rates for the new / additional scope from the current contract or any previous contract for the assets, goods or services, then it may be required to request for a mandate to negotiate in order to agree on new rates/prices.

It must be noted that there is a difference between Eskom's internal governance process to authorise a modification, and the contractual process to effect a change to the Works Information or Employer's Requirements/Specification, terms and conditions of contract. Eskom's internal governance process must first be followed via a formal modification process before changes to the Works Information or

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Employers Requirements/Specification, including quantities and / or design can be given effect to as compensation events or variation orders.

The process to follow in the case of a modification or increase in contingency value and time is as follows:

- i. During the execution phase of the contract, the Contract Manager monitors and controls the values spent and time used in accordance with the approvals given by the Delegated Approval Authority. Once the Contract Manager realises that the contract value and time and/or contingency value and time is near depletion and more contract value and time is required or where there is a compensation event/variation order that will deplete the allocated contingency value and/or time, he/she approaches the Procurement Practitioner with a request for a modification to the contract.
- ii. The Procurement Practitioner together with the Contract Manager and if required, the cross-functional team, completes the Commercial Transaction Approval Form, clearly stipulating the reasons for the modification and/or the increase to the contingency time and value. The Commercial Transaction Approval Form must state the previous, if any, modification or contingency values or times approved. Motivation must also be provided as to why the contract needs to be modified as opposed to testing the market and concluding a new contract with possibly a different / new supplier. The Contract Manager in consultation with the Procurement Practitioner and SD&L must further ensure that all SD&L targets / commitments are accordingly adjusted in order to benefit from increases in the contract value.
- iii. The Procurement Practitioner arranges for the Commercial Transaction Approval Form to be placed on the agenda of a PTC or may present the transaction to the relevant dual or triple adjudicator for approval (subject to the 20% cap for modifications within dual and triple adjudication), depending on the total approval value and time. Requests must be addressed to the Delegated Approval Authority that approved the original contract. Where the revised best estimate of expenditure (contract value plus cumulative contingency value as stated in the DCF) and/or total time exceeds the delegation of authority of the original Delegated Approval Authority, the request must be submitted to the next higher level of Delegated Approval Authority for approval.
- iv. Once approval has been obtained from the relevant Delegated Approval Authority, then in the case of a modification to the contract, the Procurement Practitioner together with an assigned representative from the Eskom Legal Department compiles the amendment to the contract. In the case of increases to the contingency value and time, no change needs to be made to the contract, but the electronic purchasing system (SAP) needs to be updated.
- v. The Procurement Practitioner arranges for the authorised supplier's representative and authorised Eskom representative to sign the amendment/modification to the contract and submit a copy of the amendment to the supplier and the Contract Manager.
- vi. The Procurement Practitioner updates the electronic purchasing system (SAP) with the amended contract values and / or time, and / or the amended contingency value and time and files the original amendment with the rest of the contract documents for audit purposes.
- vii. The Eskom Agent named in the DCF has to report all compensation events / variation orders approved by him/her in line with the contract to the Supervising Authority named in the DCF.

### 3.6.8 Invoicing and Payment

All invoice approvals and payments must be executed in accordance with the latest revision of Eskom's Accounts Payable Procedure. The Procurement Practitioner usually does not get involved in the handling of invoices or any payment other than where the Procurement Manager is assigned to be the Contract Manager. All payment certificates must be issued and certified by the Contract Manager.

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All invoices must be submitted by the supplier at the address mentioned in the order/contract for invoice submission.

### 3.6.9 Contract Termination

A contract may be terminated for many reasons, including a breach of contract, a legal dispute, supplier reconsideration, change of a supplier, etc. A contract may only be terminated strictly in accordance with the termination clauses and reasons for termination as contained in the contract.

Before a contract is terminated, all risks need to be assessed in terms of the supply of the assets, goods or services, including legal risks, operational risks and financial risks. The Eskom Legal Department must get involved to determine the risk to Eskom in terminating the contract, and how Eskom's legal risk position will change, as a result of giving effect to a termination. The termination process and associated conditions thereof are described in the contract conditions (NEC and FIDIC). The payment to be settled between the parties differs depending on whether Eskom terminates the contract, or the supplier terminates the contract. It is of utmost importance that Eskom Treasury Department is informed of any terminations in cases where there is FOREX involved with forward cover taken out. The contract file must be updated with all correspondence between Eskom and the Supplier for audit purposes and/or in the event of legal issues.

### 3.6.10 Document Retention

All original commercial documentation is to be retained as per the Eskom Procedure *"Periods for Retention of Accounting and Other Records 32-202"*. If no time period for retention is mentioned, a minimum retention period of 5 years after the contract has been completed, will apply. Hard copy documents classified as "confidential", "secret" and "top secret" that are beyond their retention period must be shredded and electronic copies permanently deleted. "Public domain" hard copy documents must be disposed of for recycling and electronic copies shall be deleted. The Procurement Practitioner must arrange for archiving of all the original contract documents at an off-site facility once the contract has been completed.

## 3.7 Special Categories of Procurement

### 3.7.1 Consultants

The process for procuring consultants is essentially the same process as for the procurement of assets, goods or services. However, the following specific considerations must be included as part of the procurement strategy, recommendation and approval, in order for Eskom to:

- Reduce the overall costs of consulting services, without compromising the quality of consultant's service, where needed;
- Commit to a skills transfer plan in order to prevent an on-going dependence on external consultants;
- Reduce Eskom's reliance on consultants, in order to achieve economy and efficiency;
- Achieve transparency in the process for selection and appointment of consultants; and
- Guarantee that all deliverables received from consultants will be measured against an SLA and will result in tangible improvements within the Eskom environment.

The services of a consultant goes beyond that of a general service provider of non-core services, and is generally required on specific technical and strategic issues that are core to Eskom's approved strategic direction (as set out in the shareholder's compact), or where the services of an independent registered professional are required (e.g. attorneys, auditors, engineers, etc. ). The use of a consultant must be

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supported by documentary evidence of an approved business case, and an approved budget. A consultant may not be contracted via the commercial (procurement) process in order to bypass the HR recruitment process, where the resource / skill is required in the medium to long-term (more than 12 months), in which case, the HR process must be followed in order to secure the resource / skill.

A dedicated centralised commodity team managed by a Category Manager operates as part of the Commodity Sourcing department within Group Technology and Commercial in order to manage the procurement of consultants across Eskom.

Consulting services may not be procured without the express written consent of the Group / Divisional Executive of the procuring Group / Division and the Internal Consulting Department (Group Finance), who must be satisfied that there are no suitable resources within Eskom who have the capability and capacity to carry out the required work. Should the cumulative value of the consultant's engagement exceed R5 million, the further written approval of the Group Executive: Technology and Commercial, and the Finance Director are required.

The approval to award a contract to a strategic / management / professional consultant can only be obtained by a delegated PTC, irrespective of the value of the procurement.

When employing the services of a consultant, the Procurement Practitioner should further ensure that the consultant has a confidentiality clause in his/her contract and signs a Non-Disclosure Agreement as part of the contract.

A formal "Declaration of Other Work" and a formal signed declaration of interests must be submitted by the consultant at the time of competitive tendering / mandated negotiations and before contracting, to ensure that there are no conflict of interests.

Where it is foreseen that the particular consulting services will be followed by further assignments, phases or related services, such as an implementation phase, the relevant Procurement Practitioner and PTC involved in appointing the consultant/s must apply their minds to the following issues:

- Would it be in Eskom's best interests to permit the appointed consultant to tender on related projects, such as an implementation phase, following on the initial consultation regarding scoping;
- How should Eskom formulate the contract to avoid limiting Eskom's options for related projects / services and to avoid giving unfair advantage to the consultant in tendering for related projects / services following on the initial consultation.

Where it is not the intent to permit the consultant to participate in future phases of a project or related supply / services, then such limitations must be notified to the consultant upfront via the conditions of tender and contract, when initially contracting with the consultant. Such provisions must seek to prohibit the consultant and its related parties from participating in future phases or related procurement.

Where the consultant that provided the original consultation is permitted to tender for subsequent consultation or services then the Procurement Practitioner must obtain the approval of the PTC that approved the initial contract (for the initial consultation) or the appropriate higher PTC. The members of the PTC must again apply their minds to ensure that the procurement process for future phases will remain fair, equitable, cost-effective, competitive and transparent, and in Eskom's best interests. However, it must be noted that where a consultant has been specifically appointed (either directly or indirectly) to design a particular scope of work for Eskom, such a consultant is not permitted to participate in at least the first tender for the supply of the designed assets, goods or services concerned, unless a specific strategy supporting the appointment of the supplier for the supply phase has been approved by the relevant Delegated Approval Authority within an approved strategy.

The Procurement Practitioners responsible for the strategic procurement of consultants within Group Technology and Commercial must liaise with a nominated SD&L functionary and HR in order to establish skills development programmes, and monitor skills transfer as a contractual obligation.

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**3.7.2 Nuclear Sourcing**

Nuclear sourcing is applied when procuring assets, goods or services relating to the generation of electricity through the use of nuclear technology, where specific regulatory requirements are applicable due to their importance to nuclear safety.

In addition to complying with all the requirements for procurement / disposals in accordance with the Approved Procurement Framework, the specific requirements stipulated in the following Koeberg Operating Unit documents must also be taken into account within each step of the procurement / disposal:

- 238-8 (Nuclear Safety and Quality Manual);
- 238-10 (Quality Assurance and Control Manual);
- 238-028 (Safety Culture Programme);
- 238-101 (Supplier Safety and Quality Management Requirements);
- 238-102 (Supplier Quality Management Requirements);
- 238-104 (Supplier Management System and Product Information); and
- 238-105 (Supplier Qualification and Audit Manual).

Representatives from the applicable Quality Department must be consulted at every stage of the procurement to ensure compliance to the aforementioned documented requirements. The input from the Quality functionaries with respect to the determination of quality requirements for the identified procurement / disposal is further required for supplier pre-qualification, determination of evaluation criteria, evaluation scoring, review and approval of submissions / reports to Delegated Approval Authorities, evaluation of supplier performance and the verification of received assets, goods or services.

**3.7.3 Land and Rights**

The securing of real rights relating to land for the purposes of Eskom's infrastructure development and operational requirements, is a specialized category of procurement, not always subject to the same competitive sourcing mechanisms and principles applicable to the procurement of moveable assets, goods or services, due to the intangible nature of real rights. These rights are generally secured via direct negotiations with land-owners who are not classified as Suppliers as defined in this Procedure. Notwithstanding this, the approval of land and rights transactions is subject to the specific Delegations of Authority as set out in Appendix A hereto. Further guidelines and standard practices regarding the handling of land and rights transactions will be contained in the Eskom Land and Rights Consideration and Compensation Standard (32-844).

**3.7.4 Eskom Treasury Activities (Borrowings, Issues of Bonds, Investment of Surplus Funds, Market Making, Hedging, and Related Treasury Activities)**

Contracts entered into by the Eskom Treasury Department regarding Treasury activities relating to borrowings, issue of bonds, investment of surplus funds, market making, hedging, and related treasury activities, (such as the appointment of financial institutions or professional services required for the purposes of executing the borrowing programme, issuing of bonds, reviewing of methodologies and testing of models related to hedging transactions and other Treasury related activities), as set out in Section 7 of Annex A: Delegation of Authority Part II: Delegation, of the Eskom Delegation of Authority Policy (240-62072907) are specifically excluded from the ambit of the procurement delegations of authority and this Procedure (32-1034). Notwithstanding this, any requirements by Eskom Treasury Department for use of management or professional consultants rendering general financial advisory

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services will become subject to procurement delegations of authority and all the requirements for procurement in terms of this Procedure.

### **3.7.5 Purchase of Electricity (Independent Power Procedure (IPPs) and Cross-Border Transactions)**

#### **3.7.5.1 Power Purchase Agreements (PPA) with local IPP'S:**

When purchasing electricity via PPA's with IPPS, either Eskom's procurement process will be followed, or the DOE will follow its own procurement process (as per section 34 Ministerial Determination). This decision will be made in consultation with the Eskom Shareholder, being DPE. In both cases ICAS and IFC investment approval needs to be obtained within Eskom. When following Eskom's procurement process, the normal PTC approval will be obtained, as per Delegation of Authority Part II: Delegation, of the Eskom Delegation of Authority Policy (240-62072907) relating to Procurement. Eskom will be a party (the authorised buyer) to the PPA with the IPP.

#### **3.7.5.2 Cross-Border Agreements**

Cross-border agreements will be handled on a case by case basis, following a procurement process as agreed with the different cross-border stakeholders and the local South African shareholder involved in the PPA. IFC and approval by the Eskom Shareholder (DPE) must be obtained for PPAs as Eskom will be a legal party to the PPA, as per the Delegation of Authority Part II: Delegation, of the Eskom Delegation of Authority Policy (240-62072907) relating to Electricity Sales and Purchases. Eskom may act in different capacities, either as 'off-taker' or as a partner with the relevant SADC authorities with regard to Wheeling Agreements and / or Connection and Use of System Agreements. In these cases, no PTC approval needs to be obtained in order to enter into such agreements.

#### **3.7.6 Strip and Quote Transactions**

With regards to 'strip and quote' transactions, where a quote can only be given for a repair once the equipment is stripped and the damage assessed. Panel contracts may be established for common elements of repair work where possible. Specific standard activities / tasks may be agreed to with the Suppliers, on a rate basis. Suppliers having the capability to execute these types of contracts may be approached to participate on the panel based on a pre-qualification enquiry or a tender which may be used as a basis for putting rate based contracts in place. A call-out rate per hour per category of repair / resource may be used as a basis for the contract. Once the panel contract is established, task orders may be issued when repairs are required. In this case it is not possible to send a RFQ to all members of the panel. A rotation process whereby every member is given a chance to quote is used. Only one supplier is approached with a request to strip and quote for any given repair required. These panels may have to distinguish between repairs which have to be done by an OEM, vs. repairs for non-proprietary items and equipment.

The same principles for setting up and managing panels and panel contracts as set out in 3.2.10.3 herein will be applicable.

#### **3.7.7 Use of Cheque Requisition (Payment for Assets, Goods or Services without Execution of Informal / Formal Sourcing Mechanisms)**

Cheque requisitions relating to the procurement of assets, goods and/or services on behalf of Eskom may be used as a direct payment mechanism (without the execution of a sourcing mechanism) only within the parameters of Group Technology and Commercial, and Accounts Payable policies and procedures, Divisional and individual delegations of authority, and subject to operational policies and procedures governing the category of supply of the said assets, goods and/or services.

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The use of cheque requisitions is permissible only with regards to the following specific categories of assets, goods or services:

- Entertainment for authorised Eskom events (Meals, Sporting Events, Theatre, Comedy, and the like, subject to the written consent of the relevant Group / Divisional Executive);
- Venue Bookings for authorised Eskom events (subject to the written consent of the relevant Group / Divisional Executive);
- Gifts and Gift Vouchers for Eskom employees, subject to approved Eskom policies around gifting;
- Promotional Items for distribution to Eskom employees;
- External training, seminars, conferences, motivational speakers;
- Subscriptions (Newspapers, Periodicals, Magazines, etc.);
- Subscriptions and Memberships to Professional Bodies;
- Recurrent monthly accounts, such as utilities and telephone accounts;
- Rates and taxes;
- Rental on buildings;
- Licenses, excluding software licences;
- Employees' removal expenses when transferred;
- Books and research reports for the Eskom library;
- One-time vendors where the supplier registration process is not feasible due to the time or value of the required ad hoc, once-off supply of goods or services (subject to a maximum value of R150k, a term of service not exceeding 5 consecutive days, and the prior written consent of the relevant GM: Commercial where the value exceeds R30k).

The person signing the cheque requisition is accountable for the procurement. If a cheque requisition is required for an item outside the above list of goods or services, or for an item within this list for which there may be an existing contract in place to supply such goods or services, then prior approval must be obtained from the relevant Senior Commercial Manager responsible for the category of supply and supported by the relevant GM: Group Commercial and Technology, prior to the signing and processing of the cheque requisition.

If a cheque requisition is used to purchase items outside this list without the necessary prior approval, then the accountable person will become liable for the purchase in his/her personal capacity and must seek condonation for breach of this Procedure from the relevant PTC. If the expense/purchase is a recurring expense, then a contract must be put in place.

### **3.8 Supplier Management**

#### **3.8.1 Supplier Registration**

Eskom may from time to time invite any person or class of persons to apply for registration as a supplier on the Eskom Supplier Database. Such invitation may be publicly advertised by whatever means deemed necessary by Eskom to bring the invitation to the attention of potential suppliers and such advertisement must include the following detail:-

- where and from whom application forms can be obtained and submitted to, with specific platforms being created where certain categories of suppliers may not have access to electronic media;
- how to submit the application form and supporting documents for registration with Eskom;

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- where and to whom enquiries can be made;
- the general requirements for registration as a supplier of assets, goods or services to Eskom;
- if applicable, the pre-qualifying criteria to be met by an applicant for registration as a supplier of a specific kind, class or category of assets, goods or services to Eskom;
- the deadline for the submission of applications and supporting documents; and
- an express statement that the Standard Conditions for Registration as Supplier are applicable to the whole of the application and registration process as well as the duration of any registration as supplier on the Eskom Supplier Database and that a copy thereof is available on the official website of Eskom or will be made available on request.

Eskom will only consider applications for registration as a supplier on the Eskom Supplier Database duly lodged in response to such a publicly advertised invitation and received by Eskom before the deadline at the designated place for the submission thereof.

Notwithstanding the aforementioned principle, if, during the execution of any procurement or sourcing by Eskom, a person / entity, who is not registered as a supplier on the Eskom Supplier Database, is instructed to apply for such registration, an application for such registration may be considered without the need for publicly advertising an invitation as set out above and must be given priority in the processing thereof, at least by the time of making a recommendation to the Delegated Approval Authority for contract award.

A person wishing to apply for registration as a supplier on the Eskom Supplier Database must submit an application:

- On an official Supplier Application Form, obtained from Eskom, or a copy thereof. Where the facilities are available, the application form may be submitted electronically through the official Eskom website / portal link by following the hyperlinks for supplier registration and all the instructions prescribed thereon;
- Duly completed in all relevant respects and supported by all the relevant documents as requested;
- At the place designated for the submission thereof; and
- Where it is an application in response to an invitation publicly advertised as contemplated above or in response to a general instruction to re-apply for registration, before the deadline for the submission thereof.

Upon receipt of an application for registration as a supplier on the Eskom Supplier Database, the assigned SD&L official shall first verify whether or not the application form has been submitted in compliance with Eskom's requirements as stated on the official Supplier Application Form, whereupon the SD&L official shall:

- Acknowledge receipt of the application in writing if it has been so submitted;
- Return the application and decline in writing to accept it where the application:-
  - Was not made on the official Eskom Supplier Application Form or a copy thereof and/or through the official Eskom website;
  - Was made, or was received at the place designated for the submission thereof, after the applicable deadline for the submission thereof; or
  - Is de-registered from Eskom's supplier database based on the process for supplier reconsideration set out below; or
- Request the applicant supplier in writing to duly complete or ensure completion of the Supplier Application Form in any particular respect (including the signing thereof) that is outstanding and/or to

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provide any of the outstanding documents or information (as the case may be) before a stipulated date, which may be extended once upon a written request, failing which the application form and all the documents pertaining thereto may be destroyed and that application will not be processed any further.

Where an application was not received at the place designated for the submission thereof, Eskom shall not be under any obligation to deliver that application to such designated place or to process such application.

Only those applications, for which an acknowledgement of receipt was given or in respect of which the applicant complied timeously with the written request, are regarded as accepted applications.

Eskom shall consider each accepted application to determine if that application:

- Meets the general requirements for registration as a supplier of assets, goods or services to Eskom;
- Where applicable, meets the pre-qualifying criteria for registration as a supplier of a specific kind, class or category of assets, goods or services to Eskom;

and may, for the purposes of such determination, request the applicant supplier in writing to provide Eskom with such further information and/or documents as Eskom deems relevant or useful before a stipulated date, which may be extended once upon a written request, failing which the application form and all the documents pertaining thereto may be destroyed and that application will not be processed any further.

In considering the application of a foreign potential supplier, Eskom may also request such further information and/or documents as would confirm that the technology of such a foreign potential supplier is compatible with the needs and requirements of Eskom and Eskom may further, for the purpose of an assessment of such technology, arrange for an inspection thereof by or on behalf of Eskom.

The pre-qualifying criteria for registration as a supplier of a specific kind, class or category of goods or services to Eskom are those criteria, at Eskom's discretion, with which a supplier of assets, goods or services must comply in order to meet the identified needs or requirements of Eskom or an End-user, taking into consideration all relevant factors including but not limited to:-

- The risks attached to or inherent in the rendering of the service or the provision of the assets or goods;
- The level of technology required by Eskom;
- Any specialist qualifications of or registrations by entities or individuals, as required by legislation or practice;
- The criticality of the assets, goods or services for the core business of Eskom;
- The risks for the safety and health of all concerned, including the employees or agents of Eskom as well as of the supplier and the general public;
- The risks for the environment;
- The potential for localisation and the development of skills;
- The need for a procurement policy providing for-
  - (i) Categories of preference in the allocation of contracts; and/or
  - (ii) The protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination; and
- The monetary value of the supply in question.

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In considering any accepted application, Eskom is entitled to make use of all information or sources of information at its disposal or available to it. In the event of Eskom discovering any misrepresentation of fact in an accepted application or if Eskom on reasonable grounds suspects that the person who submitted an accepted application is unaware of adverse information in the possession of Eskom, Eskom must notify that person of such misrepresentation or adverse information, and must afford such person an opportunity to deal /resolve the matter before a stipulated date, whereafter Eskom may take a decision on the basis of all the information then at its disposal or available to it, including a decision not to approve an accepted application.

If upon considering any accepted application Eskom determines that an accepted application does not meet the stipulated requirements, the assigned SD&L official shall give the person who submitted the accepted application notice that the application has not been approved and shall furthermore state therein:

- The reasons why that person did not qualify for registration;
- The areas, functions or aspects which were found to be weak, below average or not up to standard and which that person should address or improve with a view to future applications; and
- That, subject to the requirements and criteria that may then be applicable, that person is free to apply for registration as a supplier on the Eskom Supplier Database in response to any future invitation.

If upon considering any accepted application Eskom determines that an accepted application does meet the stipulated requirements, Eskom may decide to approve or not approve any accepted application by taking into consideration all relevant information as well as the following factors:

- The feasible or desirable number of suppliers, either in general or for a specific kind, class or category of goods or services to Eskom, that can be accommodated and/or effectively managed on the Eskom Supplier Database;
- The hierarchy and categories of preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;
- The need for a specific kind, class or category of suppliers of goods or services to Eskom;
- The geographical distribution of suppliers;
- The logistical demands or constraints for any supply of goods or services to Eskom;
- The total number of accepted applications; and
- The possibility that the person may be a front for or under the control of a person who has been de-registered as a supplier on the Eskom Supplier Database

Eskom is not obliged to accept all or any accepted applications and may decide to approve a limited number of accepted applications in the order in which receipt of the accepted applications, or any kind or class or category thereof, was acknowledged, and provided further, that these possible limitations have been clearly set out in the invitation to register and / or the Standard Conditions of Registration.

If Eskom decides not to approve an accepted application, the SD&L official shall give the person who submitted the accepted application a written notice thereof.

If Eskom decides to approve an accepted application, Eskom shall:

- Establish a supplier profile for that person / entity, which profile must also include:
  - The name and particulars of that person / entity;
  - The contact details of that person / entity;
  - The preferential procurement status of that person (if any);

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- The specific kind, class or category of assets, goods or services which that person can or may supply to Eskom; and
- The geographical area which can be supplied by that person;
- Register the person / entity on the Eskom Supplier Database as a supplier of assets, goods and services to Eskom in accordance with the supplier profile, by creation of a vendor number;
- Provide the supplier's authorised representative who submitted the accepted application notice that the application has been approved and that the person / entity has been registered on the Eskom Supplier Database as a supplier of assets, goods and services to Eskom, with confirmation of the vendor number assigned, linked to the supplier's profile.

The continued registration of a person on the Eskom Supplier Database as a supplier of assets, goods and services to Eskom is subject to:

- The on-going maintenance of the registration and supplier profile of that person / entity, requiring and obliging that person / entity to inform Eskom in writing of any change in the information that was provided to Eskom or any other information that may be relevant for the continuing registration of that person or for the updating of the supplier profile of that person or for the protection and enhancement of the procurement system of Eskom, as soon as is reasonably possible after that person becomes aware of such change or other information;
- A reconsideration of registration status in terms of Section 3.8.9 below; and
- A general instruction to re-apply in terms of clause 35 of the Standard Conditions of Registration.

The SD&L official files and archives Supplier Application Forms for a period of 5 years for audit purposes. Regular internal audits must be conducted by the Internal Audit function on the process followed and verification of the information provided by the suppliers.

The Supplier Evaluation Manager within SD&L must conduct regular assessments on supplier registration processes executed to ensure that the details of suppliers registered on the Eskom Supplier Database are accurate, updated and adequate for use at any given time.

### 3.8.2 Registration Requirements for International Suppliers

An international supplier is a foreign company carrying on business within South Africa, defined as an "external company" in terms of section 23(2) of the Companies Act 71 of 2008.

International suppliers are required to submit the following documentation, as a minimum, for purposes of becoming a registered supplier on the Eskom supplier database:

- International suppliers having local South African operations/offices and/or local South African shareholders must provide registration documents from the CIPC;
- International suppliers with no local South Africa operations, offices or shareholding must provide registration documents from the country of incorporation;
- Certified copies of passports for shareholders and directors where shareholders and directors are not in possession of South African identity documentation;
- Proof of the address of the registered head office;
- Company profile confirming services / supply organisational structure, and references of previous supply/services; and
- International suppliers having local South African operations/offices and/or local South African shareholders must provide a Letter of Good Standing in terms of COIDA, while international

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suppliers with no local South Africa operations, offices or shareholding must provide proof of registration with the COIDA equivalent body of the country of incorporation.

### 3.8.3 Name Changes, Mergers, Acquisitions, and Cessions

A supplier is contractually obliged to notify Eskom of any official changes to its legal name, changes to its legal persona, ownership and management, and any cessions of rights and delegation of obligations in terms of contracts with Eskom.

Where a supplier undergoes a name change without changes to its legal persona, ownership and/or management, then such a name change must be duly notified to Eskom within 30 days thereof in terms of the Conditions of Registration. All appropriate documentation confirming the name change, together with all updated documentation containing the supplier's new name must be submitted to Eskom. The supplier's vendor registration number will not be changed in this instance.

Where a registered supplier undergoes a name change which is as a result of a change to its legal persona (e.g. conversion from a CC to a limited liability company), a merger /acquisition between various entities and /or a change in ownership and / or management, then such a supplier is obliged to notify Eskom of the change, within 30 days thereof. Failure to notify Eskom of such a change may result in the supplier having its registration status reconsidered by Eskom, and any existing contracts may be terminated as a result.

Where a supplier duly notifies Eskom of such change, such notification must be accompanied by a new application to register as a supplier on the Eskom Supplier Database. The supplier, in its new form, must re-apply and re-qualify to be registered on the Eskom Supplier Database, against appropriate supporting documentation. The supplier will receive a new vendor number.

Changed banking details, company registration documents and certified letters from suppliers will be required in order to re-register. The record on the system will be changed to reflect the new details.

An internal due diligence must be conducted on the supplier, led by the Procurement Practitioner, and the impact of the change on the delivery of existing contracts assessed. To the extent that Eskom requires retaining the supplier in its new form against the existing contract, a formal modification must be authorised by the relevant Delegated Approval Authority, as this will amount to a change to the contracting party. Where an internal due diligence indicates that the change to the legal persona, merger/acquisition, ownership and /or management, places Eskom at undue risk and disadvantage, Eskom may terminate the contract/s with the supplier in consultation with the Eskom Legal Department, and commence a new sourcing process for the procurement of the required assets, goods or services.

Should a registered supplier require cession / delegation of its contractual rights and obligations with Eskom to another (legal) person, then such a cession / delegation can only occur with the specific prior written consent of the Eskom Agent responsible for the management of the contract in question, in consultation with the Eskom Legal Department, and only after obtaining internal modification approval, in order to enable an external and possibly unrelated third party from becoming a beneficiary. While Eskom may consent to cessions / delegations in support of supplier development and localisation initiatives, Eskom will, under no circumstances, enter directly into any contracts with such third parties.

If there are no contracts/orders linked to a specific supplier who wants to change its name, legal persona, shareholding and /or management, then the Supplier may be deleted from the Eskom Supplier Database.

### 3.8.4 Supplier Communications and Complaints

Procurement Practitioners, Contract Managers and nominated SD & L officials will liaise and engage with Suppliers on an on-going basis via a number of accepted communication mechanisms that may include a dedicated e-mail address for Suppliers to communicate with Eskom, surveys, Supplier forums,

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and one-on-one meetings, where necessary. All issues formally raised by suppliers must be formally recorded and maintained for reference purposes.

Any official / formal supplier complaints must be routed to the office of the Senior Manager: Risk and Governance for resolution.

Whenever any person / entity:

- (i) Registered as a supplier on the Eskom Supplier Database; or
- (ii) Who signed a Supplier Application Form; or
- (iii) Who is an authorised signatory to a tender / offer /proposal requested by Eskom;

has reason to believe that any person, either by commission or omission, transgressed any policy, protocol, procedure or rule of Eskom, whether pertaining to its procurement system or its business, or conducted himself in a manner that may, directly or indirectly, or that is calculated to, impact adversely on the procurement system of Eskom, that person shall immediately lodge a written complaint with the Senior Manager: Risk and Governance (Group: Technology and Commercial).

The office of the Senior Manager: Risk and Governance must facilitate investigations into any written complaint lodged by a person / entity, and be the single centralised point for the resolution of all supplier complaints.

The manner of conducting the investigation as well as any decision taken in respect thereof shall be within the sole and unfettered discretion of Eskom.

### **3.8.5 Duties and Responsibilities of Eskom to Registered Suppliers**

Subject to the provisions of the Promotion of Access to Information Act 2 of 2000, Eskom must keep all proprietary information of a person, who submitted an application or who is registered as a supplier on the Eskom Supplier Database, confidential and not disclose it to any private party. However, information that is generally available in the public domain or which was published by that person / entity need not be treated as confidential. Eskom remains entitled to the use and distribution of all the proprietary information of that person / entity for the purpose of managing its business and/or any procurement or the procurement system of Eskom.

Eskom will use the Eskom Supplier Database from time to time to select or invite a closed list of registered suppliers, to participate in the sourcing or procurement by Eskom of assets, goods or services as and when Eskom identifies a need therefor.

Eskom may use any alternative method of procurement or sourcing, including an open tender process, where Eskom is of the view that such method will be more suitable or appropriate under the circumstances.

Registration as a supplier on the Eskom Supplier Database is not a guarantee or assurance of any kind whatsoever that the person / entity so registered will be so selected or invited or that any purchase order or contract can be expected to be awarded or will be awarded to that person.

Eskom may, upon written request and on reasonable notice, provide access, during business hours, to any person / entity registered as a supplier on the Eskom Supplier Database and to any person who signed the application form for that person / entity, to the information on the Eskom Supplier Database pertaining to that supplier and/or signatory.

### **3.8.6 Duties and Responsibilities of Registered Suppliers**

Every person / entity registered as a supplier on the Eskom Supplier Database and any person who signed the Supplier Application Form for that person / entity will be required at all relevant times conduct

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themselves in a manner fully consistent and/or in accordance with the current Eskom Purchasing Pact with Suppliers and the General Conditions of Supplier Registration.

### **3.8.7 Management of Contractor Safety**

#### **3.8.7.1 Investigation**

As part of the contract management process suppliers must be subjected to an immediate investigation initiated by the Eskom Agent in terms of their contracts where one or more of the following events have occurred:

- A supplier has one or more work-related fatalities within a financial year or during the period of the contract if less than 1 year; or
- A supplier experiences three lost time incidents within the same financial year; or
- A supplier has three major health and safety non-conformances raised; or
- A supplier has had two or more contraventions of environmental legislation, including non-compliance to a condition contained in an environmental approval; or
- The supplier has been issued with a compliance notice issued by a government department for example: Department Of Labour, Department of Environmental Affairs, Department of Water Affairs, etc. or
- There is a violation of any of the Eskom Life-saving Rules; or
- There are five major SHE audit findings raised per audit/audits per financial year, i.e. this includes internal and external audits; or
- A supplier is found to have submitted fraudulent SHE-related documents.

Outcome of the investigation may initiate a process of supplier reconsideration in terms of 3.8.9 below, or, for less severe safety transgressions may result in engagement with the supplier regarding corrective action, as part of effective contract management.

Factors to be considered when meting out corrective action, or when a supplier's registration status is being reconsidered for reasons of SHE transgressions include whether:

- The Supplier has taken the appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for reconsideration;
- The Supplier has taken or agreed to take remedial measures, including any measures recommended by Eskom;
- The Supplier instituted or agreed to institute new or revised Review and Control Procedures and Programmes;
- The Supplier had adequate time to eliminate the circumstances in the Supplier's organisation that led to the reason for the investigation;
- The Supplier's management recognise and understand the seriousness of the acts /omissions giving rise to the reason to the reconsideration process, and whether the Supplier has implemented programmes to prevent a recurrence;
- The acts /omissions have an impact on finance and production connected to the project/contract, and the extent thereof.

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### 3.8.7.2 Temporary Work Stoppages

Eskom's SHEQ Policy states that *"no operating condition, or urgency of service, justifies exposing anyone to negative risks arising out of Eskom's business, causing an incident with health, safety, environmental, and quality consequences."* Any person may stop an activity, unsafe act or unsafe condition that poses or may pose a threat to the health and safety of an individual or create a risk of degradation to the environment. This includes any unauthorised work or commencement of an activity without required environmental approval, or legally or contractually non-compliant acts or omissions by performed by the Supplier or such Supplier's subcontractor or subcontractor's supplier.

The temporary stoppage of an activity (activities)/task(s) may be due to SHE concerns, including the following circumstances:

- Ad hoc work stoppages by Eskom management, all work of a similar nature may be stopped due to the occurrence of a serious incident, and the relevant Supplier will be required to comply with and/or verify the conditions stipulated in the work stoppage instruction pack.
- Ad hoc work stoppages by any person especially SHE functionaries: may be due to unsafe work or unsafe behaviour by the supplier. The conditions that gave rise to the work stoppage will determine the corrective measures to be taken urgently to protect the health and safety of employees, protect the environment and to protect the plant/equipment, etc.

### 3.8.8 Management of Internal Suppliers

Where an Internal Supplier continuously renders inadequate or sub-standard service quality, the normal contract management process must be followed with respect to rectification and remedies for breach.

The appointed Contract Manager must give the Internal Supplier written notice of the problem/non-conformance, and indicate the action required and time allowed.

If the Internal Supplier does not adequately respond, the specific assets, goods or services will be removed from the list of specified items in the Framework Agreement after determining that there are other suppliers in the market who can supply it. As a last resort, the Framework Agreement may be terminated and a contract may be placed with another supplier.

Where a history of poor performance can be proven over time with respect to an Internal Supplier, the Internal Supplier may be subject to the process of reconsideration of its registration status as set out in below, which may be applicable for a specified period of time.

### 3.8.9 Reconsiderations of Supplier Registration Status

#### 3.8.9.1 Grounds for Reconsideration in Specific Instances

Eskom is entitled to reconsider the registration status of a supplier on the Eskom Supplier Database, on any one or more of the following grounds:-

- i) A contravention of, a failure to comply with, or a breach of any of the terms, conditions or provisions of:-
  - the Eskom Purchasing Pact for Suppliers;
  - the Standard Conditions for Registration as Supplier;
  - the Standard Conditions of Tender;

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- the agreed conditions of contract, for the supply of assets, goods or services to Eskom, where applicable;

by the supplier, any of its employees, any person under its control, or any related person, which is of such materiality that it is deemed a threat or abuse to the Eskom procurement system, thereby requiring a reconsideration of the supplier's registration status with Eskom;

- ii) any conduct of the supplier, any of its employees, any person under its control, or any related person being the direct or indirect cause of any disciplinary action taken against an employee of Eskom for any misconduct that pertains to any aspect of procurement (in the broad sense, including the entire process prior to the acquisition of goods or services and the administration of any contract or order resulting from that process);
- iii) the supplier, any of its employees, any person under its control, or any related person promoting or inciting labour unrest, other than a protected strike, at any site or premises under the control and supervision of Eskom or, where another supplier has a contract with Eskom for the supply of assets, goods or services, of that other supplier where such labour unrest has a detrimental or potentially detrimental impact for Eskom on any aspect of procurement (in the broad sense, including the entire process prior to the acquisition of assets, goods or services and the administration of any contract resulting from that process);
- iv) the supplier, any of its employees, any person under its control, or a related person deliberately attempts to frustrate or obstruct, directly or indirectly, the ability of Eskom and/or of another supplier under a contract with or order from Eskom to carry out the obligations, duties or responsibilities in terms of any contract, order or legislation;
- v) the supplier, any of its employees, any person under its control, or a related person making use of any labour, material, transport, equipment, intellectual property or other assets, belonging to or under the control and supervision of Eskom or which Eskom is entitled to use, without the written consent of Eskom and either for the benefit or gain by the supplier or by a person other than Eskom or to the prejudice or potential prejudice of Eskom;
- vi) the supplier, any of its employees, any person under its control, or a related person being found in the unauthorised possession of, or being engaged in removing without permission, any property belonging to Eskom, any employee of Eskom or another supplier of Eskom;
- vii) The supplier, any of its employees, any person under its control, or a related person person being found guilty by a court:
  - of any offence in terms of the Prevention and Combatting of Corrupt Activities Act 12 of 2004;
  - of any other crime involving dishonesty and for which any term of effective imprisonment, with or without the option of a fine, is imposed;
- viii) any conduct by the supplier, any of its employees, any person under its control, or a related person resulting:
  - in that person being found guilty by a court of any crime;
  - in that person paying an admission of guilt fine in terms of chapter 8 of the Criminal Procedure Act 51 of 1977;
  - in any adverse finding being made against that person by any court, commission, tribunal, administrative body or regulatory institution in any proceedings, matter or investigation before it;
  - in any adverse procurement-related decision by an organ of state made solely on the basis of that conduct;

which conduct relates to, impacts upon or pertains to any aspect of procurement (in the broad sense, including the entire process prior to the acquisition of goods or services and the administration of any

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contract or order resulting from that process) by Eskom or to any aspect of the procurement system of Eskom;

- ix) the supplier, any of its employees, any person under its control, or a related person acquiring from any source, not authorised in writing by Eskom, or using, without the written permission of Eskom, any confidential information of Eskom, including any intellectual property of Eskom, or confidential information of another supplier in the possession of or under the control of Eskom, with a view to obtain a competitive advantage over other suppliers or potential suppliers of assets, goods or services to Eskom;
- x) the supplier, any of its employees, any person under its control, or a related person disclosing any confidential information of Eskom, including any intellectual property of Eskom, or confidential information of another supplier in the possession of or under the control of Eskom, to a third party for any procurement-related purpose where that confidential information was obtained in the course of or incidental to carrying out the contractual obligations of the supplier to Eskom;
- xi) if the supplier no longer meets the general requirements for registration as a supplier of assets, goods or services to Eskom or no longer meets, where applicable, the pre-qualifying criteria for registration as a supplier of a specific kind, class or category of assets, goods or services to Eskom;
- xii) the supplier, any of its employees, any person under its control, or a related person making any false statement or any misrepresentation, by commission or omission and either knowingly, negligently or innocently, to Eskom which:
  - induces or is calculated to induce Eskom to register that supplier as supplier on the Eskom Supplier Database, to enter into a contract with that supplier or issue him with an order; or
  - relates or pertains to the performance of the contractual obligations between Eskom and that supplier;
- xiii) the supplier, any of its employees, any person under its control, or a related person wilfully making any false statement or any misrepresentation, by commission or omission, to Eskom in order to:
  - prevent another person from being registered as a supplier on the Eskom Supplier Database or from being registered with a particular supplier profile;
  - prevent a contract to be entered into or an order to be issued by Eskom with or to another registered supplier;
  - induce Eskom to reconsider the registration of or to de-register another supplier on the Eskom Supplier Database;
- xiv) the supplier having built up a history of poor performance on one or more contracts with or orders from Eskom, including poor performance on matters or aspects of safety, health, quality control and/or environmental regulation, or having committed a serious and gross breach of contract;
- xv) in general, any conduct by the supplier, any employee of his or any person under his control or a related person prejudicial or potentially prejudicial for procurement (in the broad sense, including the entire process prior to the acquisition of goods or services and the administration of any contract or order resulting from that process) by Eskom or for the procurement system of Eskom.

### 3.8.9.2 Grounds for Reconsideration in General Instances

- i) Where a natural person who is registered as a supplier on the Eskom Supplier Database:
  - dies;
  - voluntarily surrenders his estate or is sequestered in terms of the Insolvency Act 24 of 1936; or

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- is declared by a court of law to be of unsound mind and as such incapable of managing his affairs;

Eskom shall take the necessary steps to ensure that:-

- the supplier is blocked on the Eskom Supplier Database;
- no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
- the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised.

ii) Where a partnership who is registered as a supplier on the Eskom Supplier Database:

- is dissolved; or
- voluntarily surrenders its estate or is sequestrated in terms of the Insolvency Act 24 of 1936;

Eskom shall take the necessary steps to ensure that:-

- the supplier is blocked on the Eskom Supplier Database;
- no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
- the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised.

iii) Where a legal person who is registered as a supplier on the Eskom Supplier Database:

- adopted a resolution to voluntarily begin business rescue proceedings or a person applies to a court for an order placing that legal person under supervision and commencing business rescue proceedings; or
- initiates liquidation proceedings or had liquidation proceedings initiated against that legal person

Eskom shall take the necessary steps to ensure that:-

- the supplier is blocked on the Eskom Supplier Database;
- no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
- the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised.

iv) Where Eskom is entitled to reconsider the registration of a supplier on the Eskom Supplier Database based on the Grounds for Reconsideration in Specific Instances, or Eskom takes the necessary steps in the event of death, insolvency, incapacity or business rescue of a supplier, Eskom may also reconsider the registration of:

- any related person, where that related person is registered as a supplier on the Eskom Supplier Database; and
  - any other person who is registered as a supplier on the Eskom Supplier Database and in respect of which the related person referred to above is also a related person;
- in accordance with the procedure for reconsideration as set out below.

### 3.8.9.3 Procedure for Reconsideration

The procedure for the reconsideration of the registration of a person / entity as a supplier on the Eskom Supplier Database is as follows:

- Separated or combined processes: For the purpose of this Procedure, Eskom via the Standing Committee may decide to follow separate processes for each individual supplier or to follow one or

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more combined processes against all or any number of individual suppliers where the reconsideration of the registration of more than one person / entity as a supplier on the Eskom Supplier Database is being considered.

- ii. **First notification:** If on the basis of any written communication or report a Risk and Governance Official has reasonable cause to suspect that there are grounds to reconsider the registration of a supplier, the Risk and Governance Official must immediately collect all relevant information on record with Eskom and prepare a first notification in writing, providing a brief written account with a recommendation, for submission to the Secretariat: Supplier Disciplinary Standing Committee, for placement on the agenda for consideration at the next sitting of the Standing Committee. The written recordal of any information supplied by a confidential informant or any notes of a discussion with such informant by an employee of Eskom must be deemed to be such a written communication or report and the Risk and Governance Official shall ensure that the identity of such informant, if known by Eskom, is protected against disclosure.
- iii. **First (Desktop) Assessment:** Upon receipt and consideration of a first notification from the Risk and Governance Official, the Standing Committee may, by consensus or majority:
  - reject the matter as frivolous;
  - refer the matter to the relevant Eskom Agent, to be dealt with under the terms and conditions of the relevant contract awarded and/or of the order given by Eskom to the person in question; or
  - accept the matter for further investigation and to that end refer the matter for internal investigation to the appropriate subject matter experts within Eskom.

Persons assigned by the Standing Committee to serve as Case Investigators:

- must at least be a manager holding a position classified as an M15 or above in terms of the TASK Job Grading System;
  - must be suitably qualified and experienced to investigate the matter;
  - may, under exceptional circumstances, be an independent third party who is, to the satisfaction of the Standing Committee, a fit and proper person to do an investigation in the matter and report back to it thereon.
- iv. **Investigation and Preliminary Report:** The assigned Case Investigator must, without delay, investigate the matter as discreetly and as fully as circumstances, logistics and contingencies allow in any lawful manner he / she deems fit and appropriate, where after he / she must, as soon as is practically possible, prepare and submit a written and confidential report to the Standing Committee on the investigation containing:
    - a description of the investigation and the steps taken to investigate the matter;
    - a summary of all the relevant information pertaining to the matter, set out in a manner that identifies the source or sources of that information;
    - a motivated finding as to whether or not there are in fact grounds to reconsider the registration of a supplier on the Eskom Supplier Database;
    - a provisional view on the matter and the reasons for that provisional view;
    - a recommendation to the Standing Committee; and
    - copies of all relevant documentation, including a copy of the First Notification and the documents on which it was based, as well as any written witness statements or copies of relevant correspondence found during the investigation.

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- v) Second assessment: Upon receipt and consideration of the report of the Case Investigator, the Standing Committee may, by consensus or majority:
- reject the matter as frivolous;
  - refer the matter to the relevant Eskom Agent, to be dealt with under the terms and conditions of the relevant contract awarded and/or of the order given by Eskom to the person in question; or
  - decide to proceed with the process of reconsideration, whereupon the Standing Committee shall take the necessary steps to ensure that:-
    - the person or persons in question are each notified in writing of the decision of the Standing Committee and the reasons for that decision;
    - together with the said written notice, the person or persons in question are each provided with a copy of the report of the Case Investigator, without the identity of any confidential informants, if any, being disclosed;
    - the person or persons in question are each informed that they have the opportunity to respond in writing on the report of the Case Investigator and/or to make written representations and/or to submit any additional information in writing to Eskom as to whether or not they should be de-registered as a supplier on the Eskom Supplier Database, and calling upon them to do so before a stipulated date, which may be date not less than twenty-one (21) days from the date of the receipt of the said written notice and which date may be extended once upon a written request for a period of not more than two (2) weeks; and
    - the person or persons in question are flagged on the Eskom Supplier Database and given written notice of such flagging.
- vi) Final Report and Assessment: As soon as possible after the receipt of any such comment, representations and/or additional information by Eskom from the person or persons in question (if any) or upon the expiry of the date or extended date stipulated therefor, a Final Report must be prepared by the Risk and Governance Official inclusive of the comments, representations and/or additional information (if any), but without any further information from the Case Investigator, and submitted to the Standing Committee, which may then, upon receipt and consideration thereof, in its sole and unfettered discretion:
- decide that the matter be finally considered on the documentation before it and take a decision regarding the outcome of the matter and reconsideration of the supplier's status;
  - direct that the person or persons in question be given an opportunity, at a time and place to be arranged by the Secretariat of the Standing Committee, to make oral submissions before a meeting of a subcommittee, consisting of any one or more of its members, which oral submissions together with any oral reply by the Case Investigator as well as his report with the comment, representations and/or additional information (if any), shall then be taken into account by the subcommittee to take a decision regarding the outcome of the matter and reconsideration of the supplier's status. No party shall be entitled to legal representation at such a hearing and no further documents, other than written heads of argument, may be submitted at such a hearing;
  - invite, with due regard for the dictates of procedural fairness, the person or persons in question and/or the Case Investigator to make and/or exchange further written representations, either in general or on a specific issue, to the Standing Committee before a stipulated date, after which date the Standing Committee shall on the report of the Case Investigator as well as on any comment, representations and/or additional information (if any), plus any further representations received before the stipulated date (if any) take a decision regarding the outcome of the matter and reconsideration of the supplier's status;

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- Provided that: the Standing Committee, and/or its subcommittee, shall keep proper minutes of any of its meetings.
- vii) Sanction: In the event of the Standing Committee or a subcommittee thereof finding that there is a ground or grounds to reconsider the registration of a person / entity as supplier on the Eskom Supplier Database, it may, by consensus or majority:
- give that person / entity a final warning that, in the event of such a finding being made again, that person will be de-registered as a supplier on the Eskom Supplier Database;
  - give that person a final warning and with conditions to take the necessary steps, at his own costs, within a specified period of time to address any legitimate concerns of Eskom, including conditions:
  - to take and implement specified corrective measures with regard to the supervision and control of the business, the operations or the management of that person as supplier on the Eskom Supplier Database;
  - to provide selected employees, agents and/or subcontractors of that person with specified training or with an opportunity to obtain specified qualifications; and/or
  - to upgrade, maintain or improve the plant, material or equipment of that person as supplier on the Eskom Database in a specified manner;
- Provided that if that person/entity fails to comply with such a directive within the specified period of time, Eskom shall flag that person on the Eskom Supplier Database pending full compliance with such a directive;
- suspend the registration of that person as a supplier on the Eskom Supplier Database for a period not exceeding one (1) year, during which period of suspension that person shall be flagged on the Eskom Supplier Database, with or without conditions. The period for compliance therewith shall be the period of suspension;
  - decide to de-register that person as a supplier on the Eskom Supplier Database, whereupon the Standing Committee or its subcommittee, as the case may be, shall take the necessary steps to ensure that:
    - the supplier is blocked on the Eskom Supplier Database;
    - no award of any further contracts or placing of orders with that supplier is processed by Eskom; and
    - the supplier is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised; or
    - decide to de-register that person as a supplier on the Eskom Supplier Database and to terminate all existing contracts or cancel all orders placed with that person, with immediate effect.
- viii) Notification of outcome: Notification of the outcome of any matter shall be given as follows:
- The person or persons whose registration as supplier on the Eskom Supplier Database was under reconsideration, shall be given written notice of the outcome within thirty (30) days after a decision was taken, with sufficient detail of the steps to be implemented by Eskom as a result thereof, and shall at the same time be provided with written reasons for that decision.
  - If Eskom has reason to believe that a person failed to comply in time with stipulated conditions, which served as a condition for full re-instatement of the supplier on the Eskom Supplier Database, such person / entity shall be given written notice to provide Eskom with sufficient proof of such compliance within seven (7) days after the date of receipt thereof, and,

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in the event of that person failing to respond or failing to provide such sufficient proof, Eskom shall:

- where that person was given a final warning, flag him as a supplier on the Eskom Supplier Database and take the necessary steps to ensure that no award of any further contracts or placing of orders with that supplier is processed by Eskom whilst he remains so flagged; or
  - where that person was suspended and full reinstatement was dependent on the fulfilment of conditions stipulated, block the supplier on the Eskom Supplier Database and take the necessary steps to ensure that no award of any further contracts or placing of orders with that supplier is processed by Eskom and that he is de-registered as a supplier on the Eskom Supplier Database immediately after all outstanding matters with regard to that supplier are finalised; and
  - give that person / entity a written notice accordingly.
- Where a decision was taken to de-register a person as a supplier on the Eskom Supplier Database, Eskom (via the Secretariat of the Standing Committee), must notify its internal PFMA Office, the Director-General of the National Treasury, any other organ of state with an interest in the matter, and employees or agents of Eskom through a written notice.
- ix) If during or as a result of the procedure for the reconsideration of the registration of a person / entity as a supplier on the Eskom Supplier Database, Eskom has any reason to believe that any criminal offence has been committed by any person, Eskom (through its Assurance and Forensics Department) may refer the matter in writing to the South African Police Service and/or the National Director of Public Prosecutions for a criminal investigation and possible prosecution, if warranted.

#### 3.8.9.4 Internal Review

Eskom, at its sole discretion, may have any decision taken in terms of the process for supplier reconsideration revisited, reviewed and/or reconsidered by the EXCO Procurement Subcommittee (EXCOPS), but is not obliged to do so and may do so, in its sole and unfettered discretion, upon the request of any person in respect of which a decision was taken by the Standing Committee.

The discretion of Eskom to grant a review will be based on the receipt of new information not previously considered, and /or notifications of procedural irregularities.

#### 3.8.9.5 Procedure for Re-application as a Supplier

No person / entity de-registered from the Eskom Supplier Database may submit an application to be registered as a supplier on the Eskom Supplier Database:

- For a period of 5 years from the date of the decision to de-register that person as a supplier on the Eskom Supplier Database in the case of an immediate and unconditional de-registration;
- For a period of 3 years from the date of the decision to de-register that person as a supplier on the Eskom Supplier Database, where de-registration is effected only after completion of outstanding contractual obligations;

Provided that any person / entity who was a related person to that person whilst he was so registered as a supplier is likewise prohibited. However, Eskom may, in its sole and unfettered discretion upon a written and motivated request, permit any such application if the cause or ground for de-registration of that person as a supplier on the Eskom Supplier Database has been fully addressed to the satisfaction of Eskom.

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### 3.8.9.6 Giving Effect to Sanctions

Each decision of the Standing Committee will be communicated by the Secretariat as minutes to the Supplier Evaluation Manager in order for the Supplier Evaluation Manager to ensure that the Eskom Supplier Database is accordingly updated to reflect the current status of supplier registration, the effecting of any flagging or blocking, and the recording and monitoring of any conditions as stipulated in a directive of the Standing Committee.

The decision to "flag" or "block" a supplier can only be made by the Standing Committee, and the SD&L Department will not act upon any other instructions to "flag" or "block" a supplier, from any other parties, and without due process being followed with respect to the supplier.

Until such time that the "flagging" functionality is built into the Eskom Supplier Database all flagging notifications will be located on Hyperwave, and updated after each meeting of the Standing Committee.

It is a requirement that every Procurement Practitioner make reference to the lists of flagged and blocked suppliers to ensure that no new order / contract awards are being made to such suppliers.

The Standing Committee must be notified by Procurement Practitioners / R&G officials to the extent that such suppliers are currently participating in Eskom tenders, in order to expedite decision-making before conclusion of the process of evaluation.

## 3.9 Supply Chain Planning

### 3.9.1 Introduction

The Supply Chain Planning function incorporates both the requirements of demand planning and supply planning and is a cyclical, continuous process that integrates and synchronizes the demand and supply components of the supply chain. The integration and synchronisation of the demand and supply is enabled by qualitative and quantitative methods applied with stakeholder collaboration, and are performed at a centre-led supply chain operations level as well as the business unit operational execution level.

### 3.9.2 Process Models

In the context of Eskom business, demand for commodities is derived from maintaining the infrastructure or plant, requiring security of supply, and demand for new build by extending the existing infrastructure. The following two models will apply to establish demand:

- **Anticipated Model:** Applied to all maintenance-related requirements where the future demand is not known and must be anticipated. This is a quantitative process where the historical demand is statistically extrapolated into future forecasted demand, and is executed at different consolidated levels up to an Eskom-wide level.
- **Responsive Model:** Applied to all project-related requirements where the demand is derived from project specific designs or bills of materials. The business requirements are interpreted and reviewed by means of cross functional collaboration to forecast the future demand. Historical trends are not used with this model and are more qualitative by nature by applying the best known information to enable the execution of projects within the required planned time frames. This requires an integration of engineering planning systems to the demand planning platform. The Eskom-wide level will be determined by the aggregation of the demand from the different operational levels, and is then compared to business plans.

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### 3.9.3 Establishment of Cross-Functional Teams

The forecasting will be reviewed and adjusted by cross-functional teams, both at a centre-led and business unit operational level. This is vital for the effectiveness of the forecast.

At the operational level the team will, as a minimum, consist of representatives from Materials Management, Engineering Planning, Project Management, Technology and Quality, Field Services and relevant Buyers / Procurement Managers.

Centre-led cross-functional teams, will, as a minimum, consist of Group Commercial representatives from Strategic Sourcing, Tactical Sourcing, SD&L, and Supply Chain Planning, as well as Divisional Project Management Offices and Finance.

These teams are not exclusive of any other functionary that might also be identified to have a direct input related to a reliable demand.

### 3.9.4 The Demand Plan

The demand plan is drafted by a process of gathering data, forecasting the demand, consolidating the anticipated and responsive demands, collaboration, reviewing and adjusting the demand, and finalised by means of consensus with the key stakeholders. The objective is to create a long term demand plan that will be a forecast for three to seven years with the highest possible confidence level for identified commodities with high value expenditure and complex in nature. This will enable a sourcing strategy with line of sight over procurement spend, and collaboration with key suppliers as external stakeholders.

#### 3.9.4.1 The Supply Plan

All available supply data is gathered from opened contracts and sourcing strategies. Where the supply is constrained to meet the current demand, alternative supply is identified and anomalies addressed with the relevant Procurement Practitioners. Data gathered includes, manufacturing capacity, manufacturing lead time, quotas, time frames, contract balance, and supplier past performance, and is reviewed to construct a supply plan. The supply plan is finalised by the same process as above, of collaboration and consensus at a centre-led level and is an indication of supply capacity.

#### 3.9.4.2 Matching Demand and Supply

At the business unit operational level, the demand plan is the driver for the materials requirements planning (MRP) and the demand is matched with supply for requirements within the short term framework. This includes releasing of orders from established contracts where the net demand is not met with the current resources. (Refer to the MRP process contained in Section 3.10.4 of this Procedure). Supply Chain Planning will match the demand and supply plans in the long term framework, to identify the gaps in terms of constrained supply.

#### 3.9.4.3 Integrated Demand and Supply Plans

The integrated demand and supply process resolves demand and supply exceptions by addressing the anomalies and finalising the ISDP. This process will require a cross functional committee that will address the demand and supply anomalies.

#### 3.9.4.4 Reporting

The Supply Chain Planning function will be responsible for reporting on the following:

- Demand plan
- Supply plan

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- Integrated demand and supply plan
- Forecasting accuracy

### 3.10 Materials Management

#### 3.10.1 Introduction

This Section specifically excludes primary energy and water, as well as nuclear requirements, but deals with inventory bought and stocked by Eskom BUs for capital works, and for the maintenance, repair and operation (MRO) of all Eskom assets.

The Supply Chain Operations (SCOPS) function within Group Technology and Commercial is accountable for the operational management and controls regarding inventory.

#### 3.10.2 Optimisation

This entails the initial decision on what should be held in stock, the categorization and classification of stock items, the planning and maintenance of investment levels for various parts of the inventory holding, rational replenishment of stock items and management of slow and non-moving items.

An Eskom-wide demand forecasting plan will be set up on selected commodities where practical (commodities sourced by multiple Divisions and with a repeatable or steadily running demand pattern (e.g., transformers). The objective is to achieve the lowest possible inventory investment with the highest possible stock turn ratio and availability.

#### 3.10.3 Master Data Categorisation and Classification

##### 3.10.3.1 Master Data Management (Materials and Services)

A centralised cataloguing system and philosophy shall be adopted. The cataloguing process will be applicable to both goods (stock and if necessary non-stock) and services. Both cataloguing and classification philosophies must subscribe to ISO 8000-110:2009 and ISO 22745 standards. A data dictionary forms the basis from which templates for commodities and services are built to facilitate the cataloguing process.

The Steering Committee of Technology (SCOT) is accountable for approving all templates for the various commodities as well as the format of the various descriptions culminating from the cataloguing process. A change control process will be used to manage requests for changes to the existing commodity templates. Requests for new templates and updates/changes to the ECCMA Open Catalogue Dictionary (eOCD) data dictionary will be routed via the correct channels to Electronic Commerce Code Management (ECCMA) organization. The Data Steward (reporting to the Master Data Committee) representing Supply Chain Operations (SCOPS) is responsible for developing a strategy to direct the materials and services master data maintenance organisation to achieve the master data maintenance objectives operationally, in line with the Complete, Accurate, Relevant, Accessible and Timely (CARAT) data quality principles, as well as the data quality KPA's defined by the Master Data Committee. The Data Steward represents the Materials and Services Master Data domain at the Master Data Work Group.

In principle all new material/services will be catalogued to a level 4 i.e. all mandatory attributes must be populated. Information attributes are also to be completed and part number information provided (where applicable). A strategy must be in place to achieve this for all existing "A" and "B" usage value items, critical spares, assets and strategic stock.

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The Eskom Value Standardisation and "cataloguing manual" are governance documents that define the rules for generating the various cataloguing descriptions and to ensure that the data remains consistent for similar items.

The object name within the data template dictionary is developed using the philosophy of "noun, adjective" This is the fundamental principle upon which the naming of all items within the data dictionary is developed. This naming convention shall be strictly adhered to.

The 40 character SAP short form description (SFD) shall not to be used for purchasing purposes, but shall only be used as a guide to identify a record when undertaking searches or during reporting. The purchasing order description (POD) is provided for the purposes of purchasing. In general, supplier specific part numbers are not to appear in the purchasing order descriptions (POD) with the exception of sole source supplier materials.

The engineering and maintenance managers shall support the data quality initiatives driven by the master data maintenance organisation by committing resources to assist the cataloguers. It stands to reason since it is these respective departments that will benefit the greatest from improved data quality.

End-Users are responsible for providing the necessary information to catalogue new materials/services. They are also responsible for capturing the information onto the cataloguing system. Cataloguers will review them prior to sending the records to MDM/ECC6A.

Eskom has adopted a multiple systems approach in the cataloguing environment. It is essential that all systems be kept in synchronization. New records and changes are to be made from the source system and integrated to the remaining systems. No access will be granted to make changes in the integrated system by using the transactions available in them. These transactions will be masked out to prevent unauthorised changes being introduced.

### **3.10.4 Materials Requirements Planning**

#### **3.10.4.1 Inventory Pareto Classification**

Item classification is a crucial component in driving high availability and high stock turn ratio in the business for anticipated model items. In order to manage the cash flow and total investment related to inventory, items are classified into inventory classes, with different management policies for each class. This is done by ranking items according to usage value and implementing breakpoints, and then managing the different classes appropriately.

Production items, such as furnace oil (HFO) and coal will be excluded from the initial ABC calculation not to skew the outcome of the classification. These will then be classified afterwards as "A" items (100% number of materials as A class).

Strategic and critical spares will also be excluded from the initial ABC calculation, and then be classified afterwards as "A" items (100% number of materials as "A" class).

The above classification is used to make conscious replenishment decisions, and the inventory levels are set accordingly in SAP.

The item classification in SAP remains as ABC, and is apportioned as follows:

- A items set at 80% of the annual consumption monetary value,
- B items at 15% of the annual consumption value,
- C items at 5% of the annual consumption value, and
- D items are no-movement items, and need to be classified, identified as obsolete or deleted from the material master, as and when necessary.

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The ABC classification should be updated twice a year, (after half year and year end), as too frequent updates will affect the planning parameters and consistency. The ABC classification in SAP is also the base to determine the cycle counting to be performed by the Warehousing function, but is calculated separately in the storage view of SAP. Updating this storage classification has a direct influence on determining the cycle count scheduling, and care must be taken not to run the classification update on a regular basis, rather once a year.

### 3.10.4.2 Inventory Categorization

Since different portions of the inventory holding are held for different reasons and have different characteristics in use and control, they must be differentiated to permit the application of appropriate inventory management decision rules and controls. In order to do this, inventory items are categorized discretely into categories. Such a classification is in addition to the ABC classification. It is merely another classification serving a different purpose.

Inventory will be managed and reported in different categories aligned to the required business segments. These categories will be summarised in construction, capital spares and inventories on the Financial Balance Sheet, as set out below:

Stock categories	Inventory (MM)	Financial BS	Price control
Project stock	Projects	Construction stores	System moving average
Maintenance stock	Maintenance	Inventories	System moving average
Critical spares	Critical	Inventories	System moving average
Strategic stock	Strategic	Inventories	System moving average
Capital Spares	Capital spares(quantity, UNBW not valuated)	capital spares	(Values reflected on assets register)

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### 3.10.4.3 Materials Requirement Planning (MRP)

Material replenishment rules shall be maintained on an appropriate frequency, being either on a continuous basis or a periodic basis, (e.g.: safety stock parameters). The final demand plan shall form the input for MRP.

The objective is to formulate and assign different strategies to various programs or categories of stock based on business complexity and the cost-to-serve.

The position of the programme in the matrix will determine the focus of the materials management function-

- In providing the materials requirements to the business in an efficient manner;
  - Indicating the appropriate levels of collaboration required;
  - Focussing resources towards critical programs and ABC values;
  - Setting of inventory policies;
  - Alignment of order planning;
  - "Cost-to-serve" is relating to the required service level for a specific work program or stock category;
  - "Business complexity" relating to the total spend on materials, anticipated/responsive demands, or regulatory requirements.
- i. Anticipated demand: The Anticipated Model forecast focuses on the normal business operational requirement such as unplanned maintenance. Anticipated demand is based on historical usage. This information can be extracted from SAP. In the case of the forecast for the Anticipated Model, we do not receive any future demand data from the business upfront and we analyse the historical usage to forecast the future demand, also referred to as quantitative forecast. This includes minor projects.
  - ii. Responsive demand: The Responsive Model caters for planned maintenance and other capital projects, or required stock levels for strategic and critical spares. The Responsive Model, in contrast to anticipated, is the demand that comes from the business which we are responding to and which is project-related (major projects). This includes planned maintenance and refurbishment plans, as well as new build, and is based on actual project plans where the demand is outside the minimum performance supply lead time. Other information required includes the priorities of the different projects and external information, dictating the appropriate levels of collaboration required, also referred to as qualitative forecast.

In line with the ABC classification, this model will provide a framework for MRP Planners to set planning parameters in order to balance the inventory investment with the required service level for the different categories of stock. The model also caters for the anticipated and responsive demands.

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STR	Dead stock	C Segment	B Segment	A Segment	Category
Lower	Higher	<ul style="list-style-type: none"> <li>ROP</li> <li>Higher OQ</li> <li>Larger SS</li> <li>Quantitative</li> <li>Predictable automated</li> </ul>	<ul style="list-style-type: none"> <li>ROP</li> <li>Min SS</li> <li>Pipeline</li> <li>Quantitative</li> </ul>	<ul style="list-style-type: none"> <li>ROP</li> <li>Min SS</li> <li>Pipeline</li> <li>Quantitative</li> </ul>	MRO/Minor Projects Anticipated demand
Higher	Lower	<b>One milk jar</b> <ul style="list-style-type: none"> <li>Plant level</li> <li>Single bin</li> </ul>	<ul style="list-style-type: none"> <li>PD</li> <li>Lot 4 lot OQ</li> <li>Min SS</li> <li>Qualitative</li> </ul>	<ul style="list-style-type: none"> <li>PD</li> <li>Lot 4 lot OQ</li> <li>Min SS</li> <li>Qualitative</li> </ul>	Projects Responsive demand
N/A	N/A	<ul style="list-style-type: none"> <li>Risk Profile, user integration</li> <li>Bin level as per required stock level (RSL)</li> <li>Separate storage location</li> <li>Replenishment directly into storage location</li> <li>ROP=RSL and OQ=1</li> </ul>			Strategic & Critical Responsive demand

Figure 1: MRP types and lot sizes

Legend Figure 1:

**ROP** = Re-order point or level**PD**= Planned on demand.**SS**= Safety Stock, Min refers to minimum SS**OQ**= Order quantity or lot size**MRO**= Maintenance Repair and Operational

**C Segment:** The one milk jar refers to planning the C items by setting planning parameters at the plant level in a single bin which will cater for both the anticipated and responsive demands. In other words setting a single planning parameter (ROP and lot size), to cater for all the demand at the plant including C items of projects.

The objective is to get the C items consistent and predictable that will allow automation in SAP, thus giving the MRP Planner more time to focus on the A and B items.

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- iii. **Fill Rate:** The fill rate is the magnitude of a stock-out rather than the probability thereof. For anticipated demand items, the fill rate of A and B items with long manufacturing lead times (greater or equal to 3 months), will be regular "pipe-line supply" with pre-determined order releases, to cover the demand for long performance cycles. This will be aligned with the firm requirements committed to Suppliers on a rolling basis from the contract, in order to accommodate manufacturing smoothing and firming requirements as part of the sourcing strategy. The C items may result in higher fill rates in line with the replenishment cycles above, where the re-order point caters for the demand during the manufacturing lead time plus the safety stock (6 to 8 months average stock as per the Pareto classification- replenishment cycles).
- iv. **Replenishment of project and maintenance stock categories**  
Anticipatory demand model items are managed by means of optimal minimum and maximum inventory levels per item derived from the policy settings and forecasted demand. This will include a re-order point (ROP), cycle stock and a maximum stock level. Responsive demand model items are planned bill of quantities demand, and needs to be planned on a lot for lot basis. The time scheduling of these items should be planned properly, knowing what is required and by when, and supplied accordingly. This will increase the availability and stock turn ratio (STR), and decrease the inventory investment.
- v. **Replenishment of Strategic / Critical Spares**
- The required stock level is in accordance with the risk profile and analysis conducted by relevant specialists and strategic spares technical team.
  - Spares are classified as items of plant that is critical in terms of supply quality, legislative requirements and safety.
  - A team comprising technical, maintenance and Materials Management representatives determine the required stock level (bin level)
  - Strategic items will be stocked and managed in a separate storage location 5030 and critical spares in storage location 5031.
  - The required stock level is managed at a bin level. Replenishment will take place at the point of consumption with the re-order point equal to the required bin level and the lot size 1 (one).
  - Refurbished items (rotables) might have a different replenishment rule to cater for the refurbishment of the damaged items and procurement only when an item is beyond the feasible repair state.
  - Bin levels need to be maintained at all times.
- vi. **Replenishment of Capital Spares (Part of Finance fixed assets)**  
The on-hand quantities of these items are visible in SAP inventory, but without values. The values are reflected as fixed assets with depreciation.  
The required stock levels are determined by the relevant specialists and the technical team. Bin levels need to be maintained at all times
- vii. **Performance Cycles:**  
The management of lead times shall be aligned with contractual conditions and based on performance of the supplier.  
Every effort must be made to reduce the internal lead time of Material Requirements Planning, Procurement, and Warehousing and Haulage.

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Contracts must be placed for as many as possible stock items to reduce the internal procurement lead time by releasing orders from the contract instead of ad hoc purchases.

viii. Managing Criticality

All strategic and critical spares shall be managed as a priority 1 critical factor with an aspiration of a 100% service level.

ix. Data Accuracy

In order to provide an effective materials planning and replenishment function, the data accuracy of bills of material must be at least 98% (ninety eight per cent) accurate.

x. Consignment and Vendor Managed Inventory (VMI)

Where a supplier is willing to supply stock on consignment, effective physical and administrative control measures and payment and re-stocking procedures must be applied to ensure that Eskom suffers no loss. This provision is only put in place after a rigorous test of the market, when appropriate.

xi. Identification of Obsolescence and Scrap Items

Materials Management, with the assistance of relevant technical representatives, will identify potential obsolete items, and this shall be conducted at least once a year.

### 3.11 Warehousing and Haulage

The Materials Management Manager is responsible and accountable for the overall management of all stores in the BU but may delegate the responsibility for operation and management of the stores to suitably qualified and experienced subordinates. At project sites the appointed Eskom Agent, as the Project Manager, is responsible and accountable for the overall management of all site stores in the BU but may delegate the responsibility for operation and management of the site stores to suitably qualified and experienced subordinates. This will also apply to maintenance site stores such as Customer Network Centres (CNC) where the Maintenance official managing the CNC will be accountable and responsible for all inventories kept at the site.

Group Technology and Commercial is responsible for the stores management policies and procedures within Eskom, its Divisions and wholly-owned subsidiaries.

#### 3.11.1 Storage Facilities

Storage facilities are designed and constructed to facilitate proper security of the goods stored and to limit access into stores as far as possible only to those who manage and control the stores. Every attempt is made to utilise cubic space by the installation of suitable racking and handling equipment.

Items that need special storage conditions with respect to SHEQ requirements should be identified by the Materials Management Manager and End-User, and such special conditions must be provided and maintained by stores management.

Stores must have physically separated receiving, storage and issuing areas.

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i. Receiving Area

The receiving area has clearly demarcated areas for:

- Material awaiting inspection GR blocked stock; blocked stock; stores return area;
- Material awaiting binning;
- Non-stock items awaiting collection by the End-User (Generation Division only);
- A quarantine area for rejected items; and
- Items required to be returned to the supplier.

Access to receiving areas shall be provided to promote delivery access, allow for speedy off-loading, protection of goods from inclement weather and to ensure security of the goods awaiting inspection or binning.

All receipts must be recorded immediately into the receiving register and SAP. When received after hours it must be recorded immediately in to the register and captured on SAP on the 1st working day thereafter.

List of annually updated and approved quality inspectors with specimen signatures must be available where End-Users are tasked to perform quality inspections.

Maintenance spares must be quality inspected by an approved Quality Officer or assigned End-User prior to binning. Transaction 101 (Quality Inspection/Blocked stock) or Transaction 103 GR Blocked stock (prevents suppliers not being paid until quality is approved) must as far as possible be used for maintenance spares.

All daily receipts must be captured in a receiving register upon receipt and captured immediately in SAP.

An Eskom date stamp applied to every delivery note / invoice on receipt

Where UMCs differ from the delivery note and the SAP system, there must be a conversion factor on the delivery note to prevent any confusion, regarding quantities received.

All materials must have preliminary markings, referencing the purchase order number, and the date received until final labelling takes place.

A copy of the Goods Receipt slip (with a binning stamp – if possible) must accompany the materials after the final quality approval for binning purposes.

Each delivery note line shall be referenced to the purchase order line applicable.

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**ii. Storage Area**

There must be a separate demarcated storage area.

Only material recorded as stock on SAP must be contained in the storage area.

The storage area must be aligned with prescribed policies, procedures and legislative requirements.

Compliance certificates must be obtained for all hazardous materials.

**iii. Issuing / Despatch Area**

There must be a separate demarcated issuing/despatch area.

Only material that has been processed and issued must be contained in the issuing/despatch area.

Material that has been processed and not yet physically picked from the bin location and is awaiting collection must either be physically removed to a separate staging area or must be properly marked with all the necessary details for easy identification for count purposes.

It is recommended that item only be picked when a transport order is received (where applicable).

A picking register must be implemented to control all pick tickets handed to Storage for picking from the Issuing section.

Items not collected within 3 working days should be returned back to stock by "migo cancellation" and stock for CNC's and projects within 7 working days.

A contingency goods issue control register must be used to control all contingency goods issue books.

Contingency goods issues must be completed in full including crossing out of unused lines, crossed out and all applicable signatures and issue data, material document number ('49' number on SAP).

Verification of all contingency goods issues must be performed by the Senior Warehouse Supervisor and the Administration Controller.

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#### iv. Remote/Temporary Storage Facilities

Where inventory is issued to End-Users for construction and/or maintenance projects, or ordered for delivery directly to such sites, and temporarily stored at a location remote from official storage facilities, the Project Manager concerned shall assume accountability for security and control of such material. Suitable auditable records of inventory balances and transactions are kept similar to current stores system and the equipment / material shall be marked adequately to distinguish between safekeeping and normal stock. At the end of such projects, the Project Manager must turn over all unused and/or decommissioned material and records to the official storage function and book back in to SAP.

The situation where End-Users want the warehouse to safe keep project/construction or maintenance materials must be avoided as far as possible. If the decision is made to safe keep such materials within the warehouse, a detailed manual record keeping system similar to the warehouse SAP system must be maintained and updated for short periods only. This can only be done with management approval.

#### v. Stock Locations

A separate physical location must be allocated to each stocked item. Provision must be made for items of different sizes, shapes and values, by installing appropriate bins and shelving. Overflow locations must be provided, and good cross-referencing is required to make overflow stock identifiable.

The carrying capacity of the shelves must be clearly indicated on each shelf where applicable. All bins must have a bin label indicating the material number, description, bin location and UMC.

All materials stored in bin location especially rotatable / repairable materials must be clearly marked according to their respective valuation types (New, Repaired, Damaged, etc.).

#### vi. Access Control

Access to any specific storage facility is limited to authorized stores staff and controlled by the person in charge of such storage facility.

Where temporary access is granted to non-stores personnel for whatever reason, they must be accompanied by authorized stores personnel.

The storage facility may be separated into zones, with access limited to the stores personnel responsible for each zone.

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#### vii. Materials Handling and Storage Equipment

Materials handling equipment must be selected, operated and maintained to facilitate proper handling of the goods stored, and to limit risk of injury to workers or damage to goods and the environment. Operators of handling equipment must be trained and accredited in accordance with the prescription of the supplier's equipment instructions or any legislative requirements, or any applicable Eskom policies, directives and procedures.

Storage equipment must be selected and designed to accommodate the specific requirements of the goods stored and to ensure safety, ease of access to and retrieval of goods. Equipment must be tested according to any prescribed legislative requirements.

All valid and relevant licences, test and compliances certificates must be retained for audit purposes.

#### viii. Management of Hazardous Chemicals

Hazardous chemicals must be managed and controlled according to the National Road Transport Act 93 of 1996 Regulation 280, and in accordance with OHS Act.

#### ix. Authorisation

Inventory or non-stock items must not be moved into, or out of, any storage facility without the correct documentation, and the processing of the relevant receiving, transfers or issue transactions. These transactions must be processed within 1 (one) working day after the transaction has been completed. The relevant budgeting authorities must approve all issues from inventory.

#### x. SHEQ and Housekeeping

Standards of housekeeping, SHEQ requirements and loss control shall be maintained, as required by Eskom procedures, and any prescribed legislation relating thereto. This includes the maintenance of special facilities for flammable, corrosive, poisonous and other dangerous / hazardous items / substances and for environmentally unsafe materials. Storage facilities and equipment must be selected and maintained so as to avoid safety risks.

#### xi. Inventory Accuracy

A stock verification programme must be in place. Such a programme must be two-way, system-to-floor (inventory list generated by SAP and physically checked) and floor-to-system (selection of a physical area and inventory counted back to system). Cycle counts must be in place with sufficient frequency to achieve data accuracy objectives.

Stock accuracy targets are set by Group Technology and Commercial for each of Eskom's Divisions. The minimum recommended target is 98% (ninety eight per cent) accuracy but may be adjusted by the GM: SCOPS on annual basis.

#### xii. Cycle Count Process

Cycle counting is a system of checking stock accuracy on an on-going basis spread out over the entire year. Cycle counting works from the basis that the count documents (for the items due to be counted) are created from SAP and the information on the cycle count document is compared with the physical material (quantity and descriptive information) at the storage areas.

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Although cycle counts are scheduled on a daily basis by SAP, all counts must be completed and processed during the specific month it was scheduled to be counted. No late count items must be on the SAP Cycle Count Past Due for more than 31 days. During the month it must only indicate items 7 of days or less.

All items greater than 30 days overdue must be addressed by the Senior Warehouse Supervisor at each month-end.

Peaking materials have been classified as D ITEMS and will be counted on cycle counting once a year.

The physical inventory report (ZL05) and the past due (ZL06) must be signed off by the Materials Management Manager at each month end.

Stock investigation sheets must be completed in full for all variances and approved as per the relevant delegation of authority.

xiii. Wall to Wall Counts (Only Exceptional as per Managerial Decision)

Wall to wall counts will only be carried out if there is a constant difference of approximately >10% between Administration Controller independent counts in comparison with the SAP Cycle count accuracy in specific warehouse storage areas. These storage areas must be counted preferably by Bin location sequence.

Wall to wall count will be conducted on a manual count sheet from the floor and verified with the SAP system quantities.

xiv. Monthly Independent Counts

Administration Controllers, finance staff or an independent person not involved in the warehouse operations must perform monthly independent counts as per formula indicated in the Inventory Control Work Instruction with a minimum of 100 materials per month.

The counts shall consist of a sample including floor to system, system to floor, cycle count samples of counted documents of previous week/recounts, and samples of stock movements of current week (Issues and receipts).

All final differences must be captured on the cycle counting system and must have the reference number of the cycle count document on the independent count sheet.

During February each year the top 100 highest stock values must be counted.

Independent counts must be performed during each month on all SAP plants (maintenance and capital).

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xv. Inventory Maintenance and Preservation

Inventory items that need maintenance during storage must be identified by the End-User department (maintenance or projects/engineering). Such maintenance must be scheduled and performed by the End-User in co-operation with warehousing.

Inventory must be stored in their protective packaging and wrapping. Where such protective packaging has to be removed for inspection, it must be replaced properly to ensure proper maintenance of item quality.

Inventory that requires special storage conditions with respect to SHEQ requirements, temperature or humidity control must be identified by the Materials Management Manager and End-User, and such special conditions must be provided and maintained by stores management.

xvi. Quality Assurance

Appropriate procedures must be followed to ensure that goods received are of the required quality by visual inspection. The stores function assumes responsibility for the maintenance of the physical condition of inventory once in storage.

When required, and should the stores not have qualified and authorised personnel to conduct the quality verification, the items must be placed in quality inspection or goods received into GR blocked stock (Maintenance Materials and non-stock) until a specialist quality control function Quality officer and/or the assigned End-User verifies the quality thereof. Quality variation must be dealt with by means of non-conformance reporting and appropriate actions taken. This is the responsibility of the End-User and the Contract Manager on site, and stores personnel, when material is in stores.

There must be a list of all appointed persons who perform quality inspections in the warehouse (name and specimen signature).

xvii. Stores Administration

There must be full document control, and a reconciliation of all transactions posted the previous day on the following day/next working day where the physical documents must be compared to SAP MB51 report.

A list of outstanding documents must be compiled, followed up and closed out where there are no physical documents available during daily reconciliations.

All MB51 reports must be filed with the relevant physical documents and all attachments as per required work instruction.

Records of all transactions shall be retained for the required document retention periods as prescribed by Eskom policies and procedures.

xviii. Stores Administration: Month End Controls

- Month End Verifications (e.g. Petrol and Diesel Reconciliation (where applicable))
- A copy of the month end petrol and diesel reconciliation shall be verified by the Administration Controller to be retained and filed (where applicable).

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- The daily petrol and diesel reconciliations must be filed with the Warehouse Supervisor (Issuing) and the month end reconciliations shall be batched and handed over to the Administration Controller.
- The Administration Controller must forward the following documentation to the Finance Department after each month end closure:
  - Cycle count adjustments letter (240-58971900) (Admin Controller) GL 283000: At month end all adjustments (Tx 701/702) must be consolidated on a cycle count adjustment letter (240-58971900) and signed off and forwarded to the Finance Department for final reconciliation;
  - Scrap write-off letter (Admin Controller) GL 403000: At month end all scrap write-offs "Tx 551" must be consolidated on a scrap write-off letter (240-58972459) and a copy of the scrap authorisation form (240-58972386), with a copy of the MB51 must be forwarded to the Finance Department for final reconciliation.
  - The Inventory Accountant is accountable for the final reconciliation of the 403000/283000 account.

xix. Scrap Contract Management (where Warehouse is accountable for managing the Scrap Contract)

At least once a month, all weighbridge tickets must be consolidated and each category must be captured on a spreadsheet indicating quantities collected, contract price, total money owed, and thereafter must be forwarded to the Finance Department to capture on the debtors account.

A copy of the reconciliation must be retained and annually handed over to the Document Controller to be filed and stored.

xx. Consignment Stock Check: (Administration Controller)

The Administration Controllers must check whether the assigned Materials Management Contracts Supervisor has performed and signed the monthly stock check which was verified with the supplier and if the invoice (copy) was verified to the corresponding issue transactions.

The Administration Controller must check that the monthly physical stock count between the MM Contract Supervisor and the supplier was performed correctly and signed off by both parties.

xxi. Incomplete Stock Transfers

The Administration Controller must draw the MC.1 daily check transfer values in blank slots, and must further report transfers outstanding to receiving to MRP Controllers and the receiving Warehouse Supervisor to action and close out.

xxii. Bulk Stock Reconciliations

All unused bulk stock issued out in the month must be returned to stock prior to month end and issued out on the first working day of the new month.

xxiii. Manage Repairs

This includes monitoring and maintaining the movement, where necessary, repair, replacement or disposal of capital spares and rotatable stock items, applicable only for items that were drawn from the store.

All damaged items must as far as possible be returned to the warehouse for control and administration purposes. The same quantity that was drawn from the NEW or REPAIRED valuations must be returned on the DAMAGED valuation to the warehouse.

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- Roles and Responsibilities:
  - The End User / MRP Controller must create a M310 to return damage material to the store (on SAP system and physically);
  - The RF/MRP controller creates a repair order for the damaged item to be repaired (M320-PM01/3, CO-production order or sub-contract order);
  - The RF/MRP controller must update the Damaged Materials tracking file and refurbishment control form;
  - The RF/MRP controller must perform a settlement run after receipt of physical items and repair order invoice;
  - Daily/monthly reporting and controls for Repairable Materials must be in place.

xxiv. Daily and Month End Controls

- Daily Tracking Controls of Materials:
  - Draw a MB51 stock movement report daily on all Tx 261,262,101-199 (Stock) and for non-stock via MB51;
  - Compare non-stock purchase order receipts (for repairs and services) with the ZPM050 report;
  - Capture all movement information firstly on the RF damaged daily tracking report for damaged and completed damaged materials; and
  - All PM tracking information must then be incorporated into a daily refurbishment control form which must be updated and maintained.

xxv. Monthly Verification of Damaged and Scrap Valuation Types with Stock-on-Hand Quantities

A report (MB52/ZL93 ) on all Damaged and Scrap Rotable materials must be drawn on the last working day of the month and a physical count must be done by RF Controllers to verify that all damaged/scrap items listed with an on-hand quantity is physically in the warehouse. Differences must be noted, investigated and corrected by RF Controller.

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**xxvi. Materials for Repairs - Month End Reconciliation:**

- Draw the SAP IW39 report on all valuation types (populate your own variant indicating system status);
- Draw the SAP ZPM050 open purchase order report;
- Combine all the IW39 / ZPM050 reports into one spread sheet;
- Comment on all the material numbers statuses where there are no work orders, requisitions or purchase orders;
- The Inventory Accountant must reconcile the GL 315001 to the 890000 and 30000 to 895000;
- All scrap and damaged valuation types must be revaluated as per the Finance procedures for Inventory Accountants, for all repaired items received back into warehouse monthly;
- All costs that originated from RF material that default to GL 231000 and 231100 must as far possible be appropriated back to the stock account 300000 and only in exceptional cases may be allocated to cost centres.

**xxvii. Key Performance Indicators**

The main key performance indicators are:

- Stock accuracy;
- Absolute value of stock adjustments per month compared to stock value;
- Adjustment/ write-offs as per Delegation of Authority;
- Reservations with insufficient stock;
- Cycle counting past due.

**xxviii. Haulage**

Eskom's warehouse-owned internal haulage must be utilised first and as optimally as possible.

All 3PL haulage of less than 32 tons must be transported by Eskom's local subsidiary, Rotran.

Outbound transport must be sourced via a transport requisition process, via the local procurement department.

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xxix. Periodic Reviews (Obsolete, Excess and Slow Moving Stock)

Periodic reviews of slow moving and dead stock must be performed by a cross functional team at least once per annum (made up of Finance, Disposal, Warehousing, Materials Management and Technical functionaries).

xxx. Document Control in the Warehouse

The Documentation Controller(s) must be appointed by the Management System Owner or functionally responsible manager using the Appointment Letter for Document Controllers (240-53519752) who will then become responsible to ensure the correct implementation of the procedure below including:

- The provision of administrative support during the document and record management lifecycle (i.e. registration, review and authorisation, publication, archiving and disposal);
- Reporting on document controls including draft document status, redundant documents, templates, adherence to procedure, training and other document and record management related issues;
- Ensuring that all documentation that flows through the warehouse is easily accessible on request;
- Ensuring that all documentation is centrally stored and can be referenced if not stored at the different sections;
- Ensuring that documents do not duplicate an existing document's purpose and content;
- Ensuring the use of the correct templates and that layout requirements are met; and
- Ensuring that original documents are not removed from completed files after they have been checked and documented

All documentation filed in the warehouse must be referenced and captured in a document / records register for traceability and accountability. The appointed document controller must maintain a document / records register.

**3.12 Investment Recovery (Disposals)****3.12.1 Request to Sell Moveable Goods or Assets within or Outside of Eskom**

The following functionaries are responsible for the identification of moveable assets or goods for disposal:

- Materials Management (Warehouse Managers), for excess, obsolescence or redundant stock items;
- Fleet Management for the disposal of vehicles and associated equipment;
- Project Managers, engineers and on-site technical specialists for decommissioned assets; and
- Cost Centre Managers for ad hoc decisions to dispose of items.

During the identification process, consideration must be given to options for the transfer or usage of assets / goods within Eskom, before embarking on a process of disposal.

The sale of an Eskom asset must not be performed by the asset owner. All disposals must be handled by an appointed Disposal Officer within Group Technology and Commercial. Disposal Officers are

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responsible for the administration of the disposal process in accordance with Group Commercial policies and procedures for disposals, compiling the disposal enquiry, requesting and evaluating tenders, negotiating against mandated parameters, and making recommendations to a Delegated Approval Authority. All requests for the disposal of moveable assets and goods must be documented on an AM-107 form and e-mailed to: [InvestmentRecovery@eskom.co.za](mailto:InvestmentRecovery@eskom.co.za).

Disposal transactions are not subject to the provisions of the PPPFA Framework.

### 3.12.2 Disposal Strategy

For various reasons, assets and goods in excess of Eskom's needs become available. The Division or BU owning the assets/goods must decide whether such goods or assets will be disposed of and complete the required documents (AM-107) which must be duly approved.

The centralised Investment Recovery Department within the Group Technology and Commercial has researched a number of key commodity disposal strategies based on best practice for purposes of standardisation and consolidation. These commodities were decided upon both by looking at the income generated or by the regularity and risk of the commodity. The Investment Recovery Department analyses and influences the strategy of investment recovery based on the manufacture, material components, potential markets, risks and best value contracting. Approved disposal strategies must be utilised in the disposal of identified commodities.

At times, customers such as businesses or municipalities approach Eskom to assist them by lending or supplying assets or goods needed to restore power supply during emergency situations. Where possible, without jeopardising Eskom's service, such assistance may be rendered by selling, not lending, available stock to such customers.

Eskom is continuously approached by organizations, individuals (including Eskom staff) and charities regarding the issue of sponsorships and donations and/or the sale and disposal of Eskom's moveable assets. All disposals must be managed on a commercial basis and no distinction is made between selling to internal staff or to external parties.

The Investment Recovery Manager will manage and control the updating and accuracy of the supplier database for disposal contractors.

Formally approved strategies are required for all disposals with an estimated sale value of R10m or more. Strategies are not required for disposals with an estimated sale value not exceeding R10m.

### 3.12.3 Requesting Permission to Enter into a Disposal Agreement

Procurement Practitioners and Disposal Officers may be granted personal delegations of authority based on the outcome of assessment and accreditation, granted by the Group Executive: Technology and Commercial for the approval of entering into disposal agreements, via dual or triple adjudication. All disposal agreements estimated to exceed the value for triple adjudication must be made to a delegated procurement / tender committee.

Permission to enter into a disposal agreement must be requested via a Commercial Transaction Approval Form.

The determination of the appropriate Delegated Approval Authority is based on the value of the sale /disposal agreement, generally based on the highest price obtainable.

A fair market price, rather than book value or system average price, must be obtained for any goods or assets sold, in order to establish a benchmark against the sale price obtained. Notwithstanding this, the book value or the system average price may be used to benchmark the derivation of the fair market price. This also holds true for obsolete and scrapped items. Where the expertise to establish a market

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price is not available within the selling Division or BU, expert advice must be obtained and, where necessary, paid for.

The request to enter into a disposal agreement must detail the disposal mechanism selected to sell or dispose of the assets or goods and provide detail of the sale price, benchmarked against a market or fair price.

### 3.12.4 Disposal Mechanisms

There are 5 (five) mechanisms that may be used for the disposal of moveable assets or goods. The appropriate disposal method selected will be determined depending on the requirement as specified by the initiator of the disposal request (asset owner) and the recommendation of the Disposal Officer, based on an analysis of the assets or goods to be disposed, the relevant market, and any approved strategy.

Disposals mechanisms of auctions and tenders may be supported electronically via a dedicated website enabling e-auction or e-tendering.

#### 3.12.4.1 Emergency Disposal

The same principles and procedures applicable to emergency procurement, as set out in Section 3.5.2 will also be applied to emergency disposals.

#### 3.12.4.2 Transfers

Transfer of functional or useable assets to other Eskom BUs at cost is the most favourable option, which results in the maximum benefit to Eskom.

NOTE: The transport is arranged and paid for by the new asset owner.

#### 3.12.4.3 Auctions (Traditional and e-Auctions)

Traditional auctions must be performed by competent and trained auctioneers. The use of an approved e-Auction technology may also be used. The Disposal Officer will select the most suitable type of auction method based on the commodity, and the estimated value of the disposal.

#### 3.12.4.4 Negotiations (Sale Out Of Hand)

Negotiations are normally used for a sole buyer situation or when the market price for the assets or goods is known. An independent evaluator may be used to determine the market price. This mandate to negotiate must be approved by the appropriate Delegated Approval Authority prior to commencement of negotiations.

#### 3.12.4.5 Cash and Carry

Depending on the quantity and value of the goods involved it may be recommended to have a "Tag Sale" or otherwise referred to as a "cash and carry" sale. In this case, the Disposal Officer sets the prices for each item and tags the goods with the price. Again, proper advertising and prior viewing time is allowed to achieve the best results. Proper control measures need to be implemented to handle crowd control, security, as well as payment facilities and removal of goods. This process would normally be on a first come first served basis and where the quantity of items and storage space is limited.

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### 3.12.4.6 Tender

An invitation to tender is issued to all potential buyers (dealers in the second hand market), but preferably those listed on the supplier database contained within the Investment Recovery Department within Group Technology and Commercial. The Disposal Officer endeavours to support and give preference to suppliers according to the Hierarchy of Supplier Preference. The Disposal Officer also liaises with the SD&L function to determine if opportunities exist for industrialisation, skills development and job creation, for all disposals greater than R10m in value.

The process for the issue, receipt, evaluation and award of a tender is the same process as applicable to the procurement of assets, goods or services, with the exception of the applicability of the PPPFA.

Responsive tenders are evaluated and adjudicated. A reserve price may be used where a specific minimum sale price is required. The issuing, receiving and evaluation of formal and informal tenders are administered in the same manner as that for tenders for the procurement of assets, goods and services. Criteria for evaluation may include the adherence to all prescribed legislative requirements, compliance with SHEQ requirements, and a contractor's B-BBEE status. The highest priced tender is generally accepted in the absence of any other stipulated criteria for evaluation.

All tenders must be issued, received, administered and evaluated in accordance with the same principles and processes as that required for the procurement of assets, goods and services.

### 3.12.5 Compliance with Environmental and other Prescribed Legislation

Disposals in whatever form occur at the end of a product life-cycle or usefulness, meaning that it generally has an environmental impact. With the stringent legislation and worldwide focus on carbon footprint reduction, it is imperative to build good environmental practices into disposal processes and still do so economically. The recognised best practice principle of Reuse, Recycle and Reduce must be factored into each disposal decision bearing in mind the different rules for each constituent material e.g. asbestos or oil.

The disposal of assets and goods via sales are regulated by the Consumer Protection Act 68 of 2008. The Consumer Protection Act requires that Eskom fully describes the assets or goods to be sold to the potential vendor/buyer who is deemed to be a consumer, for purposes of the Act. This legislative obligation remains despite all sales being declared "voetstoots" (as is). All tenders / enquiries and subsequent disposal agreements must address the legislative obligations of the Consumer Protection Act, to the extent applicable.

### 3.12.6 Donations

All donations must be managed in terms of Eskom's policy on donations contained in Policy 32-161 (Eskom Development Foundation Policy).

The Eskom Development Fund (ESDEF) donation committee may approve donations from Eskom and/or any of its subsidiaries of fixed and movable assets to registered non-profit organizations, preferably with welfare, education or training objectives.

Eskom BUs may donate up to the maximum value stipulated in the Donations Policy from their budgets. However these donations cannot be claimed from ESDEF. All other donations should be evaluated through the relevant ESDEF committees.

### 3.12.7 Non-Ferrous Metal (Copper, Aluminium)

All disposals of non-ferrous metals must, without exception, be executed through Framework Agreements, that must be put in place by the Investment Recovery Department. Any additional mandate

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to dispose of any non-ferrous metals outside of the applicable Framework Agreement must be motivated to and obtained in writing from the GM (Supply Chain Operations).

The following services must form part of the scope of the framework agreement, with the proviso that a BU may opt to deliver the material to the contractor:

- Collection from stores;
- Collection from sub-stations and constructions camps;
- Dismantling of disused lines; and
- Collections from re-conductoring projects.

These disposal services are approved by the relevant Delegated Approval Authority at contract award, and managed by the Middle Manager: Investment Recovery within Group Technology and Commercial.

#### 4. Acceptance

This document has been seen and accepted by:

Business Improvement Project

Eskom Legal Department

Assurance and Forensics Department

Group Commercial Management Committee

#### 5. Revisions

Date	Rev.	Compiler	Remarks
October 2010	0	S Shongwe / V Panday	Back 2 Basics Programme (As-Is Phase)
August 2011	1	V Panday	Revised to align to Back2Basics (To Be Process)
April 2014	2	V Panday	Revised to align with new Delegations of Authority, PPPFA application and revised supplier reconsideration processes.

#### 6. Development Team

The following people were involved in the development of this document:

- Vishala Panday
- Grietjie Doubell

#### 7. Acknowledgements

n/a

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### Appendix A: Procurement Delegations of Authority (Strategy Approval and / or approval for Procurement / Disposals)

Powers/Authority	Approval Authority	Recommends	
General procurement strategy (multiple phases and packages)	Board of Directors Tender Committee	CE after consultation with EXCO <sup>1</sup>	
Procurement-related policies and procedures	CE after consultation with EXCO	GE Commercial and Technology	
Procurement strategy for specific transactions from R750m up to Investment decision or Budget	Board of Directors Tender Committee	ICAS	
Procurement strategy for specific transactions from R300m up to R750m	CE after consultation with EXCO	Procuring EXCO member in consultation with GM: Commercial	
Procurement strategy for specific transactions >R10m and up to R300m	Within limits of dual and triple adjudication as prescribed for strategies (3.1.7 of this Procedure)	Relevant Practitioner	Procurement

<sup>1</sup> Within Eskom this CE delegation is generally further delegated to the EXCO Procurement Sub-Committee (EXCOPS), which is a sub-committee of the EXCO.

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**Acquisition and disposal of movable and immovable property, operational expenditure and the provision and acquisition of services****Dual and Triple Adjudication Authority**

<b>Powers/Authority</b>	<b>Approval Authority</b>	<b>Recommends /Supports</b>
Transactions up to R1m (maximum one year) – dual adjudication	Accredited Procurement Practitioner (G14 and above)	Accredited Procurement Practitioner
Transactions up to R5 m for max two years (triple adjudication)	Accredited Commercial or Non-Commercial E-Band Manager	Accredited Procurement Practitioner (Recommends) Accredited Procurement Practitioner G14 and above (Supports)
Transactions up to R50m for max three years (Exco dual adjudication)	Co-approval by 2 EXCO members (excluding procuring EXCO member) (where an OU has a second MANCO Member, co-approval shall be by that MANCO member).	Procurement Executive Manager / FD/GE/DE
Transactions up to R100m for a maximum period of three years (EXCO triple adjudication)	Co-approval by CE or FD, GE: Group Technology & Commercial, and one other EXCO Member.	Procurement Executive Manager

**Tender Committees**

Transactions up to R50m for max five years Transactions up to R100m for max ten years	Regional or Site based procurement committees established by GE/DE/FD	Procurement Manager
Transactions up to R300m for max ten years	Corporate Opex and Capex Procurement Committees	Commercial Senior Manager (minimum level)
Transactions up to R750m max 10 years	CE in consultation with EXCO	General Manager: Commercial (minimum level), in consultation with the relevant Commercial Senior Manager
Transactions up to Investment Decision or budget (if no investment required)	Board of Directors Tender Committee	EXCO Procurement Sub-Committee or GE Technology & Commercial

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<b>Land &amp; Rights: Acquisition and disposal of Land &amp; Rights related to the build programme and infrastructure development</b>		
Transactions up to R50k indefinite period (dual adjudication)	Land and Rights Development Manager	Land and Rights Practitioner
Transactions from R50k to R250k indefinite period (Triple adjudication)	Commercial Senior Manager	Land and Rights Practitioner and Land and Rights Development Manager
Transactions up to R300m	Centralised Land & Rights Committee	FD/GE/DE
Transactions up to R750m	CE in consultation with EXCO	Commercial Senior Manager
Transactions up to Investment decision/budget	Board of Directors Tender Committee	CE in consultation with EXCO
<b>Land &amp; Rights: Acquisition and disposal of Land &amp; Rights, Commercial Property, Leasing of property</b>		
Up to 300m	Corporate Properties Committee	FD/GE/DE
Up to R750m	CE in consultation with EXCO	Corporate Properties Committee
Up to Investment decision/budget	Board of Directors Tender Committee	CE in consultation with EXCO
<b>Specific Procurement</b>		
<b>Gx/Tx/Dx</b> up to R300m for Opex in relation to spares or maintenance provided it is in line with approved budget	Co-approval by CE, FD and relevant GE.	Relevant Commercial Middle Manager and Commercial Senior Manager
<b>Coal</b> Approval of colliery capital, budgets, colliery technical and mining plans, and provision accounts of existing cost plus coal contracts	Co-approval by CE, FD, and GE (Group Technology & Commercial)	Relevant Commercial Senior Manager or DE: Primary Energy Division

**CONDITIONS:**

- The commercial processes should be fair, equitable, transparent, competitive and cost effective. All authority set out herein can only be exercised after an appropriate procurement process has been executed by a Procurement Practitioner assigned by Group Commercial.
- The Technology and Commercial Group is responsible for the procurement process and execution.

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- All sole source mandate approvals exceeding R5m and/or 2 years, condonation, ratification and modifications exceeding 20% in terms of time / value (where the original approval was granted within dual/ triple adjudication) must be approved by the appropriate procurement committees and reported to the EXCOPS if within the Group/Divisions. All sole source motivations must be reviewed by the SD&L department.
- Proof that the expenditure is budgeted for or approved must accompany the recommendation for approval.
- All procurement is subject to alignment within the Corporate Plan targets, or any procurement framework developed by the GE: Technology and Commercial.
- All disposals must be executed via an authorised representative of the Investment Recovery Department and all disposals of fixed assets must be reported to EXCO and Board.
- With regard to appointment of strategic / management consultants, the Internal Consulting department must be consulted prior to any appointment and ensure that empowerment and transformation is taken into account.
- Regional or Site Tender Committee means a committee established to enable procurement within a Group/Division by the CE/FD/GE/DE consisting of at least three members, collectively with technical, commercial and finance representatives/skills, to approve procurement for a site/BU (Site Committee) or across sites (Regional Committees) and must include a representative from the Commercial function and take into account equity and transformation in its composition.
- Corporate OPEX or CAPEX Procurement Committee means a committee established at head office by the GE (Technology and Commercial) for procurement matters.
- The Board IFC and BTC are authorised to delegate any higher authority to EXCO or management in this regard.
- Auditor fees must be approved by the Audit and Risk Committee subject to the approved budget.
- For all transactions within Dual and Triple Adjudication:
  - It must be reported to the PTC authorised to deal with that level of decision for oversight;
  - Transactions trends must be analyzed and investigated by Group Commercial Risk & Governance to identify and manage risks and compliance on transactions up to R5m.
- All transactions to procurement committees below the EXCOPS must be reported to the next level committee for oversight.
- Project Sourcing and Commodity Sourcing commercial strategies must be submitted to the relevant committees as whole for the project and not the individual packages.
- Commercial strategies for capital expenditure should be presented to relevant committees before ERA (after DRA) approval to ensure pro-active inputs by the relevant committees before the final investment decisions.
- All procurement decisions must be reported to the next level of committee for information.
- With regard to all disposal of Land & Rights and Commercial Property :
  - The GE Commercial and Technology and FD must be consulted before submission to the Board/Board IFC for approval
  - It must be recommended by the Land and Rights Committee.
  - For all Lands & Rights transactions a Registered Valuer and Quantity Surveyor must be consulted

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- All transactions within dual and triple adjudication must be reported to the Lands & Rights Committee for oversight.
- The CE must be consulted prior to the disposal of any immovable property.
- Any overlap between Land & Rights & Properties will be addressed by the CE in terms of their mandates.

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**Appendix B: Delegated Signing Authorities (for contracts)**

Approval Authority	Signing Authority
Board of Directors	Group Executive; may nominate a Divisional Executive, SGM or GM
Board of Directors Tender Committee	Group Executive; may nominate a Divisional Executive, SGM or GM
Executive Committee	Divisional Executive; may nominate a SGM or GM
EXCO Procurement Sub-Committee	Divisional Executive; may nominate an SGM, GM or E-Band Manager
Head Office and Site PTCs	E-Band Manager
Triple Adjudication	Middle Manager (M17/M18)
Dual Adjudication	Manager (G14 and above)
Non-Buyers (LPOs)	Cost centre managers

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## Appendix C: PPPFA Framework

1	<p><b>Acceptable / Responsive Tender</b></p> <ol style="list-style-type: none"> <li>1. Basic Compliance with terms and conditions of tender</li> <li>2. No. of tenders submitted (main vs. alternative; later v earlier, etc.)</li> <li>3. Complete copy submitted for evaluation</li> <li>4. Mandatory Returnables to evaluate Special Conditions, Thresholds and Apply Preference Points System</li> <li>5. Authorised Tender</li> <li>6. DOIs Verified</li> </ol> <p><b>ACCEPTABLE/RESPONSIVE TENDER PROCEEDS TO EVALUATION OF SPECIAL CONDITIONS AS PRE-QUALIFICATION GATEKEEPER</b></p> <p><b>NON-RESPONSIVE / UNACCEPTABLE TENDERS DISQUALIFIED</b></p>
2	<p><b>Specific Goals as Special Conditions of Tender (Gate-keeper to Threshold Evaluation)</b></p> <ol style="list-style-type: none"> <li>7. Evaluate against stated pre-qualification criteria</li> <li>8. Eliminate non-compliant tenders</li> </ol> <p><b>ONLY SUPPLIERS MEETING SPECIAL CONDITIONS OF TENDER QUALIFY FOR THRESHOLD EVALUATION</b></p>
3	<p><b>Thresholds (Functionality, Local Content –Designated Sectors)</b></p> <ol style="list-style-type: none"> <li>9. Non-negotiable criteria - Functionality</li> <li>10. Apply all or nothing principle re: SHEQ</li> <li>11. Apply penalty principle to technical requirements</li> <li>12. Local Content Threshold (if applicable)</li> </ol> <p><b>NON-NEGOTIABLE REQUIREMENTS MET – PROCEED TO 80/20 OR 90/10 EVALUATION</b></p> <p><b>DISQUALIFY IF FAIL TO MEET THRESHOLD/S</b></p>
4	<p><b>Preference Points System</b></p> <ol style="list-style-type: none"> <li>13. Derive Evaluation Price –adjusted for arithmetical errors, VAT, all applicable taxes, CPA and unconditional discounts (refer to Calculation Sheet)</li> <li>14. Apply Prescribed Formula and Determine points for Price</li> <li>15. Add points for BBBEE as per prescribed table</li> <li>16. Total points</li> <li>17. Derive Ranking (Highest Ranked to Lowest Ranked)</li> </ol>
5	<p><b>Scoring and Ranking</b></p> <p><b>SUPPLIERS SCORED AND RANKED AGAINST TOTAL POINTS – SHORT LIST FOR NEGOTIATIONS</b></p>
6	<p><b>(Negotiate) – Not Mandatory</b></p> <ol style="list-style-type: none"> <li>18. Must be provided for in the tender</li> </ol>

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	19. Short-list in terms of provisions set out in the tender 20. Set objectives and parameters 21. Obtain mandate to negotiate 22. Derive Negotiated Outcome
<b>DERIVE SHORT LIST POST NEGOTIATIONS</b>	
7	<b>Apply Objective Criteria and Specific Goals – Short Listed Suppliers Only who are Eligible for Contract Award</b>
	23. Legal Compliance (Tax clearance, CIDB, PAYE, COIDA, etc.) 24. Financial Viability (Financial Statements) 25. Specific Goals 26. Contract Terms and Conditions 27. Registered (Eskom Supplier Database)
<b>DETERMINE SUCCESSFUL SUPPLIER/S</b>	
8	<b>Award</b>
	28. To highest ranked 29. Not to the highest ranked if highest ranked fails to meet negotiation parameters and/or one or more objective criteria – award to the next highest ranked supplier meeting all negotiation objectives and all objective criteria

**DESIGNATED SECTORS:**

The following industries, sectors and sub-sectors have so far been designated for local production with minimum local content thresholds from the Department of Trade and Industry (DTI).

Industry/sector/sub-sector	Minimum threshold for local content
Buses (Bus Body)	80%
Textile, Clothing, Leather and Footwear	100%
Steel Power Pylons	100%
Canned / Processed Vegetables	80%
Pharmaceutical Products: OSD Tender	70% (volumes)
Rail Rolling Stock	65%
Set Top Boxes (STB)	30%
Furniture Products	
o Office Furniture	85%
o School Furniture	100%
o Base and Mattress	90%
Valves	70%
Manual and pneumatic actuators	70%
Electrical and telecommunication cables	70%
Components of solar water heaters	70%

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## Appendix D: High Risk SHE Categories

High Risk	Medium Risk	Low Risk	Other
<b>1. Construction</b> <ul style="list-style-type: none"> <li>Construction Work</li> <li>Installation of equipment e.g. Transformer</li> <li>Outage work</li> <li>Working at heights</li> <li>Demolition Work</li> <li>Excavation work</li> <li>Blasting</li> <li>Scaffolding</li> <li>Building and modification of infrastructure</li> <li>Lifting equipment</li> <li>Support work</li> <li>Tunneling work</li> <li>Batch plant</li> <li>Explosive power tools</li> <li>Civil work</li> </ul> <b>2. Maintenance work involving:</b> <ul style="list-style-type: none"> <li>Live lines</li> <li>Ashing or emergency ashing</li> </ul>	<b>1. Maintenance</b> <ul style="list-style-type: none"> <li>Vehicle maintenance</li> </ul> <b>2. Transportation</b> <ul style="list-style-type: none"> <li>Medical waste transportation</li> </ul> <b>3. Services</b> <ul style="list-style-type: none"> <li>Emergency services</li> <li>Technical consulting</li> </ul>	<b>1. Low risk (includes work not conducted at heights)</b> <ul style="list-style-type: none"> <li>Labour broking or providing personnel (admin/office) based</li> <li>Cleaning services (not conducted at heights)</li> <li>Gardening or Landscaping</li> <li>Supplying and maintenance of electronic equipment ( iPads, phones, computers, laptops, screens)</li> </ul> <b>2. Manufacturing, Product Supply and Delivery</b> <ul style="list-style-type: none"> <li>Consumables and other miscellaneous items</li> <li>Non-hazardous waste transportation</li> </ul> <b>3. Services</b> <ul style="list-style-type: none"> <li>Consulting and Auditing (admin based)</li> <li>Training</li> </ul>	<b>1. Services</b> <ul style="list-style-type: none"> <li>Private electrical generation</li> <li>Externally funded projects</li> </ul>

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<ul style="list-style-type: none"> <li>• Coal lashing</li> <li>• PF Leaks</li> <li>• Boiler maintenance</li> <li>• Transformer maintenance</li> <li>• Electrical switching</li> <li>• Crane operation</li> <li>• Sandblasting</li> </ul> <p><b>3. Transportation:</b></p> <ul style="list-style-type: none"> <li>• Employee transportation</li> <li>• Coal transportation</li> <li>• HAZ Chemical and dangerous goods transportation</li> <li>• Equipment transportation</li> <li>• Driving</li> <li>• Heavy duty transport and rigging</li> </ul> <p><b>4. Manufacturing: Product Supply and Delivery</b></p> <ul style="list-style-type: none"> <li>• Conductors,</li> <li>• Scaffolding,</li> <li>• MV motors,</li> <li>• Handling of Transmission /Distribution poles,</li> <li>• Electricity</li> </ul>		<ul style="list-style-type: none"> <li>• Event management (performing structural erection)</li> </ul>	
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<p><b>5. Services</b></p> <ul style="list-style-type: none"> <li>• Security</li> <li>• Consulting (not office-based) i.e. engineers working on site or individuals having access to site</li> </ul> <p><b>6. Vegetation Management</b></p> <ul style="list-style-type: none"> <li>• Tree felling</li> <li>• Bush clearing</li> </ul> <p><b>7. Other works, e.g.</b></p> <ul style="list-style-type: none"> <li>• Diving or where work is executed in/on /around water and the risk of drowning exists</li> <li>• Working at ash dams</li> <li>• Working with asbestos material</li> </ul>			
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**Non-negotiable minimum requirements that must be requested from suppliers participating in a tender or negotiations (no prior tendering)**

High Risk	Medium Risk	Low Risk	Other
<ul style="list-style-type: none"> <li>• A baseline Risk assessment</li> <li>• Health and Safety costing</li> <li>• Competency</li> <li>• Acknowledgement for Eskom's rules &amp;</li> </ul>	<ul style="list-style-type: none"> <li>• A baseline Risk assessment</li> <li>• H&amp;S costing</li> <li>• Competency</li> <li>• Acknowledgement for Eskom's rules &amp; requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Risk assessment</li> <li>• Acknowledgement for Eskom's rules &amp; requirements</li> <li>• SHE Plan</li> <li>• Valid Letter of Good Standing</li> </ul>	<ul style="list-style-type: none"> <li>• As per the risk assessment</li> <li>• Eskom's SHE specification provided to the supplier.</li> <li>• Acknowledgement</li> </ul>

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<ul style="list-style-type: none"> <li>requirements</li> <li>• SHE Plan</li> <li>• Valid Letter of Good Standing</li> <li>• Medical certificates</li> <li>• Performance Records</li> <li>• SHE policy</li> </ul>	<ul style="list-style-type: none"> <li>• SHE Plan</li> <li>• Valid Letter of Good Standing</li> <li>• Medical certificates</li> <li>• SHE policy</li> </ul>	<ul style="list-style-type: none"> <li>• SHE policy</li> </ul>	<ul style="list-style-type: none"> <li>for Eskom's rules &amp; requirements</li> <li>• SHE Plan</li> <li>• Applicable Compensation Cover (Good Standing)</li> </ul>
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Requirements	Details
1. Acknowledgement for Eskom's rules & requirements	Ensure that all applicable rules and requirements are referenced in this form in order for the supplier to acknowledge and comply with. Ensure that this completed form is included in the enquiry procurement package. To be signed and submitted by the supplier.
2. SHE Plan	The applicable contract-specific/scope-of-work-specific SHE requirements that will be complied with and managed by the supplier. <i>Note to Eskom SHE functionary performing the SHE tender evaluation</i> –the SHE requirements must be scope-of-work-specific.
3. Valid Letter of Good Standing	Registration with the Compensation Commissioner (COID) or a licensed mutual company or an equivalent thereof (for international suppliers)
4. Medical	Conducted in relation to the individual's man-job specifications and the health risk assessment for each employee (including temporary / casual and labour broker persons).
5. Performance records	Occupational Health and Safety performance records for the past 3 years (fatalities and lost-time injuries)
6. Competency	Do employees have the appropriate qualifications and experience for performing the assigned tasks?
7. Costing for SHE	Has the supplier submitted costing for SHE

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### Appendix E: Application of SD&L as Specific Goals and Objective Criteria

Developmental Objective	Mechanism for achievement	Evaluation criteria element	Evaluation criteria process
Development of EMEs - Targeted procurement (Transactions below R30K)	Supplier list enabling closed tender mechanism from a pre-qualified list of suppliers on the Eskom Supplier Database	BBBEE (criteria for evaluation)	Hierarchy of Supplier Preference on a rotation basis
Development of EMEs - Targeted procurement (Transactions from R30K up to R1 million)	Closed tender mechanism whereby a minimum of 3 quotes are obtained from a pre-qualified list of suppliers or from an appropriately segmented supplier database	BBBEE (criteria for evaluation)	Hierarchy of Supplier Preference on a rotation basis Points allocated for BBBEE as part of the preference points system
Targeted procurement (all transactions above R1 million)	Establishment of Panels	Special conditions of tender or objective criteria supported by approved sourcing strategy	i) Declaration for support for SD&L to be completed at Phase 1 of the process (pre-qualification) ii) SD&L matrix to be completed at 2 <sup>nd</sup> phase of process (task order process) iii) Targets become contractual obligations
Skills development	Skills development targets applied for project related activities (CIBD)	Included in Functionality threshold	Included in Functionality Required for threshold evaluation point scoring
Skills development	SD&L Matrix	Suppliers to propose as part of objective criteria	Required as evidence of objective criteria that will convert to contractual obligation
Local content or Production (self-designation)	Ensure compliance with prescripts from Dti and NT on self-designation	Threshold as per approved prescripts of Dti and NT	Included in Local Content/production evaluation - Required for threshold evaluation point scoring
Local content or Production (Non-Designated sectors /	May include targets for non-designated sectors (not applied as part of a	Objective criteria supported by approved sourcing strategy	SD&L Matrix to be completed and target proposed will become

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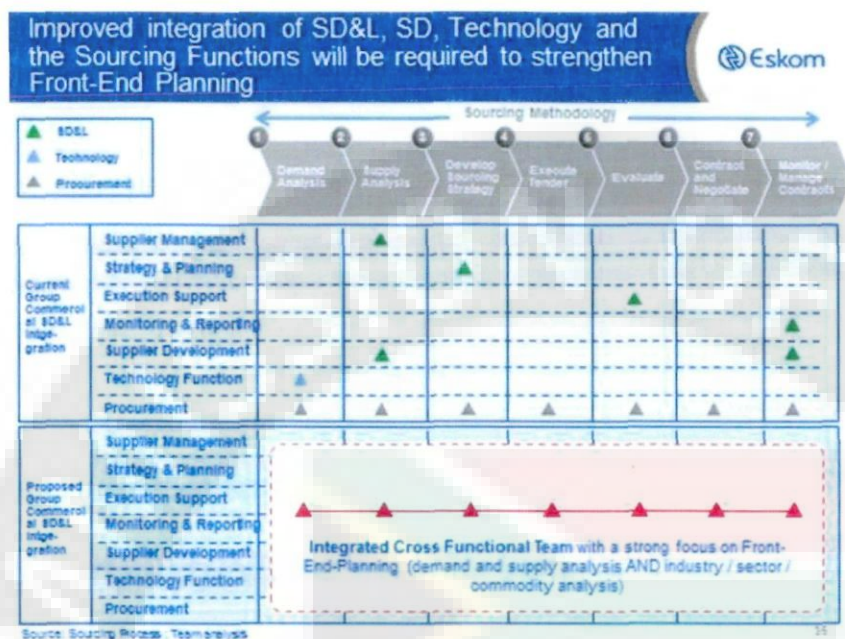


commodities)	threshold)		contractual obligation
Job creation	Job creation declaration	Objective criteria or special condition of tender	Inclusion of job creation declaration to be completed. Target proposed will become contractual obligation
Developmental spend	Determination of opportunity for 2nd tier developmental spend across: Procurement from LBS, BWO, SBE Based on unbundled of scope of work packages	i) Objective Criteria or Special condition of Tender ii) Application without thresholds or evaluation criteria	Inclusion of sub-contracting (SD&L Matrix) to be completed as a tender returnable. Target proposed will become contractual obligation
Functionality: support geographical location	Geographical location or proximity to site as an objective criterion if speed of service and /or development of the local community where the project is located	Special condition of tender or objective criterion supported by approved sourcing strategy.	Included in Functionality. Required for threshold evaluation point scoring
Supplier Development/ Enterprise Development	Pre- and post contractor support mechanism outside of the evaluation process. Measurable once sector and industry analysis is complete.	Objective criteria or special condition of tender supported by approved sourcing strategy.	Inclusion of supplier development declaration to be completed as a tender returnable. Target proposed will become contractual obligation.
Foreign imports	Negotiation and contractual obligation, however measureable once sector and commodity analysis is done	Special condition of tender/ objective criteria	Localisation of portion of scope declaration to be completed. Target proposed will become contractual obligation.

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## Appendix F: Front-end Planning



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 <b>Eskom</b>	<b>Standard</b>	
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Title: **Probity Check Standard**Document Identifier: **240-132328517**Alternative Reference  
Number:Area of Applicability: **Eskom Holdings SOC Ltd**Functional Area: **Assurance and Forensic**Revision: **1.0**Total Pages: **16**Next Review Date: **September 2020**Disclosure  
Classification: **Controlled Disclosure**

Compiled by

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Holdings SOC LtdDate: 21/11/2017Date: 30/11/2017Date: 30/11/2017

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## 1. Introduction

In terms of sections 2, 75 and 76 the Companies Act 71 of 2008 (the "**Companies Act**"), 50(3) of the Public Finance Management Act, 1 of 1999 (the "**PFMA**") and the King IV Report on Corporate Governance for South Africa, 2016 ("**King IV**"), it is expected that directors and employees of a company perform their duties in a fair, ethical and unbiased manner. Their decisions should not be influenced by personal gain or interests.

Additionally, Eskom is required in terms of section 217 of the Constitution Act, 108 of 1996 (the "**Constitution**") and section 51(1)(iii) of the PFMA to have "*an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective*".

In order to ensure and manage full adherence to the legislative provisions above and the principles of the King IV Report, all potential conflicts of interests must be declared by suppliers and employees in the prescribed manner. Such declared interests must then be assessed to ensure that they do not prejudice the procurement process or negatively influence it in any manner.

For this reason, ongoing Probity Checks and other related reviews, as determined by the Chief Audit Executive will be conducted, to identify and report potential conflicts of interests and other risks throughout the Eskom procurement value chain. It is the responsibility of the Executive and Board to manage all known conflicts of interest including those reported by the Chief Audit Executive through this process.

## 2. Supporting Clauses

### 2.1 Scope

#### 2.1.1 Objective

To prescribe the scope and processes to be followed in conducting probity checks including other related legally recognized reviews within Eskom Holdings SOC Ltd and its wholly owned subsidiaries.

Probity Checks process refers to the act of examining the personal and business relationships of a person (natural or juristic) in order to ascertain their ability and standing (in fact and appearance) to carry out the required duties and responsibilities fairly and without prejudice. The intention is to identify possible conflicts of interest and validate declared interests which may be perceived to lead to conflict, thus negatively impacting the integrity of the procurement process. Assurance and Forensic is required to report any conflicts identified through the probity checks process to the relevant immediate supervisor / manager / executive for appropriate action unless the conflict has already been disclosed and approved in which case, it will be reported to the supervisor for review and the report will reflect the conflict. The conflict will also be reported to the relevant Tender Committee where the transaction is adjudicated. Where a direct or potential conflict relates to the member of the Eskom board, A&F shares a report with the Company Secretary for deliberation with the Chairperson of the Board Tender Committee (BTC) and the Chairman of the Board. To manage confidentiality the report is shared only with the Company Secretary and feedback is shared with the BTC.

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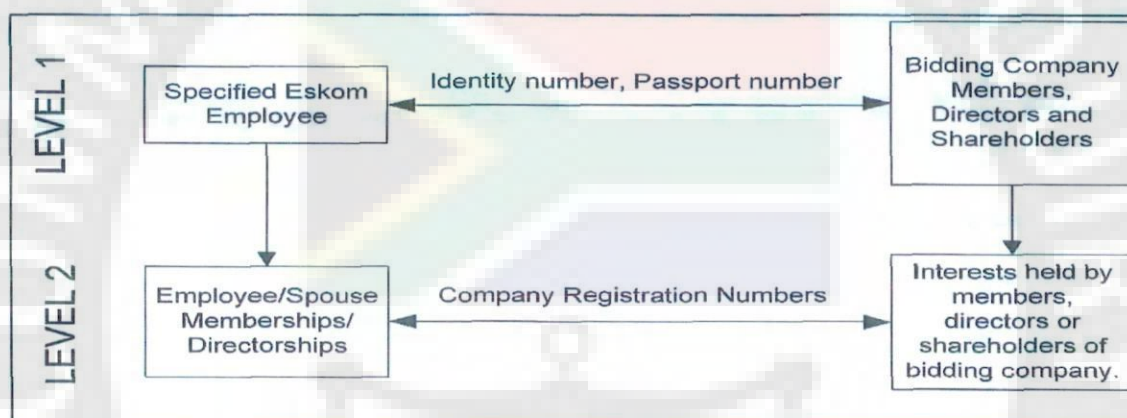
Probity Checks facilitate an early warning mechanism to identify potential conflicts thereby positively enhancing fairness and transparency of the procurement process which is essential for protecting Eskom's image and reducing its exposure to other operational and financial risks. The Probity Check process is designed to integrate legal and ethical requirements into procurement decision making and result in an enhanced ability to identify and manage procurement risks.

### 2.1.2 Applicability

This document shall apply throughout Eskom Holdings SOC Ltd and its wholly owned subsidiaries.

### 2.1.3 Probity Data Check Process Overview

Probity checks are confined to Level 1 & 2 probities (graphic below) and encompassed, amongst others, ascertaining and review of the following details:



#### Suppliers:

- Registration
- Business name/Trading name
- Business type
- Start date
- Registered/Operating Address
- Auditor details
- Respective Shareholding in other entities (if applicable)
- Links to Eskom employees and related individuals

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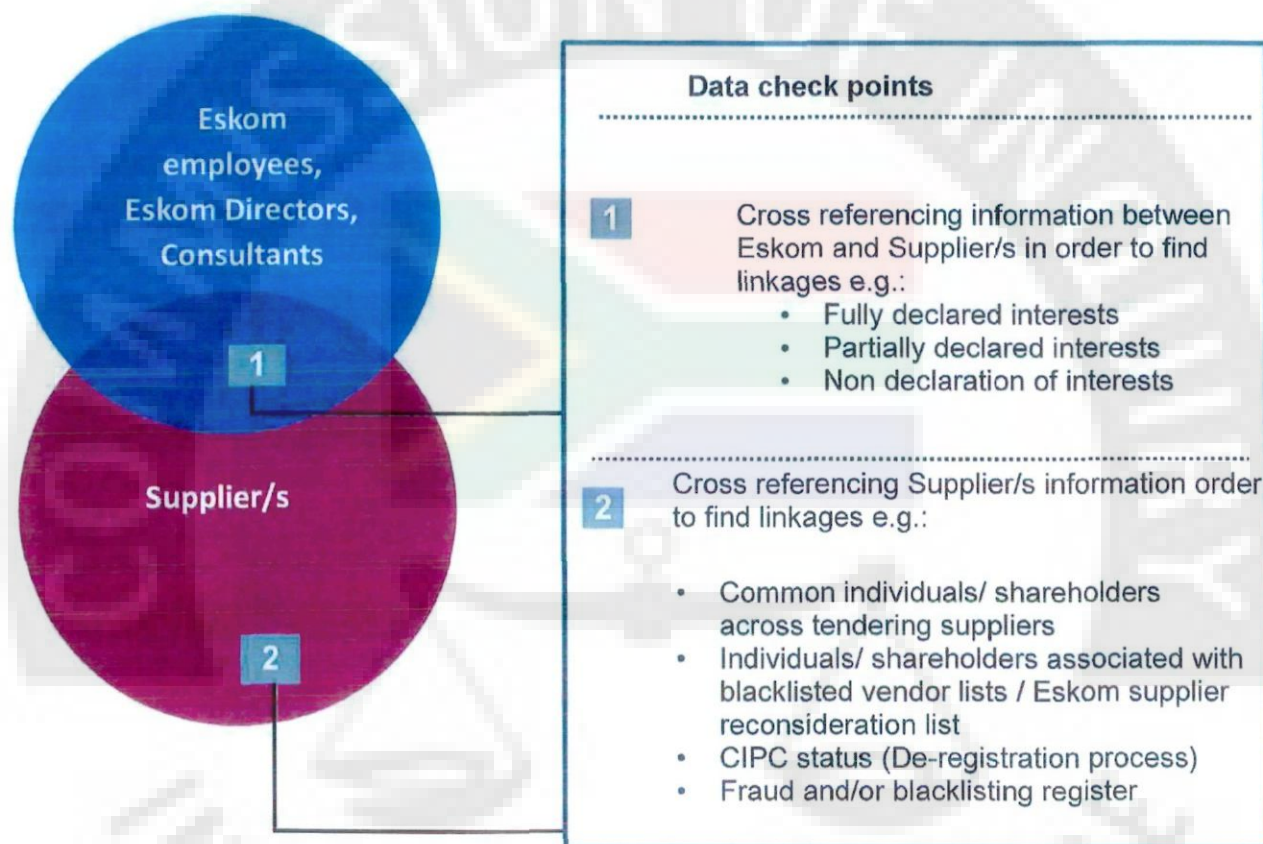
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**Individuals:**

- Identity verification details
- Confirmation of residential address
- Links to other (relevant) companies and their respective percentage shareholding
- Shareholders of the bidding companies

The data checks can be depicted as follows:

**2.2 Normative/Informative References**

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

**2.2.1 Normative**

- [1] Eskom's Procurement and Supply Chain Management Procedure (32-1034).
- [2] Conflict of Interest Policy (32-173).

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### 2.2.2 Informative

- [3] Eskom's Conditions of Service.
- [4] Eskom's Disciplinary Code (Eskom Standard 32-1112).
- [5] Eskom's Disciplinary Procedure (32-1113).
- [6] Eskom's Procurement and Supply Chain Management Policy (32-1033).
- [7] ISO 9001 Quality Management Systems.
- [8] The Eskom Code of Ethics (Standard 32-527).
- [9] Companies Act 71 of 2008.
- [10] Constitution Act, 108 of 1996.
- [11] King IV Report on Corporate Governance for South Africa, 2016.
- [12] Prevention and Combating of Corrupt Activities Act, 12 of 2004
- [13] Private Work Procedure 32-762.
- [14] Promotion of Administrative Justice Act 3 of 2000.
- [15] Protection of Personal Information Act 4 of 2013.
- [16] Public Finance Management Act 1 of 1999.

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## 2.3 Definitions

Definition	Explanation
<b>Conflict(s) of interest</b>	<p>A conflict of interest arises when one's personal interests, personal financial interests or any other interests, <b>affect, or could be perceived</b> to affect, or have <b>the potential to affect</b>, one's objectivity and discretion and/or the objectivity and discretion of another in performing Eskom duties or making decisions on behalf of Eskom. This means that an employee or director is in a position to make a decision (or influences a decision) that is not fair and objective in order to benefit personally, or to benefit related and/or inter-related persons or other associates.</p> <p>A personal interest may be an actual or potential, direct or indirect interest of an employee or a director, or of a related person or an inter-related person or other associate of the employee or director, in any business, entity, undertaking, or investment, as a shareholder, director, associate, member, adviser/consultant, prescribed officer or in any other capacity.</p> <p>A personal financial interest, when used with respect to any person, means a direct material interest of that person or of a related person or inter-related person or other associate of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed. This does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment.</p> <p>It is important to note that conflicts of interest can arise in various situations and are not confined to interests in contracts or direct financial interests.</p> <p>Situations where conflicts could arise include, but are not limited to the following, which must be dealt with in terms of this policy:</p> <ul style="list-style-type: none"> <li>a) the acceptance and/or offering of business courtesies;</li> <li>b) directors and employees having private business interests in entities that do, or might do business with Eskom;</li> <li>c) directors and employees having affiliations with non-profit organizations that receive funding or any form of aid from Eskom; and</li> <li>d) private, professional, political, academic, or other interest that may conflict with Eskom's interests.</li> </ul>
<b>Consultants</b>	Third party contractors and External consultants

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Definition	Explanation
<b>Cross Functional Team</b>	A cross-functional team is a team assigned by the Procurement Practitioner to evaluate and assess a tender submission and thereby to ensure that execution of the agreed commercial strategy is commercially, technically (including SHEQ considerations), legally, ethically and financially sound. Cross-functional teams comprise technical, financial, legal and commercial representatives, for purposes of strategy development, tender evaluations and negotiations.
<b>Director</b>	Director means a member of the Eskom Board of Directors, a member of the Eskom Subsidiary boards, a prescribed officer; or a person who is a member of a committee of the Eskom board or of the audit committee of Eskom, irrespective of whether or not the person is also a member of Eskom's board.
<b>Employee</b>	Employee(s) means individuals employed by Eskom Holdings SOC Ltd and Eskom's Subsidiaries on a permanent basis, Eskom learners and fixed-term employees, which include temporary employees, part-time employees, casual employees and occasional employees.
<b>Manager</b>	Manager includes a supervisor and means any employee with staff reporting directly to him/her.
<b>Probity</b>	Probity means integrity, uprightness, correctness and righteousness and can be summated as the evidence of ethical behaviour.
<b>Probity Check</b>	Probity Checks process refers to the act of examining the personal and business relationships of a person (natural or juristic) in order to ascertain their ability and standing (in fact and appearance) to carry out the required duties and responsibilities fairly and without prejudice.
<b>Procurement Practitioner</b>	A Procurement Practitioner is an employee within Eskom appointed to manage and/or execute a procedure or process as contained in the Eskom Procurement Procedure (32-1034), or within any of the approved PCMs relating to procure-to-pay processes which form part of the Approved Procurement Framework.

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Definition	Explanation
<b>Related and inter-related person(s)</b>	<p><b>Related</b></p> <p>a) an individual is related to another individual if they—</p> <ul style="list-style-type: none"> <li>(i) are married, or live together in a relationship similar to a marriage; or</li> <li>(ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;</li> </ul> <p>b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with the definition of "control" contained in the Companies Act; and</p> <p>c) a juristic person is related to another juristic person if—</p> <ul style="list-style-type: none"> <li>(i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with the definition of "control" contained in the Companies Act;</li> <li>(ii) either is a subsidiary of the other; or</li> </ul> <p>a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with the definition of "control" contained in the Companies Act.</p> <p><b>Inter-related:</b></p> <p>When used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) of the Companies Act, and one of them is related to the third in any such manner, and so forth in an unbroken series.</p>
<b>Supplier</b>	A supplier is a current or potential supplier, vendor, contractor, consultant, or service provider. A supplier may be a natural or legal person, and includes any employee acting within the course and scope of his/her employment or any agent or manager acting for or on behalf of or in the interests of the person registered as supplier on the Eskom Supplier Database.

## 2.4 Abbreviations

Abbreviation	Explanation
Board	Board of Directors of Eskom
BTC	Board Tender Committee
EXCO	Executive Committee of Eskom
ETC	EXCO Tender Council
DTC	Divisional Tender Council
PFMA	Public Finance Management Act 01 of 1999

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Abbreviation	Explanation
Board	Board of Directors of Eskom
POPI	Protection of Personal Information Act 4 of 2013

**2.5 Roles and Responsibilities**

- **Assurance and Forensic department** is responsible for:
  - The management and placement of contract/s between Eskom and non-statutory audit service providers; and
  - Investigation of referred matters resulting from probity checks.
  - Development, implementation and execution of the standard on behalf of Eskom.
  - The reporting of identified conflicts of interests.
  - The implementation, execution and maintenance of this standard.
- **Eskom Managers** are responsible for:
  - Taking appropriate action on matters resulting from probity checks; and
  - Supplying relevant information required for probity check requests.
- **Procurement Practitioners** are responsible for:
  - Supplying relevant information required for probity check requests;
  - Ensuring probity check requests are submitted in a timely manner; and
  - Ensuring probity check requests are submitted as prescribed by this standard.
- **Legal and Compliance department** is responsible for providing advice for:
  - The implementation, execution and maintenance of this standard;
  - The monitoring of the status of identified conflicts of interests referred.
  - Notify Group Commercial of changes in law that may affect this standard and implementation thereof.
  - Monitoring compliance on the implementation of this standard.
- **Ethics Office** is responsible for:
  - Notifying Eskom of changes in the area of Ethics and Conflict of Interest that may affect this standard and implementation thereof.
  - Recording of identified / reported conflicts of interest.
  - Monitoring of the status of identified conflict of interest referred.

**2.6 Process for Monitoring**

Legal and Compliance will conduct periodic reviews to ensure compliance on the execution of the processes defined herein.

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## 2.7 Related/Supporting Documents

The following documents and templates are supportive to this Probity Check Standard.

Template Name	Unique Identifier
Probity Request Form	240-84857882
Management Policy, including Probity Check	N/A
Probity Register	240-132328517/18/19
Application Declaration of Individual Name/Shareholding/Beneficial ownership of their shares returnable	N/A
Appointment Letter to a Director/Member or Alternate Director and Members	N/A
Delegation Letter to a Director/Member or Alternate Director and Members	N/A
Declaration of Interest for Members of Management and/or Directors/Shareholders	N/A
Probity Report	N/A

### 2.7.1 Scope of Probity Checks

The following individuals or decision-making bodies will be subject to Probity Checks (including the spouse of the members and officials of the committees, where applicable):

- a. All Executive and Non-Executive Directors and Officials;
- b. Directors and Executive Committees, members and Officials;
- c. Board members;
- d. All employees, including senior management;
- e. Other functional teams and divisions and members of any committees, non-executive and executive committees, and all individuals with a narrative or qualitative scope of 100 years;
- f. Individuals:
  - i. All personnel applying for a position of trust or an appointment;
  - ii. All personnel applying for a position of trust or an appointment;
  - iii. All personnel applying for a position of trust or an appointment;
  - iv. Shareholders or relevant suppliers.

Probity Checks will examine areas where possible conflicts of interest may exist and ensure compliance to Eskom's conflicts of interest policy and other relevant policies and/or arrangements by Eskom's employees, directors, and officials with regard to the scope of the checks.

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#### 4. Boundaries, limitations and disclaimers on Probity Checks

- Information used for the purposes of Probity Checks and due diligence reviews will be obtained from Group Commercial who will in turn rely on the tender documentation and confirmation from the supplier on the accuracy, completeness and validity of the information required for probity.
- Information used for the purposes of Probity Checks and due diligence reviews will be also be obtained from the legally recognized public domain and open sources.
- If information from the private domain is required, then consent in writing will first be obtained from the particular individual or decision-making body.
- All information pertaining to the Probity Check, Report and findings must be treated as confidential and will not be disclosed to unauthorised parties, unless a legal duty to do so exists.
- Public companies: The focus will be to conduct probity checks on individuals with a significant shareholding proportion or control. For the purposes of probity checks significant shareholding is identified as shareholding that is equal to or greater than 20%.
- Access to information relating to foreign persons and entities may be limited due to dependency for data on public domain and open sources, thus affecting the ability to conduct consistent Probity Checks.

#### 5. Probity check process overview

This document aims to clarify the circumstances, roles, responsibilities and processes to be followed in conducting probity Checks for transactions and activities within Group Commercial.

##### 5.1 Probity check requirement

It is intended that Probity Checks will be conducted as follows (via the Probity Request Form- 240-54857882):

1. Procurement transactions:
  - a. Mandatory Probity Checks: DTC, ETC and BTC Submissions
    - i. Probity Checks are required for all submissions to the DTC, ETC and BTC that involve the authorisation of new transactions, and / or contract modifications for value only.
    - ii. Probity Checks will be conducted on all members of the evaluation and negotiation teams, signatories to the reports, potential companies recommended for the procurement transaction, Board, DTC, ETC and BTC members and officials, and their spouses.
    - iii. If probity on the contract due for modification has been done in the previous twelve (12) months, the probity will only be done on changes to the membership of the Committees and not the entire Committee. The probity report produced in the preceding 12 months will be relied on, and such feedback will be provided to the respective tender committee/council

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- iv. All probity reports will follow strict disclosure due to the nature of the information. The reports will be maintained by A&F and only feedback relating to the findings of the report will be presented to the relevant Tender Committee/Council.
- v. Where a direct or potential conflict has been identified which relates to a Board Member or Board Member's spouse, the Senior Manager A&F will issue a memo to the Company Secretary outlining the direct or potential conflict. The Company Secretary is responsible for informing the Board Chairperson and BTC Chairperson of the identified conflict (whether direct or indirect) and the recommendations made in that regard.
- b. Discretionary Probity Checks on request: Other Procurement Tender Committees, and Dual/Triple Adjudication Submissions:
  - i. Probity Checks may be requested for submissions that involve the authorisation of new transactions, condonation, ratifications and / or contract modifications.
  - ii. Probity Checks may be requested by the tender committee chairperson, Dual/Triple Adjudicator or relevant senior manager from business.
  - iii. Probity Checks on members of the evaluation and negotiation teams, signatories to the reports, companies which are shortlisted for the procurement transaction, and members of the tender committee or the Dual/Triple Adjudicator.
- 2. Routine ongoing Probity Checks:
  - iv. Probity Checks will be conducted prior to appointment of tender committee members and Dual and Triple adjudicators.
  - v. Ongoing Probity Checks will be conducted on Group Commercial staff, tender committee members, Dual and Triple adjudicators and LPO buyers. This may be performed by A&F or the Risk and Governance section within Group Commercial

**5.2 The Probity Check Operational Guideline**

The Probity Check Operational Guideline outlines the processes to be followed when conducting Probity Checks. An end to end Probity check comprises the below phases:

Phase 1: Request for probity check submitted and received;

Phase 2: Conduct probity checks against approved sources;

Phase 3: Review and interpret gathered information;

Phase 4: Determine level of risk exposure;

Phase 5: Compile findings and recommendations report;

Phase 6: Record and Report findings to relevant committee/council, or Company Secretary where applicable

Phase 7: Retention and safe guarding of data and reports; and

Phase 8: Monitor and retain.

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## 6. Documentation management and retention (PoPi requirement)

Documentation related to probity Checks will align to the Eskom Standard for records retention periods (240-56296995).

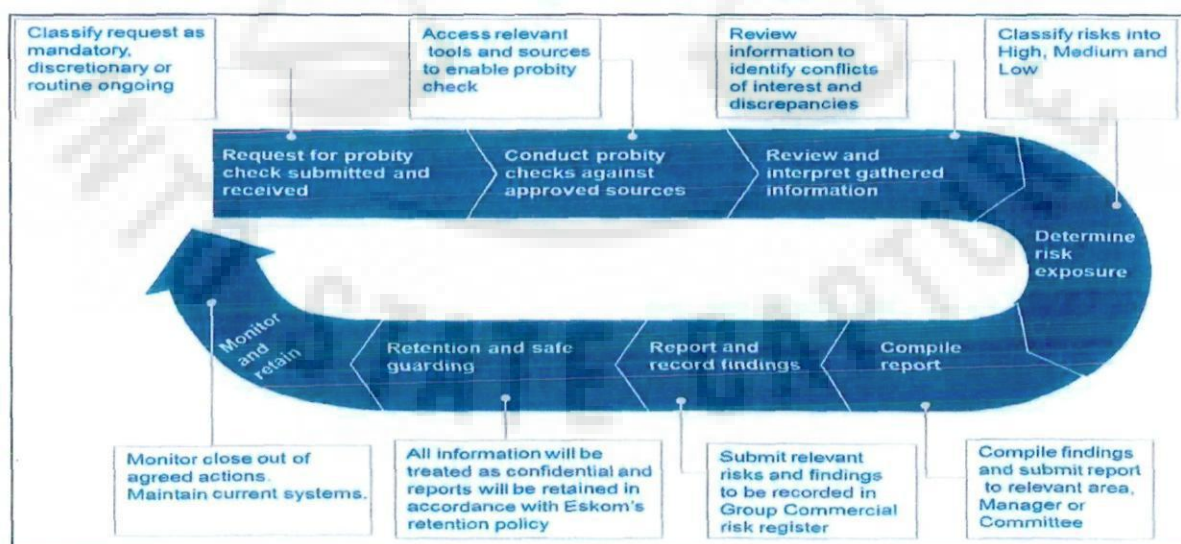
Information must be treated as confidential and must not be disseminated without relevant written approval.

## 7. Templates to be updated/compiled

- Probity Request Form (240-54857882) for DTC, ETC and BTC
- Probity Request Form (240-54857882) for other Tender Committees/Dual Adjudication/Triple Adjudication/Business/Staff;
- Probity request form/instruction to external panel;
- Probity register (240-54178784);
- Suppliers will be required to complete a Declaration of Interest form/Shareholding/Beneficiary as part of their tender returnable. Add consent for Probity check to be conducted on template + To indicate if they are Ex-Eskom employees;
- Tender Committee members + DOA approvers – Add consent for Probity check to be conducted as part of appointment form;
- Eskom employees – must be part of CoS + evaluation and negotiation forms; and
- Probity Report Format and disclaimers for submissions and ongoing employee checks.

## 8. Process Flow Diagrams

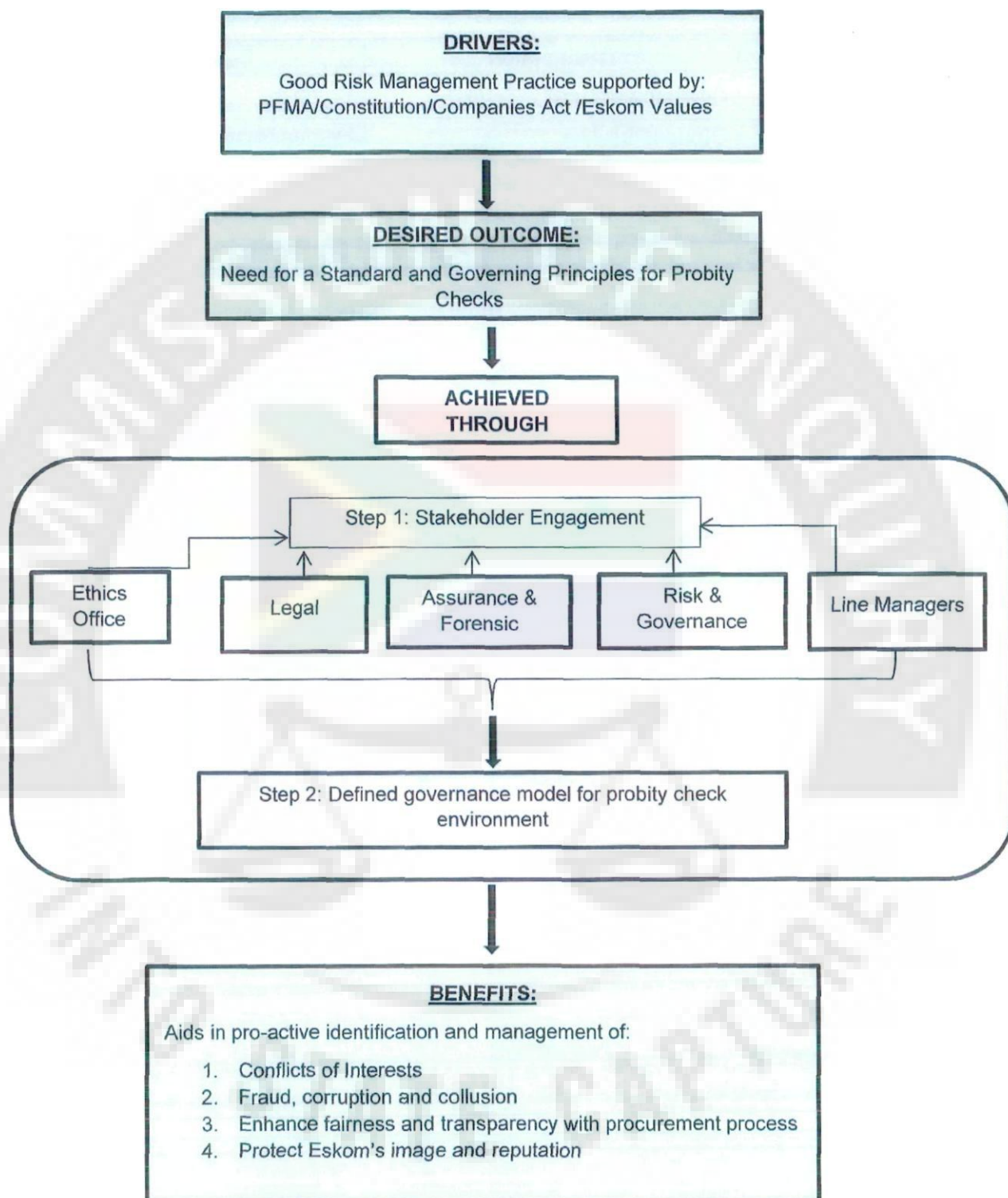
### 8.1 Probity Check Process Overview



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**8.2 Probity Check Value chain****CONTROLLED DISCLOSURE**

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**Probity Check Standard**Unique: **240-132328517 225**Revision: **1.0**Page: **16 of 16****9. Acceptance**

This document has been seen and accepted by:

Name	Designation	Department
Nazir Ebrahim	Company Secretary (Acting)	Company Secretary
Elsie Pule	Group Executive	Human Resources
Molefi Nkhabu	Senior General Manager	Assurance and Forensic
Dion Chetty	Senior Manager (Acting)	Business enablement (Group Commercial)

**10. Revisions**

Date	Rev.	Compiler	Remarks
2017	1.0	I. Bhowani	Standard to perform probity checks within Eskom

**11. Development Team**

The following people were involved in the development of this document:

Name	Department
Ishan Bhowani	Assurance and Forensic
Bouts Wagener	Assurance and Forensics
Daphne Morwalle	Ethics Office
Dion Chetty	Risk and Governance
Eddie Laubscher	Legal
Jeany Lekganyane	Legal
Nalisha Vadachalam	Risk and Governance
Kegakilwe Lobelo	Human Resources
Winile Madonsela	Legal - HR

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**MEMORANDUM**

---

To: Mr Anoj Singh, Chief Financial Officer  
Mr Molefi Nkhabu, Senior General Manager,  
Assurance and Forensic

Reference:

From: Mr Ishan Bhowani, Senior Manager, Assurance  
and Forensic

Version: 01

Date: 24 April 2017

**SUBJECT: CHANGE IN APPROACH FOR PROACTIVE AND PROBITY REVIEWS FOR  
COMMERCIAL TRANSACTIONS**

---

**PURPOSE**

1. To seek approval to change the approach for Proactive and Probity reviews for all transactions over R500M to be in line with the revised DOA Document identifier: 240-62072907.

**BACKGROUND**

2. A&F is currently mandated by the Board Tender Committee (BTC) to perform Proactive and Probity reviews for all transactions greater than R300M.
3. Part of this mandate is that Proactive and Probity reviews for transactions greater than R750M must be performed by external consulting firms.
4. Based on our discretion, A&F may use of external consulting firms for transactions between R300M and R750M.
5. The external consulting firms are managed through the panel for Non-Statutory Audits.



## CHANGE IN APPROACH FOR PROACTIVE AND PROBITY REVIEWS FOR COMMERCIAL TRANSACTIONS

### DISCUSSION

6. The revised DOA Document identifier: 240-62072907 now mandates the ETC to adjudicate Commercial transactions between R500M and R750M.
7. We seek approval to align our mandate to the new DOA i.e. perform Proactive and Probity reviews for all transactions greater than R500M.
8. A&F will perform Proactive and Probity reviews to the divisional committees (R100M to R500M) on a sample basis or as required by the respective Chairpersons. These reviews will be determined upfront and assurance feedback will be provided to the Divisional committees prior to adjudication of the transaction.

### FINANCIAL IMPLICATIONS

9. This will reduce the costs associated with assurance as the number of transactions reviewed will decrease.

### BUDGET IMPLICATIONS

10. There is currently no centralised budget for assurance work in Eskom; however the requestors pay for their assurance requirements from their budgets.

### RECOMMENDATION

11. Approve the change in approach for Proactive and Probity reviews for all transactions over R500M to be in line with the revised DOA Document identifier: 240-62072907.

Compiled by:

  
Mr Ishan Bhowani  
**SENIOR MANAGER**  
24 April 2017

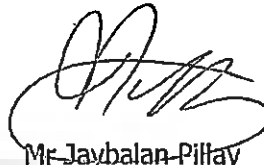


# CHANGE IN APPROACH FOR PROACTIVE AND PROBITY REVIEWS FOR COMMERCIAL TRANSACTIONS 228

Recommended/~~Not recommended~~

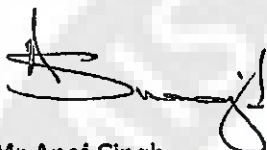

Mr Motefi Nkhabu  
**SENIOR GENERAL MANAGER**

Date: 24/4/2017

Recommended/~~Not recommended~~


Mr Jaybalan Pillay  
**CHIEF PROCUREMENT OFFICER**

Date: 25/04/2017.

Recommended/~~Not recommended~~


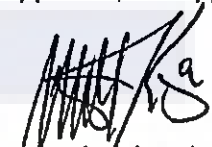
Mr Anoj Singh  
**CHIEF FINANCIAL OFFICER**

Date: 17/05/17

Approved/~~Not approved~~


Ms Chwayita Mabude  
**CHAIRMAN OF AUDIT AND RISK COMMITTEE**

Date:

Approved/~~Not approved~~


Mr Zethembe Khoza  
**CHAIRMAN OF BOARD TENDER COMMITTEE**

Date: 03/07/2017.

# Annexure “E”



**Annexure E**

 <b>Eskom</b>	<b>Secretariat Management Procedure</b>	<b>OFFICE OF THE COMPANY SECRETARY</b>
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**229**

Title: **Secretariat Management Procedure**    Unique Identifier: **221- 254**  
 Document Type: **PC**  
 Version: **3**  
 Total pages: **20**  
 Revision date: **August 2017**  
 Classification: **CONTROLLED DISCLOSURE**

COMPILED BY

FUNCTIONAL RESP.

AUTHORISED

  
**WAYNE VENNER**
  
**LUCINDA LUCAS**
  
**NAZIR EBRAHIM**
**SENIOR ADVISOR  
SECRETARIAT****MIDDLE MANAGER  
SECRETARIAT****ACTING GROUP COMPANY  
SECRETARY**

Date: 06/02/2018

Date: 06/02/2018

Date: 6/2/2018.

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**OCSDPC 221-254 - SECRETARIAT MANAGEMENT PROCEDURE -AUGUST 2017**  
**DRAFT REWR.1                      CONTROLLED DISCLOSURE**

## Secretariat Management Procedure

### 1 INTRODUCTION

The appointment of a Company Secretary in a State Owned Company (SOC) is mandatory under the Companies Act.

The Group Company Secretary should ensure the smooth running of activities of the Board, Board Committees, Exco, the Exco Sub-Committees and all Eskom subsidiaries by setting agendas, ensuring proper compilation of Board papers, advising on Board procedures and ensuring that these are implemented.

The Group Company Secretary must ensure that the minutes of Board, Board Committees, Exco and Exco-sub-committee meetings are circulated to the directors and/or senior executives in a timely manner.

The Group Company Secretary, in fulfilling the secretariat duties, is supported by a team of committee secretaries and administrative staff.

### 2 SUPPORTING CLAUSES

#### 2.1 Scope

##### 2.1.1 Purpose

The purpose of the document is to explain the procedure to be followed when providing secretariat service to the Board, Board Committees, Exco, Exco sub-committees and all subsidiaries.

The secretariat service entails the following:

- scheduling of annual meetings as per Annual Meeting Schedule;
- managing annual work plans of Board, Exco and Committee meetings;
- collating annual work plans to prepare the Combined Agenda Plan;
- convening and administering Board, Exco and Committee meetings;
- preparing agendas and meeting documentation;
- writing accurate minutes and formulating action items;
- maintaining statutory registers (minute books, attendance registers, company forms);
- coordinating and providing input in the preparation and annual review of the Board charter, terms of references and all related governance processes and procedures;
- providing reliable company law and corporate governance advice.

##### 2.1.2 Applicability

The document applies to the Office of the Company Secretary.

#### 2.2 Normative/Informative References

Users of this document should ensure that they are applying the most recent editions of the documents listed. Information on currently valid national and international standards and specifications can be obtained from the Information Centre and Eskom Documentation Centre at Megawatt Park.

## Secretariat Management Procedure

### 2.2.1 Normative

2.2.1.1 ISO 9001 Quality Management Systems.

2.2.1.2 Companies Act.

### 2.2.2 Informative

2.2.2.1 King Report on Corporate Governance, (The Role of the Company Secretary).

2.2.2.2 ICSA International Guidance Notes.

2.2.2.3 Eskom Delegation of Authority Framework.

2.2.2.4 Public Finance Management Act.

2.2.2.5 South African Year Calendar.

2.2.2.6 Directors personal diaries.

2.2.2.7 Annual Meeting Schedule (OCSTE 221-246).

2.2.2.8 Submission Timetable (OCSFM 221-208)  
(refer Governance Practice Note 2 – OCSGL 221-230).

2.2.2.9 Combined Annual Meeting Agenda Plan (OCSTE 221 – 200).

2.2.2.10 Subsidiary Governance Framework

### 2.3 Definitions

2.3.1 "Board" means the Board of directors of Eskom;

2.3.2 "Board Committees" means the committees of the Board;

2.3.3 "Business Days" means any day that is not a Saturday, Sunday or officially promulgated public holiday in the Republic of South Africa;

2.3.4 "Committee Secretary" means the individual (Group Company Secretary, Senior Advisor Secretariat or other member of the team designated as such), providing secretariat service to one or more of the Secretariat Service Recipients;

2.3.5 "Companies Act" means the Companies Act No 71 of 2008, including its regulations, as amended from time to time;

2.3.6 "Eskom" means Eskom Holdings SOC Ltd;

2.3.7 "Exco" means the executive management committee of Eskom;

2.3.8 "Exco Sub-committees" means the sub-committees of Exco;

2.3.9 "Manager" means the secretariat services manager, unless otherwise specified;



## Secretariat Management Procedure

- 2.3.10 "Meeting Pack" means meeting documentation put into a single pack in hard copy and electronically for meetings of the Board, Board Committees, Exco and Exco-Sub-committees.
- 2.3.11 "Public Finance Management Act" means the Public Finance Management Act No 1 of 1999, including its regulations, as amended from time to time; and
- 2.3.12 "Secretariat Service Recipients" means the Board, Board Committees, Exco and Exco-Sub-committees.
- 2.3.12 Subsidiaries means any subsidiary company owned fully or more than 51% by Eskom

### 2.4 Abbreviations

- 2.4.1 **GCE:** Group Chief Executive.
- 2.4.2 **CFO:** Chief Financial Officer
- 2.4.3 **CE:** Chief Executive Officer for subsidiaries
- 2.4.4 **DE:** Divisional Executive
- 2.4.5 **DCS:** Deputy Company Secretary
- 2.4.6 **GE:** Group Executive
- 2.4.7 **GCS:** Group Company Secretary
- 2.4.8 **EDC:** Eskom Documentation Centre.

### 2.5 Roles and Responsibilities

The Group Company Secretary is ultimately accountable for all services and documents delivered by the Secretariat Services. The following staff members shall provide support to the Group Company Secretary for the services and the documents listed below:

- 2.5.1 Combined Annual Meeting Agenda Plan (OCSPN 221-200)  
Secretariat Services for Board, Exco and subsidiaries and Business Operations support and Secretariat Manager.
- 2.5.2 Annual Meeting Schedule (OCSTE 221-246)  
Committee Secretaries and Secretariat Manager.
- 2.5.3 Annual Meeting Agenda Plan - individual plan per committee (OCSTE 221-203)  
Committee Secretary.
- 2.5.4 Meeting Agenda (OCSTE 221-205)  
Committee Secretary.
- 2.5.5 Meeting Packs  
Committee Secretary and Business Operations Support.

**Secretariat Management Procedure**

- 2.5.6 Executive Summary (Submission document) (Document Identifier 240-123782330)  
Group Company Secretary, Board Secretary and/or Committee Secretary
- 2.5.7 Checklist (Submission document) (OCSFM 221-221)  
Group Company Secretary, Board Secretary and/or Committee Secretary
- 2.5.8 Minutes (OCSMU 221-202)  
Group Company Secretary, Board Secretary and/or Committee Secretary.
- 2.5.9 Action Lists (240-123930538 prev OCSTE 221-201)  
Group Company Secretary, Board Secretary and/or Committee Secretary.
- 2.5.10 Compilation of meeting packs  
Committee Secretary and Administration Clerk.
- 2.5.11 Company Forms  
Business Operations Support.
- 2.5.12 Minutes Registers  
Committee Secretary
- 2.5.13 Meeting Attendance Register  
Committee Secretary

**2.6 Process for Monitoring**

The implementation of the Secretariat Management Procedure shall be measured by means of quarterly performance appraisals of staff; as well as informal and formal audits.

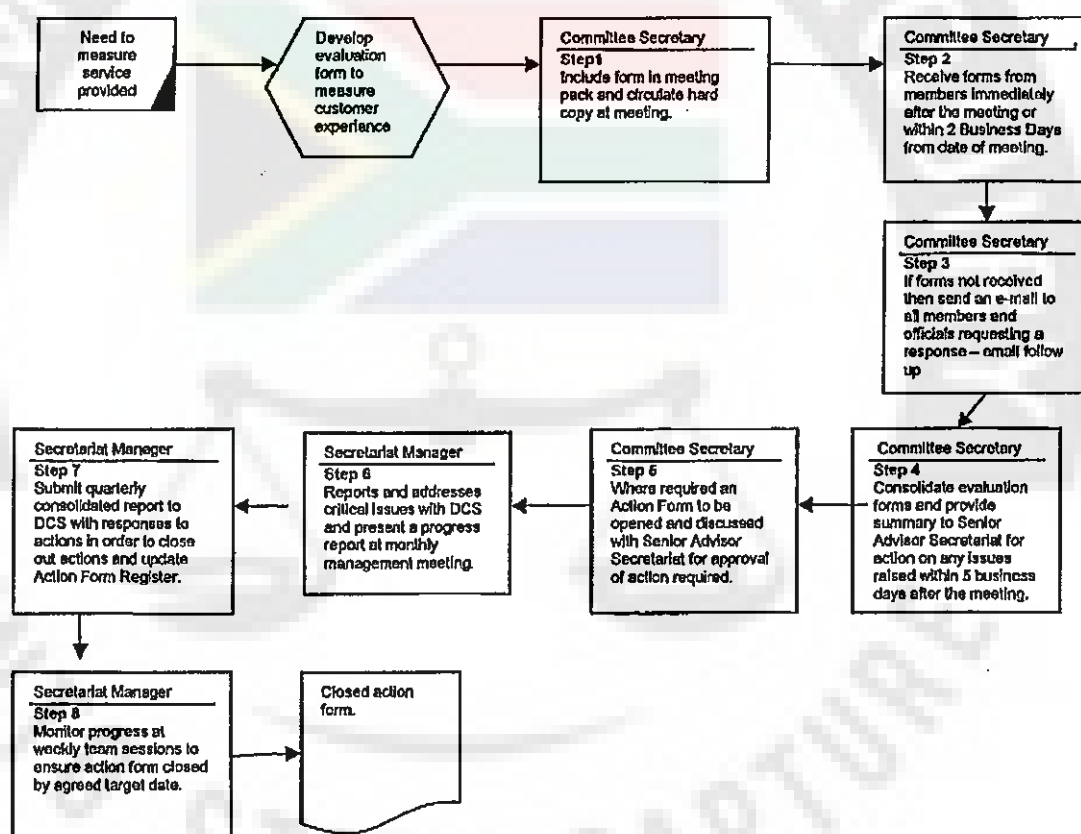
The committee secretaries shall issue evaluation surveys to all their service recipients and stakeholders to measure the standard of services provided. The process to be followed is outlined as follows:

- 2.6.1 The committee secretary shall circulate the evaluation forms to members and officials of the meeting ("service recipients"). The evaluation form shall be included in the meeting packs and hard copies provided to relevant individuals at the meeting.
- 2.6.2 The service recipients must complete the evaluation forms and return same to the relevant committee secretary, preferably at the end of the meeting or, alternatively, within 2 (two) business days from date of the relevant meeting. If insufficient forms are received within two days, the committee secretary must issue an e-mail to members requesting that the form be completed and retain the e-mail as evidence thereof.
- 2.6.3 On receipt of the completed evaluation form the relevant committee secretary must summarise the feedback and forward the summary together with all the completed evaluation forms to the Senior Advisor Secretariat for action on any issues raised, and, where required, an Action Form is to be opened in accordance ISO requirements.

## Secretariat Management Procedure

- 2.6.4 Appropriate remedial action as agreed with the Senior Advisor Secretariat should be undertaken by the Committee Secretary at the agreed target date as per the Action Form in accordance with ISO standards.
- 2.6.5 The Senior Advisor Secretariat reports and addresses critical issues with the Deputy Company Secretary.
- 2.6.6 A formal report on evaluations shall be submitted by the Senior Advisor Secretariat to the Deputy Company Secretary on a quarterly basis.

### 2.6 Evaluation of Meeting Process



## 3 DOCUMENT CONTENT

### 3.1 Relevant documents

The services rendered by Secretariat Services entail the development and maintenance of the following documents:

#### 3.1.1 Combined Annual Meeting Agenda Plan.

## Secretariat Management Procedure

3.1.2 Annual Meeting Calendar.

3.1.3 Annual Meeting Agenda Plan.

3.1.4 Meeting Agenda.

3.1.5 Meeting Packs.

3.1.6 Executive Summary

3.1.7 Checklist

3.1.8 Minutes.

3.1.9 Action Lists.

3.1.10 Statutory Company Forms.

3.1.11 Minutes Registers

3.1.12 Meeting Attendance Registers

### 3.2 Process outline

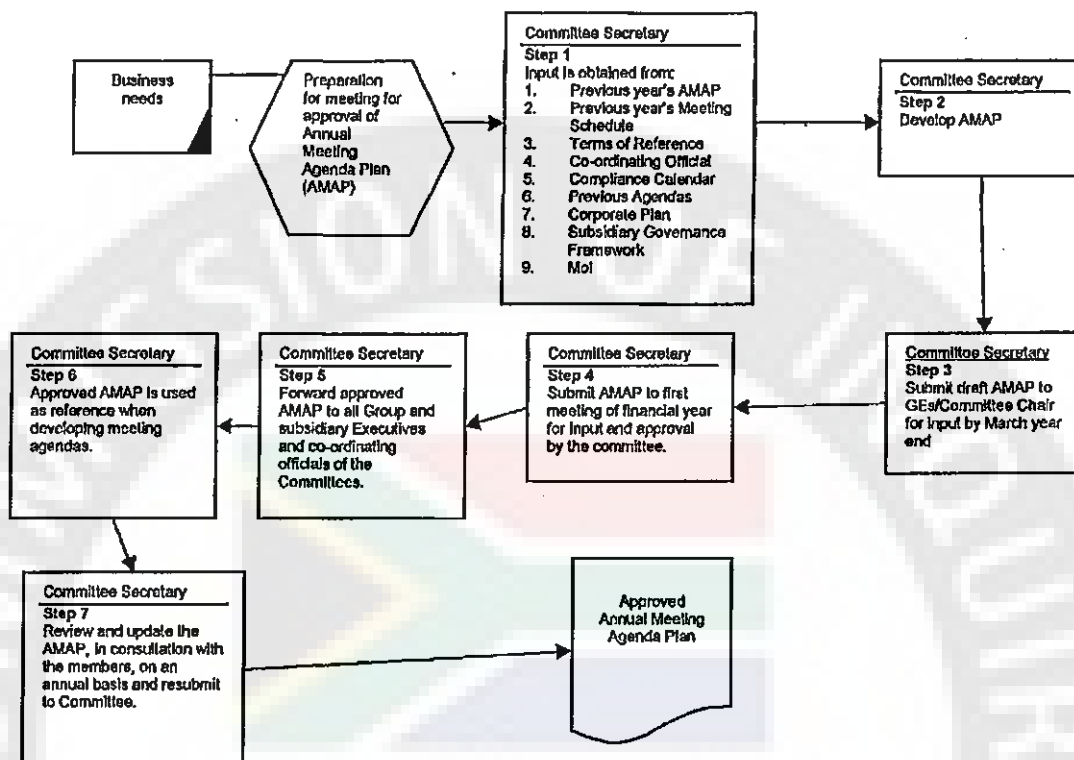
#### 3.2.1 Development of Annual Meeting Agenda Plans (OCSTE 221-203) and Combined Annual Meeting Agenda Plan (OCSPN 221-200)

The Combined Annual Meeting Agenda Plan lists all the matters that need to be discussed by the Board, Board Committees, Exco and Exco Sub-Committees and subsidiaries ("Secretariat Service Recipients") in alignment to the Corporate Plan. It also directs when the matters have to be discussed and by which governance structure as informed by the Delegation of Authority and the legal compliance frameworks. The Combined Annual Meeting Agenda Plan is ultimately the responsibility of the Senior Advisor Secretariat, with input and support from the various Committee Secretaries.

The Combined Annual Meeting Agenda Plan is informed by the individual Annual Meeting Agenda Plans of the secretariat service recipients. The flow diagram below sets out the steps to be taken in the compilation of the Annual Meeting Agenda Plans of the Secretariat Service Recipients, culminating in the Combined Annual Meeting Agenda Plan.

## Secretariat Management Procedure

### Development of Annual Meeting Agenda Plan Process



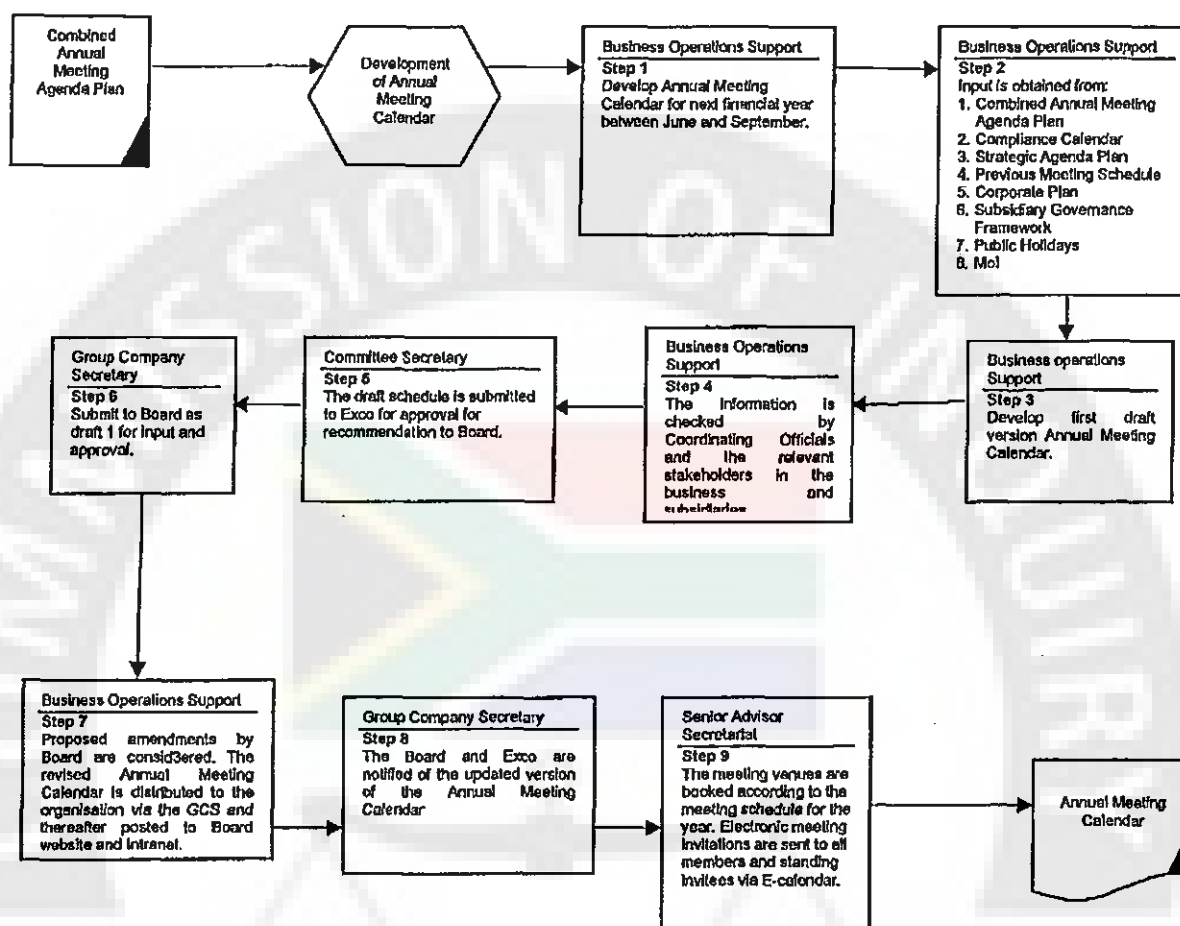
### 3.2.2 Development of Annual Meeting Calendar (OCSTE 221-246) and Submission Guidelines

The Annual Meeting Calendar is an important document as it reflects the meeting dates for the Secretariat Service Recipients. It is informed by the Combined Annual Meeting Agenda Plan as addressed in paragraph 3.2.1. Once the Annual Meeting Calendar has been approved, the Submission Guidelines is prepared for circulation by the Senior Advisor Secretariat. The Submission Guidelines reflects the target dates and/or deadlines for all relevant activities related to meetings of the secretariat service recipients.



## Secretariat Management Procedure

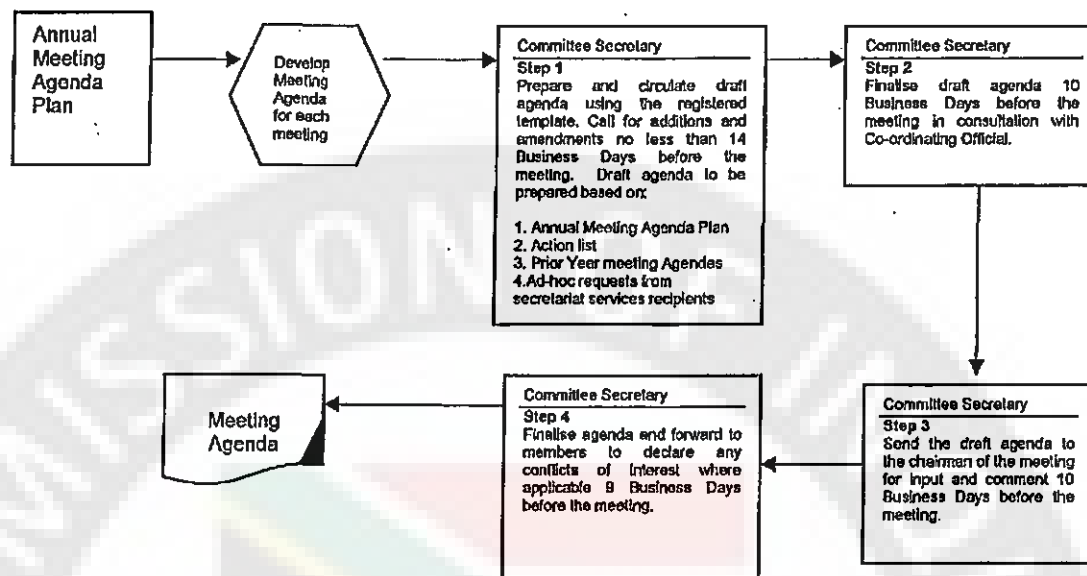
### Development of Annual Meeting Schedule Process



### 3.2.3 Development of Meeting Agenda (OCSTE 221-205)

The meeting agenda lists the matters to be discussed at the relevant meetings of the secretariat service recipients. It is informed by the Annual Meeting Agenda Plan. The timetable as indicated below must be in alignment with the dates as included in the Submission Guidelines.

## Secretariat Management Procedure



### 3.2.3.1 Declaration of Conflicts of Interest prior to the Meeting

**After the agenda has been finalised with the chairman and prior to circulation of the meeting pack, the Committee Secretary must send the agenda to members for them to declare any conflicts of interest with regard to the items that are scheduled on the agenda for discussion.**

**In the event of a member declaring an interest the following process shall apply:**

- a) Remove all the documentation/information pertaining to the relevant project from the specific member's meeting pack.
- b) Restrict access to the relevant documents on the electronic meeting platform.

### 3.2.3.2 Declaration of Conflicts of Interest during the Meeting

**In the preparation of an agenda, the Committee Secretary must ensure that "Declarations of Interest" is a standard item on the agenda of every meeting following the formal opening of the meeting. The Declaration of Interest Register is circulated to meeting attendees at the beginning of the meeting for signature. In the event of any attendee declaring an interest at this point in time or later during the course of the meeting, the Chairman shall, based on the provisions of the Conflict of Interest Policy and Procedure, determine whether or not the relevant individual needs to be recused from the meeting. The Committee Secretary shall record the declaration as well as the recusal, if any, accordingly.**

### 3.2.4 Production of Meeting Pack

**The meeting pack consists of the documentation that is to be discussed at the relevant meetings of the Secretariat Service Recipients. It is informed by the meeting agenda.**

## Secretariat Management Procedure

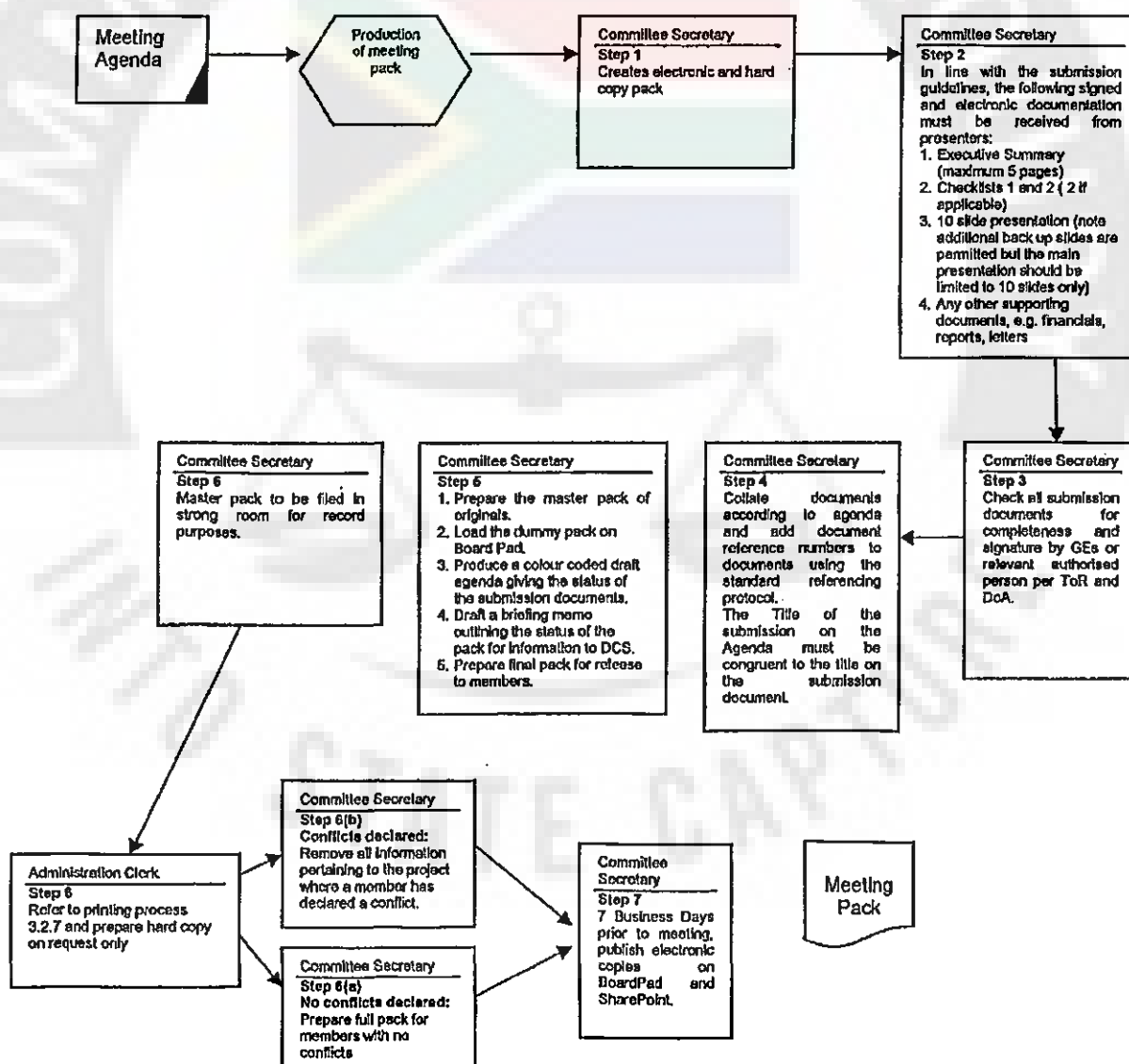
### BoardPad

All information published/uploaded to BoardPad must be documents converted from WORD/EXCEL/POWERPOINT to the format required by BoardPad (PDF).

A scanned signed document will not be **editable** on BoardPad and therefore it is recommended that all documents be converted to PDF rather than being scanned. However scanned documents may be used if the original electronic document is not available.

#### NOTE:

- Deadline to place item on Agenda is at least 12 business days before the meeting
- Deadline for document submission is 10 business days before the meeting
- Distribution of the final pack is 7 business days before the meeting.



## Secretariat Management Procedure

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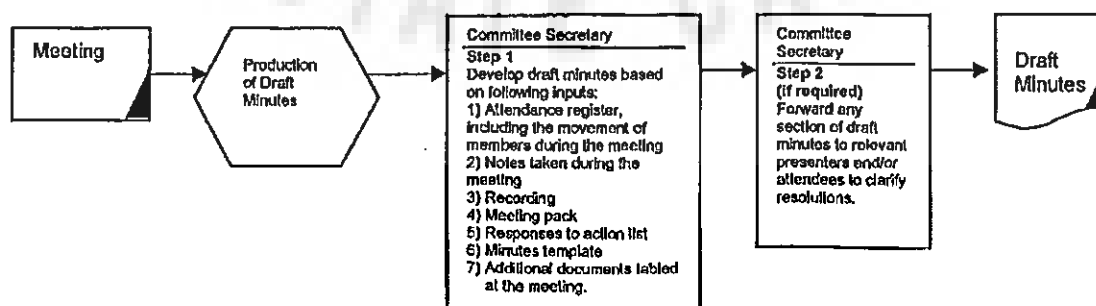
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### 3.2.5 PRODUCTION OF THE DRAFT AND FINAL MINUTES (OCSTE 221-202)

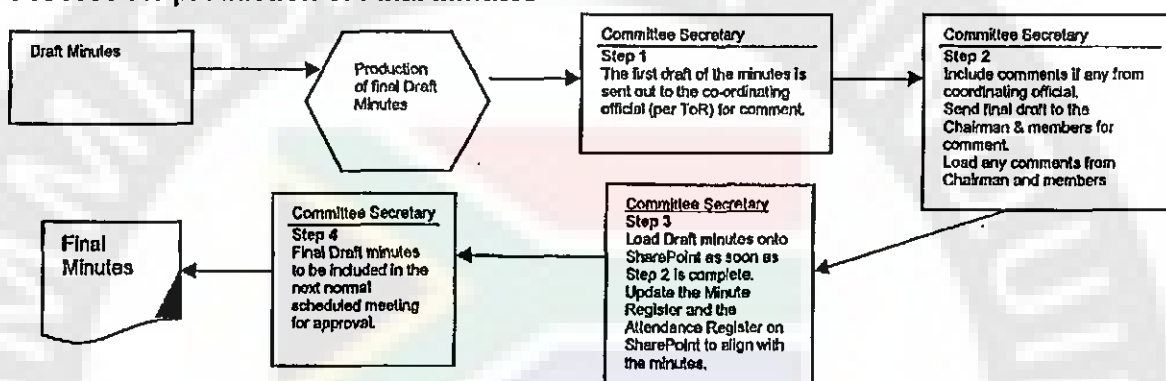
- 3.2.5.1 The primary purpose of minutes is to create an official record of the decisions that were made during a meeting. They should be detailed enough to ensure that a member who did not attend the meeting can understand what was decided on the matters considered in the meeting.
- 3.2.5.1.1 The numbering of minutes should be sequential and include a meeting number followed by the financial year, for example 03/2017-18. In respect of numbering of In-committee minutes, it will be the same as the normal meeting number when the In-committee is held on the same day (and generally around the same time). When they are held on another day then they have another number.
- 3.2.5.1.2 Resolutions should also be numbered sequentially and align with the item number of that subject in the minutes. For example if an item is Number 3.1. in the minutes then the first resolution for that item should be 3.1.1. and any sub resolutions should be 3.1.1.1.
- 3.2.5.2 Each member has an obligation to carefully review the minutes of each meeting for accuracy. Members who disagree with the minutes should bring their objection forward prior to the approval of the minutes at the next meeting.
- 3.2.5.3 The final draft minutes with amendments, if any, must be included in the normal scheduled meeting of the committee for approval.
- 3.2.5.4 The minutes should be given to the Chairman for his signature within 5 business days after the meeting at which they were approved. A signed minute is an official record of the decisions adopted at the meeting.
- 3.2.5.5 Any changes to be made to the approved minutes before or after they are signed by the Chairman should be resubmitted to the next normal scheduled meeting for approval.
- 3.2.5.6 Eskom must maintain minutes of all shareholders meetings including all resolutions adopted by them, for an indefinite period (refer the Retention of Records Procedure (OCSTR221-240)).

#### Process for production of Draft Minutes



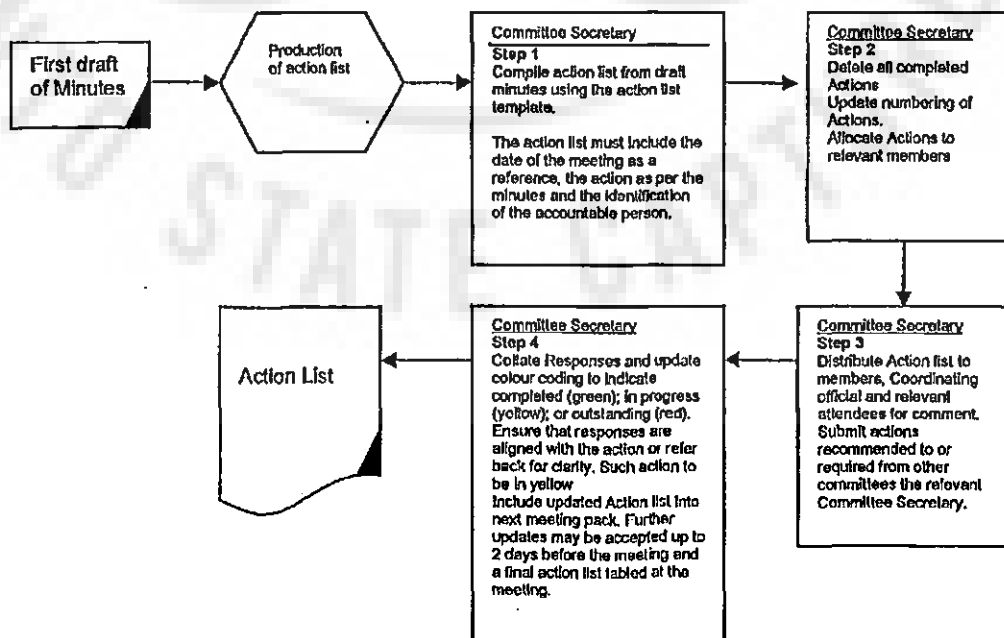
## Secretariat Management Procedure

### Process for production of Final Minutes



### 3.2.6 PRODUCTION OF THE ACTION LIST (240-123930538 prev OCSTE 221-201)

The purpose of the action list is to list all the matters that need to be attended to by the relevant secretariat service recipients. It also directs when the matters have to be completed as informed by the resolution. Once the action list is developed it is issued to the secretariat service recipients for action. The responses received are included in the action list. The action list forms part of the meeting pack of the next normal scheduled meeting.



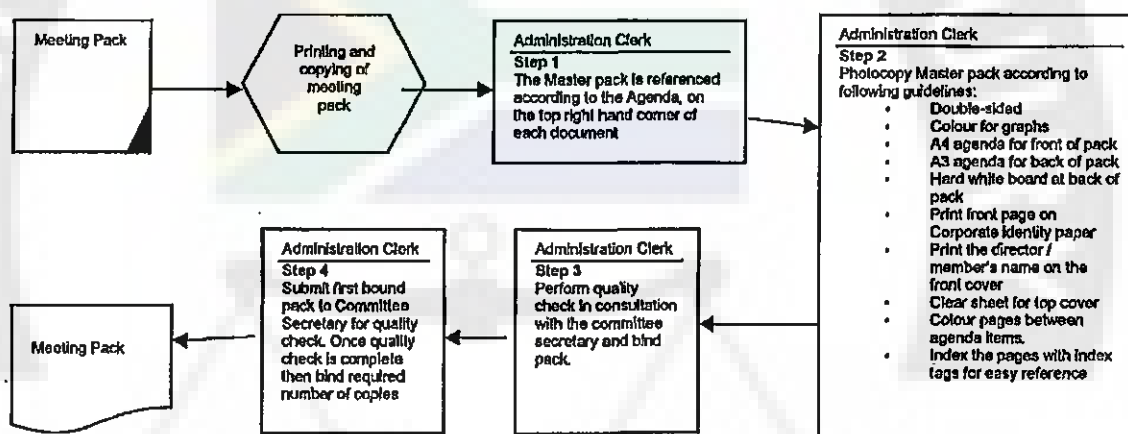


## Secretariat Management Procedure

### 3.2.7 PRINTING/PHOTOCOPYING OF MEETING PACK (Exceptional cases)

The printing/photocopying entails the printing and copying of meeting packs as required, from the Master Pack (refer 3.2.4 Step 5)

Note that hard copies are only printed for Board Members, GCE, CFO, subsidiaries CEs and external members, and Chairmen of various Committees. All other Secretariat Service Recipients should be directed to BoardPad



## Secretariat Management Procedure

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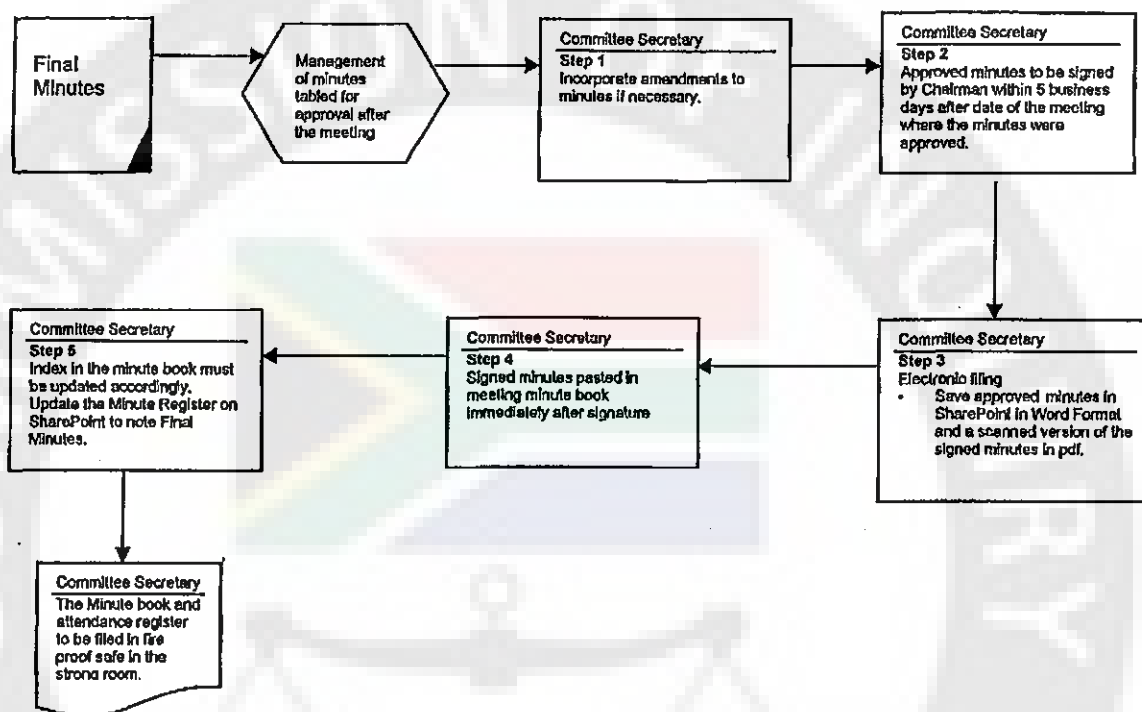
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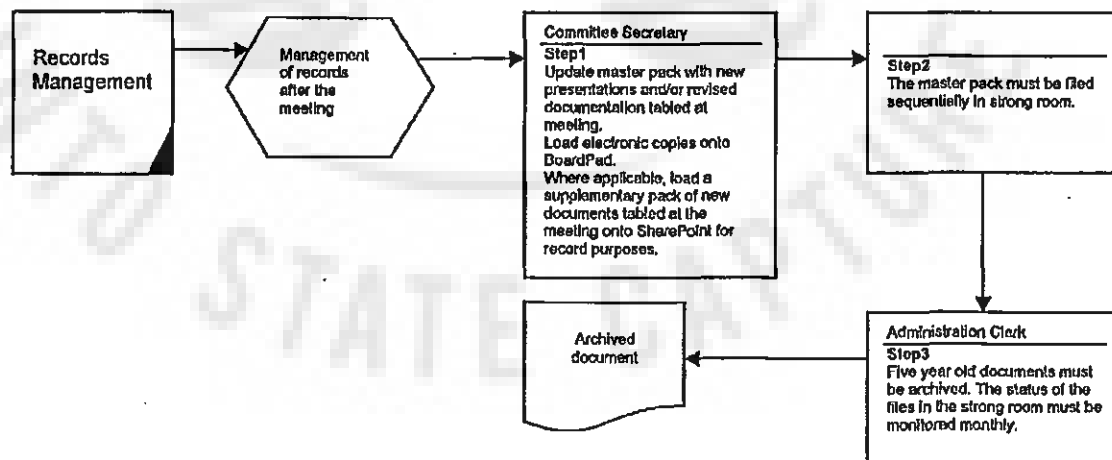
## 3.2.8 MINUTES AND RECORDS MANAGEMENT AFTER THE MEETING

## Minutes Management process

Note: Original minute books and attendance registers must always be kept at the fire proof safe located on C3 link passage.

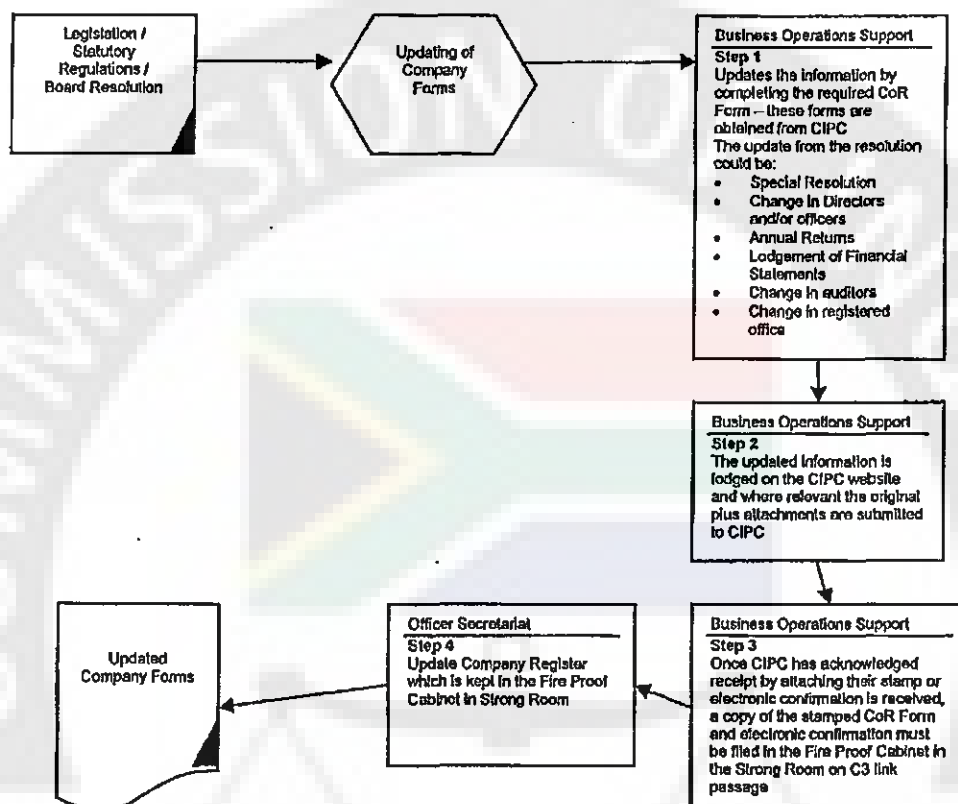


## Records Management process



## Secretariat Management Procedure

### 3.2.10 COMPANY FORMS



### 3.2.11 QUORUM

The meetings of secretariat service recipients may be held in person or by electronic communication as circumstances might require, provided that the required quorum is met.

The quorum for meetings shall be as per the individual Terms of Reference, or in the absence thereof, a majority of members present, in person or by electronic communication, throughout the meeting.

Where a member or official declares an interest and is required by the Companies Act to recuse her/himself from the meeting, the meeting remains quorate during her/his absence.

If there is no quorum fifteen minutes after the time scheduled to the start the meeting, the meeting shall be adjourned. A new date, not later than one week after the

## Secretariat Management Procedure

In order to request a download, send an e-mail to Mr Venner and give the date and times of the meeting (note must be taken of the starting and ending times of the meeting and any breaks in between, especially when there are more than one different committee meetings on one day) as well as the name of the Committee.

In terms of Secretariat Practice the recording must be erased within five working days of the minutes being signed by the Chairman of the meeting, as the only record of the meeting must be the minutes. Therefore the recording must be deleted off individual computers and out of the recycle bin once the minutes are approved and signed. If for any reason the recording is required again, it can be redownloaded.

However if the recording is from the mobile recorder then give a copy to Mr Venner for safekeeping as if you delete it, there is no more record. This will be saved in a more secure environment where they will not be accessible to anyone but Secretariat. If anyone asks for the recording, they must be advised that the recording has been once the minutes were signed. Any further queries must be directed to the Company Secretary.

### 3.2.13 HANDLING OF DOCUMENTS/INFORMATION BY THE SECRETARIAT OFFICE

All documents/information received by the Office of the Company Secretary are to be treated as confidential and are received, distributed and retained as such. Members of the Office of the Company Secretary shall be required to apply for a State Intelligence Unit (SIU) security clearance certificate. In addition, members are sworn to confidentiality in terms of their conditions of employment as specifically undertaken on recruitment to Eskom.

1. Secretariat receives submission documents from Secretariat Service Recipients. The main submission is the Executive Summary (240-123782330 prev OCSTE 221-222) and the checklist (240-123783130 prev OCTSE 221-221)
2. The secretariat service recipients deliver the original hard copy document to the Business Operation Support Secretary, and also submits an electronic copy to the Committee Secretary. The electronic copy must be in the original document format or converted to pdf, not a scanned copy.
3. The Business Operation Support Secretary signs for the document, stamps document and records receipt of document in a receipts register, and thereafter must deliver the document to the relevant Committee Secretary.
4. Upon completion of the pack the Committee Secretary must provide the Administration Clerk with the master pack for filing in the Strong Room.
5. Any documents that are returned or left in the board rooms after a meeting should be collected by the Committee Secretary and handed to the Administration Clerk for shredding.
6. The Committee Secretary needs to ensure that any late submissions, additional documentation and presentations are captured on the relevant electronic documentation management platform and in the master pack.

## Secretariat Management Procedure

### Shredding

1. All obsolete documents must be identified as such by the Committee Secretary and delivered to the Administration Clerk for shredding.
2. A register of all documents sent for shredding will be kept to identify the name of the document being shredded and the reason for shredding as well as the date.

### Archiving

1. Documents (minutes and master packs) in the secretariat strong room are filed for a period of five years after, transferred to Eskom's Central Archives and the Administration Clerk shall complete a "Record Transfer List".
2. The documents are archived in an adequately marked filing boxes used by Central Archives.
3. On receipt of the archived boxes and the Records Transfer List, the archives manager shall complete the form by recording the shelf and box number of the document to be archived.
4. Access to the documents is controlled by the Central Archives manager. All documents are to be archived in terms of the OCSD's Retention of Records procedure, and must be sent to Central Archives.

### Access to the Strong Room

1. Access to the strong room is restricted to the OCSD only.
2. The strong room must remain locked at all times.
3. Access to the secretariat strong room is granted by the Group Company Secretary

### Access to the Safes

The safes are kept in the strong room and are to be locked at all times. Access to the safes is restricted to the OCS office only.

### Use of Presentation laptops in Board Rooms

Presentation laptops used at Eskom venues for committee meetings that involves Eskom Executive, Board and external participants should not be left without removing the presentations or other sensitive information at the end of the meeting.

This is a major concern as the machines are not only used by one department/person which increases the risk of this sensitive information falling into unwanted hands or being leaked to the media.

It is the responsibility of the Committee Secretary making use of the presentation laptop to ensure that if the laptop is used that the information is removed from the machine



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and emptied from the recycle bin before leaving the meeting. Failure to do so will result reporting your name to senior management as a breach of the Eskom security policies when it comes to information security.

### 3.2.14 ROUND ROBIN RESOLUTIONS (RRR)

The use of round robin resolutions should be restricted to instances where a decision on a matter is required urgently.

The requestor (GE, DE or CE of subsidiaries) for such a resolution must provide sufficient justification for the urgent request and obtain approval therefore from the relevant Committee Chairman prior to the RRR process being implemented.

The following process should be followed in handling round robin resolutions to ensure consistency and compliance with the principles set out above:

- The relevant Committee Secretary initiates the preparation of a resolution document containing the required resolution using the Round Robin Resolution Template OCSTE 221-247.
- The Committee Secretary attaches the request as a cover page to the supporting documents and submits to the relevant chairman for signoff prior to circulating the documentation to all members for consideration.
- The resolution document must indicate a specific return date and closing time which will be a maximum of 5 working days unless otherwise determined by the Chairman.
- A round robin resolution is a resolution passed in writing, including through any medium of electronic submission, approved by 75% of members. Note that the round robin resolution under Item 3.2.11 is an exception to this rule and has been put in place to discourage the deferring of a decision to a round robin resolution instead of debating an item at a meeting, when there is sufficient time to do so.
- Such resolution shall be as valid and effective as if it had been passed at a committee meeting duly called and constituted.
- Where the round robin resolution is approved by the members through electronic transmission, the original signed resolution must be returned as soon as practical to the Committee Secretary for retention in terms of the Companies Act, as amended.
- In the event of a member not being able to sign and return the signed round robin resolution within the prescribed period, confirmation of approval of the resolution may be provided in writing or in electronic format or sms, and the resolution thereafter signed by the said member as soon as reasonably possible. In the event of a sms being received, the committee secretary shall forward same to their Eskom email address for record keeping purposes.
- Once the required approval has been secured, the Committee Secretary must inform the committee chairman of the status and the resolution will then be in full force and effect.

## Secretariat Management Procedure

- The original signed resolution and supporting report are then included by the relevant Committee Secretary on the agenda of the following formal meeting for noting. The wording of the resolution and the results thereof will be captured in the minutes of the meeting where the resolution is tabled for noting.
- The original signed resolution documents and supporting reports are then filed in a round robin register and an electronic copy thereof on SharePoint.

Should approval from the required majority not be obtained on the specific return date and closing time, the resolution has not been passed. The chairman must be advised and the matter (comprising all the supporting documents) referred to the next meeting, for due consideration.

A signatory cannot retract his approval once all the required signatures including his/hers have been received on the specific return date and closing time.

### 3.2.15. EXTRACTS OF MINUTES

Only authorised persons may have access to the resolutions of a Board, Board Committees, Exco, Exco sub-committees and subsidiaries meetings.

Such person shall obtain written approval for his/her request from the Group Executive or Divisional Executive using the Request for Information or Extract document (OCSTE 221-212).

The Committee Secretary gathers the information and prepares the extract, once approval has been received from the relevant GE, DE or CE in the case of a subsidiary. The information is then submitted to the GCS, DCGS or Board Secretary for approval to release the extract before the extract is submitted for signature.

Once such approval is given then the Business Operations Secretary for extracts in the OCS prepares the extract on an official company letterhead and submits to the Group Company Secretary for signature. Once the document has been signed the certified extract is issued to the requestor.

- All extracts from approved minutes will be issued within 3 business days of the request.
- All extracts required from draft minutes will be issued within 7 business days.

The person who receives the document must sign a duplicate copy thereof confirming receipt of the document. The copy is filed by the Business Operations Secretary in the Extracts on SharePoint.

The register of all extracts is also updated weekly and saved on SharePoint

## 4 Authorisation

This document has been seen by:

**Secretariat Management Procedure**

**Name:**  
Suzanne Daniels

**Designation:**  
Group Company Secretary

**5 Revisions**

Date	Version.	Compiler	Remarks
30 November 2012	1	Secretariat Team	None
1 March 2015	2	Secretariat Team	Revised
30 January 2017	3	Secretariat Team	Revised

**6 Development team**

Lucinda Lucas  
Nompilo Magagula  
Patricia Tshabalala  
Lebo Makgate  
Lolly Reddy  
Wayne Venner

# Annexure “F”





GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 1 (APRIL - JUNE 2017) REPORT-DEVIATIONS

Entity Name	Project Name	Project	Value/Risk	Risk Category	Assessment Date	Assessment Outcome	Start Date	End Date
Eskom	Provisioning of Engineering Design	VIP Consulting Engineers	364 435.00	Continuity of service	6/9/2017	Conditional support	From date of appointment	11 months







## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 1 (APRIL - JUNE 2018) REPORT- DEVIATIONS

Department	Project/Contract	Supplier	Value of Contract	Reason for Deviation	Award Recommendation (by date)	Supported/Not supported	Contract start date	Contract end date
Eskom	Labour Brokers Consultants	Various suppliers	1 140 522 894.00	Single source	2018/04/06	Not supported	2018/05/01	2018/07/31
Eskom	Supply of 3Mt of coal for various power station	Closed bid - Not Indicated	Not specified	Lease Agreement	2018/04/19	Pending	2018/04/01	2019/12/31
Eskom	Contract 5Mt coal to Empowerment Mpumalanga Designated Group	Various suppliers	37 361 197.98	Previously approved equipment	2018/06/22	Not supported	Not indicated	12 months
Eskom	Leasing 40 "MSC One" tokens	MSC Software GmbH	36 388 800.00	Peak demand savings	2018/06/15	Conditional support	Not indicated	36 months
Eskom	Treatment, testing and Supply of Estimated Quantities of Wood Poles and Cross Arms	Various suppliers	0.00	Continuity of service	2018/05/23	Not supported	2018/04/01	12 months
Eskom	Not submit requests for modification which exceeds the threshold for time only and modifications to task orders	None -deviation from process	8 273 162.50	Continuity of service	2018/05/23	Not supported	Not indicated	2018/12/17
Eskom	Kendal Apollo Line Lift Project	GEN Overhead Lines (Pty) Ltd (GOL)	213 522 285.00	Finalise competitive bidding process	2018/05/11	Not supported	Not indicated	12 months
Eskom	Manufacture, Testing, Supply, Delivery, Off-Loading and Erection of Estimated Quantities of Line Traps	High Voltage Equipment (Pty) Ltd (HVT)	46 088 650.00	Continuity of service	2018/05/11	Not supported	2018/05/15	2018/11/14
Eskom	Design, manufacture, testing, development of user documentation, supply, delivery, off-loading and erection of Transmission shunt capacitor and filter bank protection and control schemes	PowerTech System Integrators (Pty) Ltd	8 273 162.50	Continuity of service	2018/05/11	Not supported	Not applicable	Not applicable
ESKOM	19MW Evening-Peak Load shifting projects	BBE Energy	Not Indicated	Supplier Development Initiative	2018/06/15	Conditional support	Not stated	Not stated
Eskom	Supply and Delivery of Transformer/Reactor Protection Schemes For Various Transmission Substations	ABB South Africa (Pty) Ltd	Not Indicated	Address immediate short fall	2018/06/22	Supported	Not stated	Not stated



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 2 (JULY - SEPT 2017)

Entity/Department	Project Description	Supplier	Value of Contract	Reason for Deviation	Award/recommended by AOF/AA	Not supported/Not supported/Conditional supported	Contract start date	Contract expiry
Eskom	Provisioning of Engineering Design services	VIP Consulting Engineers	364,435.00	Delays in finalising bid process	2017/06/09	Conditional support	2016/07/18	2016/09/19
Eskom	Provision of construction supervision, inspections and build drawings for the refurbishment of Petrusville CNC	Zitholele JV	1,928,348.00	Single source due to initial work rendered	2017/07/12	Not supported	Not applicable	Not applicable
Eskom	Eskom Contractor Academy Training Programme	EduPark	50,962,040.00	Single source - unresponsive bids from the bid process	2017/07/20	Supported	2017/09/01	2019/06/31
Eskom	Procurement of spare parts	Simons Pty Ltd	16,075,778.43	Original manufacture of equipment	2017/07/03	Conditional Support	Once off	Once off
Eskom	Archiving of tendering documents	Metrolife Holding Limited	850,000.00	Single source - Current supplier and no space within the office for document storage	2017/06/22	Conditional Support	Not stated	12 Months
Eskom	Closed bid to current suppliers for screening of coal required at Arnot, Camden and Grootvlei Power Stations	Ten (10) Current suppliers	44,000,000.00	Cost effective to approach current suppliers	2017/07/13	Conditional Support	Ad-hoc basis	Ad-hoc basis
Eskom	Additional Coal for Tutuka Power Station	Exaro	35,051,800.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
Eskom	Additional Coal for Tutuka Power Station	Keweenaw	101,454,000.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
Eskom	Additional Coal for Tutuka Power Station	Tshedza	371,908,800.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
Eskom	Additional Coal for Tutuka Power Station	Glencore Operations South Africa	370,989,800.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
Eskom	Additional Coal for Mayuba Power Station	Overlooked Colliery	201,214,000.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
Eskom	Additional Coal for Mayuba Power Station	Glencore Operations South Africa	721,565,000.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
Eskom	Additional Coal for Mayuba Power Station	Universal Coal Development	240,433,200.00	Shortfall of coal	2017/07/21	supported	Not stated	12 Months
ESKOM	Provisioning of Smart Grid Solutions	Huawei Technologies	60,000,000.00	Continuity of service	2017/04/29	Conditional support	2017/08/18	2017/10/01
Eskom	2 x Mega-Drive-LCI Converter 12 Pulse Load Commutated Inverters Type: W1212-103R452 and 2 x Dry-Type RESIBLOC VSD, Rectifier & Excitation Transformer for Kendal Power Station's Boiler Feed Pump Electrical Plant Replacement and Refurbishment Project	ABB South Africa (Pty) Ltd	88,604,675.00	Original Equipment Manufacturer	2017/08/10	Conditional Support	2017/09/27	2019/03/31
Eskom	Publishing on E-Tender Portal	Deviation from the process	0.00	Challenges experienced with the National Treasury e-Tender Portal on 14 February 2017	2017/09/01	Noting	Not applicable	Not applicable
Eskom	Provision of Fuel Handling services	Lesedi Nuclear Services	10,747,114.00	Eskom's only registered South African fuel handler	2017/09/20	Conditional Support	2017/09/26	2018/12/23
Eskom	Supply and delivery of Enterprise Digital Assistant (EDA) and accessories	PowerTech System Integrators (Pty) Ltd	21,600,000.00	Renewal of license	2017/08/10	Not supported	Not stated	Not stated
Eskom	Provision of psychometric reports, assessment materials and training	Pty Tech	1,850,500.00	Sole license holder	2017/09/19	Not supported	Not stated	Not stated
Eskom	Additional survey work at Ingula Pumped Storage Scheme	Barnard & Schneider Land Surveyors & Town Planning Consultants	342,000.00	Single source - bidder conducted initial field work	2017/09/13	Conditional Support	Not indicated	Not stated
Eskom	Reactor coolant system (RCP) level instrumentation upgrade	Nuclear Consultants International (Pty) Ltd	10,000,000.00	Single source due to intellectual property rights	2017/08/01	Not supported	Not stated	Not stated



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 3 (OCTOBER - DECEMBER 2016) REPORT- DEVIATIONS

Department/ Entity	Project Description	Supplier	Value of Contract	Reason for Deviation	Award/recommended by AO/ AA	Supported/ Not supported by NT	Contract start date	Contract expiry
Eskom	Software & Hardware for meetings and document collaboration solutions for Board members	Great-Soft (Pty) Ltd	111 800 480,00	Sole supplier	2016-10-03	Supported	Not stated	Not stated
Eskom	Fresh fuel reception services	Lesedi Nuclear Services	957 793,00	Single source	2016-11-07	Conditional support	Not stated	Not stated
Eskom	Supply of software engineering services for access control system	Process Computing Technology	4 500 000,00	Single source	2016-11-07	Conditional support	Not stated	Not stated
Eskom	Maintenance of control plant department and data acquisition systems	MTN (Pty) Ltd	1 200 000,00	Continuity of service	2016-11-17	Supported	Not stated	Not stated
Eskom	Lease of office space: Kunuman (Northern Cape)	Harry Leach Trust	977 184,84	Additional space required	2016-10-31	Conditional support	3 years	Not stated
Eskom	Software license maintenance and support	Powertech Systems Integrators (Pty) Ltd	11 219 672,00	Continuity of service	2016-10-06	Conditional support	12 months	Not stated
Eskom	Software licenses and support for Charter Max and Ops X systems	Softmax Software Solutions	335 380,00	Single source	2016-10-06	Conditional support	3 years	Not stated
Eskom	Partnership agreement negotiation consultation and training contract	IAB JV	11 350 790,00	Continuity of service	2016-12-07	Supported	Not stated	Not stated
Eskom	Maintenance and support of Graphical Information Systems (SmallWorld) licenses	Powertech Systems Integrators (Pty) Ltd	Not specified	Single source	2016-10-06	Conditional support	Not stated	12 months
Eskom	Provision of Top Executive Remuneration Survey Report	Mercer Consulting Africa (Pty) Ltd	150 000,00	Single source	2016-12-06	Conditional support	Not stated	24 months
Eskom	Protection, telecontrol and automation equipment for Pienarie Transmission Substation	Siemens (Pty) Ltd	14 896 779,00	Escalation contract value	Not stated	Conditional support	Not stated	Not stated
Eskom	Safety awareness campaign	Lavish Zie (Pty) Ltd	15 000 000,00	Single source	2016-12-15	Conditional support	Not stated	Not stated
Eskom	Design, Manufacturing, Installation and Commissioning of new oil supply, drain pipes and manifolds: Matla Power Station	Steinmuller Africa (Pty) Ltd	14 124 322,00	Single source	2016-12-15	Conditional support	Not stated	12 months
Eskom	Manufacturing, delivery, installation, testing and commissioning of 220/66/22KV 40 MVA transformer	Powertech Transformers (Pty) Ltd and Actom (PTY)	30 000 000 000,00	Single source	2016-10-27	Conditional support	Not stated	Not stated
Eskom	Customisation, enhancement, effective and efficient delivery of the Executive LTI and STI schemes	EPI-USE (Pty) Ltd	4 027 145,00	Single source	2016-11-16	Not supported	Not stated	Not stated
Eskom	New contracts for the continuation of data services and new SIM card requirements	MTN (Pty) Ltd and Vodacom (Pty) Ltd	15 000 000,00	Competitive bidding process not successful	2016-11-29	Conditional support	Not stated	Not stated
ESKOM	Conduct Hazardous Location (HAZLOC) legal compliance audit at Eskom	BT Projects (Pty)	0,00	Emergency service	2016-11-14	Conditional support	Not stated	Not stated

## Deviations

Quarter 3: October - December 2017

Department / Entry	Project Description	Supplier	Value of Contract	Reason for Deviation	Award / Recommendation Date	Support Status	Contract Start Date	Contract End Date
ESKOM	Leamer Artisans Training	Gijima People Technology	2 426 450.00	Limited suppliers in the area	2017/11/13	Conditional Support	Not stated	24 Months
ESKOM	Screening of Coarse Coal	Keaton Mining	50 160 000.00	Closed bid	2017/11/08	Not supported	Not stated	Not stated
ESKOM	Closed bid for supply of urgent coal to Amot Power Station	Exxaro Coal, Cathoros Commodities and Msobo Coal	Not indicated	Closed bid	2017/11/23	Conditional Support	Not stated	Not stated
ESKOM	Re-issue of the urgent Coal for Tutuka Power Station	Selected Mines within 200km radius	Not indicated	Closed bid	2017/09/19	Conditional Support	Not stated	Not stated
Eskom	Maintenance of 10421 Drive Cam unit on Eskom vehicles	DriveRisk (Pty) Ltd	59 837 382.00	Continuity of service	2017/12/15	Conditional support	2018/01/01	2019/06/30
Eskom	Maintenance of 11592 On Board Computer units	Mix Telematics Enterprises SA (Pty) Ltd	54 250 560.00	Original Equipment Manufacturer	2017/12/15	Conditional support	2018/01/01	2019/06/30
Eskom	Advisory and consulting services for the Blesbok & Bosbok Project	Lategan Bouwer Civil Structural	98 235.00	Continuity of service	2017/10/16	Conditional support	2018/01/01	2018/06/30
Eskom	Special tools to service MR type V Tap changer	Maschinenfabrik Reinhausen	181 898.96	Sole agent	2017/12/15	Conditional support	Once off	Once off
Eskom	Design, manufacture, testing, development of user documentation, supply, delivery, off-loading and erection of Transmission shunt capacitor and filter bank protection and control schemes	PowerTech System Integrators (Pty) Ltd.	8 273 162.50	Competitive bid in Progress	2017/12/11	Conditional support	2017/12/18	2018/12/17
Eskom	Implementation of 21 load management projects	Seventy Thirty JV (Pty) Ltd	151 760 448.00	Energy Services Companies (ESCOs) work	2017/12/05	Conditional support	2017/12/01	6 months
Eskom	Composite Insulators for Transmission Group Capital	LAPP, Speedcraft t/a Pfisterer and NGK	77 219 117.09	Urgent need for these specific composite insulators	2017/11/03	Conditional support	2017/11/01	6 months
Eskom	Advertising tender on e-tender portal	None	None	eTender Publication Portal unavailable for publication	2017/11/07	Noting	Not applicable	Not applicable
Eskom	Closing of the heritage management project at Medupi Power Station	Mbofho Consulting and Project Managers cc	2 964 848.16	Continuity of service	2017/11/07	Conditional support	2017/11/01	6 months
Eskom	Remedial work on cabling and stringing at Nieuwehoop substation	High Voltage Southern Africa (Pty) Ltd (HVT)	129 078.46	Single source - contractor currently in the area doing similar work	2017/11/01	Not supported	Not stated	2 months
Eskom	Productionalisation of Group IT result management	Deloitte Consulting (Pty) Ltd	22 388 997.60	Skills and expertise required are not readily available internally	2017/10/17	Not supported	Not applicable	Not applicable
Eskom	Standard for Infrastructure Procurement and Delivery project - extension of validity period for bid process	Not applicable	Not applicable	Current tender validity expires	2017/10/19	Supported	Not applicable	Not applicable
Eskom	Lodge card limited bidding process	Not applicable	Not applicable	A decision was taken to terminate the service	2017/10/05	Conditional support	Not applicable	Not applicable
Eskom	Launch of National Association of Municipal Public Account Committee	Gallagher Convention Centre	903 185.77	Gallagher meet the requirements	2017/11/06	Conditional support	2017/11/27	Once off
Eskom	Monthly credit value adjustment, debit value adjustment and credit derivative swaps valuation in financial statements	Deloitte	1 618 800.00	Continuity of service	2017/10/10	Not supported	Not stated	12 months
Eskom	Monitoring of driver behaviour management systems	Drive Risk (Pty) Ltd	2 192 920.82	Continuity of service	2017/10/12	Not supported	Not stated	12 months
Eskom	Intelligent-automated system to optimise the water pumping system	BBE Energy (Pty) Ltd	36 388 800.00	Contractor currently in a list of ESCO	2017/09/19	Conditional Support	Not stated	43 months
Eskom	Reactor coolant system (RCP) level instrumentation upgrade	Nuclear Consultants International (Pty) Ltd	10 000 000.00	Single Source - Only approved contractor.	2017/08/01	Conditional Support	Not stated	14 months



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 4 (JANUARY 2017- MARCH 2017) REPORT- DEVIATIONS

Department/ Entity	Project Description	Supplier	Value of Contract	Reason for Deviation	Award/recommended by AO/ AA	Supported/ Not supported/ Conditional Support	Contract start date	Contract expiry
Eskom	Fan Hansen M4 Gearbox	BMG	3 500 000,00	Sole source	2017/02/09	Conditionally Supported	Not stated	Not stated
Eskom	Provision of office accommodation - Lobedu House	Delta Property Fund	12 453 828,00	Continuity of service	2017/01/17	Supported	2017/01/01	2017/12/31
Eskom	Maintenance of Ash & Dust Plants	Manyeleti Consulting SA (Pty) Ltd	12 000 000,00	Competitive bidding process in progress	2017/02/08	Supported	2017/03/01	2017/08/31
Eskom	Construction of Tombo 132kV	Conco (Pty) Ltd	10 817 336,23	Continuity of service	2017/02/09	Supported	2017/03/27	2017/07/31
Eskom	Fuel storage at Koeberg Nuclear Power Station	International Quality Consultants	3 819 000,00	Specialised services	2017/02/13	Supported	2017/03/01	2018/11/30
Eskom	Maintenance & outage repair services for boiler pressure parts for 13 coal power station	Actom, Babcock, Steinmuller	35 659 984 173,00	Sole source	2017/01/23	Not supported	Not stated	Not stated
Eskom	Provision of office accommodation: Ladysmith Customer Network Centre	Luchzel Onderneming (Pty) Ltd	2 133 829,24	Continuity of service	2017/03/20	Supported	Not stated	Not stated
Eskom	Provision of a Project Management Unit	DR M Investment cc	163 054 374,65	Continuity of service	2017/03/06	Not supported	Not stated	Not stated
Eskom	Technology selection, construction planning and cost estimation	Black and Veatch	10 000 000,00	Single source	2017/01/13	Conditional support	Not stated	18 months
Eskom	Design of storm water management, sewage infrastructure and access roads area between boiler edge slab and road No 3 for the Medupi FGD retrofit project	Umbani JV	1 995 000,00	Single source	2017/01/13	Conditional support	Not stated	2 months
Eskom	Manufacturing, supply, installation and commissioning of Hydrogen Dryers each on Units 1,3,4,5 and 6 at Majuba Power Station	Vibrosystems t/a Nugen Technologies	0,00	Standardisation of work	2017/02/10	Conditional support	Not stated	Not stated
Eskom	Construction of civil primary work, installation and commissioning of control plant equipment for Resgen 132kV feeder bay at Theunissen Substation	Boipelo Engineering (Pty) Ltd	5 212 221,98	Continuity of service	Not stated	Conditional support	2017/02/01	2017/04/01
Eskom	Compilation of a comprehensive Socio-Economic Development plan for the Nuclear New Build Programme-Thyspunt Site	Coerga Development Corporation	1 500 000,00	Single source	2017/02/15	Conditional support	Not stated	Not stated
Eskom	Economic assessment for the new nuclear plants	University of Stellenbosch	5 000 000,00	Single source	2017/02/15	Conditional support	Not stated	6 months
Eskom	Facilitation of the leadership development module, "My Eskom World" at all levels of Eskom managerial pipeline	Business Today South Africa (Pty) Ltd	3 513 520,00	Sole source	2017/02/08	Conditional support	Not stated	24 months
Eskom	Maintenance of milling plant: Matla Power Station	Babcock International Group	36 000 000,00	Competitive bidding process in progress	Not stated	Conditional support	2017/03/01	2018/02/28
Eskom	Provision of construction execution and commissioning for Kusile Project	Arup Tata Engineering Consortium (ATPE)	289 034 755,49	Continuity of service	Not stated	Not supported	Not stated	12 months
Eskom	Maintenance and completion of primary and secondary plant substation works at Taweni, Eastern Cape	Sisonke Power Projects	1 368 500,00	Continuity of service	2017/03/03	Not supported	Not stated	Not stated
Eskom	Provision of a desalination plant and associated activities	Not applicable	0,00	Risk mitigate to continue electricity generation and safety of the reactors	2017/03/10	Conditional support	Not stated	100 days
Eskom	Nuclear units feasible deployment	North West University	600 000,00	Unsolicited bid	2016/03/06	Conditional support	Not stated	6-8 months
Eskom	Maintenance of milling plant: Matla Power Station	Babcock International Group	5 000 000,00	Competitive bidding process in progress	2017/02/17	Conditional support	Not stated	2 months
Eskom	Conceptual design of the 4-20 year section of the ash dump facility at Medupi Power station	Jones and Wagener (Pty) Ltd	8 550 000,00	Continuity of service	2017/01/13	Conditional support	Not stated	8 months
Eskom	Detailed design of a generator motor for application at Matla Power Station	Toshiba International (Europe) Limited	5 500 000,00	Expansion scope of work	2017/09/01	Conditional support	Not stated	Not stated
Eskom	Supply, transportation, erection and dismantling of scaffolding	Electro Heat Energy	14 156 242,70	Single source	2017/02/02	Conditional support	Not stated	6 months
Eskom	Procurement of 3 Complete fully functional 667 MVA 765/400/230kV Single transformers and 3 MVA 765 single phase shunt reactors for various Eskom sites	Sumitomo Corporation	200 000 000,00	Continuity of service	2017/01/01	Conditional support	Not stated	3 years
Eskom	Provision of office accommodation (Northern Cape)	Andre van Niekerk and Van Niekerk Attorneys	168 000,00	Continuity of service	2016/12/14	Conditional support	Not stated	Not stated
Eskom	Security guard services, crime prevention patrols and armed response from a confined market of 9 security companies	Mposha Security, Dimpho Security, Ralte Security and Consulting, FPM Business Solutions, Securelife Security, Eulitaki Construction and Cleaning Enterprise, SIDS Security services, Blue Magnolia Trading 50, Mathomomaya Investments Holdings	100 460 680,36	Continuity of service	2017/02/07	Supported	2017/04/01	2018/03/31
Eskom	Provision of office accommodation	Krujan Properties	2 126 595,53	Continuity of service	2017/03/06	Conditional support	2017/04/01	2020/03/29
Eskom	Provisioning of wide area network services - construction, maintenance and operation of private telecommunications network services	Openserve	148 000 000,00	ICASA granted Eskom a licence exemption to construct, maintain and operate Private Electronic Communications Network Services (PECN)	2017/02/08	Conditional support	Not stated	5 years





## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 4 (JAN – MAR 2018) REPORT- DEVIATIONS

ESKOM Entity	Project/Programme	Supplier	Value/RMB	Value/USD	Start Date	Status	Completion Date	Review Date
Eskom	Approach current suppliers from closed RFP for Coal Stations for various Eskom Power	Various suppliers	Not stated	Shortfall in coal	2018/01/28	Not Supported	Not stated	Not stated
Eskom	Generator Services Workshop	Aurecon SA	8 304 187.98	Delays in design phase	2018/01/15	Supported	Not stated	Not stated
Eskom	Construction of Dumasi Hombé 132KV	Consolidated Power Projects	2 066 769.45	Delays due to weather and land claimant	2018/02/22	Supported	Not stated	Not stated
Eskom	Stormwater Controls for the Kendal Ash Dump	Steffen, Robertson and Kirsten (South Africa) Pty Ltd	2 159 923.80	Continuity of service	2018/02/16	Not Supported	Not stated	Not stated
Eskom	Small aperture terminal connectivity for substations fitted with closed circuit television	Vodacom South Africa	7 400 000.00	Minimise new infrastructure costs	2018/01/30	Not Supported	Not stated	Not stated
Eskom	Pre strengthening phase 3C- TYPE FILTER SHUNT CAPACITOR BANKS	EOH Power Systems (Pty) Ltd	8 444 596.00	contractor could not complete the remaining work as the resistors for three (3) sites were delivered in February 2017	2017/12/15	Supported	2018/01/08	2018/08/08
Eskom	Supply, delivery and off-loading of Liquid Sulphur to various Power Stations	Chemical Initiatives & Sasol South Africa (Pty) Ltd	133 836 539.00	only manufacturers of liquid sulphur	2018/02/02	Supported	2018/02/26	2020/02/25
Eskom	Manufacture, testing, supply, delivery, off-loading and erection of estimated quantities of Line Haps	High Voltage Equipment (Pty) Ltd	46 088 650.00	To finalise the competitive bidding process	2017/12/05	Not Supported	2017/12/01	Not stated
Eskom	Heritage Management Project at Medupi Power Station	Mbhotu Consulting	0.00	To finalise the closure phase	2018/01/24	Supported	2018/02/01	2018/07/01
Eskom	Design, Site Monitoring/Supervision and Construction Services to the Steam Generator Replacement Container Laydown Area and storage facilities at Koeberg Operating Unit	Botes and Kennedy Manyalo (Pty) Ltd	8 324 809.00	Scope of work has not been completed	2018/02/15	Not Supported	2018/03/05	2018/08/31
Eskom	Issue Request for Proposal (RFP) for Kusile Power Station limestone handling at Clewer Highveld Steel Complex, to the closed market	Makoya Supply Chain Holdings, Coal Solution and Hydro Lime	75 000 000.00	Cheaper rail logistics solution	2018/03/15	Not Supported	2018/03/28	5 Years
Eskom	Supply and provisioning of data storage and backup	MTN SA	474 600.00	APR with MTN SA which is in use by all Eskom units	2018/03/19	Not Supported	2018/03/23	24 months
Eskom	Kendal Power Station's Boiler Superheater Remaining Useful Life Replacement Project at Kendal Power Station	Babcock International Group	53 025 000.00	Preferred Bidder	2018/02/16	Not Supported	2018/03/01	2019/02/29
Eskom	Upgrade of Water Treatment Plant Human Interface at Duma Power Station	ABB South Africa (Pty) Ltd	14 986 335.00	Continuation of the service	2018/01/24	Pending	2018/01/06	2018/05/05
Eskom	Radiological Analysis Services for Koeberg Nuclear Power Station	PSI Risk Consultants	4 012 957.00	Continuity of service	2018/02/06	Not Supported	Not stated	Not stated

## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 1 (APRIL - JUNE 2017) REPORT- EXPANSIONS

CLIENT/PROJECT	PROJECT/INITIATIVE	STATUS	INITIAL REQUEST	APPROVED VALUE	APPROVED PERCENTAGE	APPROVED AMOUNT	APPROVED DATE	APPROVED STATUS	APPROVED DATE	APPROVED PERCENTAGE
Eskom	Design, manufacture, testing and supply of estimated quantities of line hardware for distribution, transmission	Babcock Nuthuko Powerlines (Pty) Ltd and Preferred Line Products SA (Pty) Ltd	Increase in scope require additional funds.	312,696,143.48	209,599,098.22	0.00	2017/04/13	Not supported	Not stated	Not stated
Eskom	Documentary filming of the construction process and progress at Ingula Pump storage Scheme	Ou Films Production (Pty) Ltd	To finalise final edit of 25 terra bytes of construction footage.	2,049,101.70	3,585,000.00	9,437,570.00	2017/02/22	Conditional support	Not stated	Not stated
Eskom	Detailed design and construction	Ntamdla Construction CC	Project delays	2,497,814.10	Time only	0.00	2017/04/13	Conditional support	from date of appointment	5 months
Eskom	Integrated Secondary plant solution for transmission division	Siemens Pty Ltd	Time only expansion	29,181,713.30	0.00	0.00	2017/04/13	Supported	from date of appointment	6 months
Eskom	Transmission Power Delivery Projects	ABB South Africa	Time only expansion	3,030,000.00	0.00	0.00	2017/04/26	Supported	from date of appointment	6 months
Eskom	Manufacture and supply of split meters	Landis & GYR (Pty) Ltd	Continuation of services - Original Equipment Manufacturer	126,192,590.85	107,803,734.28	63,191,745.10	2017/04/26	Conditional support	from date of appointment	12 months
Eskom	Construction of waste water treatment Plant at Kusile Power Station	Tubular Construction Zamar Engineering Services Joint Venture (TZJV)	Incomplete designs at award	119,710,851.71	50,000,000.00	105,038,578.50	2017/04/13	Conditional support	2017/05/01	2018/03/31
Eskom	Provision of Medium Voltage electric motors to various power stations	ABB South Africa (Pty) Ltd, Actom (Pty) Ltd and Zest Electric Motors (Pty) Ltd	To allow for deliveries of all outstanding orders in the current contract period.	168,849,638.40 - ABB 20,961,068.87 - Zest 54,271,707.30 - Actom	Time extension	5,238,619.03 - Zest 35,631,326.53 - Actom	Not dated	Conditional support	2017/04/01	2017/08/31
Eskom	Manufacture, supply and delivery of sedan, light delivery vehicles, heavy commercial vehicles, mini buses, buses and panel vans to Eskom	Toyota SA, Ford Motor, Volkswagen, Nissan, General Motors, Mercedes Benz and Iveco South Africa Pty Ltd	To save costs on maintenance of old vehicles.	944,581,283.87	0.00	1,000,000,000.00	2017/04/13	Conditional support	from date of appointment	27 months
Eskom	Reticulation construction services (Capital Programme) For Eskom Distribution Western Cape Operating Units	17 service providers	Continuity of service while initiating a new tender process.	100,000,000.00	Time extension	160,000,000.00	2017/04/13	Conditional support	12 months	Not Indicated
Eskom	The dead work maintenance and emergency services on 11-33KV, MV and LV Networks and associated projects within the Limpopo Operation Unit (LOU)	Panel of 92 contractors	There is currently a backlog of poles that need to be replaced.	100,000,000.00	50,000,000.00	0.00	2017/04/13	Conditional support	From date of appointment	2018/07/31
Eskom	A panel contract for Bentley Enterprise Licenses Subscription	Bentley Enterprise	Sole source	9,427,300.00	44,468,419.82	1,014,498.00	2017/04/20	Support	2017/04/21	2019/04/20
Eskom	Transmission shunt capacitor and filter bank protection and control schemes.	Powertech System Integrators (Pty) Ltd	Continuity of service	1,427,334.39	6,012,360.00	7,337,975.89	2017/04/20	Conditional support	from date of appointment	12 months
Eskom	The provision of Legal Services at Eskom Holdings SOC Ltd	73 legal firms	Non-responsive bidder on two RFPS issued	200,000,000.00	100,000,000.00	650,000,000.00	Not dated	Conditional support	from date of appointment	6 months
Eskom	Contracts for physical guarding services at all Eskom operating units, grids and national key points	25 Various contracts	Cancelled bid process	397,575,048.00	411,400,136.00	839,134.00	2017/02/15	Conditional support	2017/04/01	2018/03/31
Eskom	Supply Sulphur to various Power Stations	Sasol Nitro	Competitive bidding process in progress	115,720,000.00	43,833,714.00	159,553,714.00	Not dated	Conditional support	2017/04/01	2018/04/01
Eskom	Contracts to design, manufacture, testing and supply estimated quantities of medium voltage electric motors to various power stations	3 various contracts	To allow for the outstanding orders and additional items to be delivered.	244,082,414.00	0.00	284,952,360.00	Not dated	Conditional support	2017/05/01	2017/08/31
Eskom	Provision of two accredited facilitators and one administrator for Operating Regulations, in High Voltage Systems and Plant Safety Regulations for Kusile Power Station.	MP Learning Solutions (Pty) Ltd	Continuity of service	2,606,440.00	Time extension	1,493,995.20	2017/04/13	Supported	2017/04/01	2017/05/30
Eskom	The Supply and delivery of office chairs	Gxakwe's projects cc	Urgent need for replacement chairs while initiating a tender process.	72,740,687.34	240,000,000.00	0.00	2017/04/24	Not supported	Not supported	Not supported

Eskom	The 24 Air Conditioning Split for the Direct current (DC), Low Voltage (LV) Switchgear and Medium Voltage (MV) at Matla Power Station	Umtsentane General Trading CC	Temporal solution while the central Chilled Water System is being completed.	1 297 957.37	159 919.20	0.00	2017/05/22	Conditional support	2017/06/01	2017/10/31
Eskom	Security Services	Born to Protect	Open bid process cancelled	13 689 423.56	12 872 422.92	37 912 407.06	2017/04/13	Conditional support	from date of appointment	six months
Eskom	Works at Kusele Power Station	Turbine	Clearing past open claims received from the contractor.	18 894 908 993.00	2 745 692 298.00	0.00	2017/03/01	Conditional support	2017/10/31	2021/03/31
Eskom	Replacement of generator liquid detector's unit in Hendrina	Siemens Power Generations	To allow inspectors to maintain and inspect shorts on planned outages.	0.00	4 692 525.00	0.00	2017/03/24	Conditional support	2017/04/01	2018/05/31
Eskom	Replacement of Generator Liquid Detector's Unit in Hendrina	Siemens Power Generations	Additional scope of work	84 940 267.10	4 692 525.25	0.00	2017/03/24	Conditional support	from date of appointment	six months
Eskom	Delivery of coal at Kusele Power Station	Universal Coal Development	Continuity of service	3 154 993 000.00	5 101 861 679.00	616 675 054.00	2017/05/29	Conditional support	Not stated	Not stated
Eskom	Supply of split meters to Eskom on an as and when required basis	Landis & GYR (Pty) Ltd	A new system cannot integrate with the current solution.	126 192 590.85	63 191 745.10	107 803 734.28	2017/05/11	Conditional support	from date of appointment	8 months
Eskom	Physical security services	Born to Protect	Competitive bid process cancelled	13 689 423.56	12 872 422.92	37 912 407.06	2017/04/13	Supported	Not stated	Not stated
Eskom	Coal sampling, oversight and analysis	various suppliers	Unresponsive competitive bid process	193 500 000.00	18 000 000.00	18 000 000.00	2017/05/31	Supported	2017/07/01	2017/09/30
Eskom	Site SHEQ services for power delivery projects	Eagles Multi Skills Academy (Pty)	Align SHEQ services with project timelines	1 170 573.12	3 721 300.00	0.00	2017/06/22	Not supported	2017/01/04	2019/05/30
Eskom	Quality Management Services (Time Only)	Twanathi, SSSJV and SMMIDT	Allow completion of services	28 863 648.00	Time only	0.00	2017-6-21	Supported	2017/01/07	2017/12/30
Eskom	Excess Coal Stockyard for Medupi power station (Time only)	ThyssenKrupp Materials Handling (Pty) Ltd	Allow completion of services	1 089 444 585.41	0	1 300 309 498.85	22/06/2017	Supported	2017/01/07	30/06/2017
Eskom	Optical ground wire to distribute, transmission and group capital divisions	American Fijikura (Pty) Ltd, Prysmian Cables Sistemas SA Jiangsu Zhongtian Technology Co. Ltd	Continuity of service	824 588 388.00	292 652 792.00	120 553 858.00	2017/05/11	Conditional support	2015/10/01	2017/09/30
ESKOM	Modification of contract for manufacture, testing, supply, delivery, off-loading, erection and commissioning of 22KV to 400KV	Actom Pty Ltd	Unresponsive competitive bid process	234 508 101.00	24 683 991.00	20 923 261.00	2017/05/25	Supported	2017/04/08	2018/04/07
Eskom	Wage Bureau for the Medupi and Kusele Power Station Projects	Time Data Sequel CC	To minimise the risk of site instability	105 588 544.00	117 679 796.34	6 months	2017/05/22	Conditional support	from date of appointment	6 months
Eskom	Eskom Power Plant Engineering Institute (EPPEI) Phase II	University of Cape Town and other six South African Universities	Specialist skills	154 950 000.00	76 550 000.00	0.00	2017/05/29	Conditional support	from date of appointment	5 years
Eskom	Construction on minor civil works at Koeberg Power Station	Tyria Construction (Pty) Ltd	Continuity of service	9 247 375.84	700 723.11	0.00	2017/04/26	Conditional support	2017/07/01	2017/09/30
Eskom	The supply, delivery and installation of surge arresters for Groms, Oranjemond and Paulpsuts Eskom Substations	Siemens (Pty) Ltd	Time extension	420 167.70	0.00	0.00	2017/04/26	Conditional support	2017/04/01	2017/11/30
Eskom	Manufacture, testing, supply, delivery, off-loading, erection and distribution, transmission and Group Capital Divisions on an as and when required basis	ABB South Africa (Pty) Ltd	Continuity of service	81 714 522.00	56 245 280.00	15 756 448.00	2017/05/11	Conditional support	2017/03/31	2018/03/30
Eskom	Design, supply and installation and commissioning of 66KV overhead power line for the Majuba Rail Project	Consolidated Power Projects (Pty) Ltd	Time extension	78 907 294.61	0.00	0.00	2017/06/14	Conditional support	2017/07/01	2018/01/31
Eskom	Supply and delivery of various gases and cylinder rentals to various Eskom sites	Afrox (Pty) Ltd and Air Products (Pty) Ltd	Competitive bidding process in progress	22 800 000.00	51 663 864.82	88 246 927.67	2017/06/21	Conditional support	2017/07/01	2017/10/30
Eskom	Design, procurement, construction, commissioning, operation and maintenance of Eskom Mkondeni Solar Photovoltaic	Besandla Engineering & Construction (Pty) Ltd	Additional scope of work	4 067 262.11	1 104 453.34	0.00	2017/04/13	Conditional support	from date of appointment	2 years
Eskom	Catering services	Various suppliers	Additional funding funds has depleted on the initial contract	97 250 000.00	40 800 600.00	0.00	2017/06/06	Conditional support	from date of appointment	8 months
Eskom	Provision of engineering services at PTR storage tanks at Koeberg Operating Unit	TUV NORD	TUV quality services are critical to the success of the project	374 880.00	1 244 000.00	2 019 600.00	2017/06/14	Not supported	Not stated	Not stated

## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 1 (APRIL - JUNE 2018) REPORT- EXPANSIONS

Entity	Project/Service	Contractor	Contract Description	Contract Value (R)	Contract Value (ZAR)	Contract Value (USD)	Contract Start Date	Contract Status	Contract End Date	Contract Renewal Date
Eskom	Provision of EPC core banking systems and IT infrastructure	Ernst and Young	ESKOM is in the process of disposing EPC and to start a new bid.	18 951 495.00	15 284 448.	8 978 920.00	2018/08/19	Pending	Not indicated	Not indicated
Eskom	Upgrade of existing plant, design and construction of new plant and materials for the Ash Handling at Camden Power Station	Rula Bulk Material Handling (Pty) Ltd	Continuity of service	545 114 511.00	116 497 357.22	0.00	2018/02/22	Not supported	2018/03/03	2018/12/02
Eskom	Project engineering services	57 Service providers	Continuity of service	43 700 000.00	17 250 000.00	0.00	2018/04/12	Not supported	2018/10/01	2019/06/30
Eskom	Electrical and Civil works	41 suppliers	Continuity of service	149 359 900.00	49 350 000.00	0.00	2018/03/23	Not supported	2018/07/01	2021/06/30
Eskom	Manufacture and supply of Power Quality Monitoring Meters To Eskom	Actom Protection Control a Division of Actom (Pty) Ltd	Funds depleted and additional demand	18 508 520.00	12 718 780.47	0.00	2018/03/12	Not supported	2018/09/09	2018/09/14
Eskom	Procurement of Plant Design, Supply and Installation of Overhead Track Equipment (OHE)	Jrcan International Ltd	Complete the remaining scope of work	648 897 067.24	0.00	0.00	2018/03/13	Supported	2017/03/14	2018/04/13
Eskom	Re-installment of the Outside Plant MV Switchgear board scope outstanding works	Siemens (Pty) Ltd	Re-installment of scope	270 568 947.18	20 637 527.49	0.00	2018/03/28	Not supported	2018/07/01	2021/12/31
Eskom	Re-installment of the Outside Plant LV Switchgear board scope outstanding works	Siemens (Pty) Ltd	Re-installment of scope	128 119 764.06	13 802 373.81	17 708 680.62	2018/03/28	Not supported	2018/07/01	2021/12/31
Eskom	Outside Plant and Water Treatment Plant Control and Instrumentation Refurbishment at Tutuka Power Station	Yokogawa South Africa (Pty) Ltd	Funds depleted	139 696 225.83	13 139 015.88	195 623 858.61	2018/04/18	Conditional support	2018/05/01	2018/10/31
Eskom	HV and MV feeder schemes	ABB South Africa (Pty) Ltd	Finalise the competitive bidding process	60 143 307.11	43 491 505.95	109 205 551.50	2018/04/23	Not supported	2018/03/01	2020/02/28
Eskom	Provision of Engineering and Project Management at Kusile Power Station	Black & Veatch	Continuity of service	114 000 000.00	1 068 619 804.00	13 771 267 374.00	2018/02/12	Conditional support	2018/03/19	2020/06/30
Eskom	Provision of Engineering and Project Management at Medupi Power Station	PB Africa (Pty) Ltd	Continuity of service	114 000 000.00	350 000 000.00	8 552 112 091.00	2018/02/12	Conditional support	2018/03/19	2018/12/31
Eskom	Installation and Erection of 160 Newly Manufactured Low Burners (8) Units at Camden Power Station	John Thompson a division of ACTOM	Continuity of service	136 900 154.96	0.00	22 902 507.51	2018/03/28	Supported	2018/04/01	2022/03/30
Eskom	Provision of Project Engineering Services to Power Delivery Engineering (Integration)	DMG Resources	Continuity of service	7 516 015.00	6.00	0.00	2018/04/05	Not supported	2018/04/01	2019/02/28
Eskom	Provision of Professional Quantity Surveying Services For Kusile Power Station	Durapi Consultants	Continuity of service	90 082 271.04	51 378 787.92	107 843 674.10	2018/04/05	Not supported	2018/04/01	2018/09/30
Eskom	Sourcing and delivery of Material and Services for The Eskom Information Centre (EIC)	EBSCO International & Worldwide Information Systems (Pty) Ltd for subscription and Worldwide Information Systems (Pty) Ltd & African Trading cc for Books	Funds depleted and additional demand	56 972 064.00	98 875 887.00	0.00	2018/02/23	Within AAAO mandate	2015/03/16	2020/03/15
Eskom	Provision and Maintenance of the Fuel Oil Plant	Sufence SA (Pty) Ltd	High demand of fuel	22 368 000.00	26 508 900.00	0.00	2018/04/05	Not supported	2015/08/01	2020/07/31
Eskom	Engineering and design of boilers and associated plant	Mitsubishi Hitachi Power Systems Europe GmbH & Mitsubishi Hitachi Power Systems Africa (Pty) Ltd	Additional scope changes	185 316 800.00	3 092 835 843.00	0.00	2018/04/25	Conditional support	2018/01/01	2021/03/31
Eskom	Palmiet Blouderon Air Compressor Replacement	Lesedi Nuclear Services (Pty) Ltd	Design is not finalised	20 521 261.29	0.00	0.00	2018/04/05	Pending	2018/04/30	2018/10/31
Eskom	Provision of Project Control for Kusile Power Station	RPS Consulting	Business continuity	141 052 017.50	0.00	0.00	2018/04/05	Not supported	2018/04/01	2018/09/30
Eskom	Provision of SAS software license, maintenance and support and professional services	SAS Institute (Pty) Ltd	Software renewal	29 186 756.76	231 730 314.10	87 160 480.88	2018/02/24	Pending	2017/03/01	2021/04/30
Eskom	Project Engineering Surveying Services	Themba Consultants	RFQ process to be finalised	26 360 836.90	0.00	0.00	2018/04/05	Not supported	2018/04/01	2018/05/31
Eskom	Construction of the new admin building at Camden Power Station	Trancon Construction (Pty) Ltd	Continuity of service	72 322 833.20	0.00	0.00	2018/02/27	Pending	2018/02/28	2018/08/31
Eskom	Construction of portion of Medupi-Borotho 400KV Transmission Line project (Section A)	Consolidated Power Projects (Pty) Ltd (Cenro)	Continuity of service	1 582 593 330.00	0.00	44 292 964.84	2018/05/15	Supported	2018/06/14	4 months

Eskom	Provision of Forensic & Anti-Corruption Consultation Services.	Kage Solutions, Neo Solutions, Prology, Crawford, EY, Nexia SAB&T, Exaclech, Qhubeka/Xulu, Katch Logistics, Open Water, UBAC, NMK, GS, Morar and Phandahani	Limited funds and additional scope of work	30 000 000.00	62 369 600.00	79 914 495.41	2018/05/24	Conditional support	2018/06/01	2019/04/30
Eskom	Manufacture and supply of Split Meters to Eskom on an as and when required basis	Lands & Gyr (Pty) Ltd and Nyamezela Metering (Pty)	Finalise the competitive bidding process	350 189 590.85	201 384 282.19	129 110 460.10	2018/04/04	Not supported	2018/11/01	2018/12/31
Eskom	Provision of Legal Services For Eskom Holdings SOC Limited	Legal Firms	Finalise the competitive bidding process	200 000 000.00	80 000.00	750 000 000.00	2018/04/17	Conditional support	2018/04/01	2018/12/31
Eskom	Supply of three PSA Nitrogen Generation Plant Generation Plants at Kusile Power Station	Nugen Technologies (Pty) Ltd	Additional scope of work	20 981 016.00	0.00	15 106 318.92	2018/05/17	Supported	2018/05/18	2018/11/15
Eskom	Maintenance and Operation of the Sewer Treatment Plant at Kusile Power Station	Pranteo (Pty) Ltd	Finalise the competitive bidding process	8 174 893.25	420 000.00	3 591 493.00	2018/05/08	Conditional support	2018/05/10	2018/06/09
Eskom	Provision of Professional Services at the Hendrina Power Station	Shawen Consulting Engineers (Pty) Ltd	Complete the remaining scope of work	1 855 870.00	0.00	0.00	2018/05/15	Conditional support	2018/05/15	2018/07/15
Eskom	Security Services at Summeren	Uraluja Trading (Pty) Ltd	Business continuity	2 716 641.75	2 587 970.52	1 725 310.29	2018/05/04	Not supported	2018/05/01	2019/04/30
Eskom	Refurbishment of four man isolation valves	WK Construction	Additional scope of work	20 998 074.76	1 140 000.00	0.00	2018/04/19	Supported	2017/11/01	2018/05/31
Eskom	Manufacture, supply and installation of the Auto Schemes at Koeberg for Transmission Delivery Projects	ABB South Africa (Pty) Ltd	Continuity of service	3 030 000.00	0.00	0.00	2018/06/25	Pending	2018/08/01	2019/05/31
Eskom	Valve Regulated Lead Acid Cells, Battery Stands, Battery Cabinets and Accessories to various divisions on an as and when required basis	COM 10 A Division of ACTOM (Pty) Ltd	Additional business requirements	3 808 711.92	8 896 901.95	5 009 311.56	2018/05/18	Not supported	2016/08/01	2021/07/30
Eskom	Provision of Monthly Bureau Maintenance Service for Driver Monitoring Cameras Installed at Eskom Vehicles Including De-Installation and Re-Installation of Units	Drive Risk (Pty) Ltd	Finalise the competitive bidding process	16 621 495.00	41 291 588.00	0.00	2018/06/25	Conditional support	2018/07/01	2018/07/31
Eskom	Maintenance of On Board Maintenance Of ON Board Computers (OBC) UNITS Installed on Eskom Vehicles	Mix Telematics Enterprises SA (Pty) Ltd	Finalise the competitive bidding process	18 083 250.00	39,875,460.00	0.00	2018/06/25	Conditional support	2018/07/01	2018/07/31
Eskom	Supply, transportation, erection and dismantling of scaffolding and insulation material for Generation Power Stations including Group Capital	Southey Contracting (Pty) Ltd, Kafer Thermal Contracting Services, SGB-Cape and TMS Group Industrial Services (Pty) Ltd	Court interdict	0.00	399 025 026.00	0.00	2018/06/06	Supported	2018/07/01	2018/09/30
Eskom	Provision of Fuel Cards Facilities For Fuel, Oil, Toll Fees, Repairs and Maintenance Facilities	Standard Bank SA (Stannic)	Finalise the competitive bidding process	7 217 841.84	5 836 085.61	29 464 998.69	2018/05/30	Supported	2018/06/01	2018/12/31
Eskom	Contract for Home-Work, Home Transport for Employees	UM Joint Ventures	Finalise the competitive bidding process	25 477 033.18	2 327 610.51	9 261 306.78	2018/06/27	Supported	2018/07/01	2018/07/31
Eskom	The Supply and Delivery of Hardware Storage, Servers & Blades, Software, professional services, maintenance & support Modular Data Centre	Hewlett-Packard Enterprise (HPE) South Africa (Pty) Ltd	Continuation of service	421 171 934.61	230 000 000.00	0.00	2018/05/22	Supported	2018/05/31	2019/03/04
Eskom	Provision of Facilities Management Services to Eskom Real Estate (ERE) Corporate Office Buildings in Gauteng Region on an as when required basis	Erm Perscopic Masingati, Leroy Building Construction cc & Thumecu (Pty) Ltd	Depletion of funds and additional scope of work	57 550 888.00	162 449 879.91	57 130 658.48	2018/06/25	Supported	2018/07/01	2018/08/31
Eskom	Supply, Delivery and Offloading of Fuel Oil to all Eskom's Fired Power Stations	Econ Oil & Energy (Pty) Ltd & FFS Refiners (Pty) Ltd	Finalise the competitive bidding process	2 485 574 824.83	0.00	0.00	2018/06/25	Supported	2018/07/01	2018/10/31
Eskom	Procurement of Plant Design, Supply and Installation and Commission of 38kV Overhead Power Line For Majuba Rail Project	Consolidated Power Projects (Pty) Ltd	Complete the remaining scope of work	91 539 383.44	0.00	0.00	2018/06/22	Conditional support	2018/07/01	2018/08/31
Eskom	Technical Assurance for Majuba Offloading Facility and Yard Optimisation	Themba UES Joint Venture	Delays in Construction Services	15 722 623.33	0.00	Not Indicated	2018/03/28	Awaiting additional information	2018/04/01	2018/03/30
Eskom	Supply of Coal to Camden Power Station	Vunene Mining	Continuity of service	1 531 600 000.00	5 163 960 000.00	588 042 531.30	2018/04/18	Conditional Support	Not Indicated	5 years
Eskom	Design, procurement, delivery on site excess coal stock yard at Kusile	Tenova Mining and Minerals South Africa (Pty) Limited	Additional scope of work	962 383 802.66	166 287 688.00	0.00	2018/03/29	Not supported	Not Indicated	Not Indicated
Eskom	Provision of technical assistance	Erigo Energy Tech Inc	Finalise the competitive bidding process	49 071 838.00	105 310.89	0.00	2018/04/10	Pending	Not Indicated	12 Months





## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 2 (JULY - SEPTEMBER 2016) REPORT- EXPANSIONS

Department/ Entity	Project Description	Supplier	Reason for extension	Original Contract Value	Value of Contract Extension	Value of previous extensions	Award/ Recommended date by AO/AA	not supported/not supported	Contract Start Date	Contract End Date
ESKOM	Security Services	GJV Security (Pty) Ltd	Competitive bid process is in progress	596,000.00	965,400.00	1,287,200.00	9/16/2016	Supported	2016/10/01	2017/03/31
ESKOM	Supply and construction of the Dassenberg substation	Rosheon SOC Ltd	Construction of feeder bays from Koeberg to Dassenberg	28,000,000.00	1,565,425.27	4,122,005.58	7/22/2016	Supported	Not stated	not stated
ESKOM	Provision of Scaffolding, access and thermal insulation services	Southey Contracting (Pty) Ltd	Competitive bid process is in progress	44,460,865.25	8,260,000.00	48,954,685.60	Not stated	Supported	Not stated	not stated
ESKOM	Supply of coal at Amot Power Station	Tegeta Exploration and Resources (Pty) Ltd	To augment existing coal contract	235,021,150.00	854,955,000.00	Not stated	8/11/2016	Not Supported	Not stated	not stated
ESKOM	Provide Kusile Power Station with a complete design, procurement, delivery to site, erection, cold and hot commissioning of the coal	Tenova Mining and Minerals SA (Pty) Ltd	Provide contractor with the Distributed Control System	1 001 219 697.00	318,322,174.24	Not stated	8/10/2016	Supported	Not stated	not stated
ESKOM	Supply of coal to Majuba Power Station	Tegeta Exploration and Resources (Pty) Ltd	Additional supply for coal required	3,794,748,750.00	2,937,870,000.00	Not stated	8/22/2016	Not Supported	Not stated	not stated
ESKOM	To provide APN services	Vodacom	Continuation of service	20,000,000.00	10,000,000.00	Not stated	Not stated	Supported	Not stated	not stated
ESKOM	Control and Instrumentation (C&I) System for Medupi Power Station	Alstom S&E Africa (Pty) Ltd	Alignment of completion date at Medupi with Integrated Master Schedule	1 349 351 818	Not stated	629 171 844	Not stated	Supported	2016/09/30	2019/12/31
ESKOM	Extension of contract at Medupi Power Station	Siemens ACI Open Consortium	Delay due to labour unrest	107,270,440.00	36,688,432.00	16,876,537.00	9/26/2016	Supported	Not stated	not stated
ESKOM	Provision of scaffolding	Southey Contracting (Pty) Ltd	Competitive bid process is in progress	44,460,865.25	8,260,000.00	48,954,685.60	7/21/2016	Supported	Not stated	not stated
Eskom	Supply of coal to Komati Power Station	Koornfontein Mines (Pty) Ltd.	Additional supply for coal required	6,955,200,000.00	341,544,200.00	not stated	Not stated	Supported	Not stated	not stated
Eskom	Installation of titanium tubes and refurbishment of turbine condensers to Duvha Power Station	Gea Nilenca (Pty) Ltd	Unforeseen urgent re-tubing	51,900,000.00	19,175,069.00	40,192,519.00	Not stated	Supported	Not stated	not stated
Eskom	Supply of coal to Amot Power Station	Hlagisa Mining Ltd	Expansion of scope	3,195,696,000.00	137,784,000.00	442,656,100.00	Not stated	Supported	Not stated	not stated
Eskom	Providing Kusile Power Station with design, manufacture, supply, installation, commissioning and testing, control and instrumentation system	ABB South Africa	Expansion of scope	3,102,828,043.38	550,044,229.00	not stated	Not stated	Supported	Not stated	not stated
Eskom	Supply and Delivery of air heaters and draught spares plants	Howden Africa (Pty) Ltd	Expansion of scope	298,800,000.00	218,300,000.00	185,500,000.00	Not stated	Supported	2016/10/01	2016/12/31



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 3 (OCTOBER - DECEMBER 2016) REPORT- EXPANSIONS

Department/ Entity	Project Description	Supplier	Reason for extension	Original Contract Value	Value of Contract Extension	Value of previous extensions	Award/ Recommended date by AO/AA	not Supported/not Supported	Contract Start Date	Contract End Date
Eskom	Provision of professional quantity surveying services at Kusile Power Station	Durapi Consulting	Continuity of services	79 079 536,00	56 841 167,00	37 758 546,00	2016-11-22	Supported	Not stated	Not stated
Eskom	Construction of terrace underground facilities at Kusile Power Station	Esor Construction (Pty) Ltd	Increase quantities due to additional of scope	311 106 943,00	382 208 460,00	1 098 347 892,00	2016-11-11	Conditional support	Not stated	Not stated
Eskom	Supply of 3 PSA Nitrogen Generation Plant for Kusile Power Station	Nugen Technologies (Pty) Ltd	Expansion of project duration due to modification of scope	18 404 400,00	0,00	0,00	2016-11-17	Conditional support	Not stated	Not stated
Eskom	Provision of raw water to Eskom power stations	Department of Water and Sanitation	Continuity of service	3 394 000 000,00	1 844 811 849,00	1 301 534 473,00	2016-12-09	Supported	Not stated	Not stated
Eskom	Manufacture, supply and delivery of air heaters	Howden Africa (Pty) Ltd	Funds depleted before expiry period.	298 800 000,00	218 300 000,00	185 500 000,00	2016-09-26	Conditional support	04/10/2016	Not stated
Eskom	Upgrading of four transformers for Van der Bijl SS controller within Gauteng Operating Unit	Rotek Industries SOC	Additional scope of work still need to be executed.	1 162 248,83	3 230 452,05	n/a	N/A	Supported	Not stated	Not stated
Eskom	National Security Services	L.L. Security Services cc, Maximum Security Services, and Double Barrel Security Services cc	Additional sites without security are being exposed to vandalism due to absence of security.	65 037 601,16	41 601 695,05	None	2016-08-18	Supported	6 months	Not stated
Eskom	Electrification and minor reticulation projects on an as and when required basis.	35 contractors on the panel	Project delays due shorage of Eskom trucks.	100 000 000,00	142 571 411,93	70 772 601,46	2016-09-26	Conditional support	Not stated	Not stated
Eskom	Supply of 600 000 tons of coal	Sudor Coal (Pty) Ltd.	Competitive bidding process in progress	1 586 995 200,00	162 486 000,00	1 598 391 048,00	2016-10-27	Conditional support	3 months	Not stated
Eskom	Panel of suppliers for strategic business management	Various Contractors	Additional projects identified	605 000 000,00 (Excl VAT)	1 200 000 000,00 (Excl VAT)	None	2016-10-27	Conditional support	3 years	Not stated
Eskom	Supply of coal to Khipfontein, Lepurport Colliers and Moonfontein Beneficiation Plant	Iyanda Mining (Pty) Ltd.	Competitive bidding process in progress	506 018 266,67	93 656 544,67	321 558 500,67	2016-10-13	Conditional support	1 Month	Not stated
Eskom	Construction, installation, erection and commissioning of miscellaneous building	Basil Read (Pty) Ltd	Delays in construction	521 471 349,41	740 887 566,21 (Excl VAT)	953 270 107,91	2016-10-06	Conditional support	24 Months	Not stated
Eskom	Construction services for major reticulation contracts for the Gauteng Operating Unit	Various Contractors	Funds depleted before expiry period.	50 000 000,00	12 420 176,47	248 403 529,36	Not specified	Conditional support	Not stated	Not stated
Eskom	Combustion of waste terrace at Kusile Power Station	WBHO Construction (Pty) Ltd	Revised Bill of Quantities	656 204 475,81	213 972 010,48	1 494 366 263,90	2016-11-11	Conditional support	60 Months	Not stated
Eskom	Extension of construction of various buildings at Medupi Power Station	Aveng Africa Limited	Extension of duration to assess completion of all contractual obligations	232 211 127,00	Time only no value equied approval	807 906 320,00	2016-11-24	Supported	18 Months	Not stated
Eskom	Maintenance and outage repair services for boiler pressure parts at coal fired power stations	Actom, Babcock and Steinnmuller	Allow sufficient time for competitive bidding process	740 000 000,00	2 505 875 132,00	3 171 875 133,19	2016-11-30	Conditional support	12 Months	Not stated
Eskom	Supply of Coal to Komati Power Station	Koornfontein Mines (Pty) Ltd	Continuity of service	341 544 200,00	6 955 200 000,00	87 093 771,00	N/A	Conditional support	Not stated	Not stated
Eskom	Technical support and maintenance of air heaters and draught plant fans	Howden (Pty) Ltd	Continuity of service	655 300 000,00	674 800 000,00 (Excl VAT) and 67 400 000,00 for any unforeseen contingencies (Excl VAT)	1 372 900 000,00	2016-09-26	Conditional support	2016-09-26	6 months
Eskom	Design, manufacture, supply, installation, commissioning and testing, control and instrumentation system for units 1 to 6 and the balance of plant at Kusile Power Station Project (P21)	ABB South Africa	Previous contractors terminated	2 522 783 814,38	550 0044 229,00 with an additional contingency fee of 30 000 000,00	NONE	Not specified	Conditional support	Not stated	Not stated
Eskom	Physical security services in Limpopo	Various	Competitive bidding process in progress	70 503 708,88	31 020 156,69	0,00	2016-11-24	Conditional support	2016-12-01	2017-03-30
ESKOM	Expansion of contract for general good services for Grootevlei station	Not stated	Project value under estimated	39 544 817,20	23 409 758,00	5 604 430,00	2016-07-11	Supported	Not stated	Not stated
Eskom	Modification of contract for manufacture, testing and supply of estimated quantities of Circuit Breakers	Actom High Voltage (Pty) Ltd	Additional stock required to restore power supply	482 429 232,00	13 639 554,54	786 226 998,00	Not stated	Supported	Not stated	Not stated

Eskom	Extension of contract for dust & noise monitoring services at Kusile	Gijima Holdings (Pty) Ltd	Competitive bidding process in progress	2 506 692,69	1 221 281,45	0,00	2016-11-24	Conditional support	Not stated	Not stated
Eskom	Extension of manufacturer, testing, supply, delivery, offloading and erection of estimated quantities of 6.6-132KV Voltage transformers	Instrument Transformer Technologies (Pty) Ltd	Competitive bidding process unsuccessful	19 809 181,89	19 809 181,89	0,00	2016-12-14	Conditional support	2015-01-11	2016-10-31
Eskom	Construction, installation, erection and commissioning of miscellaneous building	Basil Read (Pty) Ltd	Delays in construction	227 304 374,00	0,00	511 449 309,30	2016-11-24	Supported	2017-01-01	2017-12-31
Eskom	Supply and delivery of Gas for Research, Testing & Development (Rosherville)	Air Liquide	Incorporation of additional need	2 213 900,00	892 204,00	0,00	Not stated	Supported	2016-09-22	2018-08-21
Eskom	Supply, delivery and support services for laptops, desktops and slates	Mostek (Pty) Ltd	Escalating business needs for computer equipments	38 500 000,00	60 258 823,00	0,00	2016-05-12	Not Supported	2016-07-18	2017-07-17
Eskom	Modification of an Infrastructure at Medupi Power Station	Actom (Pty) Ltd	Contractor delayed due to other contract on site	735 362 678,00	582 397 111,00	1 551 557 012,42	2016-10-10	Conditional support	Not stated	6 years
Eskom	Construction services for Minor Reticulation contracts within the Gauteng Operating Unit	Various Contractors	Funds depleted before project completion	75 000 000,00	203 013 259,31	0,00	2016-10-31	Conditional support	Not stated	36 months
Eskom	Loading of coal at the Blinkpan Rail Siding	Makoya Supply Chain Holdings (Pty) Ltd	Contract value depleted due to non-performance by other mines	166 655 600,00	53 835 600,00	13 000 000,00	2016-12-09	Conditional support	Not stated	Not stated
Eskom	Coal handling services at Tutuka Coal Terminal	Transnet Freight Rail	Continuity of service	127 500 000,00	10 800 000,00	0,00	2016-12-09	Supported	Not stated	Not stated
Eskom	Unit board replacement at Palmiet Pumped Storage Scheme	Siemens (Pty) Ltd	Continuity of service	9 561 336,00	5 313 080,87	0,00	2016-12-12	Conditional support	2016-12-18	2017-08-12
Eskom	Construction of water treatment plant	Alula Water (Pty) Ltd	Outstanding work remaining due access challenges	718 114 780,00	120 996 405,00	0,00	2016-12-14	Conditional support	2016-12-30	2019-03-31
Eskom	Provision of Fuel Oil and Sootblower Plant Maintenance	Clyde Bergmann Africa (Pty) Ltd	Continuity of services	32 800 001,57	10 902 731,64	0,00	2016-12-14	Conditional support	Not stated	Not stated
Eskom	Supply of milling plant maintenance services from unit 1 to 6 at Durba Power Station	Steinmuller Africa (Pty) Ltd	Competitive bidding process in progress	0,00	Not stated	0,00	2016-12-15	Conditional support	2016-12-28	2017-03-27
Eskom	Provision of Biometric Access Control Software, Equipment/Materials and Consumables at Medupi Power Station project	Honeywell Automation and Control Solutions (SA) (Pty) Ltd	Additional scope of work	9 967 051,10	15 581 432,57	0,00	2016-12-15	Supported	2016-04-01	2019-03-31
Eskom	Provision of security services in the Welom Area, Free State Operating Unit	Phiripiri Security Services	Continuity of service	23 180 584,15	5 727 422,98	26 704 909,07	2016-12-15	Not Supported	2017-01-01	2017-03-31
Eskom	Provision of Forensic and Anti-Corruption consultation services	Panel of service providers	Backlog of forensic services	30 000 000,00	30 000 000,00	0,00	2016-12-15	Conditional support	Not stated	2019-03-30
Eskom	Transportation of raw and portable water from Kendal Power Station to Kusile Power Station project	Tamukelo Business Enterprise cc	Competitive bidding process in progress	63 534 415,00	14 694 095,52	0,00	2016-12-15	Supported	2016-12-22	4 Months
Eskom	Chimneys and silos at Medupi Power Station	Karrena-Concor Joint Venture	Competitive bidding process in progress	797 010 242,00	19 867 486,60	202 545 752,00	2016-12-14	Conditional support	2017-07-07	2018-07-07
Eskom	Security services	Born to protect security	Competitive bidding process in progress	13 689 423,56	5 339 428,14	32 794 327,52	Not stated	Supported	2016-11-01	2017-04-30
Eskom	Construction of Miscellaneous Structure at Kusile Power Station	Stefanutti Stock Basil Read Joint Venture (SSBR-JV)	Revised design and measurement	1 632 321 742,11	1 183 068 984,06	739 849 498,47	2016-11-11	Conditional support		19 Months
Eskom	Catering Services	Lephahle Site Services	Increase number of staff working on site	221 046 709,94	189 829 034,77	0,00	2016-11-11	Supported	Not stated	Not stated
Eskom	Maintenance KRUSS of K11 Tensiometers	Advance Laboratory Services	Calibration of Kruss equipment	92 207,25	984 965,20	0,00	2016-11-17	Supported	Not stated	Not stated
Eskom	Supply of coal	Inyanga Mining (Pty) Ltd	Competitive bidding process in progress	506 018 266,67	2 816 148 764,00	321 558 518,60	2016-11-15	Conditional support	Not stated	Not stated
Eskom	Planning, Scheduling tasks, Cost Engineering, Control tasks and Control with verification of progress site	RPS Engineering	Continuity of service	123 729 840,00	68 362 292,00	0,00	2016-11-22	Conditionally Supported	2016-12-31	2018-03-18
Eskom	Provision of engineering project support and facilitate upgrade of Kriel Fabric Filter Plant	Babcock & Wilcox Power Generation Group	Inspection by contractor outstanding	139 397 259,82	0,00	19509076,69	2016-12-15	Supported	Not stated	Not stated
Eskom	Construction of Gilead 66V and Knobel Chloa 66Kv Feeder Bays	High Voltage Technology	Inspection by contractor outstanding	23 016 957,98	0,00	383 979,08	2016-12-15	Supported	Not stated	Not stated
Eskom	Provision of equipment, materials, consumables and services required to complete site work	Stefanutti Stock and Izazi	Increased quantities	211 419 990,62	425 780 104,16	0,00	2016-11-11	Conditional support	Not stated	Not stated
Eskom	Security services	Born to protect security	Competitive bidding process in progress	13 689 423,56	5 339 428,14	32 576 978,92	Not stated	Supported	2016-10-20	6 Months
Eskom	Refurbishment and upgrade of Electrostatic Precipitators at Matla Power Station	Hamon SA (Pty) Ltd	Continuity of service	331 564 637,30	218 757 930,68	30 093 699,37	2016-09-06	Supported	2016-07-01	2019-12-31



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 3 (OCT - DEC 2017) REPORT- EXPANSIONS

Entity	Project Name	Supplier	Project Description	Contract Value (R)	Value Added (R)	Value Captured (R)	Completion Date	Support Type	Start Date	End Date
ESKOM	Construction of waste water treatment plant	Tubular Zaman	Delays in providing access to site	131 681 936.89	70 493 167.80	155 038 578.50	2017/10/01	Conditional support	2018/04/01	2018/06/30
ESKOM	Permanent Railway Line for Majuba Power Station	Aveng Africa (Pty) Ltd	Continuity of services	573 118 300.28	81 032 153.42	38 594 427.00	2017/08/29	Conditional support	Not Stated	7 months
ESKOM	Travelling wave locator system on transmission lines to the transmission division on an as and when required basis	H.V Test (Pty) Ltd	Competitive bid in progress	15 097 619.70	4 309 151.81	2 220 598.16	2017/10/11	Conditional support	Not Stated	Not Stated
ESKOM	Rehabilitation of civil items at First Falls, Second Falls and Collywobles dams that feed Eskom owned related hydro stations situated in the Eastern Cape Province.	Surface Preparations Equipment and Coatings (Pty) Ltd	Delays caused by weather conditions	27 714 925.81	0.00	0.00	2017/12/13	Conditional support	Not Stated	7 Months
ESKOM	Security Services	Born to Protect	Continuity of services	15 605 942.86	6 436 211.46	43 558 206.59	2017/10/18	Conditional support	2018/01/01	2018/03/30
Eskom	Conservancy Tanks at Kusile Power Station	Moreki Distributors	Continuity of service	8 228 000.00	15 444.00	0.00	17/12/2017	Conditional support	2017/12/01	2018/11/30
Eskom	Supply, Cleaning and servicing of chemical toilets including urinals at Kusile Power Station	Moreki Distributors	Continuity of service	30 411 700.00	62 499 000.00	0.00	2017/11/10	Conditional support	2017/12/01	2018/11/30
Eskom	Site cleaning services at Kusile Power Station	Bravo Guzubane Youth Co-Operative Limited	Continuity of service	10 245 214.00	14 746 471.00	3 878 073.00	2017/10/19	Conditional support	2017/10/27	2018/10/25
Eskom	Medium and Low Pressure Valves and Valves Spares	Ainsworth Diagnostics JV, Rthuba Valves and Industrial Suppliers CC, Mitech Mokoena JV & Zenzile Premier JV	Continuity of service	78 329 552.00	166 823 975.00	54 846 471.00	2017/11/20	Conditional support	2017/11/02	2018/03/31
Eskom	Western Cape Operating Unit	Gordian Fence sa (Pty) Ltd and Afhwire	Continuity of service	16 696 666.00	7 500 500.00	14 914 057.00	2017/11/28	Conditional support	2017/12/04	2018/03/03
Eskom	Various Gases and Cylinder Rentals	Afrox (Pty) Ltd & Air Products (Pty) Ltd	Continuity of service	22 800 000.00	140 910 792.00	0.00	2017/10/13	Conditional support	2017/11/01	2018/03/01
Eskom	Compressed Air Quality Equipment	Ingersoll Rand	Additional work required to complete work	91 999 467.00	5 415 274.00	0.00	2017/09/19	Conditional support	2019/01/01	2020/10/30
Eskom	Partial Re-Insulation of Drogenwer Proteus 400KV Line	Dokugesi Electrical CC	Additional work required to complete work	16 078 050.00	0.00	0.00	2017/08/11	Supported	2017/09/01	21 months

Eskom	Rail, Handling and Road	Jdwala Holdings	Continuity of service	72 101 551.00	192 651 450.00	0.00	2017/10/17	Conditional support	2017/11/01	2019/10/30
Eskom	Integrated Secondary Plant Solutions for Transmission Division, Comprising Protection Schemes, Telecontrol and Substation Automation Equipment	Siemens Pty Ltd	Continuity of service	29 181 713.00	0.00	0.00	2017/10/03	Conditional support	2017/11/15	2018/07/14
Eskom	The design, manufacturing, installation and commissioning of new oil pipes, drain pipes, manifolds for level stands and fabrication of bends	Stiemuller Africa (Pty) Ltd	Delays in providing access to site	28 192 943.00	0.00	0.00	2017/11/29	Supported	2018/01/01	2018/08/31
Eskom	Boiler works at Kusile Power Station	Mitsubishi Hitachi Power Systems Europe GMDH and Mitsubishi Hitachi Power Systems Africa (Pty) Ltd	Delays in providing access to site	18 531 680.00	3 092 853.00	0.00	2017/12/04	Conditional support	2018/01/01	2021/12/31
Eskom	Rental of Parkhomes at Duvha Unit 3 Recovery	Kwikspace Modular Building (Pty) Ltd	Competitive bid in progress	111 120.00	87 150.00	0.00	2017/11/30	Conditional support	2017/12/06	2018/07/05
Eskom	Provision of architectural, civil, structure, geotechnical, electrical and mechanical, fire detection and lighting and quantity surveying services	Iliso Consulting	Continuity of service	1 976 084.00	452 821.00	0.00	2017/12/15	Conditional support	2018/01/01	2018/06/30
Eskom	Consolidated Building Management Systems at Khusile Power Station	Honeywell Automation and Control Solution Southern Africa	Unresponsive bid	54 812 115.00	52 683 323.94	0.00	2017/12/05	Conditional support	2018/01/01	2020/09/01
Eskom	Engineering, design, manufacture, supply, delivery, erection/installation, testing and commissioning of 6 complete boilers and associated plant	Mitsubishi Hitachi Power Systems	Continuity of service	18 531 680.00	0.00	0.00	2017/10/31	Supported	Not stated	121 months
Eskom	Manufacture and supply of metering kiosks	Sabi Switchboards cc	Continuity of service	43 100 000.84	0.00	54 771 166.85	2017/10/27	Supported	2013/08/09	8 months
Eskom	Expand current contract for DC & UPS System at Kusile	Actom (Pty) Ltd	Continuity of service	67 440 534.61	0.00	0.00	2017/10/17	Supported	2010/11/19	3 years
Eskom	Provision of a wage bureau for the for the Medupi and Kusile Power Station projects	Time Data Sequel cc	Increase in service demand	105 688 544.00	76 756 203.13	40 923 593.01	2017/11/08	Supported	Not stated	Not stated
Eskom	Modify a panel contract contract for the provision of legal services	Various suppliers	Continuity of service	200 000 000.00	800 000 000.00	75 000 000.00	2017/11/30	Supported	2009/05/01	2017/04/30
ESKOM	Supply and delivery of ION exchange resins to various Eskom Power Stations	Agechem Water Treatment cc	Competitive bid in progress	82 783 708.87	33 145 113.80	12 417 558.33	2017/10/27	Supported	2011/12/01	2018/11/30
Eskom	Stringing, cabling and earthing of equipment and protection schemes at Hydra Substation	High Voltage technologies (Pty) Ltd	Continuity of service	3 404 404.00	919 765.00	0.00	2017/10/17	Supported	2018/07/19	2018/05/31
ESKOM	Milling plant maintenance services at Mafika Power Station	Babcock Buthuko	Competitive bid in progress	20 449 047.72	9 120 000.00	14 000 000.00	2017/10/01	Supported	not stated	2018/05/31



Eskom	Logic modifications B2B, Blackstart 2 for control and instrumentation upgrade	Andritz-Hydro GmbH	Continuity of service	41 579 559.25	384 060.08	10 288 699.93	2017/10/20	Supported	2011/07/01	2013/12/31
Eskom	Provision of meter audits, removal of illegal connections, disconnections and reconnections in Gauteng operating Unit	Thumncu (Pty) Ltd	Continuity of service	17 521 075.91	9 120 000.00	28 938 335.51	2017/11/21	Supported	2014/07/01	2017/06/30
Eskom	Maintenance and operation of the sewer treatment plant at Kuzile Power Station	Prentec (Pty) Ltd	Continuity of service	8 174 893.24	7 182 985.49	0.00	2017/11/14	Supported	not stated	not stated
Eskom	Design and construction of burner storage facility in Camden Power station	Tsalanang Construction Management (Pty) Ltd	Continuity of service	3 679 208.07	1 241 936.14	1 132 673.76	2017/10/30	Conditional Support	2017/11/01	5 months
Eskom	Common plant pressure vessels testing and repairs	D9 Thermal (Pty) Ltd	Continuity of services	18 153 314.65	19 104 741.28	0.00	2017/11/09	Not supported	N/A	N/A
Eskom	Catering services	Lephalele Site Service	Continuity of services	221 046 709.94	43 455 922.21	189 829 034.77	2017/12/07	Not supported	2018/02/01	2019/06/30
Eskom	Printing services	Motswako Office Solution (Pty) Ltd	Continuity of services	211 202 604.34	85 000 000.00	0.00	2017/12/13	Not supported	2018/04/01	N/A
Eskom	Manufacture, supply, delivery, off loading and commissioning of 66kV and 132kV circuit breakers	ABB South Africa (Pty) Ltd	Continuity of services	81 714 088.00	80 230 330.00	56 245 280.00	2017/12/15	Not supported	2018/04/01	2019/03/31
Eskom	Manufacture, supply, delivery, off loading and commissioning of 400kV circuit breakers	Actom Pty (Ltd)	Continuity of services	93 388 050.00	48 028 140.00	54 698 715.00	2017/12/15	Not supported	2017/02/07	2019/02/06
Eskom	Manufacture, supply, delivery, off loading and commissioning of 275 kV circuit breakers	ABB South Africa (Pty) Ltd	Continuity of services	48 782 178.00	0.00	0.00	2017/12/15	Not supported	2017/02/07	2019/02/06
Eskom	Provision of facilities management services to estate within North West Operation Unit and Gnd	Khumovusi Trading & Projects, Tlisa Trading, SHBZY Contracts and Motshiamos United	Continuity of service	11 587 597.64	36 711 119.04	70 980 000.00	2017/11/21	Not supported	2017/02/07	2019/02/06
Eskom	Security services	Various suppliers	Continuity of services	206 379 922.98	136 837 747.09	0.00	2017/12/13	Not supported	2018/01/01	2018/12/31

## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 4 (JANUARY - MARCH 2017) REPORT- EXPANSIONS

Department/ Entity	Project Description	Supplier	Reason for extension	Original Contract Value	Value of Contract Extension	Value of previous extensions	Award/ Recommended date by AO/AA	Supported/Not Supported	Contract Start Date	Contract End Date
Eskom	Provision of SAS software & professional services	SAS Institute (Pty) Ltd	Increase data volumes	29 186 756,76	231 730 314,10	87 160 490,68	2017/01/13	Supported	2017/07/07	2018/07/07
Eskom	Provision of recruitment services to Majuba Rail Project	Backhousia Consulting CC	Alignment of contract with approved ERA's	38 109 767,56	49 117 788,49	799 256,14	2017/01/17	Supported	2017/02/16	2018/12/31
Eskom	Provision of field & quality engineering services	Arup Tata Power Engineering Consortium	Continuity of service	104 795 567,04	47 216 387,76	11 400 000,00	2017/01/30	Supported	2017/02/28	2018/03/31
Eskom	Procurement of Teleprotection equipment	ABB SA (Pty) Ltd	Expansion of scope of work	2 505 738,88	9 043 952,00	4 125 470,80	2017/01/30	Supported	2017/02/28	2018/03/31
Eskom	Manufacturing, testing, supply & delivery of various pole mounted	ADC Energy CC & E-Lek Engineering (Pty) Ltd	Single Source	0,00	0,00	0,00	2017/02/08	Supported	2017/06/09	2019/06/08
Eskom	Design, manufacture, testing & supply of line hardware for distribution and transmission	Babcock Nuthuko Powerlines (Pty) Ltd	Expansion of scope of work	312 696 143,48	209 599 098,22	0,00	2017/02/22	Not Supported	Not stated	Not stated
Eskom	Fencing (Western Cape Operating Unit)	Gordian Fence SA (Pty) Ltd and Afriwire	Expansion of scope of work	33 333 333,32	21 425 746,00	16 614 057,00	Not dated	Conditional support	Not stated	Not stated
Eskom	Uninterrupted Power Supplies (UPS) (P16) at Medupi Power Station	Standby Systems	Continuity of service	132 037 510,00	10 573 334,79	0,00	2016/12/14	Conditional support	2016/12/31	2019/06/30
Eskom	Transmission of Power Delivery Projects	Consolidated Projects (Pty) Ltd	Expansion of scope of work	158 259 330,15	44 292 964,84	202 552 294,44	2017/01/09	Conditional support	Not stated	Not stated
Eskom	Provision of software license, maintenance and support and professional services	Micro Focus Software Ireland	Sole source	73 500 000,00	140 441 334,50	233 650 610,20	2017/01/13	Supported	Not stated	Not stated
Eskom	Cleaning outside at Matimba Power Station	Mmakgoge (Pty) Ltd	Enable legal investigations to take place	20 464 946,00	9 181 896,00	14 265 294,00	2017/01/17	Conditional support	2017/02/01	2017/12/31
Eskom	Psychometric assessment materials and services	JVR Psychometrics	Insufficient budget	600 000,00	800 000,00	0,00	2017/01/17	Conditional support	2016/06/01	2017/05/31
Eskom	Electrification of Households, Schools and Clinics in Limpopo	Panel of 88 contractors	Backlog of electrification	127 263 217,20	127 724 587,85	93 292 953,60	23/01/2017	Conditional support	2017/06/15	2017/03/31
Eskom	Provision of meetings management services for Eskom Board	iThemba Governance and Statutory Solutions (Pty) Ltd	Retain the level of proficiency	1 218 000,00	2 030 000,00	0,00	26/01/2017	Conditional support	2017/02/01	2017/12/31
Eskom	Construction supervision phase 4 at the Ingula pumped storage scheme	Braamhoek Consultants Joint Venture (BCJV)	Expansion of scope of work	0,00	589 621 050,73	0,00	2017/02/08	Conditional support	2017/04/11	2018/04/10
Eskom	Manufacture, testing, supply, delivery, off-loading, erection and commissioning of 400kV	Actom High Voltage Equipment, a division of Actom (Pty) Ltd	Competitive bidding process in progress	95 388 050,00	54 698 715,00	150 086 765,00	2017/02/09	Conditional support	Not stated	12 months
Eskom	Provision of coal sampling, oversight and analysis of Eskom coal imports	MBMCF Resource Management, Mpuamanza Group, Natural Sampling Services, Noko Analytical Services, Rockom Transport and Projects, SABS Commercial SOC Ltd, SGS South Africa (Pty) Ltd and Siza Coal Services)	Competitive bidding process in progress	193 500 000,00	36 000 000,00	0,00	2017/02/21	Conditional support	2017/04/01	2017/09/30
Eskom	Accommodation of 159 Hitachi Artisans for Kusile Power Station project	Villa Roma Boutique Hotel	Expansion of scope of work	8 174 250,00	7 263 900,00	2 478 600,00	2017/04/24	Conditional support	2017/03/01	2017/08/31
Eskom	Supply of 1.2 million tons of coal from the Kipfontein Colliery	Ivanga Mining (Pty) Ltd	Competitive bidding process in progress	506 018 266,67	720 298 528,00	321 558 518,67	Not stated	Conditional support	2017/03/01	2017/08/31
Eskom	Provision of construction management staff to support Kusile Power Station	Impulse International (Pty) Ltd	Continuity of service	76 734 640,00	119 081 920,00	3 094 599,98	2017/03/17	Not Supported	2017/03/20	2018/01/19
Eskom	Provision of project controls reporting for generation, new build and renewables projects	Arup Tata Power Engineering Consortium	Continuity of service	25 500 933,60	73 749 381,03	36 075 084,54	2017/01/30	Conditional support	2017/02/28	2018/03/31
Eskom	Provision of permanent security services for the Western Cape Operating Unit	Greystone Trading 389 CC and Eden Security Services CC	Competitive bidding process in progress	8 500 000,00	1 366 854,05	13 835 146,68	Not stated	Conditional support	Not stated	Not stated
Eskom	Electrification of household's connections, infrastructure and infills	Various suppliers	Expansion of scope of work	300 000 000,00	84 472 653,00	0,00	Not stated	Conditional support	2016/01/01	2017/01/30
Eskom	Refurbishment of outside plant, water treatment control and instrumentation at Tutuka Power Station	Yokogawa South Africa (Pty) Ltd	Expansion of scope of work	139 696 225,58	51 961 221,21	143 662 637,00	Not stated	Conditional support	2017/11/01	2018/02/28
Eskom	Engineering, Design, Manufacture, Inspection, Delivery, Site testing, Commissioning of 24 complete Auxiliary oil Transformers, associated fire protection system and earthing resistors for the Kusile Power Station	Zest Electric Motors (PTY) Ltd	Delays caused by other contractors	82 029 507,31	13 611 034,12	0,00	Not stated	Conditional support	Not stated	40 months

## Procurement through expansion method

Eskom	Industrial and medical gases	Airox (Pty) Ltd and Air Products (Pty) Ltd	Competitive bidding process in progress	20 000 000,00	18 735 639,67	22 168 302,41	2016/12/20	Conditional support	Not stated	6 months
Eskom	Project controls, reporting for generation, new build and renewables projects	Arup Tara Engineering Consortium	Continuity of service	25 500 933,60	36 075 084,54	37 674 296,49	Not stated	Conditional support	2017/02/28	2018/03/31
Eskom	Manufacture, testing, delivery, oil loading and erection of estimated quantities 11-12kV transformers	Instrument Transformer Technologies	Competitive bidding process in progress	33 676 568,34	0,00	0,00	Not stated	Conditional support	2016/11/01	2017/02/28
Eskom	Low Voltage Switchgear Kusile Power Station	Siemens SA	Delays caused by other contractors	491 163 194,44	0,00	0,00	2017/01/30	Conditional support	Not stated	36 Months
Eskom	Design, manufacture, testing and supply of medium voltage electric motors to various power stations	ABB South Africa, Actom (Pty) Ltd, Zest Electric Motors (Pty) Ltd	Allow for the outstanding orders and additional items to be delivered	244 082 414,40	284 952 360,00	284 952 360,00	Not stated	Supported	2017/05/01	2017/08/31
Eskom	Purchase of vehicles ancillaries	Various suppliers	Alignment of contract with approved capital budget	159 341 338,00	129 924 911,00	0,00	Not stated	Conditional support	Not stated	Not stated
Eskom	Supply coal to Kusile power station	Universal Coal	Improve coal specification	3 154 983 000,00	5 101 861 679,00	616 675 054,00	2017/03/20	Not Supported	2013/04/01	2023/03/31
Eskom	Construction of burner facility in CAMDEN Power station	Tsalanang Pty LTD	Extension of contract period	3 227 375,00	0,00	0,00	2017/03/15	Conditional support	2016/10/17	2017/10/17
Eskom	Construction of Gxosis in Orenjemoond	OPTIPOWER Projects	Expansion of scope of work	178 197 922,00	40 398 000,00	0,00	2017/04/21	Conditional support	2016/01/15	2017/08/14
Eskom	Provision of security services for all units and National Key Points	25 Contracts	Cancellation of tender due to non responsive bids received	397 575 048,00	411 400 136,00	926 839 134,00	2017/02/15	Conditional support	2017/04/30	2018/03/01
Eskom	Supply Sulphur to various Power Stations	Sasol Nitro	Competitive bidding process in progress	115 720 000,00	12 654 658,00	31 179 056,00	2017/03/23	Conditional support	2010/12/01	2017/09/30
Eskom	Construction of overhead lines	Various service providers	Insufficient budget	98 396 347,00	9 146 692,00	0,00	2016/12/14	Conditional support	Not stated	Not stated
Eskom	Provision of Server Support Services, Disaster Recovery Data Centre Services, End-User Computing Services and Service Desk Support	T-Systems	Competitive bidding process in progress	2 936 231 859,00	942 344 318,00	3 388 581 250,00	2017/02/08	Conditional support	2017/03/01	2018/04/30
Eskom	Provision of security services	Eden Security CC and Rane Security	Competitive bidding process in progress	18 000 000,00	4 405 774,36	67 249 648,41	Not dated	Conditional support	Not stated	Not stated
Eskom	Transportation of coal from various rail sidings to Tutuka, Groenvlei, Camden and Maguba Power Stations	Transnet Freight Rail (TFR)	Impractical to negotiate new contracts for a longer period without a long term view of the coal requirements for the power stations	4 857 766 000,00	2 055 472 844,00	0,00	2017/02/24	Conditional support	2017/04/01	2017/10/31



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 4 (JAN – MAR 2018) REPORT- EXPANSIONS

Department / Entry	Project Description	Supplier	Reason for Extension	Original Contract Value	Value of Contract Extension	Value of Previous Extensions	Award / Recommendation Date	Support Status	Contract Start Date	Contract End Date
Eskom	Provision of IT services	IT Systems South Africa (Pty) Ltd	Finalisation of the bidding process	2 958 231 859.00	342 000 000.00	4 052 496 344.00	2016/01/19	Supported	2016/04/01	2018/03/31
Eskom	Supply and delivery of B&V and 13.2kV circuit breakers	ABB South Africa (Pty) Ltd	Continuity of services	81 714 008.00	80 230 330.00	72 001 728.00	2016/01/29	Not Supported	2016/02/01	2018/02/06
Eskom	Facilities management services to estate within North West Operation Unit and Gae	Hummer Trading & Projects, Thye Trading, SH&Z Contracts and Motshemoes Limited	Continuity of services	11 547 587.64	143 123 27.08	6.00	2016/01/15	Supported	2016/06/01	2018/05/31
Eskom	Upgrade of existing plant, design and construction of new plant and materials for the Ash Handling at Camden Power Station	Rute Bulk Material Handling (Pty) Ltd	Continuity of services	545 114 511.00	118 497 357.22	8.00	2016/03/22	Not Supported	2016/03/03	2018/12/02
Eskom	400 MV Switchgear	Actom MV SwitchGear (Pty) Ltd	Funds exhausted	42 998 622.00	80 385 502.00	6.00	2016/01/02	Not Supported	Not applicable	Not applicable
Eskom	Medupi Ash Dump	Rute Bulk Materials Handling (Pty) Ltd	Time only - finalisation of the process	568 877 284.82	0.00	63 363 711.04	2016/12/22	Supported	Not applicable	Not applicable
Eskom	Rehabilitation of civil items at First Falls, Second Falls and Collymore dams	Surface Preparations Equipment and Coatings (Pty) Ltd	Time only - Delays caused by inclement weather	27 714 925.81 with contingency amount of 2 714 925.81	0.00	0.00	2017/12/13	Supported	Not stated	Not stated
Eskom	Area E - Pre-fabrication facility at Durba Power Station	Vula Mapagula Trading and Projects cc	Time Only - delays due to design capabilities by supplier	7 321 663.30	0.00	0.00	2016/01/31	Supported	Not stated	4 months
Eskom	The supply, transportation, erection and dismantling of scaffolding and insulation material for 13 (THIRTEEN) Generation Power Stations	Southern Contracting (Pty) Ltd, Kwaer Thermal Contracting Services, SGB-Cape and TMS Group Industrial Services (Pty) Ltd	Continuity of service	329 139 000	8 721 605 442	3 955 873 671	2017/07/05	Supported	2016/03/01	2018/09/30
Eskom	Manufacture and supply Power Quality Meters	Actom Protection Control & Division of Actom (Pty) Ltd	Competitive bid in process	18 906 320.70	12 718 790	6.00	2017/09/19	Not Supported	2017/08/09	2019/09/14
Eskom	Maintenance and outage repair services for Boiler Pressure parts under the maintenance and outage repair services for High Pressure Pipework	Actom, Babcock and Steimuller	Conclude a competitive bidding process	843 600 000	15 557 080 418	7 374 360 540	2016/01/05	Not Supported	2018/10/01	2019/09/30
Eskom	Civil works at Grooms and Grooms substation	Gebene Engineering Services	Continuity of service	11 136 013	0.00	0.00	2016/01/02	Supported	2016/01/01	31/07/2018
Eskom	The maintenance workshop services (MWS) roof and cladding replacement	Randstad Sales (Pty) Ltd	Continuity of service	7 964 649.00	0.00	0.00	2016/01/29	Supported	2016/01/31	2018/02/28
Eskom	Civil works at Upington Substation	Rgame Construction (Pty) Ltd	Continuity of service	88 508 383	0.00	0.00	2016/01/09	Supported	2016/02/06	2018/08/06
Eskom	Qualified Inspection Service during outages 121, 221 AND 222 at Koeberg Operating Unit (KOU)	Westinghouse Electric	Continuity of service	33 729 382	21 972 030	0.00	2017/12/15	Not Supported	2018/02/01	2019/01/31
Eskom	Design, manufacture, delivery, testing, installation and hot commissioning of the 2 x 275kV Air Filter capacitor installation at Lepani Substation	Ahrlek (Pty) Ltd	Continuity of service	39 469 167	481 367	0.00	2017/12/15	Supported	2017/12/28	2018/12/25
Eskom	NELC and F&OE Training	BCA Training (Pty) Ltd	Continuity of service	14 625 000	8 128 578	0.00	2017/12/15	Not Supported	Not stated	2018/07/14
Eskom	Provision of Facilities Management Services in Eskom Real Estate (ERE) Corporate Office Buildings in Gauteng Region on as and when required basis	Eris Periscope Management, Leroy Building Construction cc & Thumou (Pty) Ltd	Continuity of service	213 204 346.44	182 448 878.81	0.00	2016/01/28	Supported	2016/04/01	2019/03/31
Eskom	Upington Cabling & Stringing contract for the transmission power delivery projects in the Northern Cape	High Voltage Technology (Pty) Ltd	Continuity of service	3 195 254.00	472 437.00	0.00	2016/02/28	Supported	2016/03/04	2018/06/03
Eskom	World Bank Funded Infrastructure for Transmission Power	Babcock Mthululu	Continuity of service	135 447 863.00	0.00	0.00	2017/11/21	Supported	2017/11/24	2018/04/23
Eskom	Provision of Engineering and Project Management Services	Mc-Tech Industrial (Pty) Ltd	Continuity of service	15 549 352.00	86 131 487.00	50 562 114.00	2016/01/24	Not Supported	2016/02/01	2018/12/30
Eskom	Dismantling, Commissioning, of existing Non-Lethal Fence, Reconstruction and Commissioning of Non-Lethal Fence at Dalpiet Substation	SA Fence and Gate	Continuity of service	4 221 921.00	0.00	0.00	2016/02/16	Supported	2016/02/16	2018/04/15
Eskom	Construction of Newwheep-Upington 400kV Line (SECTION B)	Consolidated Power Projects (Pty) Ltd (Carnes)	Continuity of service	63 460 395.00	0.00	0.00	2016/02/14	Supported	2016/02/28	2018/06/27
Eskom	Construction of Newwheep-Upington 400kV Line (SECTION A)	Opil Power Projects (Pty) Ltd	Continuity of service	65 476 039.00	0.00	0.00	2016/02/14	Supported	2016/03/15	2018/06/30
Eskom	HV and MV Feeder Protection Schemes	ABB South Africa (Pty) Ltd	Continuity of service	80 143 307.00	43 481 505.00	109 205 551.00	2016/02/27	Pending	2016/03/01	2020/02/28
Eskom	Medium and Low Pressure Valves and Valve Spares	Ainsworth Diaphragm JV, Rhube Valves and Industrial Suppliers CC, Metch Motors JV & Zenzile Pinner JV	Finalisation of competitive bidding process	76 329 552.00	0.00	54 846 472.00	2016/03/02	Not Supported	2016/03/03	2018/11/02
Eskom	Construction of the Ash Dump and Dams and Miscellaneous Infrastructure at Medupi Power Station	Basil Road (Pty) Ltd	Continuity of service	453 471 348.00	0.00	563 780 288.00	2016/03/09	Supported	2016/03/12	2018/12/11
Eskom	Provision of construction supervision at Ingula Pumped Storage Scheme	Bramhoek Consultants Joint Venture (BCJV)	Continuity of service	308 614 234.00	10 277 569	358 042 854.00	2016/03/23	Supported	2016/04/09	2018/12/06
Eskom	Installation and Erection of 180 Newly Manufactured Low Nox Burners on (B) Units at Camden Power Station	John Thompson a division of ACTOM	Continuity of service	136 900 154.00	0.00	22 802 507.00	2016/03/26	Pending	2016/04/01	2022/03/30
Eskom	The sourcing and delivery of material and services for the Eskom Information Centre (EIC)	EDSCO International & Worldwide Information Systems (Pty) Ltd for subscription and Worldwide Information Systems (Pty) Ltd & Albano Trading cc for Books	Continuity of service	56 972 064.00	96 875 867.00	0.00	2016/02/23	Pending	2016/03/01	2020/03/15
Eskom	Free Carrier Arrangement (FCA) Transporters for haulage	Free Carrier Arrangement (FCA) Transporters	Continuity of service	2 399 000.00	2 399 000.00	1 799 000.00	2016/03/25	Supported	2016/04/01	2018/03/31
Eskom	The Consolidated Building Management System at Kusile Power Station Project (P22A)	Honeywell Automation and Control Solutions Southern Africa (Pty) Ltd	Continuity of service	64 812 115.00	52 683 323.00	0.00	2017/12/05	Supported	2016/01/01	2020/09/01
Eskom	Hypercare Assurance and Ad-Hoc Support	Surtis (Pty) Ltd	Continuity of service	5 204 492.00	48 745 363.00	59 774 558.00	2016/03/02	Not Supported	2016/03/01	2022/02/28
Eskom	Manufacture, Testing, Supply and Delivery of									



Eskom	Various Estimated Quantities of Low Voltage Fuses to Eskom on As and When Required Basis	Imbimbi- Advanced Product (Pty) Ltd (APT)	Continuity of service	5 196 090.00	6 764 581.00	0.00	Not started	Pending	2018/02/01	2018/09/30
Eskom	Procurement of Plant Design, Supply and Installation of Overhead Track Equipment (OITE)	Iron International Ltd	Continuity of service	649 997 067.00	20 231 867.00	0.00	2018/03/13	Not Supported	2018/04/11	2020/10/11
Eskom	Panel Contract for Provision of Legal Services	73 legal firms	Continuity of service	200 000 000.00	270 000 000.00	43 157.00	2018/03/28	Supported	2018/04/01	2018/12/31
Eskom	Provision of project and programme controls oversight and assurance	LTE Consulting (LTE)	Continuity of service	35 831 067.00	51 171 836.00	0.00	2018/03/15	Not Supported	2018/04/01	2018/03/31
Eskom	The supply and delivery of lubricants to various Eskom Power Stations	BP Southern Africa (Pty) Ltd, Engen (Pty) Ltd and Chevron (Pty) Ltd	Continuity of service	227 378 420.00	106 469 702.00	58 518 110.00	2018/02/12	Supported	2018/04/01	2019/07/31
Eskom	Design, manufacture, testing and supply of estimated quantities of Medium Voltage (MV) Electric Motors to various power stations for the Generation Division	ABB South Africa (Pty) Ltd and Actom (Pty) Ltd	Continuity of service	256 206 535.00	0.00	40 859 945.00	2018/03/12	Supported	2018/01/01	2018/03/31
Eskom	Supply of Three PSA Nitrogen Generation Plants at Kusele Power Station	Nugen Technologies (Pty) Ltd	Continuity of service	20 861 016.00	0.00	15 106 318.00	2018/03/20	Not Supported	2018/05/18	2018/11/15
Eskom	Provision of Management Services	Novconsultant Hynds (Pty) Ltd	Continuity of service	38 610 983.00	1 651 000.00	0.00	2018/03/26	Not Supported	2018/04/01	2018/12/31
Eskom	Provision of Project Development Services For Transmission Projects Developed by Group Capital Project Package 3	Wyleli	Retain the necessary resources	9 689 840.00	8 312 935.00	0.00	2018/03/12	Not Supported	2018/03/31	31/09/2018
Eskom	Provision of Project Development Services For Transmission Projects Developed by Group Capital Project Package 2	Project Powerhouse	Retain the necessary resources	19 254 901.00	0.00	0.00	2018/03/12	Not Supported	2018/03/31	31/09/2018
Eskom	Provision of Project Development Services For Transmission Projects Developed by Group Capital Project Package 1	Vaughan Charles Associate	Continuity of service	12 726 297.00	13 762 631.00	0.00	2018/03/12	Not Supported	2018/03/31	31/09/2018
Eskom	Refurbishment of four main insulation valves	WK Construction	Continuity of service	1 140 000.00	20 998 074.00	0.00	2017/11/09	Not Supported	2017/11/01	2018/05/31
Eskom	The Upgrade of LRI Platform and Charvin at Eskom Academy of Learning and Leadership Development Centre Centre Buildings in Midrand	Shore LRI (Pty) Ltd	Continuity of service	738 850.00	191 193.51	0.00	2018/03/23	Supported	2018/01/10	2018/03/10
Eskom	Assessment, design, installation, testing, commissioning of Fire Systems at Divis Network Management Centre (NMC)	Thokozelo Management (Pty) Ltd	Continuity of service	8 618 915.00	0.00	0.00	2018/03/23	Supported	2018/04/01	2018/06/30
Eskom	Transportation of coal by Rail from various rail sidings to Tutuka, Grootvlei, Camdeboo and Mafika Power Stations	Transnet Freight Rail (TFR)	Continuity of service	1 967 350 000.00	1 381 347 000.00	0.00	2018/03/19	Supported	2020/04/01	2018/06/30
Eskom	TUTUKA Ash Dump Increase Project: Concept Development For Vertical extension of the existing Tutuka Ash Dump Facility and additional Thermal Monitoring	Zithobele JV	Continuity of service	6 984 072.00	691 465.00	0.00	2018/02/23	Not Supported	2018/02/28	2018/04/30
Eskom	Provision of Engineering and Project Management to Kusele Power Station	Black & Veatch	Continuity of service	114 900 000	1 068 819 904	13 771 267 374	2018/02/12	Pending	2018/03/19	2020/06/30
Eskom	Provision of Engineering and Project Management to Mafika Power Station	Panasonic Bruchardt Africa (Pty) Ltd (P&B Africa)	Continuity of service	114 000 000	350 000 000	6 552 112 091	2018/03/12	Pending	2018/03/19	2018/12/31
Eskom	Stringing and Cabling at Various Substations- Central Grid	R.T Tshabalele Electrical	Continuity of service	1 979 504	0.00	0.00	2018/03/23	Pending	2018/05/01	2018/11/30
Eskom	LV Switchgear replacement project at Mafika Power Station	Siemens (Pty) Ltd	Continuity of service	128 119 784	13 902 373	17 706 680	2018/03/28	Not Supported	2018/07/01	2021/12/31
Eskom	MV Switchgear replacement project at Mafika Power Station	Siemens (Pty) Ltd	Continuity of service	270 568 947.00	20 637 527.00	0.00	2018/03/28	Not Supported	2018/07/01	2021/12/31
Eskom	Printing Services	Notewise Office Solution (Pty) Ltd	Finalisation of the bidding process	211 202 604.34	85 000 000.00	0.00	2018/01/08	Not Supported	2018/04/01	2019/09/30
Eskom	Catering	Lephalele Site Service	Continuity of services	221 046 709.34	43 435 922.21	189 829 034.77	2017/11/20	Not Supported	2018/02/01	2018/07/30
Eskom	Security Services	Various service providers	Continuity of services	206 379 922.38	138 837 747.09	0.00	2018/01/24	Not Supported	2018/01/01	2018/12/31
Eskom	Supply and delivery of 400kv circuit breakers	Actom (Pty) Ltd	Continuity of services	93 368 050.00	48 028 140.00	54 696 715.00	2018/01/28	Not Supported	2018/02/01	2018/02/08
Eskom	Common plant pressure vessels testing and repairs	DB Thermal (Pty) Ltd	Continuity of services	18 153 314.65	18 104 741.28	0.00	2018/03/18	Not Supported	2018/04/01	2018/06/30



## GOVERNANCE MONITORING AND COMPLIANCE: QUARTER 2 (JULY -SEPT 2017) REPORT- EXPANSIONS

Department/ Entity	Project Description	Supplier	Reason for extension	Original Contract Value	Value of Contract Extension	Value of previous extensions	Award/ Recommended date by AO/AA	not supported/not supported/Conditional support	Contract Start Date	Contract End Date
Eskom	Fencing Terms Contract Western Cape Operating Unit	Gordian Fence SA (Pty) Ltd and Afrwire	Continuity of service	33,333,333.00	15,000,000.00	23,094,634.00	2017/07/19	Conditional Support	2017/08/07	2017/12/03
Eskom	Design, manufacture, testing and supply of composite insulators for Transmission and Group Capital	Speedcraft Manufacturing (Pty) Ltd, LAPP Insulators and NGK Insulators Ltd	Continuity of service	69,043,131.00	77,219,122.00	12,922,456.00	2017/07/27	Conditional Support	2017/08/01	2018/01/31
Eskom	Construction of a new dedicated walkway and the upgrades to the existing carpark at Duvha Power Station	Shando Ka Ndaba Business Enterprise CC	Continuity of service	2,281,803.00	0.00	0.00	2017/07/21	Conditional Support	2017/08/15	2017/10/15
Eskom	Provision of security services at Medupi Power Station Project	Fidelity Security Group	Align contract with national security contracts	64,921,843.00	41,355,898.00	12,209,715.00	2017/07/27	Supported	2017/08/01	2018/01/31
Eskom	Construction of substations (Primary and Control Plant) for the projects in the North West Operating Unit (NWOU) on and as when required basis	20 various panel contractors	Finalise projects allocated	97,284,573.00	56,982,076.00	220,920,182.00	2017/07/20	Supported	2017/08/11	2018/02/10
Eskom	Paulps Second Transformer Upgrade	High Voltage Technology (Pty) Ltd	Continuity of service	2,374,059.00	0.00	0.00	2017/04/13	Conditional Support	2017/08/01	2018/01/31
Eskom	Supply of three (3) PSA NITROGEN Generation Plants at Kusile Power Station	Nugen Technologies (Pty) Ltd	Continuity of service	20,981,016.00	0.00	15,106,318.00	2017/07/20	Supported	2017/08/20	2018/01/18
Eskom	The provision of Engineering Project Management Services	Thabile Engineering cc	Continuity of service	1,571,250.00	610,292.00	0.00	2017/07/03	Conditional Support	2017/08/31	2018/02/18
Eskom	The detailed design and construction of the spares storage facility and provision of services to the spares storage facility	Vuka Magagula Trading and Projects CC	Continuity of service	5,409,602.00	0.00	0.00	2017/07/20	Supported	2017/08/16	2018/03/31
Eskom	Provision of Engineering and Project Management Services at Kusile Power Station	Zitholele JV	Additional scope of work	7,898,985.00	590,816.00	0.00	2017/07/19	Conditional Support	2017/08/01	2017/09/30
Eskom	Supply and delivery of office chairs (total number requested is 9217, approval was granted as follows: Megawatt 311 of 500, Braamfontein 225 of 225 and Academy of learning 108 of 130. 8362 still to be verified)	Gxakwe's projects cc	Additional needs requirements	72,740,687.00	Not indicated	0.00	2017/07/31	Conditional Support	Once off	Once off
Eskom	Construction of civil related works	Gebane Investments cc	Complete the remaining scope of work	26,577,903.00	0.00	0.00	2017/07/20	Conditional support	2016/05/16	2017/07/25
Eskom	Car parks and walkways at Duvha Power Station	Shando ka Ndaba Business Enterprise	Continuity of service	2,241,803.00	0.00	0.00	2017/07/19	Conditional support	2017/03/01	2017/10/15
Eskom	Supply and delivery of liquid sulphur	Ukhamba Lobuntu Chemicals	Allow business continuity and finalisation of tender process	17,000,000.00	5320349.04	32,770,594.46	2017/08/14	Conditional support	Not stated	3 months
Eskom	Supply of Petrol and Diesel to various Eskom and subsidiaries' stations	Masana Petroleum Solutions and Makwande Energy Solutions	Continuity of service	1,757,463,159.00	0.00	0.00	2017/07/20	Conditional support	2011/06/09	2017/08/21
Eskom	Modification of contract with Stefanutti Stocks and Mathomomayo Joint venture Pty Ltd for raw water pump station and sub-station at Medupi power station	Stefanutti Stocks and Mathomomayo Joint venture Pty Ltd	Continuity of service	194,885,592.30	76,165,226.28	0.00	2017/06/30	Conditional support	Not stated	12 months
Eskom	Fencing Terms Contract Western Cape Operating Unit	Gordian Fence SA (Pty) Ltd and Afrwire	Continuity of service	33,333,333.00	15,000,000.00	0.00	2017/07/19	Conditional Support	2014/12/04	2017/12/03
Eskom	Design, manufacture, testing and supply of composite insulators for Transmission and Group Capital	Speedcraft Manufacturing (Pty) Ltd, LAPP Insulators and NGK Insulators Ltd	Continuity of service	69,043,131.00	77,219,122.00	0.00	2017/07/27	Conditional Support	2017/08/01	2017/01/31
Eskom	Technical Support services for Maruba Rail Project for time only	Aecom (Pty) Ltd	Continuity of service	32,122,397.15	0.00	0.00	2017/08/04	Supported	2017/06/30	2018/12/31
Eskom	Design, Manufacture and supply of various pole top and ground mount transformers on an as and when required basis	Aecom Distribution Transformers (Pty) Ltd, Electro Inductive Industries (Pty) Ltd and Revive Electrical Transformers (Pty) Ltd	Increase in estimated quantities	462 010 202.74	485,317,001.77	0.00	2017/08/01	Conditional support	Not stated	2017/10/31
Eskom	Panel of live work maintenance services on the MV Network (11kv-33kv) and associated projects within the Limpopo Operating Unit	Panel of 61 Contractors	Continuity of service	100,000,000.00	93,164,690.82	0.00	2017/08/01	Conditional support	2017/08/01	2018/07/31
Eskom	Manufacture, supply and delivery of air heaters and draught plant spares	Howden Africa (Pty) Ltd	Original Equipment Manufacturer	340,632,000.00	165,528,000.00	954,800,000.00	2017/07/20	Conditional support	2017/07/01	2018/06/30
Eskom	Technical Support and Maintenance Services	Howden Africa (Pty) Ltd	Original Equipment Manufacturer	747,042,000.00	564,300,000.00	3,027,270,000.00	2017/07/20	Conditional support	2017/07/01	2018/06/30
Eskom	Provision of verification and technical assurance services on construction work for Maruba Rail Project	Transnet Capital Projects	Continuity of service	95,833,315.22	0.00	0.00	2017/07/07	Conditional support	2017/07/01	2018/06/30
Eskom	66kv and 132kv circuit breakers	ABB South Africa (Pty) Ltd	Competitive bid process in progress	81,714,088.00	56,245,280.00	15,756,448.00	2017/09/27	Conditional support	Not stated	20 Months
Eskom	Maintenance and outage repair services for boiler pressure parts and or maintenance and outage repair services for high pressure pipework for 13 fossil fired power stations	Aecom (Pty) Ltd, Babcock Ntshuko Engineering (Pty) Ltd and Steimmuller Africa (Pty)	Competitive Bidding process underway	846,600,000.00	10,098,875,057.57	8,116,218,594.30	2017/08/29	Conditional support	2017/10/01	2017/12/31
Eskom	Online vending system and prepaid support gateway licence, maintenance and support	Ontec Systems (Pty) Ltd	Sole distributor	337,979,043.00	1,115,330,571.00	1,013,937,130.00	2017/08/25	Not supported	Not stated	Not stated
Eskom	Online vending system and prepaid support gateway licence, maintenance and support	Ontec Systems (Pty) Ltd	Sole distributor	337,979,043.00	1,115,330,571.00	1,013,937,130.00	2017/09/04	Conditional support	2017/10/01	2018/09/30
Eskom	The supply of compressed air quality equipment at Kusile Power StationN (P1A)	Ingersoll Rand South Africa (Pty) Ltd	Additional scope of work	91,999,467.00	5,415,274.00	0.00	2017/09/19	Not supported	2017/08/30	6 months
Eskom	Provision of rail transportation from Danielsburg to Vereeniging, handling and storage at Vereeniging and road transportation from Vereeniging to Kusile Power Station	Idwala Industrial Holdings (Pty) Ltd	Expansion of scope	72,101,551.00	192,651,450.00	0.00	2017/08/30	Conditional Support	2017/10/01	2018/01/31
Eskom	Offshore manufacturing inspection services for Medupi Power Station	New Age Engineering Solutions, ISO-Q & RBI	Expansion of scope	108,518.40	0	316,512.00	2017/09/14	Conditional Support	2017/10/01	Not stated
Eskom	Non-statutory off-site ad-hoc manufacturing inspection services for Medupi Power Station	TUV-Nord	Expansion of scope	2,746,224.00	0.00	3,520,800.00	2017/09/04	Conditional Support	2017/10/01	2018/01/31
Eskom	The supply, erection and dismanting of scaffolding and insulation material for generation power stations including group capital	Southey Contracting (Pty) Ltd, Kaefer Thermal Contracting Services, SGB-Cape and TMS Group Industrial Services (Pty) Ltd	Competitive bid process in progress	329,130,000.00	1,277,740,531.00	4,206,957,068.00	2017/09/01	Conditional Support	2017/10/01	2018/03/31
Eskom	Provision of security services at Simmerpan	Utafutani Trading (Pty) Ltd	Continuity of service	2,716,641.00	1,725,310.00	0.00	2017/08/25	Conditional Support	2017/10/01	2018/03/31

Eskom	The supply and delivery of lubricants to Power Stations	BP Southern Africa (Pty) Ltd, Engen (Pty) Ltd and Chevron (Pty) Ltd	Competitive bid process in progress	227,378,420.00	58,318,110.00	0.00	2017/09/13	Conditional Support	2017/10/01	2018/09/30
Eskom	Air Cooled Condenser (ACC) Erection Works for Unit 4 to Unit 6 at Kusile Power Station	Tubular Construction Projects (Pty) Ltd	Continuity of service	708,971,582.00	431,010,103.00	0.00	2017/09/14	Conditional Support	2017/09/19	2018/12/09
Eskom	Detailed design and construction of the scrap laydown facility and provision of services to support the scrap laydown facility (Area D) at Durba Power Station	Maraka Consulting and Siamelaive Trading JV	Continuity of service	5,320,045.35	223,687.64	0.00	2017/04/26	Not supported	Once off	Once off
Eskom	Distributed Management Systems (DMS) software and license maintenance	ABB South Africa	Renewal of software licenses	3,322,920,906.00	41,362,865.10	0.00	2017/07/03	Not supported	Not stated	Not stated
Eskom	Maintenance and support of backup infrastructure	Sidibule Technology Services (Pty) Ltd	Continuity of service	34,084,315.00	14,203,117.50	0.00	2017/07/04	Conditional Support	Not stated	12 months
Eskom	Wage	Time Data Sequel CC	Continuity of service	105,688,544.00	117,679,796.34	0.00	2017/07/01	Not Supported	Not stated	42 months
Eskom	construction of Nieuwehoop – Upington 400kV (Section A)	OPTI Power Projects (Pty) Ltd	Finalisation of the outstanding work	72,367,650.83	0.00	0.00	2017/07/04	Conditional Support	Not stated	7 months
Eskom	construction of Nieuwehoop – Upington 400kV (Section B)	Consolidated Power projects (Pty) Ltd	Complete the remaining scope of work	72,367,650.83	0.00	0.00	2017/07/04	Conditional Support	Not stated	7 months
Eskom	Design, Manufacturing, Testing of composite Insulator for Transmission and Group Capital	Manufacturing (Pty) Ltd, LAP Insulators and NGK Insulators Ltd	Competitive bid process in progress	69043131.29	77219122.61	0.00	2017/07/12	Not Supported	Not stated	11 Months
Eskom	The contract value for provision of minor reticulation, prepaid meter installation, recloses and voltage regulators services within North West Operating Unit as and when required	Various services	Execute additional scope of work	62,000,000.00	16,000,000.00	0.00	2017/06/22	Conditional Support	Not stated	6 months
Eskom	Balance of Power works at Kusile Power Station	Grinaker – LTA Metals and Minerals (A division of Aveng Africa Ltd)	Continuity of services	485,842,058.72	575,895,842.05	0.00	2017/07/13	Conditional Support	Not stated	29 Months
Eskom	Camden Ash Facility Project	Aqua Transport and Plant Hire (Pty) Ltd	Continuity of services	58,241,915.03	58,241,915.03	0.00	2017/06/29	Not supported	Not stated	56 months
Eskom	Permanent railway line for Mapheko Project	Aveng Africa (Pty) Ltd	Continuity of services	573,119,300.28	81,032,153.42	0.00	2017/07/07	Conditional Support	Not stated	7 months
Eskom	Free Carrier Transporters of Coal	Various service providers	Additional coal requirements	8,095,000.00	2,051,000.00	0.00	2017/07/05	Conditional Support	Not stated	2018/03/31
Eskom	Construction of Fehle Filter Plant (FFP) Retrofit Project Grootvlei Power station units 2, 3 & 4	Acton (Pty) Ltd	Continuity of services	554,510,113.55	0.00	0.00	2017/07/13	Supported	Not stated	12 months
Eskom	Construction of overhead lines in the North West Operating Unit	Various service providers	Continuity of services	98,396,347.00	13,950,787.62	0.00	2017/07/19	Conditional Support	Not stated	6 months
Eskom	High Frequency Transformers on Unit 5 Electrostatic Precipitator Plant at Duvha Power Station	Castel SA (Pty) Ltd and Projects CC	Continuity of services	29,944,807.50	time only	0.00	2017/05/19	Conditional Support	Not stated	2 months

# **Annexure “G”**





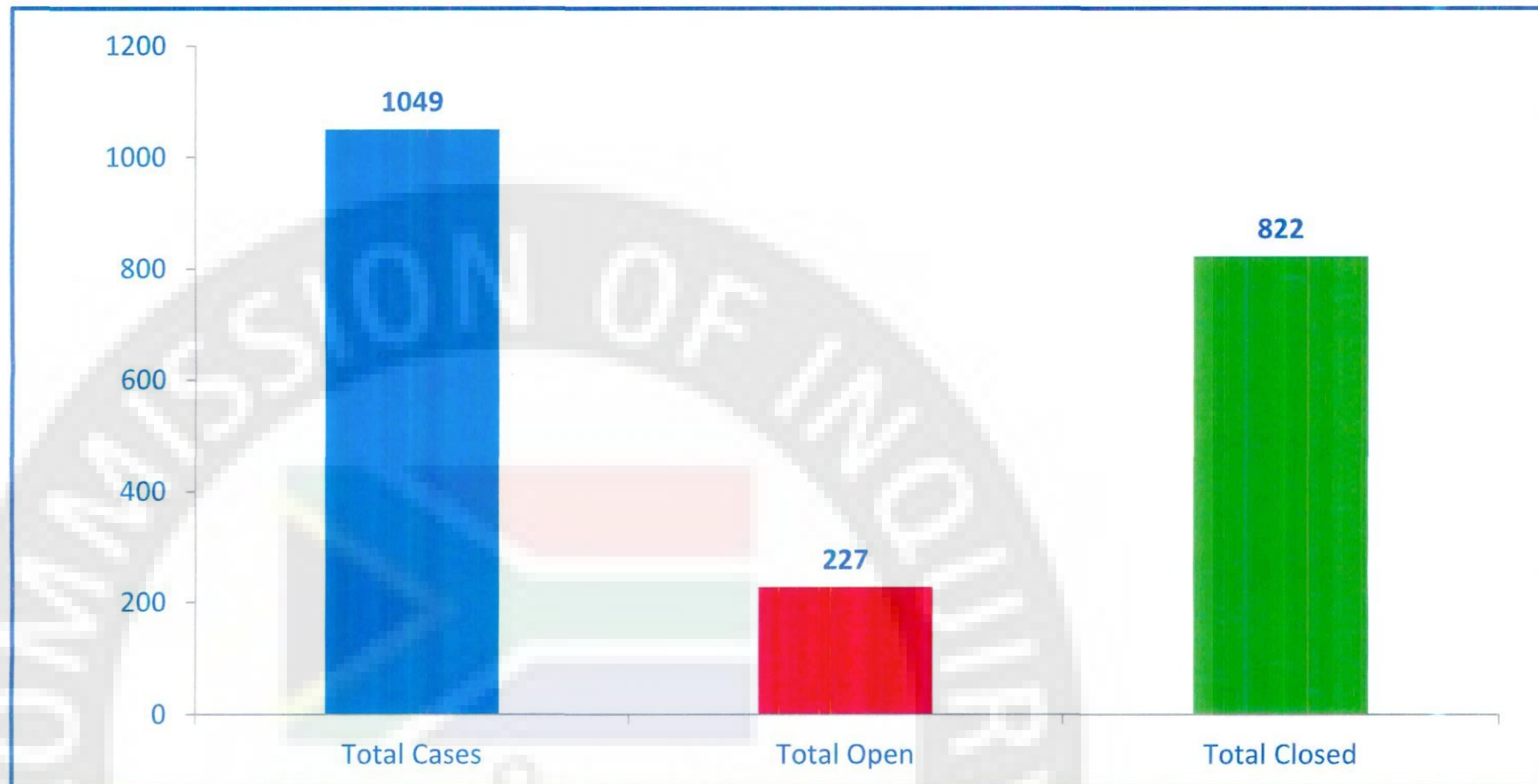


# Assurance and Forensic Feedback

## Progress Report on Consequence Management Project

Date: 13 November 2018

## Status on Cases



- The total of 822 cases have been closed as at 31 October 2018. The total of 227 cases remains open.



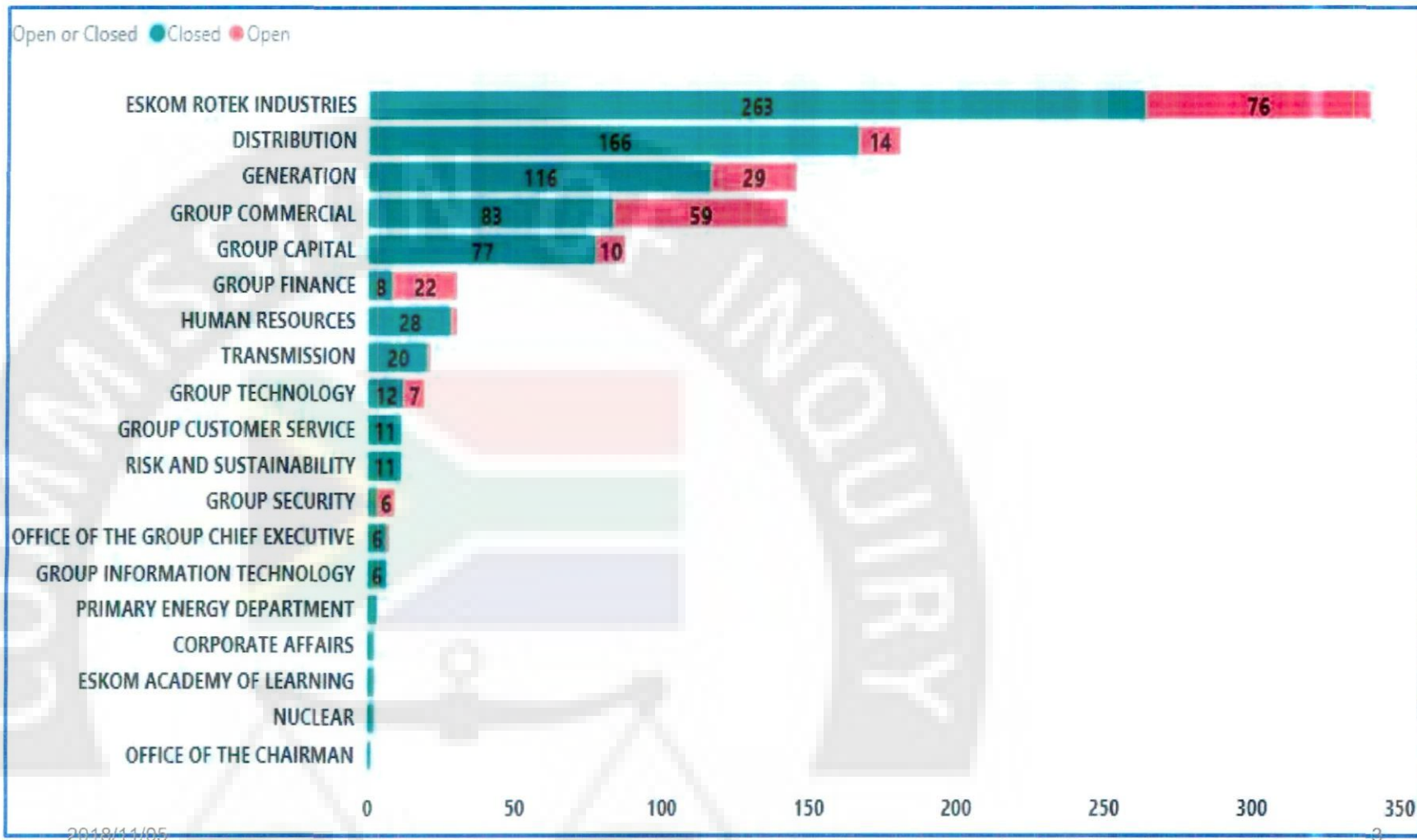
# Status on Cases per Division



Total Cases: 1049

Total Closed: 822

Total Open: 227

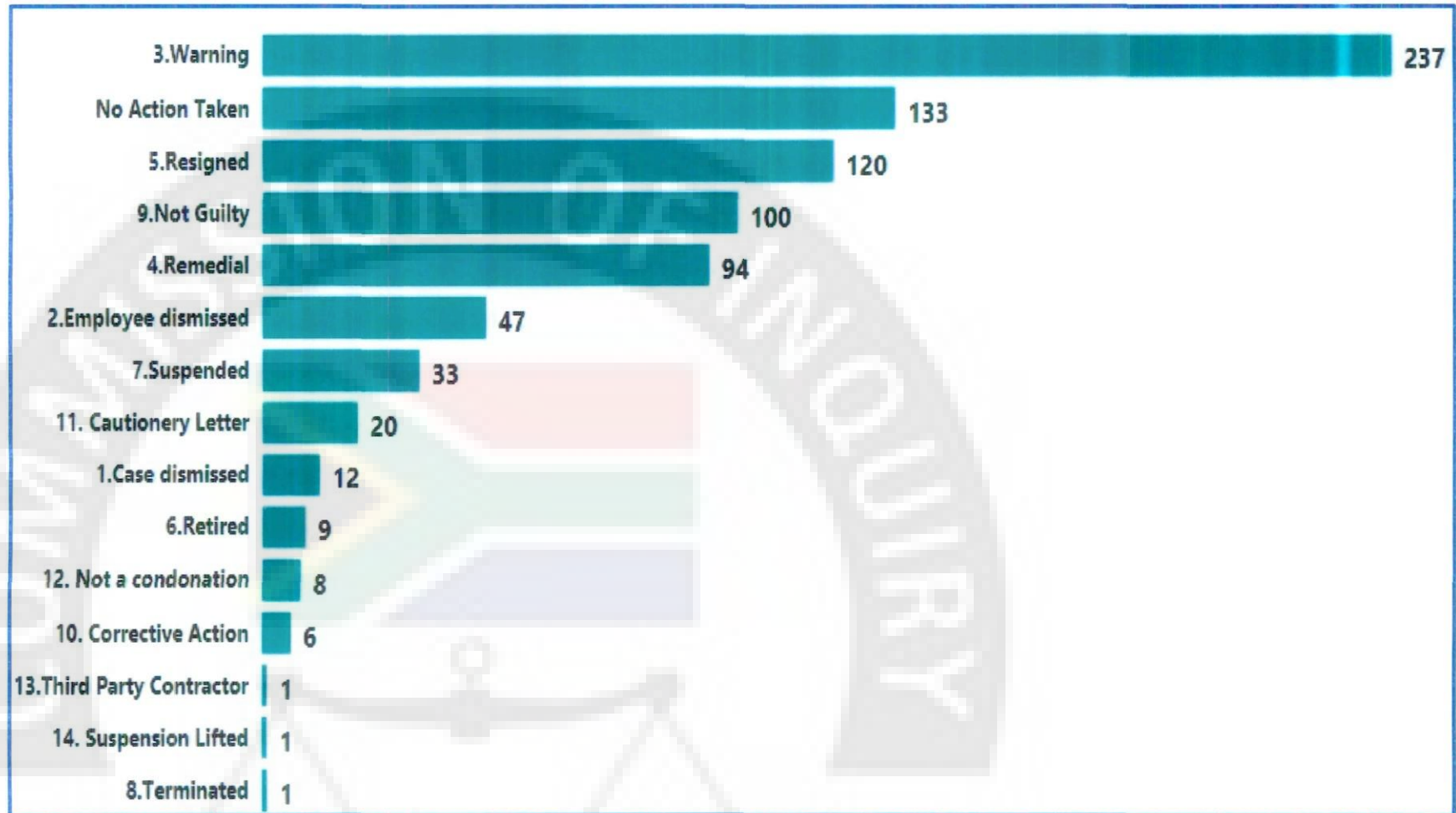


2018/11/05

## Closed Cases Per Category



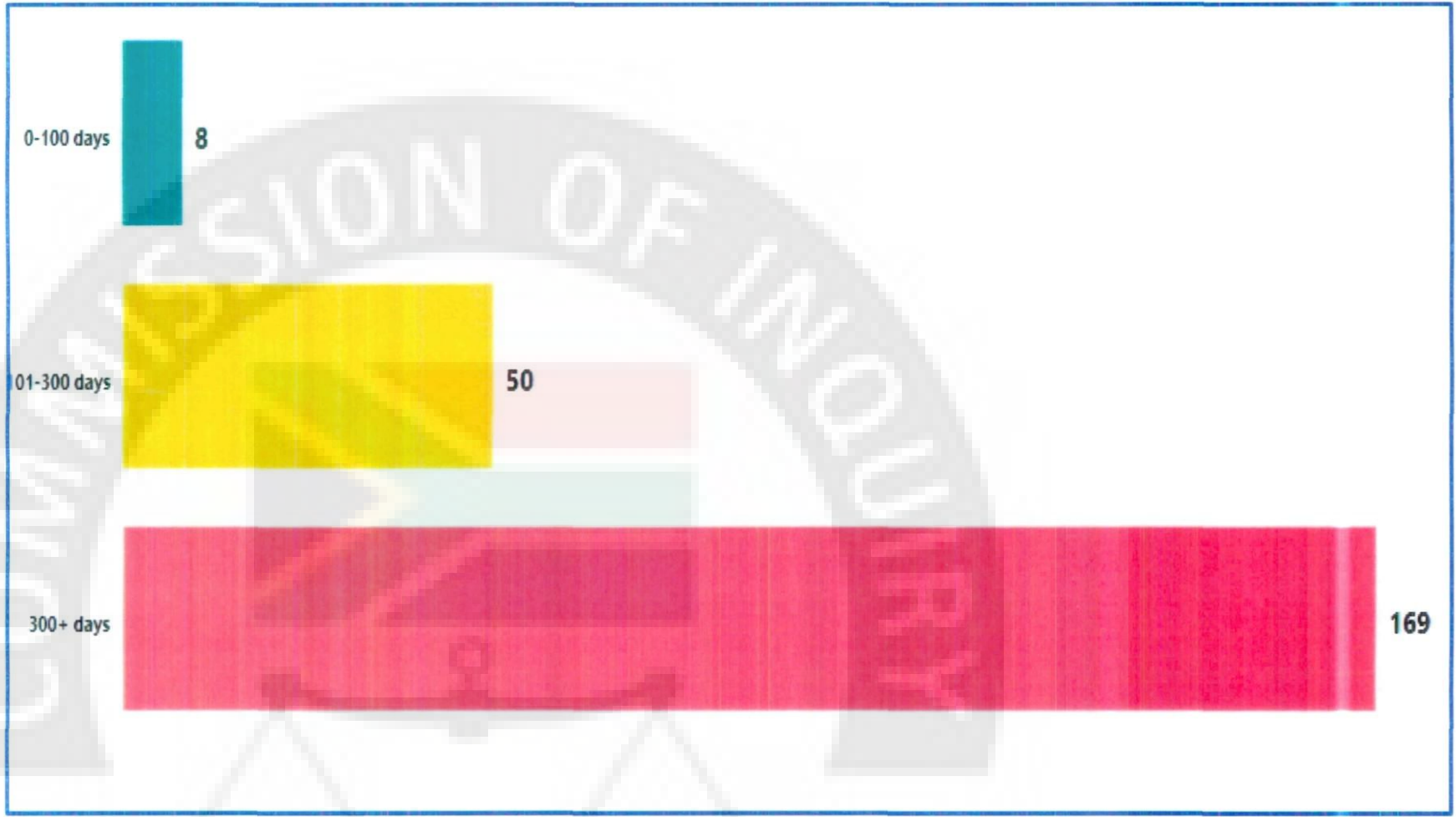
Total Closed: 822



# Age Analysis on Open Cases



Total Open: 227



2018/11/05

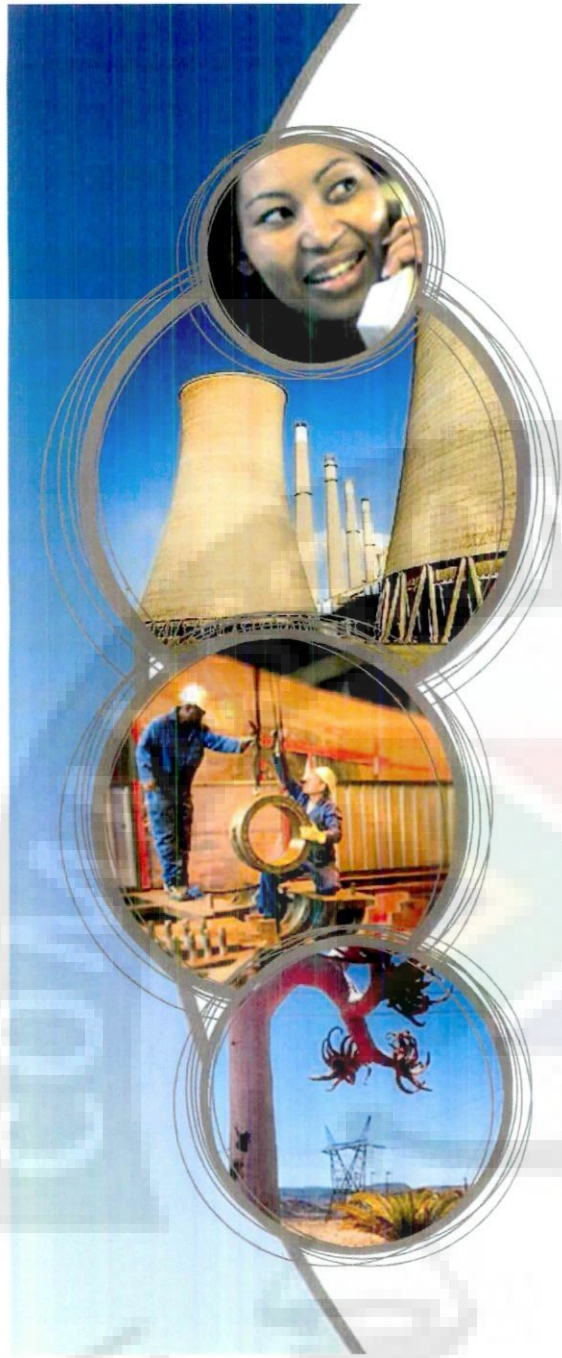
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Thank you



## Additional Slides



## Sources of disciplinary cases

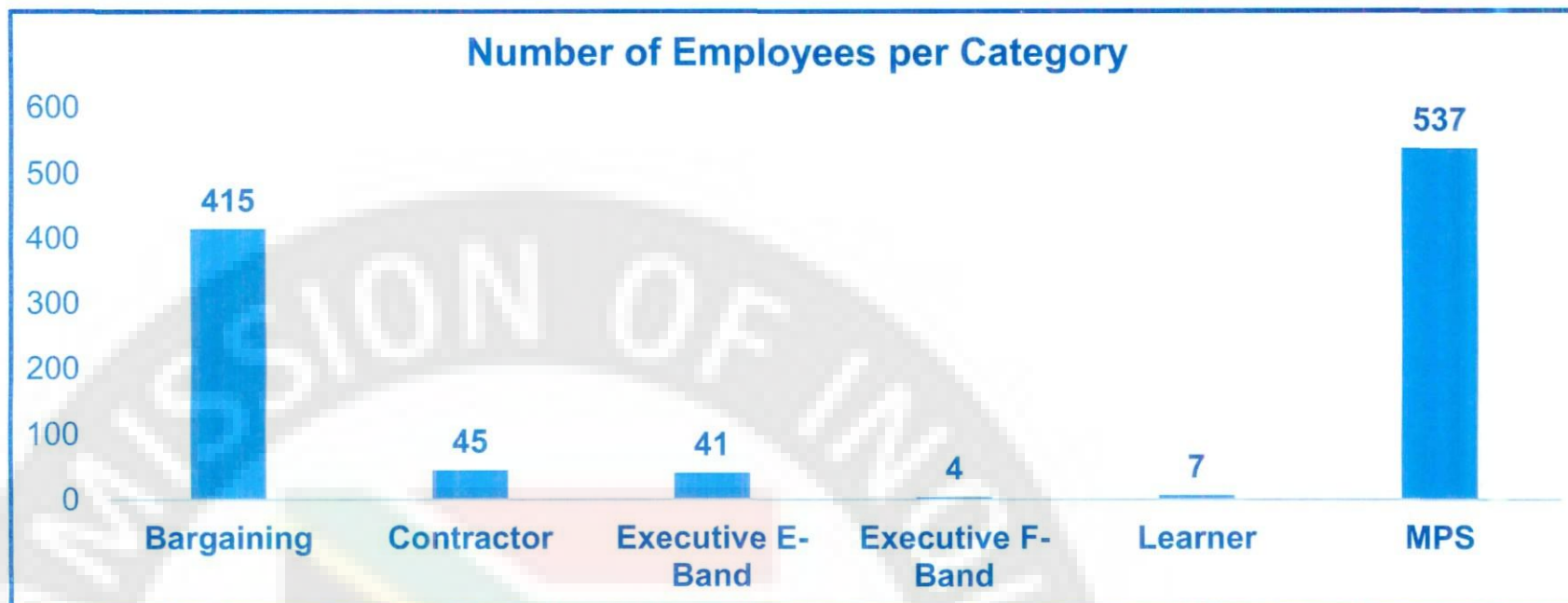


Name of Source Document	Initial No. of Disciplinary Cases	Current No. of Disciplinary Cases
Condonation Cases	786	881
IR - Disciplinary Enquiries	23	23
IR - Disciplinary Hearing	22	22
IR – Suspensions	14	14
Forensic Cases	62	109
	<b>907</b>	<b>1049</b>

### Condonation:

Whenever any Eskom employee procures assets, goods or services by any means without adherence to the Approved Procurement Framework, the condonation process must be followed in order to give effect to the irregular procurement and enable payment to the supplier.

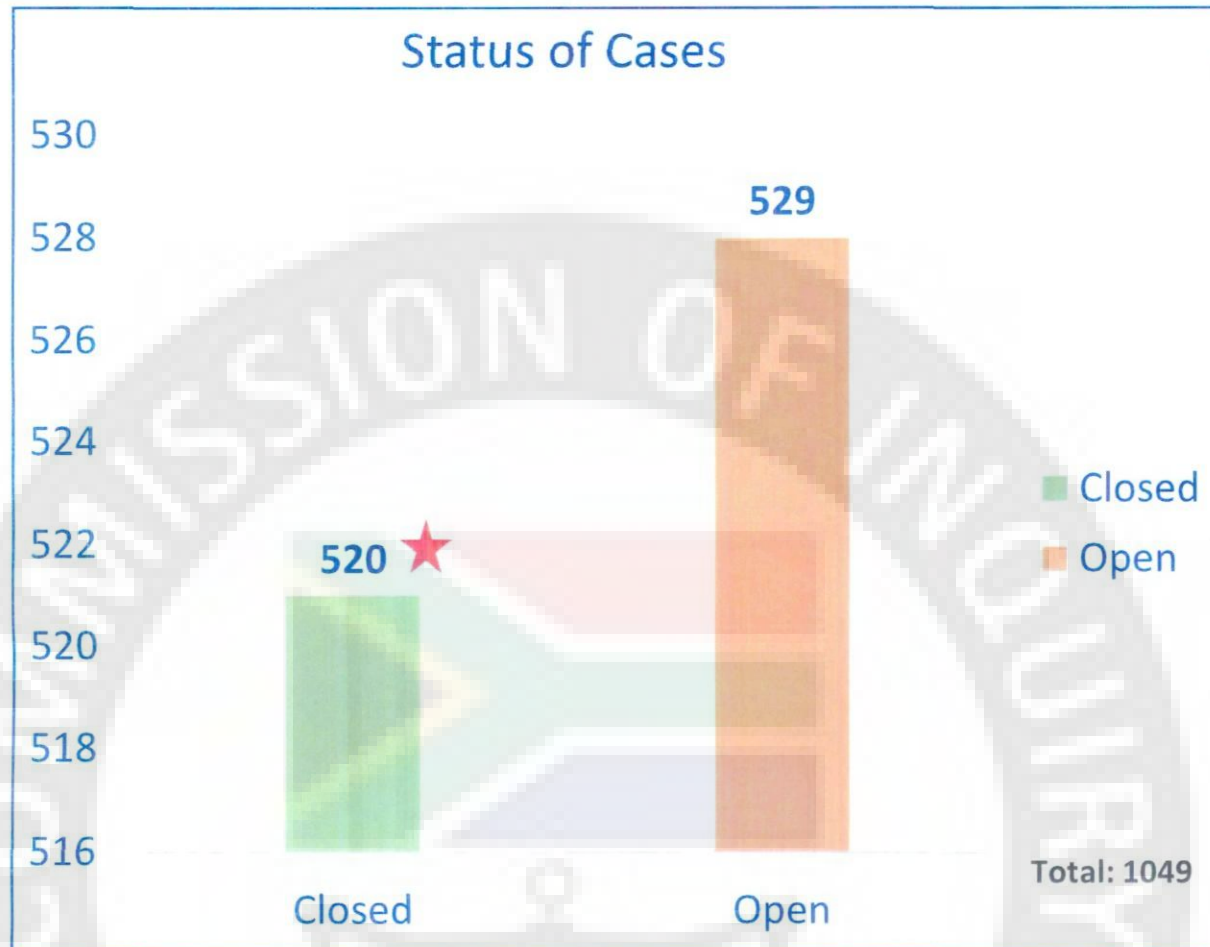
## Total Cases per Grading Category



Case Type	Bargaining	Contractor	Executive E-Band	Executive F-Band	Learner	MPS	Grand Total
CONDONATION	323	38	34	1	6	479	881
FORENSIC	48	7	5	2		47	109
INDUSTRIAL RELATION	44		2	1	1	11	59
<b>Grand Total</b>	<b>415</b>	<b>45</b>	<b>41</b>	<b>4</b>	<b>7</b>	<b>537</b>	<b>1049</b>



## Initial Status of All Cases Before Cut-Off

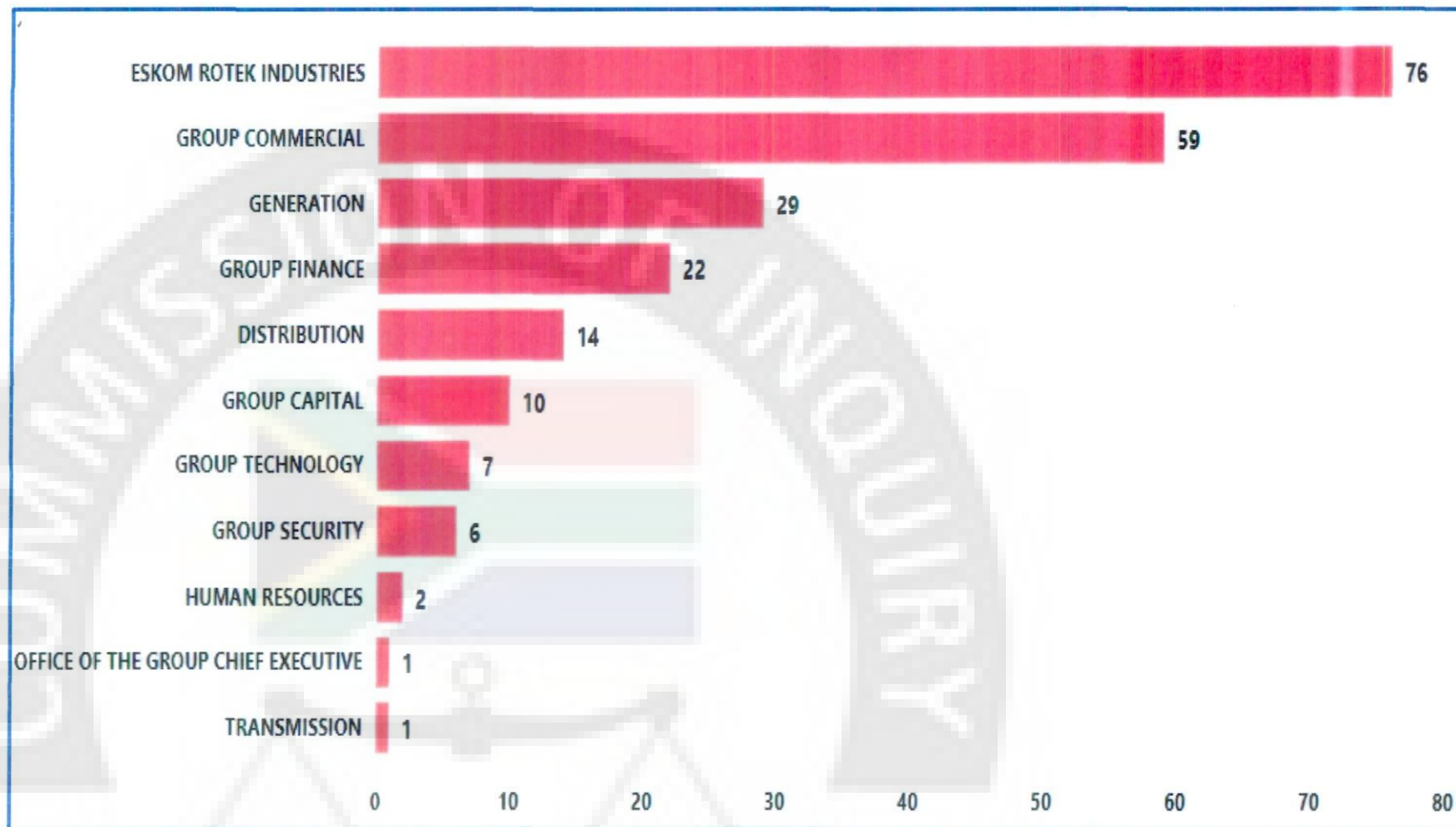


★ On follow-up with management, these cases were said to be have been closed. These were not closed as part of consequence management project; therefore we cannot confirm whether due process was followed.

## Open Cases per Division



Total Open: 227



2018/11/05

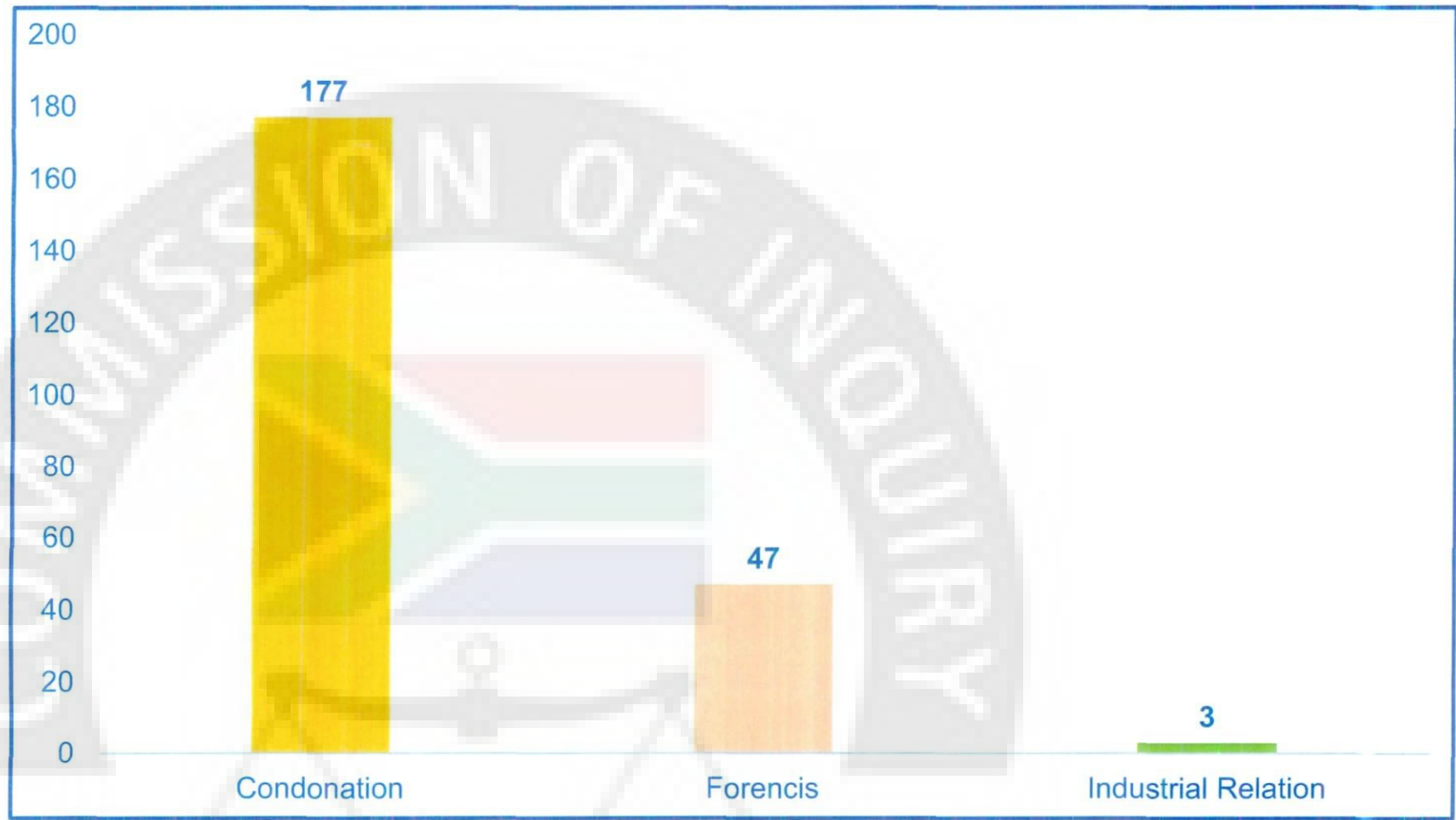
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283

# Open Cases per Category



Total Open: 227

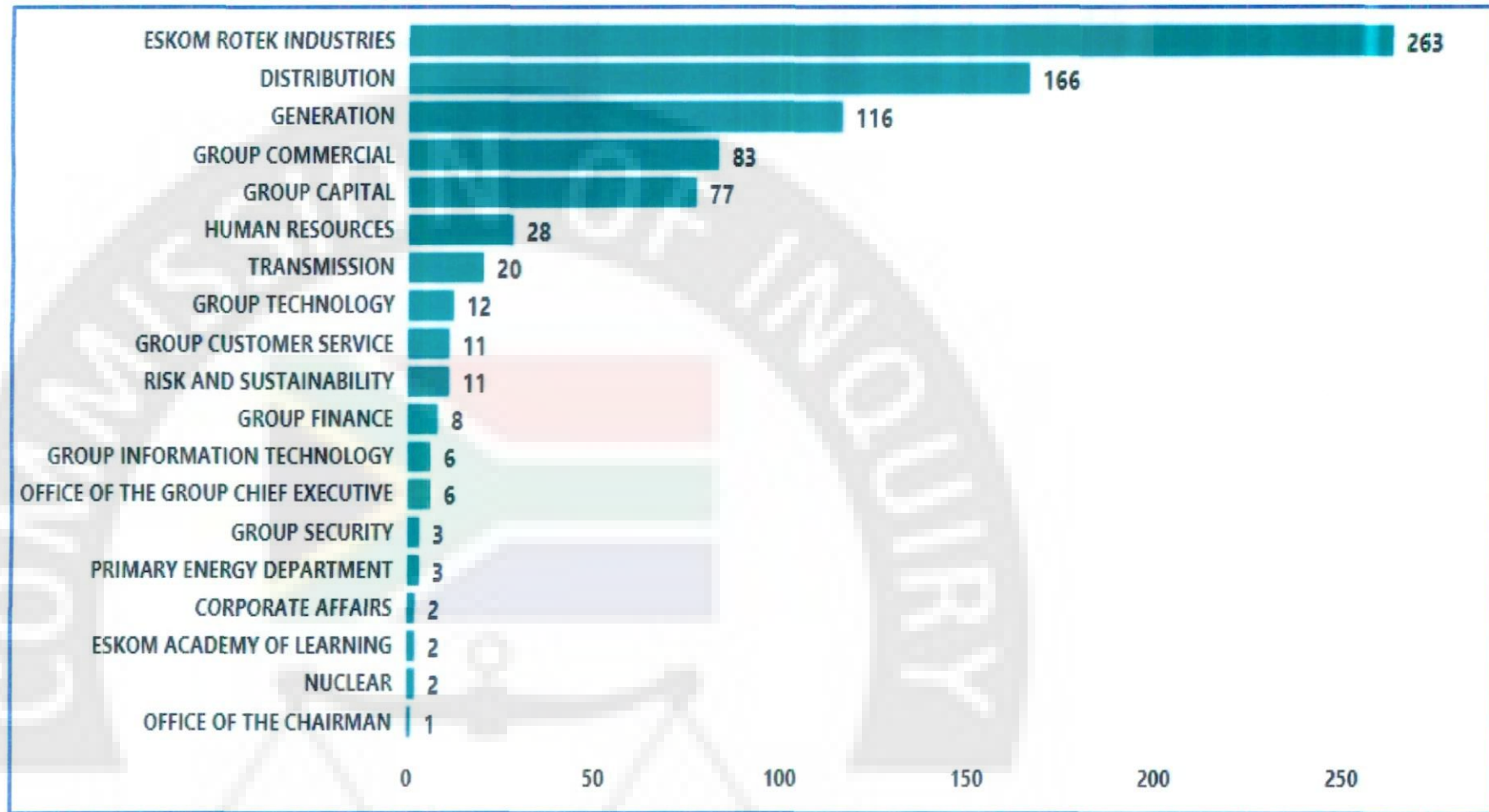




## Closed Cases per Division



Total Closed: 822



2018/11/05

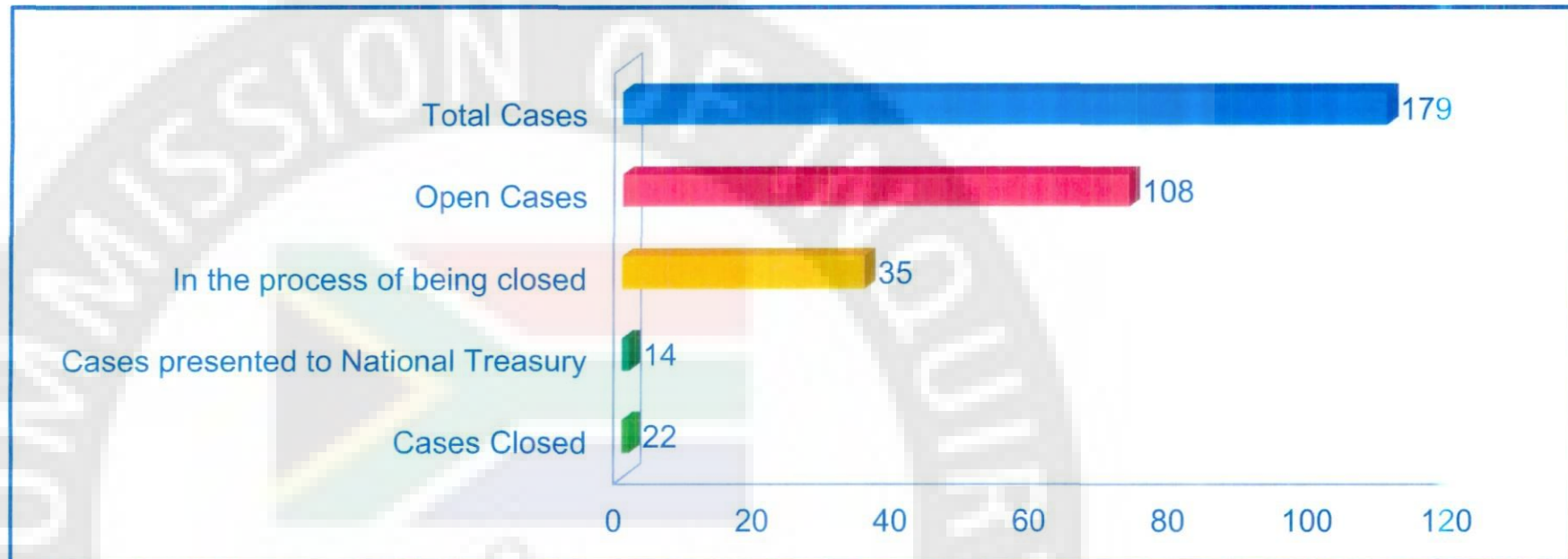
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## Status on supplier Disciplinary Cases



The current management information indicates that for the period 1 Jan 2016 to 30 Sep 2018, a total 179 supplier disciplinary cases have been lodged with the Supplier Reconsideration team. 136 of these cases have been presented to the Supplier Reconsideration Committee (SRC) and 43 of these cases are still to be presented to the SRC.



The 14 suppliers submitted to National Treasury will be de-registered on Eskom database for a period of 12 months. The cases that are still open consists of inter alia, cases that needs further investigation, cases yet to be presented and cases where first notification letters to be issued to suppliers.



## Number of Case Presenters Trained



Division	No. of Case Presenter Trained
Assurance & Forensics	1
Commercial	2
Customer Service	7
Distribution	34
Finance	3
Generation	14
Group Capital	1
Group Information Technology	2
Human Resources	13
Risk & Sustainability	10
Technology	3
Transmission	13
Security	1
<b>Total</b>	<b>104</b>

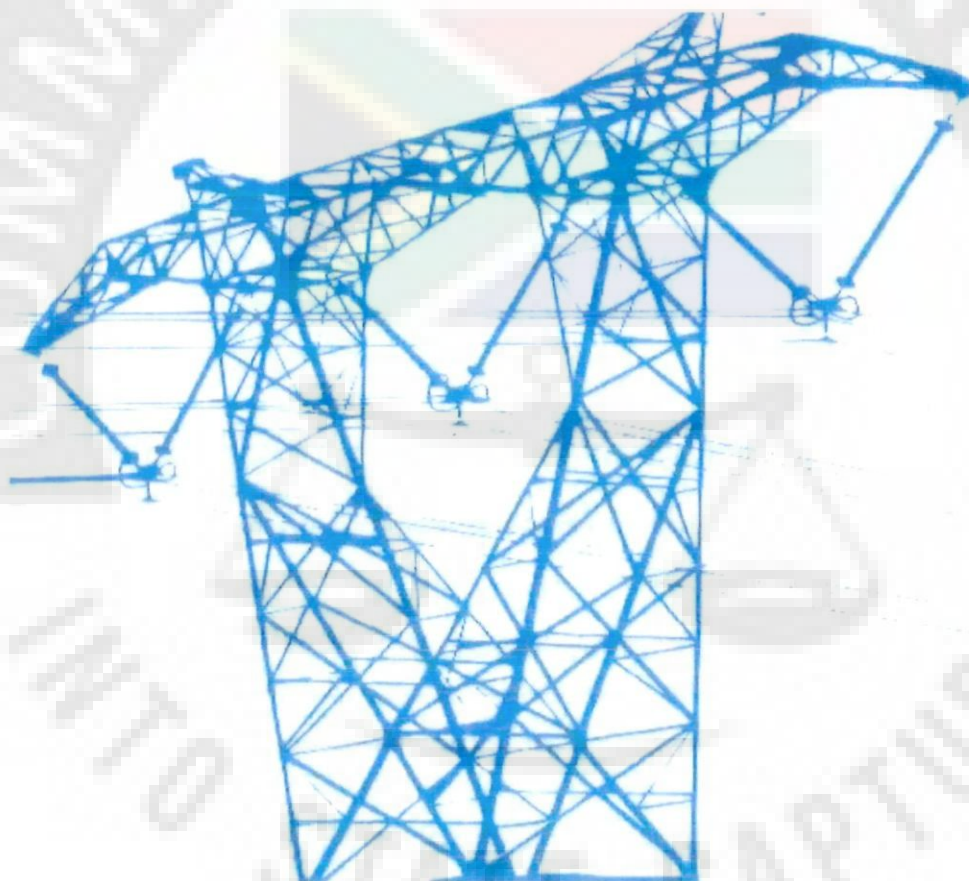
# Annexure “H”





## Report 6

### Procurement Audit Qualification Turnaround Programme: Phase 2 Progress Report 2018/19



**Powering your world**



This Audit Qualification Recovery Plan progress update provides status feedback up to the end of October 2018. The report was prepared by the Audit Recovery Programme team, and will be presented at the next Audit and Risk Committee (ARC), herewith signed on behalf of Eskom by:



Mr Phakamani Hadebe

Group Chief Executive

Date:

24/12/2018

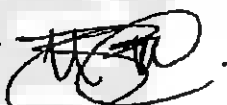


Mr Calib Cassim

Chief Financial Officer

Date: 20-12-2018

Language edited



Mafu Ramotshela

Language Services

Corporate Affairs Division

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#### Information security

This document must be treated in accordance with the Eskom Information Security Policy 32-85.

Information resources are Eskom's business-critical assets requiring a high level of protection. Sufficient measures commensurate with the risk must be taken to protect these information resources against accidental or unauthorised modifications, disclosure, and/or destruction, as well as to ensure the confidentiality, integrity, and availability of Eskom's information resources.

## EXECUTIVE SUMMARY

This report provides an update on the progress made by Eskom to address the completeness of irregular expenditure reporting in terms of the Public Finance Management Act 1 of 1999 (PFMA) notes that resulted in a qualified audit opinion for the 2018 financial year (FY) and the closing out of historical audit findings. The Eskom Board Audit and Risk Committee, Eskom Exco, and the Qualification Turnaround Meeting continue to monitor the progress of the plan, with the support of a dedicated project team that manages the interventions needed to ensure successful implementation.

To address the issues raised in the audit qualification and the reported irregularities, Eskom prepared and implemented a recovery programme (the "Recovery Plan"). A copy of the initial Recovery Plan was shared with each of Eskom's lenders under its facilities agreement in August 2017, and the updated reports will continue to be sent to lenders on a regular basis. Regular progress feedback is provided, with the most recent update given for the close-out of Phase 1 in July 2018. This report provides progress up to the end of October 2018.

Audit Recovery Turnaround Phase 2 will continue the work from Phase 1 for completeness, compliance, and change. The key focus areas for Phase 2 will include the following:

- Closing out of historical audit findings through condoning of deviations by the relevant delegated authorities: National Treasury continues to be engaged in discussions relating to the preparation and submission of events requiring condonation. At the reporting date, R10 billion of condonations had been taken to National Treasury, of which R804 million had received its approval. The Recovery Plan is to be supported by Exco and the ARC and approved by the Board, confirming the close-out of Phase 1 and scope of Phase 2 until the end of FY2019. Audit recovery processes for consolidated condonations are to be supported by the ETC and BTC for Board approval.
- Reviews of all open contracts from 1 April 2015 to 31 March 2018 – panel contracts, sole source, and emergencies for procurement compliance: new contracts continue to be checked for compliance each quarter. Investigation into the compliance levels for newly placed contracts revealed that 229 of the new contracts for Q1 were fully compliant, and 21 condonations were identified. A total of 90 of the 205 contracts over R1 billion were reviewed for compliance during execution. These were mainly in the IPP area and were compliant. Contract modifications not taken to NT (15%/20% rule) were investigated fully, and the R6,48 billion had decreased to some R3,9 billion due to clean-up. For foreign tax compliance back to 2012, there must be engagement with SARS and NT for alternative ways to confirm supplier tax compliance, as assistance is required.
- Enhancing monitoring and compliance controls, including reporting systems, and capacitation of the compliance function in P&SCM: there had been a reduction in the number of emergencies, but 14 of the 25 emergency declared after 9 November 2017 had compliance issues and are being dealt with by divisions. While the PFMA reporting process and reports had been

enhanced, the level of reporting can be improved (limited new items reported in Quarters 1 and 2).

- Strengthening relationships with key stakeholders for common understanding and support as part of stakeholder relations: engagements with SNG Grant Thornton on the interim audit are on track for overview and process walk-throughs.

The Recovery and Turnaround Programme Phase 2 will continue until March 2019. Beyond the Recovery Plan, the procurement focus will be on the sustainability of efforts addressing compliance, resourcing, leadership, and systems issues to further support the path to full compliance.



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### Table of abbreviations

A&F	Assurance and Forensic
ACPO	Acting chief procurement officer
ARC	Audit and Risk Committee
B-BBEE	Broad-based black economic empowerment
BTC	Board Tender Committee
CFO	Chief financial officer
CIDB	Construction Industry Development Board
DPE	Department of Public Enterprises
DTC	Divisional Tender Council
ERI	Eskom Rotek Industries
ETC	Eskom Tender Council
Exco	Executive Committee
F&W	Fruitless and wasteful
GCE	Group chief executive
GE	Group executive
IFRS	International Financial Reporting Standards
IR	Industrial Relations
NT	National Treasury
PCC	Panel Control Committee
PIE	Procure in Eskom
PFMA	Public Finance Management Act
PMO	Project Management Office
PPPFA	Preferential Procurement Policy Framework Act
P&SCM	Procurement and Supply Chain Management
PTC	Procurement Tender Committee
QTM	Qualification Turnaround Meeting
RGC	Risk, Governance, and Compliance
SAM	Submissions analysis model
SAPS	South African Police Service
SARS	South African Revenue Service
SCOPS	Supply chain operations
SCRM	Supply chain record management
SHEQ	Safety, health, environment, and quality
SNG Grant Thornton	SizweNtsalubaGobodo Grant Thornton
VAT	Value added tax

## 1 INTRODUCTION AND BACKGROUND

### 1.1 The audit qualification and irregular expenditure

Eskom received a qualified audit for the financial year ending 31 March 2017 because the auditors could not rely on the processes in place to ensure the completeness of irregular expenditure reporting. The qualified audit resulted predominantly from a lack of completeness in documentation to validate irregular expenditure. The irregular expenditure was summarised in Note 52 of the Annual Financial Statements, which contains the eight key procurement areas that need to be addressed through the Recovery Plan.

Irregular expenditure is defined as expenditure incurred in contravention of, or not in accordance with, the PFMA or any other applicable legislation. It, thus, has a very broad reach and is essentially a "bucket" that catches all transgressions of any statute, whether these occurred deliberately, accidentally, unknowingly, or in good faith and regardless of whether value was received or not.

When an item is classified as irregular expenditure, it does not, therefore, automatically imply that it was not authorised, nor that it was fruitless and wasteful.

The crux of the completeness qualification relates to the ability of the organisation to identify, track, collate, and disclose all irregular expenditure, as required by the Updated Guideline on Irregular Expenditure, issued by the Office of the Accountant-General, residing in National Treasury (NT), in April 2015 (NT Guideline).

According to the NT Guideline, an assessment of irregular expenditure must be made when items are recorded as "expenditure" in terms of International Financial Reporting Standards (IFRS) in the books of the public entity. Once any item, be it capital expenditure or operational expenditure, meets the criteria of irregular expenditure, it must be disclosed as such in the notes to the Annual Financial Statements, and it will remain in the disclosed closing balance until such time as it is condoned, recovered, written off, or derecognised in accordance with the NT Guideline, as follows:

- Where recognition, as well as the condonation/recovery/write-off, of the irregular expenditure happens in the same financial year, the item is, nevertheless, still disclosed as irregular expenditure, with both legs shown separately.
- Where condonation/recovery/write-off of the irregular expenditure occurs in a subsequent financial year, the item is reflected in the closing balance at year-end and carried forward to the next year (or beyond) until such time that it is condoned, recovered, or written off, after which it is no longer included in the closing balance.
- For transactions submitted for ordinary condonation because the applicable process was not followed, these can still be condoned or authorised through the normal approval process. Such transactions will not be classified as irregular expenditure if they have not yet been recognised as an expense according to accounting convention (IFRS); typically, this would be where the goods or services

have not yet been received (signed goods received note or service sheet). If ordinary condonation occurs before this point, the non-conformance is rectified and will not be classified as irregular expenditure.

- Condonations for the incurral of irregular expenditure may only be granted where no official is found to be liable by law. This must be supported by evidence included in a written investigation report that must form part of the submission for condonation.
- Where an investigation finds that an official is liable by law for any losses or damages suffered, or no value for money was received, steps must be taken to recover the expenditure.

## 1.2 Purpose

Phase 1 of the Audit Qualification Recovery Plan was implemented to ensure that Eskom had adequate systems and processes in place to monitor and report all irregular expenditure and take the necessary corrective actions to address the audit qualification. The Recovery Plan was approved by the Audit and Risk Committee (ARC) in August 2017, with procurement focus on:

- PFMA note audit findings: to follow up and condone (where possible) all instances identified in the PFMA note and updating of the note;
- contract review: to address the concern of completeness and confirm that the contracts placed are fully compliant with all policy and legislative requirements;
- control: to establish and enhance monitoring and compliance controls, including reporting systems, to avoid recurrences of non-compliance; and
- stakeholder relationship management: in addition, to build relationships with key stakeholders (for example, the Department of Public Enterprises (DPE), NT, funders, and SizweNtsalubaGobodo Grant Thornton (SNG Grant Thornton) for future dealings and assistance, as relevant.

To address the issue of completeness, a process is being embedded in the business to ensure more robust monitoring and reporting of irregular expenditure incurred and condoned. In addition, there will also be an independent review of the process by internal audit, which will support the external audit process.

Phase 1 was from August 2018 to July 2019; Phase 2 will continue the work not completed in Phase 1 and the work required for Note 51 until the end of March 2019.

### 1.3 Structure to support the plan

To provide the necessary attention, a Qualification Turnaround Meeting (QTM) was constituted to monitor the implementation of the Audit Qualification Recovery Plan. The QTM is chaired by the chief financial officer (CFO) and consists of representatives from different areas of business, who meet every two weeks:

- CFO
- Chief procurement officer (CPO) – alternative chair
- Recovery Programme manager
- Procurement and supply chain management leads
- Finance (including Eskom Treasury and Centre of Excellence)
- Assurance and Forensic
- Legal and Compliance

Invitations can be extended to the external auditors, SNG Grant Thornton (from March 2018), and the DPE (from February 2018).

QTM provides feedback reports to the following committees, as requested:

- Eskom Executive Committee (Exco)
- Board ARC
- Board

The Recovery Plan is managed by a full-time seconded Recovery Programme manager, who has established a dedicated project management office (PMO), co-ordinating the efforts and feedback from various work streams.

The PMO is resourced with both Procurement and Supply Chain and business representatives, fully seconded and dedicated to the work on the plan (see Figure 1). The PMO members were selected due to their extensive knowledge in the various areas contributing to the work streams in the plan.

For each functional and support area, an area lead was identified, who is responsible for managing and enabling the actions. Due to the size of the Sourcing teams, a Sourcing PMO was also established, with dedicated resources, with a "Drumbeat" taking place three times a week. Work stream leads have resources in place in subsidiaries, Nuclear, Primary Energy Division (PED), Systems and Processes, and Risk, Governance, and Compliance (RGC).



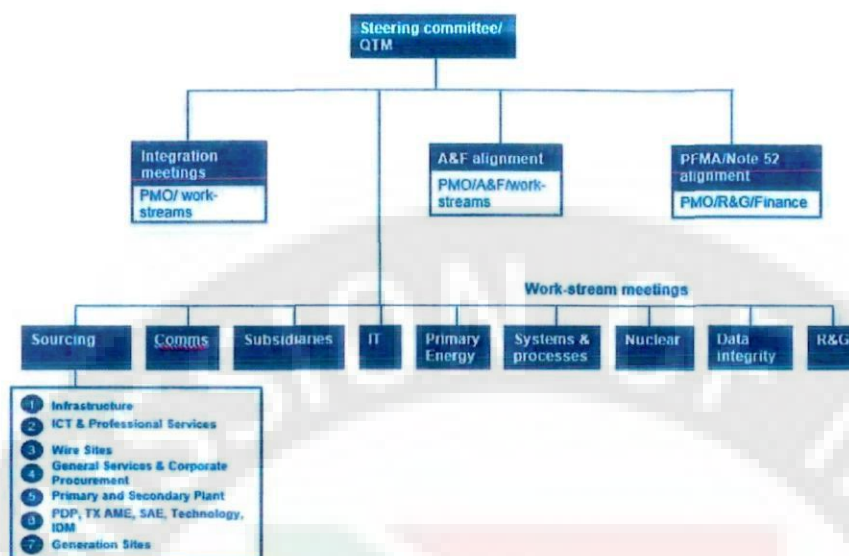


Figure 1: Structure of the programme

Meetings have been set up with Assurance and Forensic (A&F) to discuss feedback on reviews and the way forward. All contracts that have been reviewed by A&F are discussed at these meetings, as well as reviews of emergencies and PFMA note condonation packs. In cases where further actions are required, these are also discussed and agreed on at the meetings to ensure that findings are closed out. Project and integration meetings take place weekly across the work streams to address progress and challenges.

#### 1.4 Process for close-out

In planning to address reported irregular expenditure in FY2017, engagements took place between NT and Eskom to understand NT's role in terms of the relevant authority for approval of condonation.

Based on the outcome of the meeting, Eskom developed a process to deal with each disclosed PFMA note item, possibly taking them through the Divisional Tender Council (DTC), Exco Tender Council (ETC), Board Tender Committee (BTC), and NT (in case of legislative contraventions) as is required per item, illustrated in Table 1 below. Individual or consolidated condonations will be prepared by the Procurement and Supply Chain Management (P&SCM) teams in Sourcing, Primary Energy, Nuclear, and subsidiaries, which will be presented to NT for approval. In November 2018, the condonation process was approved by the appropriate internal authority to be applied to all PFMA note items.

Table 1: Relevant authority for condonations and method

Ref. 52.1	Closing out of the identified Note 52 themes	Condonation method	Condonation authorities
(c)	Breach of PPPFA: Monetary thresholds – incorrect tender process applied	Consolidated	ETC > BTC > NT Relevant authority for PPPFA
(f)	Tender process not adhered to – commitments made before approval	Individual/ consolidated	DTC > ETC > BTC Not NT if Eskom procedures
(i)	Breach of PPPFA: Tax clearance certificates	Consolidated	ETC > BTC > NT Relevant authority for PPPFA
(j)	Non-compliance with CIDB Regulations	Individual/ consolidated	ETC > BTC > NT Relevant authority for CIDB
(k)	Breach of PFMA: Incorrect use of sole source	Individual/ consolidated	ETC > BTC > NT Relevant authority if mechanism part of instruction notes/ regulation
(l)	Breach of PFMA: Tender processes not adhered to	Individual/ consolidated	ETC > BTC > NT Relevant authority if mechanism part of instruction notes/ regulation
(g)	Procurement of services – Incorrectly classified as an emergency	Individual/ consolidated	DTC > ETC > BTC Not NT if Eskom procedures
(h)	Quality management – Tender process not followed and insufficient delegation of authority	Individual	ETC > BTC > NT (Criminal matters not concluded)
(e)	Modifications	Individual/ consolidated	ETC > BTC > NT Relevant authority if mechanism part of instruction notes/ regulation

Closing out the FY2017 PFMA note audit findings takes place through a four-phase process in order to regularise the expenditure and correctly reflect it in PFMA reporting and updating of the note. The process is illustrated in Figure 2. The process includes review of data integrity, A&F verification, an approval process, as well as reporting for closure in the PFMA report and updating of the note.

Identify	Verify	Approve	Document
<ul style="list-style-type: none"> <li>Identify the population that needs to be condoned               <ul style="list-style-type: none"> <li>Report drawn from SAP with all transactions</li> <li>Filter transactions based on relevant criteria to determine size of population</li> <li>Apply limited intelligence/manual review to remove known exemptions</li> </ul> </li> <li>Investigate breach, liability in law and recovery of funds</li> <li>Determine consequence management</li> <li>Prepare condonation report</li> </ul>	<ul style="list-style-type: none"> <li>PSCM Risk and Governance to perform first line verification</li> <li>Eskom Audit and Forensics to review condonation pack and principles applied</li> </ul>	<ul style="list-style-type: none"> <li>Submit to relevant authorities for approval               <ul style="list-style-type: none"> <li>ETC</li> <li>BTC</li> <li>NT (As required)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Update PFMA register (if applicable)</li> <li>Update condonation register</li> <li>Closeout remaining action</li> </ul>

Figure 2: PFMA note audit finding close-out process developed

The process was revised to include condonation of modifications and to also note that the date of application was extended to 8 December 2012. This was taken through the internal approval process. A meeting with NT is being arranged in order to discuss the approved condonation process and its application to various items listed in the notes to the AFS.



## 2 PHASE 1 PROGRESS

### 2.1 Historical issues – close-out of PFMA note audit findings

All eight procurement items identified in the PFMA note have been addressed and are at different levels of progress. The outstanding items are continuously addressed by the designated responsible parties across all business areas, namely, Eskom Rotek Industries (ERI), Generation Nuclear Division, PED, Sourcing, and RGC. To ensure that there is adherence to legislative and compliance requirements, constant alignment with compliance takes place, and updates are done on a regular basis.

Regular engagement with National Treasury to follow up on the approval of the documentation sent for condonation continues. As at the end of October, the following key PFMA note items were with National Treasury for approval.

Table 2: Key PFMA note items with National Treasury for approval

	<b>Closing out of the identified Note 52 theme</b>	<b>Condonation value</b>	<b>Irregular expenditure in PFMA report</b>
1	Sourcing – FY2016 and FY2017 monetary threshold	R593 312 665	R593 312 665
2	ERI – FY2016 and FY2017 monetary threshold	R210 579 554	R143 504 915
3	Quality panels management	R2 069 747 301	R1 560 000 000
4	DC10 electrical construction – CIDB	R100 000 000	R21 565 896
5	Group Five – CIDB	R1 353 908 012	R266 768 225
6	BCA – condonation sole source	R62 267 599	R59 860 348
7	MTN – condonation sole source	R15 721 121	R5 478 765
8	Nuclear tax FY2016 and FY2017	R5 668 329 548	R1 569 382 680
	<b>Total</b>	<b>R10 073 865 799</b>	<b>R4 219 873 494</b>
	Condoned (1 and 2)	R803 892 219	R736 817 580
	Awaiting approval	R9 269 973 580	R3 483 055 914

### 2.1.1 Note 52.1(c) Breach of PPPFA: Monetary thresholds

The Preferential Procurement Policy Framework Act (PPPFA) requires that monetary thresholds to determine the point scoring criteria applied to the transaction be inclusive of value added tax (VAT). Historically, Eskom applied the threshold exclusive of VAT, which implies that certain procurement was performed applying the incorrect point scoring criteria.

Two thresholds are specified in the PPPFA: R30 000 and R1 000 000. The R1 000 000 threshold was increased to R50 000 000 for all tenders issued after 1 April 2017.

Transactions that are VAT-exempt or are in this bracket, but not irregular (due to sole sources or emergencies, for example), are the exceptions. P&SCM Procedure 32-1034 was supplemented with an instruction note effecting the clarification of the VAT inclusion matter.

During the FY2017 audit, a total of 188 events were identified that breached the PPPFA due to thresholds. On further investigation during the Recovery Programme, 14 transactions were found to be duplicates and removed from the list. The remaining 174 events formed part of the full population of 4 085 (R593 million, excluding VAT) potential threshold breaches for FY2016 and FY2017 for the Sourcing area. The submission to the ETC and BTC was verified by A&F, supported by the ETC and BTC on 21 December 2017, submitted to NT on 11 January 2018, and presented at a meeting with NT on 25 January 2018. On 19 June 2018, NT approved the condonation for monetary thresholds submitted. A total of 1 045 transactions for ERI for FY2016 and FY2017, at a combined value of R210 million, and 4 085 transactions for Sourcing for FY2016 and FY2017, at a combined value of R593 million, were approved.

Further engagement with NT, the Auditor-General, SNG Grant Thornton, and Eskom management took place to clarify the strategy and decision to review and condone only transactions for the last two financial years, as was the scope of the Recovery Plan. This approach was not supported by NT and the Auditor-General. Eskom was, therefore, required to also look at transactions back to the date of effective legislation, that is, December 2012. This forms part of Phase 2.

### 2.1.2 Note 52.1(f) Tender process not adhered to: Commitments before approvals

Of the 14 transactions identified during the FY2017 audit, five transactions related to findings where conditional approvals had been granted by the Procurement Tender Committee (PTC), but there was no evidence that those conditions had been met. To close the findings, secretariats were requested to provide evidence that the conditions had been met. This was reflected in minutes of the Procurement Tender Committee (PTC) or documents provided to the committee by the end user. The remaining nine transactions were condoned after 31 March 2017. These items were investigated further, and the number of transactions deemed irregular was revised to three for



reporting purposes. The documentation for these findings was verified by A&F for close-out.

In terms of processes and controls implemented, only a DTC (R500 million) or higher can adjudicate condonations, irrespective of value. Secretariats of the Tender Committee must record all conditional approvals met.

Procurement and Supply Chain Management Procedure 32-1034 Revision 3 was updated with a detailed process for condonation.

#### **2.1.3 Note 52.1(g) Procurement services: Incorrectly classified as an emergency**

Two instances of transactions being classified as emergencies, where they did not meet the requirements of an emergency, were reported as contraventions. The transactions have since been condoned and rectified by the relevant delegated approval authority (Procurement Tender Committee).

In terms of processes and controls implemented, only a DTC (R500 million) or higher can adjudicate emergency ratifications, irrespective of value. Effective 12 October 2017, all emergencies can only be authorised by the relevant group/divisional executive. In order to effectively report and track payments on emergencies, a document type was created on SAP to identify these transactions.

#### **2.1.4 Note 52.1(h) Tender process not followed: Insufficient delegation of authority**

The closing out of this finding will allow Eskom to reduce the irregular expenditure in the financial statements and PFMA reports by R1,56 billion. Internal investigations on the finding relating to inconsistent management of the Quality Panel were completed. Eskom engaged with NT on the issue, as some matters would still be open due to criminal cases currently in progress. The disciplinary process will happen parallel to the rest of the consequence management process.

Condonation packs for the Safety, Health, Environment, and Quality (SHEQ) Panels were approved by the ETC and BTC. A submission was made to NT on 11 January 2018 to support the principles applied to the condonation of the transaction. A presentation was made on 25 January 2018, and further information required by NT was provided up to July 2018.

On 5 July 2018, NT responded to the condonation request and stated that the irregular expenditure amount of R1,56 billion would be considered for condonation after receiving confirmation from the South African Police Service (SAPS) that the condonation would not weaken the criminal case. Eskom engaged with A&F and Legal to obtain this confirmation. This has still to be provided. National Treasury reconfirmed that it would respond to the condonation request subject to receipt of this confirmation.

### **2.1.5 Note 52.1(i) Breach of PPPFA: Tax clearance certificates**

For FY2017, Eskom reported 55 transactions to the value of R986 million that breached the PPPFA due to the absence of tax clearance certificates for foreign suppliers. The value was increased to R3,1 billion at the end of FY2018 due to a review of the entire population in the past two financial years (FY2016 and FY2017).

A guideline document on tax clearance certificates was issued by the RGC on 15 January 2018. In addition, to ensure that there would be compliance in the future, reference was made to the SARS process on how to assist entities that provided services to South African companies.

The condonation packs for Nuclear and Sourcing were submitted to the ETC on 14 March 2018. The Nuclear tax condonation was submitted to NT on 12 April 2018 for approval for the period 1 April 2015 to 15 February 2018 for a value of R5,6 billion and the irregular expenditure of R1,57 billion. Eskom is still awaiting NT approval regarding this submission. The balance of transactions is still under investigation and will follow the formal internal condonation process before submission to NT.

On 5 July 2018, NT responded to the condonation request and stated that the irregular expenditure would be finalised after receiving evidence that the foreign suppliers with a local footprint tax status were valid when they were appointed.

This finding has been extended to the date of application of the PPPFA to Eskom, effectively 7 December 2012. This has placed a significant burden on the team to retrieve historical data regarding foreign entities. This item will continue into Phase 2.

### **2.1.6 Note 52.1(j) Non-compliance with CIDB Regulations**

Two events were identified that breached the Construction Industry Development Board (CIDB) Regulations. The contravention stemmed from failure to advertise tenders on the CIDB website, although these were advertised on the National Treasury portal. As a mitigating measure, to address compliance, a communiqué was distributed to relevant individuals, together with an instruction note dated 29 June 2017 issued to this effect, to advise Procurement of what to do when there were system problems. Both contraventions were supported through the internal process and submitted to NT for approval.

On 26 March 2018, NT responded to the condonation request for the construction related to the gas turbines at Ankerlig and stated that the irregular expenditure would be finalised after receiving confirmation from CIDB that the website had not been available during publication of the tender. Eskom management is currently closing the matter and will submit a revised investigation report to NT.

The CIDB breach for the DC10 construction condonation was submitted to National Treasury on 28 February 2018.

### **2.1.7 Note 52.1(k) Breach of PFMA: Incorrect use of sole source**

Three instances of transactions incorrectly classified as sole source were reported as contraventions of the PPPFA (not adhering to the competitive tendering process). One instance was determined to be correct, and the other two were supported for condonation internally and submitted to NT for approval.

On 27 February 2018, the submission was made to NT, requesting condonation of the breach of NT Instruction SCM Instruction Note 3 of 2016/2017, when the contract with Binnington Copeland and Associates (Pty) Ltd (BCA) was established. On 13 June 2018, NT responded to the request; the irregular expenditure of R62 million was not condoned because no disciplinary action had been taken against the relevant officials who had caused the contravention. Eskom management responded to the request and is awaiting the feedback.

On 27 February 2018, a submission was made to NT for condonation of the breach of National Treasury Instruction SCM Instruction Note 3 of 2016/2017, when the contract with MTN Service Provider (Pty) Ltd was established. On 13 June 2018, NT responded to the request; the irregular expenditure of R5,4 million was not condoned because there was no evidence that the accounting authority had taken the appropriate disciplinary steps against the relevant officials. Eskom management is in the process of closing the matter.

### **2.1.8 Note 52.1(l) Breach of PFMA: Tender processes not adhered to**

Eleven instances were identified where the PFMA tender processes had not been adhered to.

Four transactions were investigated and are currently in the approval phase. The four transactions have followed the internal governance and approval process to condone the deviation from the PPPFA.

The remaining seven were part of an investigation that was completed by an independent investigator on 15 June 2018. The internal governance is being processed to condone the seven incidents; however, Eskom Legal advised the tender committees not to approve/support the condonations, as these are linked to another investigation being performed by A&F.

## **2.2 Contract reviews**

### **2.2.1 Establishing a basis for contract procurement reviews**

The audit qualification highlighted shortcomings in supply chain records management of contracts. At that stage, many contracts were still kept only as hard copies, and the files were not complete. Hyperwave was the agreed documentation system, but compliance with storage of the contract records in Hyperwave was low (< 50%).

When requested by the auditors to provide the source of records, particularly for contracts concluded on site, P&SCM could not meet the required turnaround times to

respond. For this reason, a concerted effort was made by each of the Sourcing areas (PED, Nuclear, ERI/subsidiaries, and the Sourcing teams) to improve the control of contract records.

Based on a risk basis, higher-value contracts were prioritised. In terms of contracts over R1 billion, these contracts accounted for 80/20 of the spend in Eskom and were, therefore, the priority for completion. For this, A&F did 100% verification of these contracts and separately tracked the issues raised per contract in each of the areas (PED, Nuclear, ERI/subsidiaries, and the Sourcing teams). Weekly engagements with A&F and the teams were set up to address the contract reviews and Note 52 items.

The process involved various elements, the first being completion of the physical file, as per P&SCM checklists for mandatory documents (such as approvals, contracts, modifications), after which the respective senior managers signed off the checks for their areas. These contracts were scanned, and a taxonomy was finalised in Hyperwave, where the scanned files were uploaded, with tracking of each area to determine how many had been completed, were outstanding, and had issues. A&F verified the contracts over R1 billion and, where time permitted, contracts over R500 million. Based on the risk profile of Eskom, contracts under R1 billion were checked internally by P&SCM and signed off by the respective senior managers for completion of reviews. Where issues were identified, they were red-flagged and tracked until close-out.

The scope of the reviews covered new contracts placed in FY2018, was extended to contracts that were placed in FY2017 and FY2016, and was later further extended to active contracts in FY2016, FY2017, and FY2018. The contracts that were not covered were contracts that had expired prior to FY2016 (before 1 April 2015).

The checks focused on procurement. What was checked included the following: the process for establishment of contracts through evidence of documents; extracts of minutes of approvals; mandatory returnables such as tax certificates and B-BBEE certificates; mandatory processes such as advertising on the CIDB website, where applicable; and evidence of a signed contract. What was not checked were the contracts in execution such as payments or supplier performance management. This was done in parallel with ongoing verification by the P&SCM contracts compliance team in Business Enablement, who continued with site visits to also, in parallel, verify the physical records, particularly for contracts established on site.

Contract review for Phase 1 progressed well, with 205 (100%) of the contracts over R1 billion and a further 6 118 (91%) under R1 billion reviewed. The remaining 9% had issues varying from a lack of documentation to proof of CIDB or tax compliance and must be closed out by the business. This will be added to the tracking of Phase 2.

## **2.2.2 Phase 1 review of emergencies and sole source**

- Emergencies were addressed using a three-step approach: closing out current findings, performing a full population review for compliance purposes, and implementing a system where the group executive signed for all emergencies.

- For FY2018, 234 emergency transactions (129 from Eskom and 105 from ERI) were checked for validity by the RGC Department and were also verified by A&F.
- A&F reviewed 140 sole sources signed off during FY2018 and a sample of CIDB-related contracts.
- A review of all FY2018 emergency transactions is in progress, with 151 out of 234 (65%) being non-compliant and requiring condonation. Of the 151, 76 from Eskom and 75 from ERI were challenged in terms of compliance with the definition of emergencies. These are being addressed with the business for condonation. The high percentage of non-compliance is a concern, and additional controls have been put in place to lower the number of emergencies.
- A review of transactions in FY2016 (1 156 transactions) and FY2017 (993 transactions) not included in Phase 1 will be considered in the next phase.

## 2.3 Governance and controls

### 2.3.1 Data Integrity checks

A data integrity stream was established to ensure the accuracy and consistency of data during the execution of processes and reporting of progress. The process for the checks is as follows:

- Extract the population from the relevant source system.
- Perform spot checks to ensure accuracy and completeness.
- Report on consolidated business feedback.
- Ensure continuous feedback and reporting, including system enhancement, to make reporting more accessible to data users (such as SAP HANA reporting).

The datasets produced had previously been distributed quarterly. During July 2018, monthly runs were introduced. The datasets were distributed to business for verification.

The table below shows data integrity checks that were performed on monetary thresholds.



Table 3: Breach of PPPFA – monetary thresholds FY2018

Financial year and quarter	Full population	Reviewed by business	Irregularities identified	Comments on irregularities
FY2018 Q1	309	309	31	2 for Sourcing and 29 for ERI
FY2018 Q2	284	284	17	3 for Sourcing and 14 for ERI
FY2018 Q3	219	56	10	1 for sourcing and 9 for ERI
FY2018 Q4	220	220	7	7 for ERI
FY2018 total	1 032	869	65	

### 2.3.2 Enhanced PFMA reporting

P&SCM takes the lead in the reporting of procurement-related irregular expenditure across the Eskom Group. The quarterly reporting of PFMA was changed to monthly, and the report itself was enhanced. This supports the Eskom PFMA compliance senior manager to improve reporting of the PFMA note.

Eskom reported R19,6 billion of irregular expenditure for FY2018. The current focus is on investigating and verifying the amounts as reported in order to ensure accuracy, completeness, and condonation through the relevant authority.

Increased efforts on awareness and training in the identification and reporting of irregular expenditure will form part of Phase 2 activities.

Table 4: PFMA irregular expenditure reports 31 March 2018

	Expenditure (R million)	Description
Modifications exceeding allowed amount	6 520	Incorrectly applying the modification rule – rule introduced in May 2016
PPPFA – incorrect tender process	1 556	Incorrectly applying the threshold for contracts < R 1 million – December 2012
PPPFA – tax clearance	3 168	Did not obtain tax clearance for foreign suppliers without a local establishment. The amount is only for 2016 to 2018 and not from December 2012 (still to be quantified)
CIDB regulations	592	Did not comply with CIDB requirements
<b>Sub-total</b>	<b>11 836</b>	<b>Non-compliance to administrative requirements</b>
Use of sole source	4 882	Labour contract in ERI
Contracts not awarded in terms of National Treasury Guideline	1 398	McKinsey & Trillian
Other	1 493	
<b>Total</b>	<b>19 606</b>	

### 2.3.3 SAP and systems enhancement

The following controls have been implemented and/or enhanced since April 2018:

- Documentation management systems (OpenText)
- Contract workflow approvals
- Introduction of emergency and condonation indicators in SAP
- Irregular expenditure register

A real-time view of emergency orders in SAP will have the ability to track, report, and control emergency spend in an instant.

With regard to contract documentation management, the SAP OpenText system was adopted. The system went live at the end of March 2018 and is operational. The first phase of the project has been completed, with roll-out of the top 200 contracts. The next step is for the project team to set up engagements with the business in order to provide guidance on the migration of the remaining contract documents.

### 2.3.4 Probity checks

Probity checks have been taking place to verify the status of declarations of interest and potential conflicts of interest in the procurement environment. In the Procurement and Supply Chain Management Department, 1 308 employees were evaluated, and 443 members of the tender committees were evaluated, belonging to 40 different tender committees.

### 2.3.5 Governance, processes, and compliance

Changes were made to the Eskom Procurement and Supply Chain Management Policy (32-1034) to eliminate ambiguities and provide clarity in line with the NT Regulations.

The revised P&SCM Procedure 32-1034 Revision 3 was implemented and rolled out throughout the business. Early indications are that, although these governing documents were updated and rolled out, their integration and embedding in the relevant processes need further attention. For this reason, integration and lessons learnt sessions are being planned with the relevant stakeholders from October 2018 onwards, thereby allowing a period for any issues to surface.

An RGC plan is being executed to ensure that the governance processes in place support full compliance. In addition to the awareness campaigns and training that are being conducted, a template for monthly reporting and consolidation of all irregular expenditure related to procurement transactions was implemented in September 2017.

The Compliance Plan includes performing a baseline risk assessment per Act, including the PPPFA, CIDB, and broad-based black economic empowerment (B-BBEE), developing and maintaining a risk register, and mapping and identifying

controls for each risk identified. Guidelines and controls for submitting condonations were also developed and were implemented in April 2018.

In order to ensure effective monitoring, breach and consequence management registers are being developed and established on a shared portal for end users to update and maintain.

Regulatory and assurance reviews are planned to enhance identification and promote robust investigation and transparent reporting of irregular and fruitless and wasteful expenditure.

### 2.3.6 People and training

Eskom devised a training plan informed by the skills gap analysis assessment, which includes audit findings, individual compacts, development plans, etc. The Procurement Department has a training plan that can be grouped into eight categories, as outlined in Table 5 below.

Table 5: Training Plan in Procurement and Supply Chain

Category	Number of completed training interventions
Mandatory training for all Group Commercial employees	5
Training for all Group Commercial practitioners – including PPPFA and NT Regulations training	5
External development training for procurement and investment recovery practitioners	4
Internal development training for procurement and investment recovery practitioners and managers	5
Infrastructure sourcing-related trainings	5
Supply chain operations (SCOPS) investment recovery	0
SCOPS materials management	8

In addition, PTC members were trained on both the PPPFA and NT instruction notes, as were all procurement practitioners and support structures in Procurement. Furthermore, the RGC team continues to give guidance and refresher courses to the P&SCM Management Committee on request.

The RGC team prioritised training and communication to support the Recovery Plan and reported the progress, as illustrated in Table 6.



Table 6: Risk and Governance-focused training and communications

Category	Target audience	Comment
PPPFA training	Group Commercial and Tender Committee	100% trained
Training on instruction note from NT	Group Commercial and Tender Committee	100% trained
Infrastructure procurement training	Group Commercial and Tender Committee	100% trained
PIE – procurement in Eskom (Training on Procurement Procedure – Revision 3)	Group Commercial and Tender Committee	The P&SCM Procedure (Rev.3) was finalised and implemented; training roll-out in progress
Creating procurement awareness	Eskom employees	30% trained
Communicating supplier reconsideration process	Eskom-wide	Communicated to the business

The focus is now on where non-compliance was detected. The relevant buyers will have their SAP access suspended immediately until refresher training has been undertaken. In cases where there is repeat non-compliance, disciplinary and corrective action will be taken. The internal audit function will also be strengthened to ensure more proactive and robust monitoring of transactions.

Employee engagements will be done to increase awareness regarding audit findings. Employees are required to declare conflicts of interest annually (and every time a new conflict arises). If conflicts are not declared, relevant disciplinary action will be taken in line with Human Resources-related policy.

PPPFA training was completed for all procurement practitioners, with a detailed training plan being developed for their continuous training. Additional training awareness for PIE (procurement in Eskom) was also conducted in the current financial year between April and October 2018. More training is planned for the remainder of the financial year.

Table 7: PIE training completed during FY2019

Course location	Number of persons trained
Brackenfell	47
Eskom Academy of Learning	455
East London	11
Eskom Park, Witbank	157
Gauteng OU, Braamfontein	12
Koeberg Power Station	106
KZN OU, New Germany	47
Lethabo Power Station	30
Polokwane	29
Bloemfontein, Freepen Building	10
<b>Total</b>	<b>904</b>

## 2.4 Stakeholder engagements

NT continues to be engaged in discussions relating to the preparation and submission of events requiring condonation.

Regular engagements took place with SNG Grant Thornton, which included requests for further information, which have since been answered.

Regular feedback sessions take place with A&F, during which feedback is provided to streams for correction/rectification.

A detailed communication strategy aimed at an entrenched rhythm of communication to all levels of stakeholders was developed, and numerous topical communiqués were shared. Weekly feedback on the progress of each stream is collated via the project and shared with internal stakeholders.

A programme-specific email address is in place (ProcurementRecovery@eskom.co.za) as an additional engagement medium through which the entire business can voice opinions, request information, etc. relevant to the programme. This is managed to ensure that all interactions are responded to.

Progress on stakeholder engagements:

- The revised ARC submission with the Phase 2 plan and close-out of Phase 1 for the recovery efforts was initially submitted during August 2018. Biweekly Qualification Turnaround Meetings, chaired by the CFO, take place.
- Information on progress is presented to lenders, SNG Grant Thornton, and the DPE.
- Regular engagement takes place with NT for condonations that require its approval.
- Internal stakeholder relationships are addressed through change management, awareness, and training.

## 2.5 Managing emerging risks to programme delivery

Five main areas of risk were identified, which are being tracked constantly and mitigated to ensure minimum negative effect on the programme. These risks are discussed in Figure 3 below.



Risk	Risk Rating	Considerations
Numerous system changes required over short period of time		This remains the most significant risk on the programme, in particular the impact of the changes to lower level staff <ul style="list-style-type: none"> <li>To mitigate this, effective change management and communications is required</li> <li>SAP Hana, CPA tools, barcoding, informal tendering, e-auction tools to be tracked effectively</li> </ul>
Progress at subsidiaries on recovery activities slower than anticipated		<ul style="list-style-type: none"> <li>Developed plan to remedy, but will not be fully ready by year end audit</li> <li>Supplemented team in ERI procurement with 8 external resources</li> <li>Discuss with SNG the readiness of Eskom group vs subsidiaries</li> <li>Remains a risk to audit qualification</li> </ul>
Consequence management		Risk because of expectations of stakeholders relating to consequence management actions as part of closeout of Note 52. This has to be balanced <ul style="list-style-type: none"> <li>Communicate effectively to stakeholders on approach to individual and consolidated incidents</li> <li>Due to the sensitivity of the information with respect to actions on individuals, Eskom Human Resources will maintain the Industrial Relations (IR) register</li> </ul>
Progress on investigations (public domain) concern		Outside of scope of this internal program but require procurement closeouts (IR, Condonations) <ul style="list-style-type: none"> <li>Conclusion of the investigations will impact on closeout of some Note 52 items</li> <li>Matters under investigation (52.1m) will undergo procurement close-out once the investigations have been completed</li> </ul>
NT procedure review and condonation approval		<ul style="list-style-type: none"> <li>NT has now provided feedback on Procedure 32-1034</li> <li>NT has to provide feedback on the condonations submitted to date to support closeout</li> </ul>

Figure 3: Risks identified in the programme

From a change management perspective, there is no doubt that the numerous changes introduced have an overwhelming impact on the staff implicated. A concerted effort to regularly arrange awareness and training is given attention and priority by P&SCM leadership.

Other risks identified, but currently being monitored and managed, include:

- additional resources required where there are recruitment constraints; and
- further work alignment across work streams and business outputs.

The success of these initiatives will be tracked and included in all quarterly reviews going forward.

### 3 RECOVERY PHASE 2

#### 3.1 FY2018 PFMA note and the FY2019 Annual Financial Statements

Eskom received a qualified audit for FY2019 on the PFMA note. The table below indicates the main groupings of items. Modifications relating to NT Instruction Note 3, going back to fix the full population for FY2016/17 for tax certificates on foreign suppliers and PPPFA monetary thresholds going back to December 2012, together with non-compliance with the requirement to advertise on the CIDB website, accounted for reporting of some R11,8 billion of irregular expenditure.

Table 8: FY2018 PFMA note – irregular expenses of R19,6 billion reported

Category	Expenditure (R'm)	Description
Modifications exceeding allowed amount	6 520	Incorrectly applying the modification rule – rule introduced in May 2016
PPPFA – incorrect tender process	1 556	Incorrectly applying the threshold for contracts < R 1 million – December 2012
PPPFA – tax clearance	3 168	Not obtaining tax clearance for foreign suppliers without a local establishment The amount is only for 2016 to 2018 and not from December 2012 (still to be quantified).
CIDB Regulations	592	Not complying with CIDB requirements
<b>Subtotal</b>	<b>11 836</b>	<b>Non-compliance with administrative requirements</b>
Use of sole source	4 882	Labour contract in ERI
Contracts not awarded in terms of National Treasury Guideline	1 398	McKinsey and Trillian
Other	1 493	
<b>Total</b>	<b>19 606</b>	

### Significant increase in the reported irregular expenses in 2018 to R19.6 billion

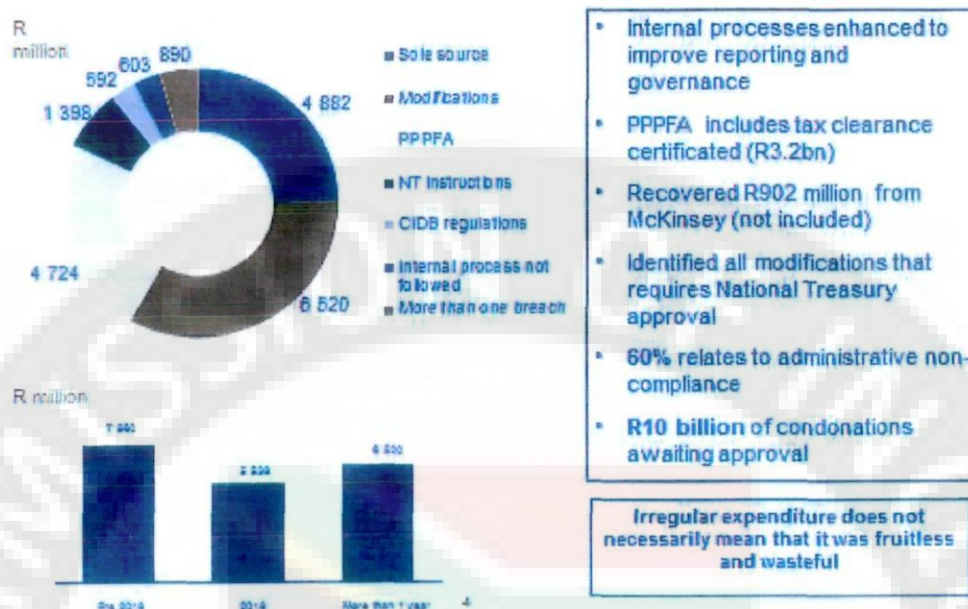


Figure 4: Reported irregular expenditure FY2018

### 3.2 Recovery Plan continued scope – Phase 2

In line with its purpose, the Recovery Plan focuses on four main areas to ensure that procurement of goods and services is done in compliance with the PFMA. Phase 1 of the recovery effort ran until the end of the year-end audit for FY2018 (June 2018). The Audit Recovery Plan will continue with the work from Phase 1 for completeness, compliance, and change. For sustainability, the scope of Phase 2 will run for the period July 2018 to March 2019.

Phase 2 will continue with the original focus areas, with additional activities to:

- maintain focus on key procurement-driven initiatives that support the improvement in auditing and tracking of the implementation of a robust procurement system;
- understand and correctly report on irregular expenditure; and
- build confidence in the procurement system.

#### 3.2.1 Addressing historical issues

This process entails closing out historical audit findings through condoning deviations by the relevant delegated authorities, in particular the FY2017 and FY2018 PFMA note, which involves investigations and submission to relevant authorities for approval. For the clean-up, this was extended, where practical, back to the date of effective legislation.



### 3.2.2 Contract reviews

The contract reviews involve all open contracts, panel contracts, sole sources, and emergencies for procurement compliance, focusing on new contracts for procurement compliance, contracts in execution for top 205 contracts, contract modification approvals, the panel contract, and emergency and sole source events for compliance. The process will include condonation of events, where possible, on conclusion of the reviews.

### 3.2.3 Governance controls

The aim here is to enhance monitoring and compliance controls, including reporting systems. This process includes the following activities:

- Enhance the PFMA reporting processes, guidelines, training, and controls for irregularities, criminal conduct, F&W, and total PFMA expenditure report for completeness.
- Drive the SAP and systems enhancements: automation, system flags, SAP OpenText for remaining contracts, and improved reporting and controls.
- Plan for the interim audit to include PFMA compliance.
- Track the roll-out of P&SCM Procedure 32-1034 Revision 3.
- Implement communication and change management to ensure sustainability of recovery initiatives.
- Track the Implementation Plan for subsidiaries.
- Track and report quarterly reviews of tax clearance, monetary thresholds, CIDB, sole sources, and emergencies.
- Monitor plans regarding consequence management.

### 3.2.4 Building relationships

This involves building relationships with key stakeholders for common understanding. The initiatives involve:

- an ARC submission on the revised plan during August 2018 for the recovery efforts;
- monthly Qualification Turnaround Meetings, chaired by the CFO, and monthly meetings with representatives from the DPE and auditors as arranged by Eskom;
- regular progress reports to lenders and the DPE;
- regular engagement with NT for condonations that require its approval; and
- addressing internal stakeholder relationships through change management, awareness, and training.

## 3.3 Programme of activities

A project plan was developed in conjunction with the different stream leads managing various items contained in the notes. Following a review of the stream leads process, the following Project Plan was developed in order to track and monitor the progress of

the Audit Recovery Programme. The Project Plan is used to share feedback internally and conduct awareness raising at the different committee meetings such as the ARC, Exco, Design to Cost, and Finance Committee.





Table 9: Project Plan audit recovery FY2019 detailed activities

Audit recovery Programme						
Description	Progress as @		On Track		Complete	Behind
	2018/11/02		Start	Finish	Status	Comments
	Plan	Act				
<b>Audit Recovery Programme J3 final 22 Oct 2018</b>	49%	47%	2018/02/08	2019/04/30	●	
Modifications exceeding allowed amounts (Mod Thresholds - e)	92%	91%	2018/05/13	2019/03/21	●	* Engaged with Business to check data after using an incorrect rule data for verification * Preparing for the next ETC
Incorrect Tender Process Applied ( Monetary Threshold - f)	65%	51%	2018/08/02	2019/03/28	●	* Verification of data set in progress * Resource Allocation to be finalised
Closeout Historical Note 52	32%	36%	2018/06/13	2019/03/28		
Monetary Threshold c	36%	100%	2018/06/13	2019/03/28	●	Sourcing and ERI Condonations & Irregular Expenditure approved June 2018 for FY 2016 /2017
Tender Processes not adhered to f	57%	100%	2018/06/13	2019/02/19	●	
Incorrect Classification of Emergencies g	36%	100%	2018/09/26	2019/03/28	●	
Quality Management h	12%	32%	2018/06/13	2019/03/28	●	With NT
Tax Clearance Certificates i	24%	76%	2018/06/13	2019/03/22	●	Nuclear Tax FY 16, FY 17 with NT
CIDB Regulations j	12%	24%	2018/06/13	2019/03/29	●	DC10 Electrical Construction and Group Five are with NT
Sole Source k	12%	96%	2019/02/08	2019/03/29	●	Sole Sources With NT - BCA, MTN
Tender Processes not adhered to l	100%	0%	2018/10/18	2019/03/22	●	Resource allocation to be resolved
Contract Execution Reviews 205 (>R1bn)	40%	41%	2018/09/10	2019/03/13		
IPP	100%	100%	2018/09/28	2018/10/16	●	66 out of 66 reviews complete
Generation National Contract	54%	37%	2018/09/10	2018/12/20	●	14 out of 32 completed, 6 for ERI still to be checked
Group Capital	53%	4%	2018/10/03	2019/02/15	●	Letter has been sent to GM / PD / Snr Mgr CMO to expedite traction (2 out of 32 done)
Group IT	100%	100%	2018/09/17	2018/09/28	●	2 out of 2 completed, Reviewed by GIT and ARP
Nuclear	45%	0%	2018/10/15	2018/12/14	●	On Track - 4 Contract to be reviewed
Transmission	20%	0%	2018/10/15	2018/12/13	●	On Track - 7 Contract to be reviewed
PEO S9	7%	0%	2018/10/26	2019/03/13	●	On Track - S9 Contract to be reviewed
Contract Procurement Compliance Historical	57%	94%	2018/07/31	2018/12/31		
Infrastructure Build Programme	71%	96%	2018/09/03	2018/11/28	●	356 out of 362 completed, 6 outstanding
Generation Sites Contract	52%	83%	2018/09/03	2018/12/31	●	1366 out of 1652 completed, 286 outstanding
Information communication & Technology	52%	75%	2018/09/03	2018/12/31	●	685 out of 918 completed, 233 outstanding
Transmission	100%	100%	2018/07/31	2018/07/31	●	1648 out of 1648 reviews completed
Generation National Contracts	100%	98%	2018/08/01	2018/10/31	●	242 out of 245 completed, 3 await DTC feedback 31 Oct 2018
Distribution National Contracts	100%	100%	2018/07/31	2018/07/31	●	298 out of 298 completed
Distribution Wires	100%	100%	2018/09/14	2018/09/14	●	182 out of 182 completed
Corporate Contracts	100%	100%	2018/08/31	2018/08/31	●	601 out of 601 completed
<b>New Contract Procurement compliance FY 19</b>	9%	24%	2018/10/10	2019/04/30		
Contract Procurement Reviews FY2019 Q1	34%	48%	2018/10/10	2018/12/21	●	340 Contracts - 229 Compliant
Contract Procurement Reviews FY2019 Q2	0%	0%	2018/11/05	2019/02/15	●	351 contracts to be reviewed
Reporting	50%	48%	2018/02/08	2019/03/26	●	* Lenders Report No.5 for July 2018 supported by ARC, approved by CFO and currently in GCE's office awaiting final signature * Provisional dates for Audit 7& Risk Committee meeting issued for the whole Financial Year. Latest meeting held 24 Oct 2018. * QTM dates for meetings to be confirmed
Assurance on processes within the programme	18%	10%	2018/10/10	2019/02/14	●	Risk identification completed on the program and ranking in progress
Verification Process	30%	10%	2018/08/15	2019/03/25		
Lenders Report	26%	50%	2018/08/28	2019/03/25	●	Verified 2 report out of 4
Modifications (old Sample Size = 240 revised to 48)	32%	31%	2018/08/15	2019/03/12	●	15 verified out of 48. Await input from mods stream
Contract Reviews 205 (>R1bn)	32%	0%	2018/08/15	2019/03/12	●	Awaiting input from Contract Review Stream
<b>Review of Emergency Purchases</b>	59%	68%	2018/06/27	2019/03/29		
Planning	100%	100%	2018/06/27	2019/03/21	●	
Review of Emergency Purchases for Q1 FY 2019	100%	100%	2018/11/09	2019/03/29	●	12 Transactions reviewed, 2 meeting criteria
Review of Emergency Purchases for Q4 FY 2018	100%	100%	2018/09/25	2019/03/28	●	29 Transactions reviewed, 11 meeting criteria
Review of Emergency Purchases for Q2 FY 2019	100%	100%	2018/09/25	2018/10/23	●	23 Transactions reviewed, 16 meeting criteria
Review of Emergency Purchases for Q3 FY 2018	100%	100%	2018/10/18	2019/03/28	●	42 Transactions reviewed, 14 meeting criteria
Reporting & Monitoring	17%	35%	2018/07/02	2019/03/29	●	Draft report issued to Senior Management.

Audit recovery Programme						
Description	Progress as @		On Track		Complete	Behind
	2018/11/02		Start	Finish	Status	Comments
	Plan	Act				
Foreign Tax Compliance	22%	6%	2018/07/02	2018/10/15	●	Detail confirmation of transaction values still to be verified, scope increased to include transactions from 2012
Consequence Management	18%	27%	2018/07/02	2019/03/29	●	49/77 cases has been Closed out - 23 still to be completed
Change Management & Communications	44%	36%	2018/07/05	2019/03/26	●	<ul style="list-style-type: none"> <li>* Problem statement for Change management defined and signed off</li> <li>* Development of change story in progress (To be shared with P&amp;SCM Leadership)</li> <li>* Audit Recovery Programme in progress</li> <li>* Communication gaps identified, highlighted and addressed</li> </ul>
ERI Procurement Recovery Activities	30%	55%	2018/09/04	2019/03/18		
Review Emergencies	61%	65%	2018/10/09	2018/11/20	●	Emergency Reviews for Q3 & Q4 FY 17/18 has been completed based on Revised NT Note 3
Review ERI Phase 1 Close Out Report	0%	25%	2018/11/05	2019/01/22	●	Action plan in place to close phase 1
Training / Awareness for the Procurement Team	0%	25%	2018/12/18	2019/03/18	●	Purchasing In Eskom (PIE) Training has been rolled
Integration With Other Initiatives	30%	30%	2018/06/13	2019/03/26	●	<ul style="list-style-type: none"> <li>* Compliance Plan</li> <li>* Matters under investigation</li> <li>* SAP system Changes</li> <li>* Panel Contracts</li> <li>* PFMA Reporting</li> </ul>



## 4 ADDRESSING IRREGULAR EXPENDITURE

### 4.1 Review of FY2018 PPPFA monetary threshold transactions

On the basis of discussions held with NT, the AG, and SNG Grant Thornton, Eskom is currently analysing all transactions for FY2013, FY2014, and FY2015 to determine the number and value of monetary threshold breaches for the subsidiary ERI, Nuclear, and Eskom Sourcing. Once verified, the condonation packs will be prepared to be submitted to the ETC and BTC for support prior to NT submission. An amount of R888 million in irregular expenditure was included in the 2018 Annual Financial Statements for these prior years under the matters under investigation.

For monitoring of current compliance, reviews are under way for the PPPFA monetary threshold transactions for this financial year.

For completeness, a full population for all once-off purchase orders (requests for quotation) and all contracts placed between the values of R26 315 and R30 000, as well as R877 192 and R1 million, was extracted from SAP up to 31 March 2018. The change in threshold from R1 million to R50 million from 1 April 2018 meant that the values between R43 859 649 and R50 million were extracted from SAP from 1 April 2018. The figures quoted in the SAP system exclude VAT. A&F reviewed and agreed on the process and a sample.

The irregularities identified are being condoned and individual consequence management principles applied for the new financial year. The prior years will be consolidated.

In June 2018, NT approved FY2016 and FY2017 condonations for monetary threshold breaches. The recovery team is reviewing the transactions from 8 December 2012 to 31 March 2015 for consolidated condonation. The dataset is comprised of approximately 4 200 transactions, and 66% of these transactions have been verified by Sourcing. Based on reasonableness, these will be consolidated for ETC, BTC, and then NT approval. Note that it is again likely that the auditors will highlight potential overstatement of the total irregular expenditure if every transaction is not checked, and these checks cannot be done through system downloads. Manual checks are time-consuming and will yield limited further benefits due to constraints on retrieval of old records. The submission for monetary thresholds is being finalised for FY2013 to FY2015 for the approval process.

Table 10: Breach of PPPFA – monetary thresholds FY2019

Financial year and quarter	Full population	Reviewed by business	Irregularities identified
FY 2018 total	1 032	869	65
FY 2019 Q1	186	11	0
FY 2019 Q2	190	8	0
FY 2019 Q3	80	11	0
FY 2019 YTD	456	30	0

#### 4.2 Breach of PPPFA: tax clearance certificates

Phase 2 will include the review of the full population of contracts/once-off purchases with foreign suppliers for the period 1 May 2012 to 31 March 2016. The purpose of the review is to determine whether these foreign suppliers had valid tax clearance certificates for the period Eskom transacted with them.

An analysis of our data illustrated the following:

Table 11: Foreign tax numbers

Total number of foreign suppliers on database	Number of foreign suppliers transacted with from 2012 to 2016	Value of transactions with foreign suppliers from 2012 to 2016
504	179	R15 billion

For FY2017, Eskom reported 55 transactions to the value of R986 million that breached the PPPFA due to the absence of tax clearance certificates for foreign suppliers. The value was increased to R3,1 billion at the end of FY2018 due to a review of the entire population in the past two financial years. The condonation packs for Nuclear and Sourcing were submitted to the ETC on 14 March 2018.

On 12 April 2018, the Nuclear tax condonation was submitted to NT for approval for the period 1 April 2015 to 15 February 2018 at a value of R5,6 billion and the irregular expenditure at R1,57 billion. NT requested Eskom to obtain proof from SARS regarding the suppliers' compliance status at the time of appointment. Eskom engaged SARS, which stated that it could not assist Eskom, and this feedback was provided to NT in a letter from the ACPO on 11 September 2018. Eskom's condonation packs sent to NT were based on records in Eskom systems. Concern about the non-approval, to date, of the condonation as irregular expenditure has continued to grow, since the initial submission was made in April 2018.

The balance of transactions is still under investigation and will follow the formal internal condonation process before submission to NT. Due to the high value of transactions, Eskom cannot deem all transactions without records to be irregular and requires a means to determine a more accurate number. During the review of the FY2017 and FY2018 transactions, only a small number of tax clearance certificates could be obtained from Eskom Vendor Management and/or contract files.

In order to prevent the overstatement of irregular expenditure and to expedite the review for the period 2012 to 2016, Eskom requested SARS to assist the Eskom team with copies of all valid tax clearance certificates for the 179 foreign suppliers with whom Eskom transacted during the period mentioned.

Alternatively, Eskom would need to submit a request for approval to NT of a reasonable and practical method to determine the value of irregular expenditure for the periods prior to 1 April 2015. A meeting with NT and relevant officials from SARS is to be arranged in order to discuss and resolve this matter.



### 4.3 Contract modifications per NT Instruction Note 3

Eskom approves all contract deviations and expansions (modifications) internally for general goods and services and for construction-related contracts via an established, controlled process. The Eskom Delegation of Authority sets out the limits that the different adjudication authorities have to approve deviations and expansions (modifications) internally, being dual and triple adjudication, procurement tender committees, divisional tender committees, the Eskom Tender Council, and the Board Tender Committee.

National Treasury Instruction Note 3 of 2016/2017 relating to expansions or variations of orders, states the following:

"9.1 The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 20% or R20 million (including VAT) for construction related goods, works and or services and 15% or R15 million (including VAT) for all other goods and or services of the original contract value.

9.2 Any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury."

Since inception in May 2016, Eskom has interpreted and applied this provision to mean that both the percentage and the value thresholds must be exceeded before National Treasury (NT) approval is required. National Treasury approval was sought for these deviations and expansions (modifications) after review and recommendation by Eskom's adjudication authorities.

At a meeting with the AG, SNG Grant Thornton, and NT on 29 May 2018, it was clarified that Eskom's interpretation and implementation of Instruction Note 3 were incorrect. Thus, as a priority, Eskom identified all expansions (modifications) since 1 May 2016 that ought to have gone to NT for approval based on the percentage or value threshold interpretation. As these transactions have already been reviewed by Eskom's adjudication authority, Eskom will submit them for condonation by NT once verified internally.

During the FY2018 annual audit, contract modification was raised as part of the audit qualification. In Note 51.1(e) "Modifications exceeding allowed amounts", a figure of R6,52 billion (721 transactions) was reported as irregular expenditure. On 21 August 2018, A&F identified an additional three transactions from Nuclear to be added to the population, increasing the number of transactions to 724.

To address this, the stream will assess all contract variations processed from 1 May 2016. The transactions that do not meet the requirements will be investigated, and due process will be followed to regularise the deviations. In an effort to address the above-mentioned and to review all contract variations processed from 1 May 2016, a process for addressing the modifications was drafted for implementation.



The individual transactions from the date of the instruction note are being investigated, and preliminary findings have resulted in a reduction in the value and number of transactions in the population. The data was sorted into different categories in order to determine the actual number of condonations to be presented for condonation and what needed to be excluded from the list. Once verified, these will be submitted to A&F for verification prior to submission to the ETC, BTC, and then NT for approval.

The effort focuses on addressing the deviations from inception of the NT instruction note in May 2016, and it currently involves 473 transactions out of the 724, with 34 to be condoned as bulk under late adoption, and 12 will be addressed by the business on an individual condonation basis.

#### 4.4 Contract reviews in Procurement

The review of the contracts in Procurement to address the completeness of the contract files and to confirm that the contracts placed are fully compliant with all policy and legislative requirements is under way. For Quarter 1, feedback on new contracts is tabled below. From July to October 2018, 536 new contracts were created and are being reviewed. Of the Phase 1 reviews up to the end of March 2018, the 9% that had issues are being closed out individually.

Table 12: Compliance of Procurement contracts

Quarter 1 new contracts established (1 April 2018 to 30 June 2018)			
<b>Fully compliant</b>	229	67%	Reviews by Contract Compliance
<b>Deleted</b>	2	1%	Removed from list
<b>Subsidiary</b>	12	4%	Still being checked by ERI
<b>Partially compliant</b>	76	22%	Still providing source documents
<b>Requiring condonation</b>	21	6%	Issues with establishment
<b>Total</b>	<b>340</b>		

#### 4.5 Checking of top 200 contracts in execution

The contracts in execution review focuses on post-award, active contracts that are over R1 billion, currently accounting for 205 contracts. We have commenced reviews and checks for the established contracts in order to ensure compliance with good contract administration practices. The approach is to work through the contracts per operating division.

The content of the checklist has been confirmed with Contract Management. This includes, but is not limited to, managing the following:

- Contract compliance and governance

- Contractor/consultant/supplier performance
- Claims/compensation events administration
- SHEQ management
- Penalties application
- Review of various registers

A contract management review checklist for contracts in execution was disseminated to the contract managers of these contracts. A review of contracts in execution was initiated by engaging Generation, Group Capital, and Group IT. So far, 90 contracts have been reviewed, with no significant issues to raise. The review is on track for completion of all 205 contracts by financial year-end. The next step is to compile a procedure for the contract reviews.

At a high level, the contracts are mainly in PED, Generation, Group Capital, and IPPs, as tabled below.

Table 13: Review status of established contracts

Sub-area	Number of contracts	Value (R'bn)	Number of contracts reviewed	Value (R'bn)
Generation	38	R134	20	R89,1
Group Capital	32	R173	2	R2,8
Group IT	2	R2	2	R2,4
IPPs	63	R692	66	R691,7
Nuclear	4	R10		
PED	59	R419		
Transmission	7	R14		
<b>Totals</b>	<b>205</b>	<b>R1 445</b>	<b>90</b>	<b>R786</b>

#### 4.6 Checking of panel contracts

The audit finding relating to panel contracts confirmed the need to improve governance and controls across the panels in Eskom.

An improved governance framework for panels was developed and taken to the ETC for support to go to the BTC. The improvement of the SAP BI capability for panel contracts will allow the tracking of the task orders against the contracts. The dashboards were developed and are being tested, and the IT actions were completed. The intention is for the system to go live in January 2019. A contract management procedure for management of panels was developed in October and is under review for approval.

#### 4.7 Review of emergency transactions

This review involved the period 1 October 2017 to 30 September 2018.

The objective of the review was to test whether approved emergency purchases complied with the criteria of an emergency as stipulated in P&SCM 32-1034 (Revision 3). The review also tested compliance with the 12 October 2017 decision that all emergencies had to be authorised by the relevant group executive and then ratified at DTC level.

The review included all approved and conditionally approved transactions (excluding ERI) as recorded in SAM (submissions analysis model). The period covered was from 1 October 2017 to 30 September 2018.

A statistical analysis of data illustrated a significant reduction in the number of transactions since the implementation of the 12 October 2017 decision that all emergency purchases had to be authorised by the relevant group executive.

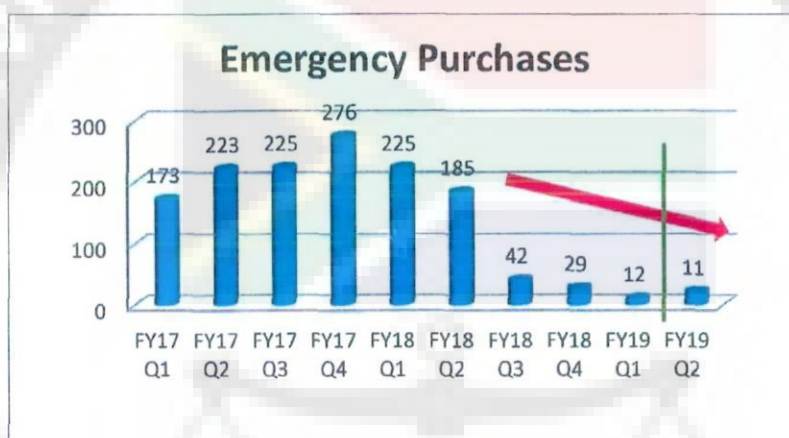


Figure 5: Emergency purchases

Our review revealed the following:

- A total of 106 emergency transactions ratified by various tender committees were reviewed.
- Of these emergency transactions reviewed, 62 (58%) did not meet the criteria of an emergency as stipulated in P&SCM 32-1034 (Revision 3), and the services or repairs, etc. could have been procured using the normal or urgent procurement mechanism.
- Forty of the 106 transactions related to emergencies declared after 12 October 2017. Emergencies declared after 12 October 2017 had to be authorised by the relevant group executive, while emergencies before this date had to be authorised by the most senior manager on site.
- For 21 of the 40 emergencies declared after 12 October 2017, written evidence of approval by the GE could be found. For a further 11 emergencies, it was confirmed that telephonic approval had been granted. Emergencies declared since 12



October 2017 had a slightly higher percentage of compliance with P&SCM 32-1034 (Revision 3).

- A total of 61 (58%) emergencies were from Generation, 14 (13%) from Distribution, and 15 (14%) from Transmission.
- Four power stations had more than two emergencies declared/ratified during the period under review. Arnot Power Station had a very high number of emergencies declared/ratified, with a level of compliance of less than 30%.

Table 14: Emergencies declared/ratified per power station

Power station	No. of emergencies	Met criteria	% compliance
Camden	5	1	20%
Matimba	6	1	17%
Tutuka	11	4	36%
Arnot	21	6	28%

A review of all emergency transactions for the past four quarters revealed that 106 emergencies had been recorded, of which 43 were fully compliant with the requirements of Eskom and NT. The rest were sent to the business for close-out.

#### 4.8 Review of sole source transactions

Sole sources are currently being managed and monitored in the business areas as part of the business process.

## 5 GOVERNANCE AND CONTROL

### 5.1 Adopting a combined assurance approach

The Procurement and Supply Chain Policy (32-1033) sets out the mandate for procuring goods and services, while the Procedure (32-1034) spells out the various processes for which assurance of adequacy and effectiveness are provided by risk-based monitoring. Thus, the Assurance Risk Plan was derived from mitigating the risk of non-compliance to risks stipulated by legislative requirements. Typically, government Acts and Regulations compel Eskom to have a process in place that stipulates how it will give assurance that the risk of non-compliance is mitigated to an acceptable level. The Procurement Recovery Plan identifies legislative requirements that dictate the compliance framework for Procurement and Supply Chain Management. The PFMA and PPPFA set the framework for compliance. These legislative requirements are intrinsically linked in managing Procurement and Supply Chain. The former regulates the monies for procuring goods and services, and the latter sets targets regarding preferential suppliers. The requirements stipulated by these pieces of legislation define the risks according to which Eskom must avert non-compliance.

The Assurance Plan will, therefore, test for adequacy of controls in place to mitigate the risk to an acceptable level. When the adequacy test has been ascertained, the controls are tested for effectiveness. Once the Acts have been unpacked to understand their applicability, they are classified in accordance with the level of risk they pose to the business. Thus, risk identification forms the basis of compliance risk. A structured plan to give assurance to managing the risk of non-compliance is to ascertain the following:

- Building compliance risk management competency
- Developing the metrics matrix
- Monitoring controls linked to applicable Acts to ensure effective implementation
- Managing corrective action to non-compliance
- Strengthening and fostering relationships with the compliance community in Eskom

Capacity building will be the basis for competency training. A matrix for continually unpacking legislation for applicability is being developed. Monitoring of the effectiveness of controls will be conducted through internal and external reviews at a set frequency.

To date, reviews have been conducted to track progress on contract modifications submissions for National Treasury condonation. Certificates of acknowledgement of receipt are issued by National Treasury, which state whether the condonation application was supported or not. These reviews give assurance as to the completeness of document management in that the submissions are supported by documented subjective evidence in a clearly defined central depository. The significance of this type of document management is to leave a visible audit trail for monitoring purposes.



## 5.2 Verifications of recovery work

To ensure the integrity of data and information, verifications will be conducted as follows:

Table 15: Verification methodology to be used

Methodology	To be verified
<p><b>MODIFICATIONS</b></p> <p>The contract modifications stream will provide a list of contracts to be verified.</p> <p>Total number of contracts modified since May 2016 &gt; 15% or R15 million and &gt; 20% or R20 million. The total number of contracts fitting this criterion is 596 for 64 plants across Eskom, with a total of 202 buyers.</p> <p><b>Sampling methodology:</b></p> <ul style="list-style-type: none"> <li>• Random sampling across contracts, plants, and buyers</li> <li>• Sample size of 20% (of total population of 240) to be verified</li> <li>• Output: verified report versus source documents</li> </ul>	<ul style="list-style-type: none"> <li>• PTC approval or any relevant committee</li> <li>• Availability of modification reports</li> <li>• National Treasury feedback, where applicable</li> <li>• Consequence management</li> </ul> <p><b>Progress to date:</b></p> <ul style="list-style-type: none"> <li>• 100% verified (source documents provided)</li> </ul>
<p><b>SOLE SOURCE</b></p> <p>Where, as a result of proven in-depth market analysis, only one supplier in the market has been identified as being capable or available to supply assets, goods, or services in the existing circumstances, it may become necessary to deviate from competitive tendering and follow a sole source process.</p>	<p><b>Input documents:</b></p> <p>Sole sourcing and emergencies stream (quarterly transactions)</p> <p>SNG Grant Thornton Final Audit Management Report FY2017</p> <p><b>Checks:</b></p> <ul style="list-style-type: none"> <li>• Availability of market analysis report</li> <li>• Sample from a centralised system for necessary documents such as a sole source justification form and validity period</li> <li>• Reasons as approved by PTC (refer to minutes)</li> </ul>
<p><b>EMERGENCIES</b></p> <p>Emergency procurement may occur when there is a serious and unexpected situation that poses an immediate and imminent risk (that is, within 24 hours) to health, life, property, or the environment that calls Eskom to action and where there is insufficient</p>	<ul style="list-style-type: none"> <li>• Declaration of a situation as an emergency by responsible authority</li> <li>• Emergency criteria checklist availability and completeness</li> </ul>

time to invite competitive tenders.	
<b>Input documents:</b> <ul style="list-style-type: none"> <li>• Emergencies stream</li> <li>• SNG Grant Thornton Final Audit Management Report FY2017</li> </ul>	
<b>CONTRACT ESTABLISHMENT</b>	Verify completeness, tax clearance certificate, CIDB-related requirements, and stored location.
<b>CONTRACTS IN EXECUTION</b>	Verify contract management, tax clearance certificate, CIDB-related requirements, and stored location.
<b>REPORTING</b>	Verify report versus source documents.  Progress to date: two of four reports verified.

### 5.3 PFMA compliance

The PFMA report is prepared quarterly. The status at the end of Quarter 2 of FY2019 is shown below (P&SCM only; excludes divisions and ERI).

Table 16: PFMA compliance

Irregular expenditure, new transactions	R658 568 356
Irregular expenditure, prior years (continue to incur)	R2 619 597 861
Total IE	R3 278 166 216

### 5.4 Addressing audit findings

The progress on the closure of the 89 listed findings in the audit database required management attention for FY2018, with two closed out as at end October and 84 to be overdue shortly. The efforts are led by the GM Sourcing (acting) across the Procurement and Business Partnering areas. This will be monitored weekly.

### 5.5 Compliance Plan update

The lack of resources in the P&SCM RGC team to fully address the Compliance Plan was noted, and external assistance was approved by the GCE. The supplier for the P&SCM policy review (MAC Consulting) was appointed, and a kick-off meeting was held on 29 October to address efficiency and risk. The supplier Ensika is to provide assistance on P&SCM compliance. A detailed compliance plan was developed in

conjunction with the appointed service provider for implementation from November 2018, targeting key areas such as preparation for audits, contract compliance, and addressing fruitless and wasteful expenditure. The baseline plan is shown below.

Table 17: P&SCM Compliance Plan

Plan description	Start date
<b>Audit readiness workshop</b>	
Skills transfer and audit readiness workshop	07-Nov
<b>Procurement and supply chain management</b>	
Analysis of P&SCM audit findings FY2018	05-Nov
Assistance in closing out P&SCM audit findings FY2018	05-Nov
Assistance in closing out all P&SCM interim audit findings	26-Nov
Assistance in closing out all P&SCM year-end audit findings FY2018/19	15-Mar
<b>Public sector compliance</b>	
Analysis of progress on close-out of public sector compliance audit findings FY2018	05-Nov
Assistance in closing out public sector compliance audit findings FY2018	05-Nov
Assistance in closing out all PSC interim audit findings	26-Nov
<b>Audit readiness</b>	
Items under investigation in FY2018 irregular expenditure report	08-Nov
Review of interim audit RFIs for repeat findings	08-Nov
<b>Contract modifications for time</b>	
Contract modifications for date – 30% additional time for construction contracts	05-Nov
Contract modifications – compensation events	07-Nov
<b>CIDB compliance</b>	

CIDB registrations (> R10 million)	7-Nov
CIDB registrations: fines/penalties	7-Nov
<b>Fruitless and wasteful expenditure</b>	
Development of fruitless and wasteful expenditure checklist/test	05-Nov
Fruitless and wasteful expenditure testing	08-Nov
<b>Other analysis</b>	
National Treasury submissions, responses, and actions (analysis )	12-Nov
Analysis of condonation register	08-Nov

Additional efforts with regard to compliance, governance, and controls include the following:

- Draft revision of the PFMA reporting procedure – refinements are being made, and clarification has to be sought from NT on certain points.
- Exemption application: this was submitted to NT regarding certain provisions of the PPPFA and PFMA instructions.
- The PFMA note is prepared at least on a quarterly basis.
- PFMA training continues across all sites per the training programme.
- Disciplinary charges were laid and/or finalised.
- A PFMA monthly co-ordinators forum is up and running.
- A memorandum was prepared for the GCE, providing a motivation for more focus and resources and for formal approval of the PFMA Improvement Plan.

## 5.6 Matters under investigation

Matters under investigation in relation to Note 51 of the 2017/18 Annual Financial Statements were closed or are in the process of being finalised, including the relevant disclosures.

Other matters investigated by Eskom's A&F Department are reported to management and presented to the Audit and Risk Committee. Where any instances of irregular expenditure are identified, these matters are referred to Eskom's PFMA Section.



Eskom has made significant progress towards becoming a trusted SOC.

- **14 implicated senior executives exited**
- **12 criminal cases** opened, five of which involve **nine senior executives**
- Total of **1 049 outstanding cases** since April 2018, of which **858 have been finalised**, resulting in **99 employee exits**
- As at end of October 2018, a **total 269 whistle blow cases** are under investigation, **75 of these have been completed**. Of the 75, total sanctions issued (i.e. actions taken) are 47
- **Remedial action** has been taken against **25 staff doing business with Eskom**; 7 exited
- **Lifestyle audits** of senior management in progress
- Investigated all **irregular supplier contracts** (so far, five are no longer doing business with Eskom). **Recovered R902 million** from McKinsey with an additional **R99 million** recovered relating to interest
- Cooperating with **eight regulatory bodies conducting major investigations**<sup>1</sup>

1. National Treasury procurement investigations, Zondo Commission, Hawks, SIU, Parliamentary Inquiry, National Director of Public Prosecutions, Standing Committee on Public Accounts and SAPS

Figure 6: Status of addressing matters under investigation

### 5.7 SAP and systems enhancement

Systems in place need to support compliance. Systems currently being strengthened include the following:

- SAP panel contract solution: the panel contract solution will enable reporting and improve management of panel contracts.
- The procurement checklist will ensure that transactions can only be loaded in SAP if all the requirements have been met.

These two controls are currently in the final stages of development, after which user acceptance testing (UAT) will take place during November 2018. As soon as the UAT has been signed, these controls will be embedded in SAP.

In order to continuously detect any non-compliance, a SAP report will be drawn quarterly to monitor compliance with PPPFA requirements. Since July 2018, some of these reports have been extracted on a monthly basis. If non-compliance is identified, it will be escalated to the relevant senior manager for immediate action.



### 5.8 Consequence management

Three main approaches to consequence management measures have been undertaken, covering awareness and training, improvement of systems and processes, and disciplinary enquiries.

Table 18: Three-pronged approach to consequence management

Awareness and training	<p>Reinstatement of the Drumbeat meetings to close audit findings and to reinforce compliance with P&amp;SCM Procedure 32-1034 and other relevant policies, legislation, and guidelines.</p> <p>Provision of awareness training to all buyers across all sites.</p>
Systems and processes	<p>Development and implementation of a checklist system for purchasing documents, which has to be signed off by a senior manager. This is monitored at the Drumbeat meetings.</p> <p>SAP system enhancements to improve workflow for different procurement mechanisms and workflow controls are currently in the testing phase. This will address the current challenges identified during contract verification, for example, correct procurement mechanisms, CIDB, tax compliance, threshold determination, etc.</p> <p>Quarterly compliance monitoring system implementation for monetary thresholds and tax clearance.</p>
Disciplinary enquiries	<ul style="list-style-type: none"> <li>• Consequence management in Commercial is now managed by a dedicated resource and reported on a weekly basis.</li> <li>• The workflow controls in SAP will prevent many of the transgressions that contributed to the current breaches.</li> <li>• There are 77 cases that arose from condonations prepared relating to breaches in the commercial process. Of these, 54 had been closed out. A breakdown of the status of disciplinary cases is given in Figure 7.</li> </ul>

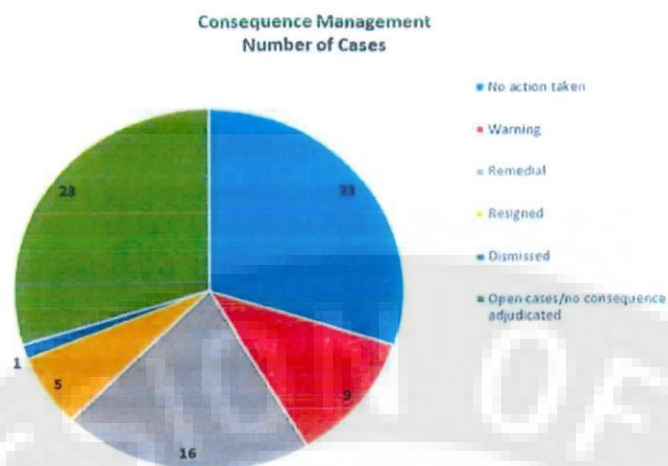


Figure 7: Consequence management number of cases

## 6 STAKEHOLDER MANAGEMENT

National Treasury was identified as a key stakeholder, as many of the procurement items require its support or approval relating to the use of procurement mechanisms such as sole source, emergency, modifications over a specific threshold, and cancellation of tenders, as shown in the table below.

Table 19: National Treasury involvement in procurement

Item	Summary
Emergency procurement	<ul style="list-style-type: none"> <li>Any emergency procurement occurs where there is a serious or unexpected situation that poses an immediate risk to health, life, property or environment.</li> <li>A deviation which does not fall within this definition requires prior National Treasury approval if it exceeds the thresholds mentioned below</li> </ul>
Sole Source procurement	<ul style="list-style-type: none"> <li>Sole Source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements.</li> <li>A deviation which does not fall within this definition require prior National Treasury approval (this is classified as Single Source procurement)</li> </ul>
Modifications to Construction related goods/services/works	<ul style="list-style-type: none"> <li>Contracts/Orders which vary by more than 20% or R20 mill from the original value require prior National Treasury approval.</li> </ul>
Modifications to All other goods/services	<ul style="list-style-type: none"> <li>Contracts/Orders which vary by more than 15% or R15 mill from the original value require prior National Treasury approval.</li> </ul>
Time variations for Infrastructure related contracts/ orders	<ul style="list-style-type: none"> <li>National Treasury approval is required in order to exceed the time for completion by more than 30% from the original duration.</li> </ul>
Cancellation of Tenders	<ul style="list-style-type: none"> <li>According to the 2017 PPPFA Regulations, National Treasury prior approval is required to cancel a tender for the second time.</li> </ul>

The inclusion of progress feedback relating to the Recovery Plan will be in the feedback to the DPE. Meetings with SNG Grant Thornton will take place on an agreed basis prior to and after an interim audit.

## 7 ESKOM ROTTEK INDUSTRIES (ERI)

ERI has made substantial progress on its contract reviews. It faces significant challenges, with three main notable risks:

- Labour broking orders were concluded based on confined sourcing without NT approval.
- The ERI DTC adjudicated transactions without a properly constituted quorum.
- Confined sourcing was incorrectly applied.

ERI had managed the following progress as per the Phase 1 close-out report:

- ERI conducted contract reviews on all active contracts in the 2018 financial year and previous two financial years.
- Purchase order reviews: thorough reviews of all purchase orders within the threshold parameters were conducted for FY2016, FY2017, and FY2018 (Quarters 1, 2, and 3).
- The population of contracts was obtained from the SAP system and included all contracts that were valid during the last three financial years, that is, FY2016, FY2017, and FY2018. Contracts established after 1 March 2018 did not form part of the review. Contracts still valid during FY2018 were reviewed first, followed by those for FY2017 and FY2016.
- A contract review dashboard was created to track the progress of the contract reviews. As at 23 March 2018, all 579 contracts established before 2 March 2018 for the past three financial years were part of the reviews. Of the 579 contracts, 22 contract files were not available at the time of the review.
- Thresholds for FY2017 were completed; currently, ERI is busy with other financial years, with progress reported for FY2015 and FY2016.

There is an approved plan for the subsidiary that was finalised and signed off on 15 October 2018, with a mini project team to mirror the activities of the broader audit recovery as a work stream. This team is closing out prior-year findings and addressing current compliance; it is part of the Recovery Programme meetings.

- **Review of emergencies and sole source for ERI:** data on emergencies had been received for review by 20 November 2018.
- **Feedback on Phase 1 close-out for ERI:** the actions for Phase 1 had not been closed out. An action plan and progress feedback from Phase 1 close-out still have to be received from relevant stakeholders. This will be continue until January 2019.
- **ERI contract reviews:** contract review data for ERI indicated that there were no contracts over R1 billion; thus, no contracts required review. A report will be drafted to indicate this for auditing purposes.
- **ERI training:** training for the Procurement or Buying team on the revised procedure and policy is to be confirmed. A need for retraining and assessment of the team has been identified from the data reviewed for contracts.
- **Consequence management:** year-to-date consequence management statistics were received and are to be reviewed.

- **Resources for ERI:** an additional resource was supplied to the ERI procurement recovery team to ensure prompt reviews and meeting of delivery dates.





## 8 SUSTAINABILITY OF THE PROGRAMME

### 8.1 Operating model changes

The Procurement and Supply Chain operating model was reviewed for alignment with customer needs. The model had informed changes to the structure. A compliance function was introduced in the RGC structure in P&SCM. Structures to support the operating model were developed for implementation in the 2017 financial year. Notably, the compliance function will ensure full compliance with the relevant regulations for all transactions, including those identified in the FY2017 PFMA note.

### 8.2 Leadership commitment and assistance

To instil a compliance culture in the organisation and for effective role modelling, Eskom leadership recommitted itself to ensuring compliance, ethical behaviour, and professionalism throughout the organisation. These efforts are led by the CFO, with the full support of the GCE.

The performance compacting of audit success is included in executive compacts, including those for all GEs. In addition, all GEs in the organisation lead and ensure compliance in the organisation. Initiatives headed by the GEs include:

- authorising all emergency orders that are placed; and
- signing off on all sole source transactions.

There were some changes to the Board and Exco, and the CFO conducted briefings on the Recovery Plan, for which support was received.

### 8.3 Procurement Recovery Plan

The broader initiatives of the Procurement Recovery Plan will address the following:

- Visible leadership and change management that address the wider impact on employees and their involvement
- Effective P&SCM systems and processes, including new systems, SAP, and non-SAP systems, together with codification and demand planning efforts
- Integrated effort to address audits, through capacitation of RGC, and plans for compliance, monitoring, and A&F
- Improvement of stakeholder relations and enhancement of awareness regarding procurement

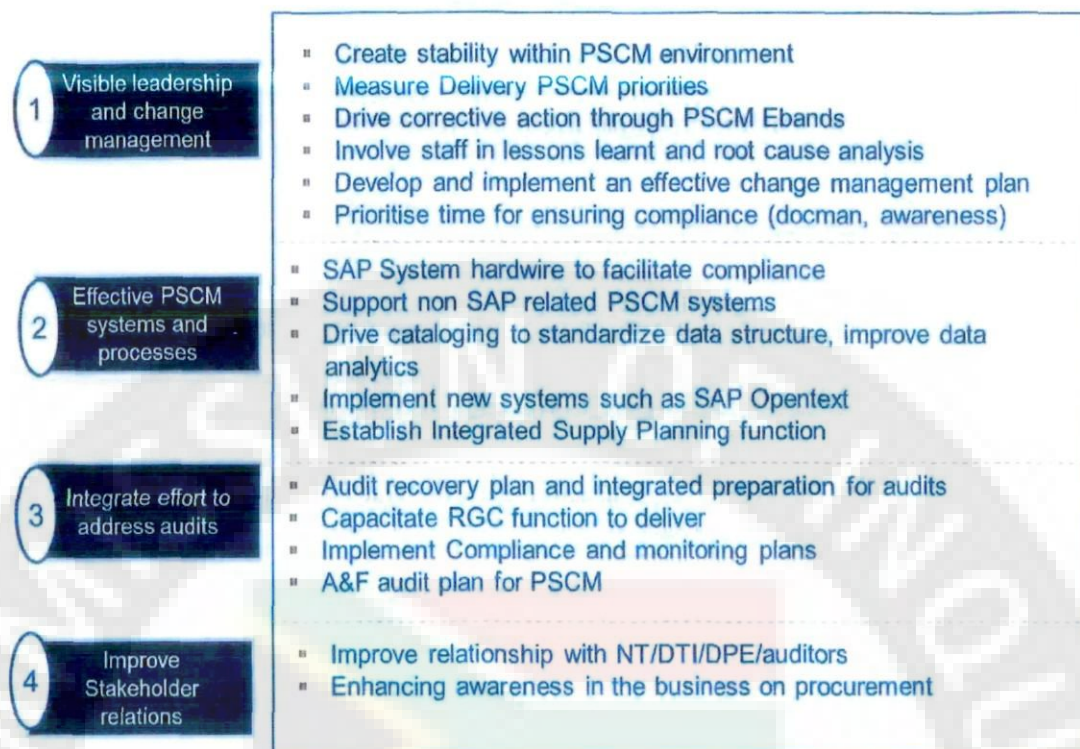


Figure 8: Procurement Recovery Plan focus

## 9 CONCLUSION

### 9.1 Comment on overall status

Team efforts have led to progress in review, investigation, and compilation of the condonation packages to seek to close-out of the reported irregular expenditure, as well as in efforts to ensure the prevention of future irregular expenditure. The most significant progress has been in the contract reviews and efforts to close out the Note 52 items and the reviews of contracts and emergencies, together with a compliance plan being implemented for current issues.

Given the processes that have been put in place for closing out required approvals and confirmations from a variety of stakeholders, both internal and external, there has been progress. Most of the items are currently with NT as the relevant authority for approval or are in the final stages of verification to go through for approvals.

The ACPO, with the team, is driving a number of key initiatives to improve the level of compliance, increase the use of automation, address change management, and improve policies for effectiveness and risk management. There is a focus on capacitation of procurement sourcing teams, internal advertisement for resources for automation, and redeployment of internal resources to support key activities.

### 9.2 Monitoring of progress on Recovery Plan

A detailed MS Project plan with milestones and weekly tracking is in place, with a dedicated planner. Weekly alignment meetings take place, where each business area is responsible for reporting on progress made during the previous week. At these meetings, potential risks and challenges are raised. Risks are then addressed through the necessary mitigation measures, and support is provided for overcoming challenges.

Fortnightly meetings with the CFO take place, where all progress, risks, and challenges are reported to the QTM members, who have the resources and decision-making power to assist and support the efforts. Feedback is also provided to Exco and the ARC as a standing item, where Eskom leadership provides monitoring and support.

Continued monitoring of the progress made, together with the newly implemented, more robust systems, will allow for continued progress in ensuring compliance in the procurement environment.

### 9.3 Next steps

The next steps on the Recovery Plan include the following:

- Obtain feedback from NT on the following condonation submissions: breach of the PPPFA in relation to tax clearances for Nuclear, non-compliance with CIDB

Regulations, use of sole sources, not following the tender process, and insufficient delegation of authority.

- Submit the following to NT after ETC and BTC support:
- Breach of PPPFA in relation to tax clearances for FY2016 and FY2017 for the Sourcing Department
- Consolidated condonations for monetary thresholds for FY2013 to FY2015
- Modifications relating to NT Instruction Note 3
- Tender processes not adhered to still going through approval for the internal condonation process
- Integrate efforts in broader procurement recovery for sustainability.

#### **9.4 Creating sustainability in efforts after recovery**

An awareness and communication programme on the recovery efforts is in place to keep Procurement staff and the business informed of the plan. Employee engagements continue in order to ensure continuous awareness regarding audit findings and to embed the new behaviour necessary for full compliance.

"Lessons learnt" Interventions will be set (per discipline) to share best practices and experiences and to identify engagement. Information on what has been learnt will be shared during implementation of the plan and will be stored for future use. Awareness sessions on audit qualification, PFMA reporting, and overall compliance will be the key themes.

A review of the efficiency and risks of the current P&SCM procedure is under way. Guidance and instruction notes to support Eskom P&SCM Procedure 32-1034 are issued via the RGC Department on a regular basis. The compliance function has developed a plan to address current issues as Recovery Plan close-outs. Functional compliance officers in the departments, a compliance section, and enhanced systems will also support the sustainability of efforts. In the short term, additional resources in terms of an external partner will support Compliance Plan implementation, focusing on skills transfer.

Changes in the SAP system, improvement in procurement sourcing planning, and clearing of backlogs on expiring contracts will also address sustainability. The broader Procurement Recovery Programme will address systemic, governance, and change issues beyond the Audit Recovery Plan.

**ADDITIONAL BUNDLE: SAMPLE E-MAILS EXTRACTED FROM ESKOM SERVER PREPARED FOR THE ZONDO COMMISSION  
(PREVIOUSLY PROVIDED WITH FULL DISCIPLINARY BUNDLES)– 22 FEBRUARY 2019**

No.	Description	
1.	Singh Server E-mails from Daniels Disciplinary Bundle	398 to 436
2.	Koko Additional Server E-mails	437 to 444
3.	Koko Server E-mails from Koko's Disciplinary Bundle	445 to 529
4.	Daniels Server E-mails from Daniels Disciplinary Bundle	530 to 564





SM71

**Subject:** FW: Eskom - Tegeta guarantee

**From:** Thuli.Zulu@absacapital.com [mailto:Thuli.Zulu@absacapital.com]  
**Sent:** 30 March 2016 03:09 PM  
**To:** Anoj.Singh@eskom.co.za  
**Cc:** steve.seaka@barclays.com  
**Subject:** Eskom - Tegeta guarantee

Dear Anoj

Regrettably, we confirm that Absa Bank Limited ("Absa") is unable to extend the guarantee that is issued with Tegeta as the beneficiary, when it expires on 31 March 2016. The view was taken internally that Absa will not have any association with transactions that involve the Sahara Group.

We wish to reiterate that Absa remains committed to working with Eskom and this decision has no bearing on the relationship with Eskom.

Regards

Thuli

Thuli Zulu | Head of State Owned Companies | Coverage - Public Sector | Barclays Africa  
Tel +27 (0)11 895 7033 | Mobile +27 (0)82 920 5340 | Email [thuli.zulu@absacapital.com](mailto:thuli.zulu@absacapital.com)  
15 Alice Lane, Sandton, Gauteng, South Africa  
[absacapital.com](http://absacapital.com)

Virginia Mgilane | Team Assistant | Coverage | Absa Capital  
Tel +27 (0)11 772 7157 | Mobile +27 (0)71 183 2594 | Email [virginia.mgilane@barclays.com](mailto:virginia.mgilane@barclays.com)

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A handwritten signature in black ink, located in the bottom right corner of the page.

SM74

**Subject:** FW: Fwd: 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL  
**Attachments:** image001.png; ATT00001.htm; 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL.docx; ATT00002.htm

**From:** Anoj Singh [mailto:[SinghA3@eskom.co.za](mailto:SinghA3@eskom.co.za)]  
**Sent:** 08 December 2015 03:36 PM  
**To:** Matshela Koko <[KokoMM@eskom.co.za](mailto:KokoMM@eskom.co.za)>  
**Subject:** Fwd: 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL

Hi M

Please review revised submission and if happy sign and give to Maya.

Thx

A

Sent from my iPhone

Begin forwarded message:

**From:** Faheema Badat <[FaheemaB@regiments.co.za](mailto:FaheemaB@regiments.co.za)>  
**Date:** 08 December 2015 at 3:28:03 PM SAST  
**To:** "anoj.singh@eskom.co.za" <[anoj.singh@eskom.co.za](mailto:anoj.singh@eskom.co.za)>  
**Cc:** Eric Wood <[EricW@regiments.co.za](mailto:EricW@regiments.co.za)>, Mahommed Bobat <[mbobat@regiments.co.za](mailto:mbobat@regiments.co.za)>  
**Subject:** 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL

Dear Anoj

Please find attached the Optimum Coal Mine Board memo.

Thank you.

Regards,  
Faheema Badat



## Info

## 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL

E-mail attachment: CA:\Users\WJONKER\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\UJRFPIQ\20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL.docx



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Created	08/12/2015 03:29 PM
Last Printed	08/12/2015 03:18 PM

## Related People

Author	KokoMM@eskom.co.za
	Add an author
Last Modified By	Faheema Badat
	Show All Properties



	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	4
		Effective Date	December 2015
		Office of the Company Secretary	

### EXECUTIVE SUMMARY

#### ROUND ROBIN SUBMISSION TO BOARD OF DIRECTORS (BOD)

##### 1. TITLE OF THE SUBMISSION

Prepurchase of coal from Optimum Coal Mine (Pty) Ltd ("OCM")

##### 2. RESOLUTION REQUIRED

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

##### 2.2 Executive summary and conclusion

2.2.1 Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5Mtpa by OCM as a result of business rescue proceedings.

2.2.2 There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.


2.2.3 The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk. Counterparty risk is mitigated via a cession of the coal to Eskom.

2.2.4 The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.

2.2.5 This proposal will result in a net present value benefit to Eskom of R238.9 million.

2.2.6 In conclusion this proposal provides much needed coal for business operations; mitigates the supply risk and provides a commercial benefit to Eskom.




	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	4
		Effective Date	December 2015
		Office of the Company Secretary	

### 3. SUMMARY OF FACTS

#### 3.1 Background

- 3.1.1 OCM was placed into business rescue around August 2015.
- 3.1.2 Eskom requires continuity of supply to the Hendrina Power Station of 5.5Mtpa at an average price of R150 per tonne. OCM cannot produce coal at a price of less than R450 per tonne.
- 3.1.3 The business rescue practitioners have maintained that the only manner in which the business could survive is that Eskom increase the price paid for coal received in terms of this contract.
- 3.1.4 Eskom maintained its position that it will not look at an increased coal price and that the supplier is expected to continue supplying at the contracted price.
- 3.1.5 On 24 November 2015, the Group Executive Generation met with the business rescue practitioners to discuss the way forward.
- 3.1.6 The business rescue practitioners indicated that they were looking at disposing the interest to the proposed purchaser. The Due Diligence commenced around the 10<sup>th</sup> November 2015 and is currently underway. The purpose of the meeting was to understand Eskom's concerns.
- 3.1.7 The proposed purchaser representatives present at the meeting confirmed that the company had commenced the Due Diligence and that it was committed to a 30 day due diligence with a definitive agreement to be in place by 15 December 2015.
- 3.1.8 The business rescue practitioners advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought from Eskom.
- 3.1.9 At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated that OCM is being taken out of business rescue proceedings and that it would honour the contract in its current form with no amendments.
- 3.1.10 They further advised that they will follow the contract route to process the Eskom claim of R2.2 billion.
- 3.1.11 As at date of this submission, Eskom has not yet received the formal notification of the status of OCM from the business rescue practitioner.



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3.1.12 Koorfontein Mine, a subsidiary of OCM, currently supplies Komati Power Station and this contract expires 31 January 2016 with supply commitments to be met by mid-January 2016.

3.1.13 While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability has compromised the security of supply to Hendrina Power Station in the short to medium term. Therefore Eskom would require a firm resolution on OCM by mid December 2015.

3.1.14 The risk of security of supply for Hendrina Power Station and Komati Power Station is of such key national interest that Eskom thought it appropriate to bring it to the attention of the Department of Mineral Resources.

3.1.15 This upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key authorities to assist in assuring resolution to the coal supply situation and certainty going forward.

3.1.16 A copy of the correspondence addressed to the Director General, Department of Mineral Resources, is attached hereto.

3.1.17 The reply from the Department of Mineral Resources is attached hereto.

3.1.18 The Department of Mineral Resources has requested that Eskom consider solutions to ensure the security of supply risk is mitigated in National Interest.

### 3.2 Key assumptions

The submission and decision required set out herein, is based on the following key assumptions:

3.2.1 OCM is formally declared not to be in business rescue as required by the provisions of the Companies Act.


3.2.2 The transaction between OCM and the proposed purchaser is formally approved by the regulatory authorities.

3.2.3 Eskom is securing its coal supply for two Power Stations facing imminent adversity, based on the mine plan provided by OCM.

### 3.3 Financial implications

3.3.1 Koorfontein Mine had offered a 9% increase on the current price to R415 per tonne. The proposed buyer has advised Eskom that it will adhere to the current price of R380 per tonne for the next 12 months as compared to the R415 per tonne proposed. This will translate into a net present value benefit of R72 million over the year.



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		Effective Date	December 2015
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- 3.3.2 The proposed buyer has also committed to providing a 5% discount to the current OCM price which amounts to R88.7 million.

### 3.4 Benefits of the advance purchase of coal

- 3.4.1 The advance purchase of R1.68 billion will secure a future supply of coal to Eskom and will be funded by a reduction of Eskom's coal stockpile from 54 days to 40 days.
- 3.4.2 OCM will cede the unsupplied portion of coal under the prepurchase agreement as security.
- 3.4.3 The net present value of the proposed transaction results in cash benefit of circa R238.9 million

Net present value of cash flows	
Cost of funding R1.68 billion for 12 months (*1)	(R135.8m)
Reduction in working capital at WACC – 14.5%	R213.4m
5% discount on pre-purchased coal from OCM	R88.7m
Discount received from Koorfontein Colliery	R72.6m
<b>Net present value benefit to Eskom</b>	<b>R238.9m</b>

1. Funded at 3 month JIBAR plus 140 basis points over a period of 12 months as a bullet redemption

### 3.5 Human Resource implications


No implications.

### 3.6 Risks (including Environment, Legal or Contractual risks) and other considerations

The risk identified at this stage relate to security of supply being compromised, regulatory approvals not timeously obtained and that there would be no contract in place by end December 2016. It is submitted that the strategy set out herein goes a long way to mitigating the identified risks.

- 3.6.1 Operational and supplier risk mitigation by pledge and cession of coal purchased.
- 3.6.2 Proceeds of R1.68 billion prepayment of coal are to be used by OCM to extinguish existing liabilities to ensure the business continues as a going concern.
- 3.6.3 Proposed purchaser will lift current empowerment ownership from 30% to 51%.
- 3.6.4 The shutdown of OCM could potentially result in thousands of job losses and add to the negative publicity surrounding Eskom.



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### 3.7 Verification by independent party (if applicable)

Regiments Capital (Proprietary) Limited

#### SIGNED

\_\_\_\_\_  
**Anoj Singh**  
**CHIEF FINANCIAL OFFICER**

Who hereby represents that the above information is correct.

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
**Matshela Koko**  
**GROUP EXECUTIVE: GENERATION**

Who hereby represents that the above information is correct.

\_\_\_\_\_  
 DATE

Submission prepared by: M Koko  
 Contact Number: +2782 859 9334



SM75

**Subject:** FW: Fwd: ESKOM - R1,7bn  
**Attachments:** ABSA Demand Guarantee.pdf; ATT00001.htm; ABSA PERFORMANCE GUARANTEE.pdf; ATT00002.htm

**From:** Anoj Singh [mailto:SinghA3@eskom.co.za]  
**Sent:** 10 December 2015 10:24 AM  
**To:** EricW@regiments.co.za  
**Subject:** Fwd: ESKOM - R1,7bn

Please review and advise

Thx

A

Sent from my iPhone

Begin forwarded message:

**From:** <emmerentia.vaneyslend@barclays.com>  
**Date:** 10 December 2015 at 9:40:38 AM SAST  
**To:** <Anoj.Singh@eskom.co.za>  
**Cc:** <Thuli.Zulu@absacapital.com>  
**Subject:** ESKOM - R1,7bn

Dear Anoj,

Thuli requested, I provide you with details on a guarantee, to be cash covered for R1.7bn.

My understanding is, that the transaction relates to the supply of goods/service.

In this regard, please find attached the templates for the Demand Guarantee :

Under a Demand Guarantee:

The Guarantor's liability under this guarantee is principal in nature and is not subject to any agreement.

The Guarantor will pay on written demand and will not determine the validity of the demand or become party to any claim or dispute of any nature which any party may allege.

Pricing for the Demand Guarantee: 0,30 pct p.a. charged quarterly in advance.

Also the template for the Performance Guarantee :

Under a Performance guarantee:

The guarantee refers to the Contract and what the contract is in respect of.

The bank, then guarantees the payment to the Beneficiary on the Beneficiary's written demand of the Guaranteed Amount in the event that the Applicant fails to fulfil any of its obligations under the Contract.

Pricing for the Performance Guarantee: 0,15 pct p.a. charged quarterly in advance.

The above pricing are provided on the basis that this transaction will be cash covered. Should circumstances change, please advise and we will re-price accordingly.

My understanding is also, that this is an urgent requirement, which please be advised we would be in a position to issue urgently before close of business today.

Regards

Emmerentia Van Eyslend | Vice President | Trade and Working Capital |  
| Corporate Banking Origination |  
Tel +27 (0)11 772 7724 | Mobile +27 (0) 83 550 1699 | Email  
[Emmerentia.vaneyslend@barclayscapital.com](mailto:Emmerentia.vaneyslend@barclayscapital.com)  
First Floor Absa Capital Building 15 Alice Lane Sandton  
[www.Barclays.com](http://www.Barclays.com)

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For important disclosures, please see: [www.barclays.com/salesandtradingdisclaimer](http://www.barclays.com/salesandtradingdisclaimer) regarding market commentary from Barclays Sales and/or Trading, who are active market participants; and in respect of Barclays Research, including disclosures relating to specific issuers, please see <http://publicresearch.barclays.com>.

---





Corporate and  
Investment Banking

180 Commissioner Street  
Absa Towers North  
Johannesburg  
South Africa

PO Box 7735  
Johannesburg  
2000  
South Africa

Tel 0860 777 469  
Fax +27 (0)11 224 3173

BGICentre@absa.co.za

<insert name of beneficiary>  
<physical address of the beneficiary 1<sup>st</sup> line>  
<physical address of beneficiary 2<sup>nd</sup> line>  
<postal code>  
(the "Beneficiary")

### DEMAND GUARANTEE

Guarantee Number: <insert guarantee number>

1. Absa Bank Limited, Registration Number 1986/004794/06, of Absa Towers North, 180 Commissioner Street, Johannesburg 2001 (the "Guarantor"), duly represented by <insert name of signatory 1> as <insert capacity of signatory 1> and <insert name of signatory 2> as <insert capacity of signatory 2> hereby guarantee the payment of up to a maximum aggregate amount of <insert the guaranteed amount> (<insert the guaranteed amount in words>) (the "Guaranteed Amount") to the Beneficiary on the Beneficiary's written demand stating that the amount is due and payable by <insert the name of the Applicant>, <Registration Number to be inserted of the Applicant> (the "Applicant") in terms of <insert details of the contract> (the "Contract").
2. The Guarantor's liability under this guarantee is principal in nature and is not subject to any agreement. The Guarantor's liability shall not be reduced, or in any way be affected by any alteration of the terms of the Contract or any other arrangements between the Applicant and Beneficiary, whether oral or in writing.
3. The Guarantor will pay on written demand and will not determine the validity of the demand or become party to any claim or dispute of any nature which any party may allege.
4. All demands must be signed by authorised signatories whose signatures needs to be confirmed by your bankers or authenticated SWIFT.
5. This guarantee shall expire at 12:00 on the <insert expiry date> (the "Expiry Date") and any claim and statement received hereunder must be received at this office on or before the Expiry Date and after the Expiry Date this guarantee shall be ineffective, whether returned to the Guarantor for cancellation or not and no claims or statement will be considered after the expiry date irrespective of when such claims first arose.

Member of



## DEMAND GUARANTEE

Guarantee Number <insert guarantee reference number>

6. This guarantee is neither negotiable nor transferable and is restricted to the payment of a sum of money only and limited to the Guaranteed Amount.
7. With each payment by the Guarantor under this guarantee, the Guarantor's liability shall be reduced *pro rata*.
8. The Applicant shall be responsible for all costs in respect of this guarantee.
9. This guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the jurisdiction of the South African courts.
10. The Guarantor accepts that the Beneficiary's address reflected above is the Beneficiary's *domicilium citandi et executandi* for all purposes in connection with this guarantee.

Signed at <insert place of signature> on <insert day> <insert month> <insert year>

for and on behalf of Absa Bank Limited  
<insert signatory1>  
<insert capacity signatory1>

for and on behalf of Absa Bank Limited  
<insert signatory2>  
<insert capacity signatory2>





Corporate and  
Investment Banking

180 Commissioner Street  
Absa Towers North  
Johannesburg  
South Africa

PO Box 7735  
Johannesburg  
2000  
South Africa

Tel+27 (0)860 777 469  
Fax+27 (0)11 224 3173

www.bgicentre@absa.co.za

<insert name of beneficiary>  
<physical address of the beneficiary 1<sup>st</sup> line>  
<physical address of beneficiary 2<sup>nd</sup> line>  
<postal code>  
(the "Beneficiary")

### PERFORMANCE GUARANTEE

Guarantee Reference Number <insert guarantee reference number>

<insert order number or heading>

Dear Messrs

1. You have entered into a written contract with <insert the name of the Applicant> <insert the Registration Number of the Applicant> on <insert date of the Contract> <insert what the contract is in respect of> (the "Contract") in terms of which the Applicant is required to furnish the Beneficiary with a performance guarantee for the maximum amount of <insert the guaranteed amount> (<insert the guaranteed amount in words>) (the "Guaranteed Amount").
2. We Absa Bank Limited, Registration Number 1986/004794/06 of Absa Towers North, 180 Commissioner Street, Johannesburg, 2001 (the "Bank") hereby guarantees the payment to the Beneficiary on the Beneficiary's written demand of the Guaranteed Amount in the event that the Applicant fails to fulfil any of its obligations under the Contract. Such written demands shall bear the confirmation of your banker or authenticated SWIFT, that the signatories thereon are authorised to sign.
3. The Bank's liability under this guarantee ("Guarantee") is principal in nature and is not subject to any agreement. The Bank's liability shall not be reduced, or in any way be affected by any alteration of the terms of the Contract or any other arrangements between the Applicant and the Beneficiary, whether oral or in writing.
4. The Bank will pay on written demand and will not determine the validity of the demand or become party to any claim or dispute of any nature which any party may allege.
5. All demands must be signed by authorised signatories whose signatures needs to be confirmed by your bankers or authenticated SWIFT.

Member of





## Performance Guarantee

Guarantee Number &lt;insert guarantee number&gt;

6. This Guarantee shall expire at the abovementioned office of the Bank on <insert the expiry date> (the "Expiry Date") and any claim and statement received hereunder must be received at this office before the Expiry date. After Expiry Date, this Guarantee shall expire, whether returned to the Bank for cancellation or not and any claim or statement received after the Expiry Date shall be ineffective, irrespective of when such claims first arose.
7. This Guarantee is neither negotiable nor transferable and is restricted to the payment of a sum of money only and limited to the Guaranteed Amount.
8. With each payment by the Bank under this Guarantee, the Bank's liability shall be reduced *pro rata*.
9. This Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the jurisdiction of the South African courts.
10. The Bank accepts that the Beneficiary's address reflected above is the Beneficiary's *domicilium citandi et executandi* for all purposes in connection with this Guarantee.
11. The Applicant shall be responsible for all costs in respect of this Guarantee.

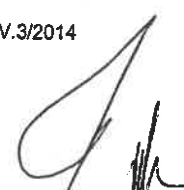
Signed at &lt;insert the place of signature&gt; on &lt;insert the day&gt; &lt;insert the month&gt; &lt;insert the year&gt;.

for and on behalf of Absa Bank Limited  
 <insert full name of signatory 1>  
 <insert capacity of signatory 1>

for and on behalf of Absa Bank Limited  
 <insert full name of signatory 2>  
 <insert capacity of signatory 2>

## AS WITNESSES:

1. \_\_\_\_\_ 2. \_\_\_\_\_



SM76

**Subject:** FW: Re: ESKOM - R1,7bn  
**Attachments:** image001.jpg

**From:** Anoj Singh [mailto:SinghA3@eskom.co.za]  
**Sent:** 10 December 2015 01:34 PM  
**To:** Suzanne Daniels <DanielSM@eskom.co.za>  
**Cc:** Caroline Henry <HenryCM@eskom.co.za>  
**Subject:** Re: ESKOM - R1,7bn

Hi C

Please arrange for the transfer of funds to ABSA for the issuance of an on Demand bond that includes CP.

I will revert by 2pm with CP for the Bond.

Timing is close of business today please if possible.

Thx

A

Sent from my iPhone

On 10 Dec 2015, at 12:32 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Hi Caroline

I actually thought for this transaction we would use the draw down one? See the attached proposed agreement between the parties.

Best Regards

**SUZANNE DANIELS**

Company Secretary

Eskom Holdings SOC Ltd

Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327

Email: [daniels.suzanne@eskom.co.za](mailto:daniels.suzanne@eskom.co.za)

<image001.jpg>

REPRESENT YOUR POWER 49

**From:** Caroline Henry  
**Sent:** Thursday, December 10, 2015 12:30 PM  
**To:** Suzanne Daniels  
**Cc:** Anoj Singh  
**Subject:** RE: ESKOM - R1,7bn

Hi Suzanne,

I assume you would go for the performance guarantee which commercial use regularly.

If we are to do a cash backed transaction we need to transfer the funds & it is already getting late for today please advise when the guarantee needs to be provided.  
 Anoj mentioned there are 3 CP's before they can draw on the guarantee please advise how we will incorporate that into the performance guarantee  
 I am just checking pricing although it looks fair  
 Thanks  
 Caroline

**From:** Anoj Singh  
**Sent:** Thursday, December 10, 2015 10:59 AM  
**To:** Suzanne Daniels; Caroline Henry  
**Subject:** Fwd: ESKOM - R1,7bn

FYI

A

Sent from my iPhone

Begin forwarded message:

**From:** <emmerentia.vaneyslend@barclays.com>  
**Date:** 10 December 2015 at 9:40:38 AM SAST  
**To:** <Anoj.Singh@eskom.co.za>  
**Cc:** <Thuli.Zulu@absacapital.com>  
**Subject:** ESKOM - R1,7bn

Dear Anoj,  
 Thuli requested, I provide you with details on a guarantee, to be cash covered for R1.7bn.

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Under a Performance guarantee:

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Pricing for the Performance Guarantee: 0,15 pct p.a. charged quarterly in advance.

The above pricing are provided on the basis that this transaction will be cash covered.  
Should circumstances change, please advise and we will re-price accordingly.

My understanding is also, that this is an urgent requirement, which please be advised we would be in a position to issue urgently before close of business today.

Regards

Emmerentia Van Eyslend | Vice President | Trade and Working Capital |  
| Corporate Banking Origination |  
Tel +27 (0)11 772 7724 | Mobile +27 (0) 83 550 1699 | Email  
[Emmerentia.vaneyslend@barclayscapital.com](mailto:Emmerentia.vaneyslend@barclayscapital.com)  
First Floor Absa Capital Building 15 Alice Lane Sandton  
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<Letter Agreement - Tegeta - Eskom - Draft 1 (002) (3).doc>

SM83

**Subject:** FW: Fwd: 16h00 20151210 Letter Agreement - Tegeta - Eskom - execution copy  
**Attachments:** 16h00 20151210 Letter Agreement - Tegeta - Eskom - execution copy.doc;  
ATT00001.htm

**From:** Anoj Singh [mailto:[SinghA3@eskom.co.za](mailto:SinghA3@eskom.co.za)]  
**Sent:** 10 December 2015 04:26 PM  
**To:** [EricW@regiments.co.za](mailto:EricW@regiments.co.za)  
**Subject:** Fwd: 16h00 20151210 Letter Agreement - Tegeta - Eskom - execution copy

Sent from my iPhone

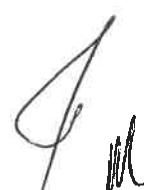
Begin forwarded message:

**From:** Suzanne Daniels <[DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)>  
**Date:** 10 December 2015 at 4:13:35 PM SAST  
**To:** Anoj Singh <[SinghA3@eskom.co.za](mailto:SinghA3@eskom.co.za)>  
**Subject:** 16h00 20151210 Letter Agreement - Tegeta - Eskom - execution copy

Hi Anoj

Herewith the Agreement as amended.

Regards  
Suzanne





## Info

13

A &gt; TEAMS &gt; ENVIRONMENT &gt; CONFIDENTIAL: Project Mag 2 &gt; 24. ANOJ SINGH &gt; 3 April 2018

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 Created 10/12/2015 04:00 PM  
 Last Printed 10/12/2015 12:58 PM

**Related People**

Author CDH  
 Add an author  
 Last Modified By Suzanne Daniels

**Related Documents**

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 Edit Links to Files  
 Show All Properties

A handwritten signature in black ink, located at the bottom right of the page.

# **AGREEMENT REGARDING THE PREPURCHASE OF COAL FROM OPTIMUM COAL (PTY) LTD**

- 1 Eskom Holdings SOC Limited ("**Eskom**") and Optimum Coal Mine Proprietary Limited (In business rescue), registration number 2007/005308/07 ("**OCM**") concluded a coal supply agreement (with BHP Billiton during 1993 and transferred to OCM during 2008) in terms of which OCM supplies and delivers coal to Eskom in accordance with Eskom's approvals framework in accordance with the terms and conditions set out therein ("**Existing Coal Supply Agreement**"). OCM has become the subject of business rescue proceedings.
- 2 Eskom has obtained a mandate from its board of directors to enable Tegeta Exploration and Resources Proprietary Limited, registration number 2006/014492/07 ("**Tegeta**") to pre-purchase coal from OCM for the supply and delivery of coal in accordance with Eskom's approvals framework on substantially the terms and conditions set out in the Existing Coal Supply Agreement. Tegeta is in the process of acquiring all the shares on OCM from the existing shareholder, OCM Holdings ("**Share Transfer**").
- 3 In order to enable Tegeta and OCM to undertake the required supply and delivery of coal to various Eskom power stations, Tegeta has agreed to advance funds to OCM in order for OCM to continue to supply and deliver coal to Eskom in terms of the Existing Coal Supply Agreement.
- 4 The parties to this letter agreement ("**Parties**") wish to enter into a binding agreement ("**Agreement**"), to facilitate the financial commitments which each party will be required to make in order to procure the timely supply and delivery of the coal required by Eskom on the terms and conditions of the Existing Coal Supply Agreement.
- 5 **Conditions Precedent**
  - 5.1 Save for clauses 1, 5, and 7 to 12 all of which will become effective immediately, this Agreement is subject to the fulfilment of the conditions precedent that by no later than 17h00 on 31 March 2016 –
    - 5.1.1 all approvals and consents under the Mineral and Petroleum Resources Development Act, No. 28 of 2002 ("**MPRDA**") required for the Share Transfer, including but not limited to section 11 approval, has been obtained by the Parties;
    - 5.1.2 all agreements and transactions contemplated in this Agreement (to the extent necessary) have been approved by the competition authorities in terms of the Competition Act, No 89 of 1998;
    - 5.1.3 the company secretary of OCM has delivered a confirmation notice to Eskom confirming that pursuant to the Share Transfer, the shares in OCM has been transferred to Tegeta and Tegeta is registered as such in the register of members of OCM; and
    - 5.1.4 the legal advisors of Eskom has issued a confirmation letter that the conditions precedent set out in this Agreement have been fulfilled.
- 6 **Terms of Agreement**
  - 6.1 Eskom will make an advance payment to OCM to prepurchase future coal supply in terms of the Existing Coal Supply Agreement in the amount of R 1 680 000 (one billion six hundred and eighty million rand) ("**Advance Payment**") payable on fulfillment of the conditions precedent set out in clause 5.1 above.



- 6.2 Pursuant to clause 6.1, Eskom will issue a bank guarantee ("**Guarantee**") in favour of Tegeta in the amount of R 1 680 000 (one billion six hundred and eighty million rand) ("**Guarantee Amount**") to secure the payment of the Advance Payment. It is recorded that the issue of the Guarantee will be conditional on the similar terms as set out in clause 5 hereof.
- 6.3 Notwithstanding the provisions of the Existing Coal Supply Agreement the following shall apply -
- 6.3.1 Tegeta will procure that for supply to Eskom from the OCM mine in terms of the Existing Coal Supply Agreement, for the 12 month period commencing on 1 January 2016 to 31 December 2016, a 5% discount shall be applied to the agreed price of R 154 (one hundred and fifty four rand) per metric ton. Accordingly the price payable for supply from the OCM mine shall be R 146.30 (one hundred and forty six rand and thirty cents) per metric ton; and
- 6.3.2 for supply in accordance with the Existing Coal Supply Agreement from the Koorfontein mine, the price payable shall be as set out as in the Existing Coal Supply Agreement, being R 380 (three hundred and eighty rand) per metric ton for the period 1 January 2016 to 31 December 2016.
- 6.4 In lieu of the Advance Payment, in respect of all invoices issued by OCM to Eskom relating to supply of coal from the Optimum Colliery, Koorfontein mine and the Brakfontein mine ("**Total Invoices**"), at the end of each month commencing 28 February 2016 Tegeta shall procure that OCM issues a credit note to Eskom equal to R140 000 000 (one hundred and forty million rand) until the full amount of the Advance Payment has been recovered in full.
- 6.5 In the event that the amount payable in respect of the Total Invoices is more than R140 000 000 (one hundred and forty million rand), any amounts payable in respect of the Total Invoices in excess of R140 000 000 (one hundred and forty million rand) shall be payable to Tegeta.
- 6.6 In the event that the amount payable in respect of the Total Invoices is less than the R140 000 000 (one hundred and forty million rand), any amounts due and payable to Eskom shall incur interest at prime overdraft rate plus 2.5% until settled in full.
- 6.7 Tegeta shall, or shall procure that OCM, as soon as possible after the Sale Transfer, register a special notarial bond or various special notarial bonds in favour of Eskom with the relevant deed registry in respect of all existing and future coal produced or to be produced by OCM at the Optimum Colliery, Koorfontein mine and the Brakfontein mine.
- 6.8 To the extent required, Eskom shall obtain the required approvals in terms of the Public Finance Management Act, 1999.
- 7 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Letter not incorporated in this Letter shall be binding on either of the Parties. The Parties will as soon as possible after the signature of this Agreement execute comprehensive agreements relating to the subject matter of this Agreement and which will contain further detailed provisions regarding the arrangements contemplated herein.



- 8 In the event of any of the Parties ("**Defaulting Party**") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another Party ("**Aggrieved Party**") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.
- 9 No addition to or variation, deletion, or agreed cancellation of all or any paragraphs or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 10 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 11 This Agreement shall be governed by the laws of the Republic of South Africa and each Party hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 12 Each of the Parties hereby agrees, by countersigning this Agreement below, that it binds itself to the provisions of this Agreement, and the natural person signing in a representative capacity hereby warrants that he/she is fully authorised.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2015

For and on behalf of  
**ESKOM HOLDINGS SOC LIMITED**

Signature \_\_\_\_\_

Name of Signatory \_\_\_\_\_

Designation of Signatory \_\_\_\_\_

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2015

For and on behalf of  
**TEGETA RESOURCES (PROPRIETARY)  
LIMITED**



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory



*[Handwritten signature]*



SM84

**Subject:** FW: Fwd: ESKOM - R1,7bn  
**Attachments:** image001.png; ATT00001.htm; ESKOM APPLICATION.pdf; ATT00002.htm

**From:** Anoj Singh [mailto:SinghA3@eskom.co.za]  
**Sent:** 10 December 2015 04:44 PM  
**To:** EricW@regiments.co.za  
**Subject:** Fwd: ESKOM - R1,7bn

FYI

Sent from my iPhone

Begin forwarded message:

**From:** <emmerentia.vanevslend@barclays.com>  
**Date:** 10 December 2015 at 4:22:46 PM SAST  
**To:** <HenryCM@eskom.co.za>, <SinghA3@eskom.co.za>  
**Cc:** <Thuli.Zulu@absacapital.com>, <DanielSM@eskom.co.za>  
**Subject:** RE: ESKOM - R1,7bn

Dear Caroline,  
 Please find attached the guarantee application form to be duly completed by authorized signatories.  
 I have forwarded the below request to our Legal department for vetting ,to be included in our approved wording.  
 Will forward drafts as soon as possible.

Thanks  
 Emmerentia

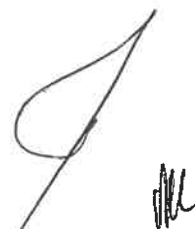
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**From:** Caroline Henry [mailto:HenryCM@eskom.co.za]  
**Sent:** Thursday, December 10, 2015 3:34 PM  
**To:** Van Eyslend, Emmerentia: Absa (JHB); Anoj Singh  
**Cc:** Zulu, Thuli: ABSA Capital (JHB); Suzanne Daniels  
**Subject:** RE: ESKOM - R1,7bn

PS guarantee is for 3 months  
 Thanks  
 Caroline

**From:** Caroline Henry  
**Sent:** Thursday, December 10, 2015 3:22 PM  
**To:** 'emmerentia.vanevslend@barclays.com'; Anoj Singh  
**Cc:** Thuli.Zulu@absacapital.com; Suzanne Daniels  
**Subject:** RE: ESKOM - R1,7bn

Emmerentia,  
 Herewith the terms for the guarantee  
 I confirm the full amount is on call at present with yourselves  
 Please advise final pricing & when we can expect drafts.  
 Thanks very much



In favour of: Tegeta Exploration and Resources Proprietary Limited, registration number 2006/014492/07

& Eskom Holdings SOC Limited

Amount: R 1 680 000 000

Guarantee payable on non-performance of Eskom in the event the Conditions Precedent below are met:

- 1.1.1 all approvals and consents under the Mineral and Petroleum Resources Development Act, No. 28 of 2002 ("MPRDA") required for the Share Transfer, including but not limited to section 11 approval, has been obtained by the Parties;
- 1.1.2 all agreements and transactions contemplated in this Agreement (to the extent necessary) have been unconditionally approved by the competition authorities in terms of the Competition Act, No 89 of 1998;
- 1.1.3 the company secretary of Optimum Coal Mine Proprietary Limited (in business rescue), registration number 2007/005308/07 (OCM) has delivered a confirmation notice to Eskom confirming that pursuant to the Share Transfer, the shares in OCM has been transferred to Tegeta and Tegeta is registered as such in the register of members of OCM;
- 1.1.4 to the extent required, Eskom has obtained required approvals in terms of the Public Finance Management Act, 1999; and
- 1.1.5 the legal advisors of Eskom has issued a confirmation letter that the conditions precedent set out in this Agreement have been fulfilled.

Kind Regards

Caroline Henry

Senior General Manager - Treasury | Treasury Department | Finance Division | Eskom Holdings SOC Ltd.

CG U43 | Megawatt Park | Maxwell Drive | Sunninghill | Sandton

Tel: +27 (0)11 800 2901 | Fax2Email +27 (0)86 660 1088 | Mobile +27 (0)82 893 4994

Email : [caroline.henry@eskom.co.za](mailto:caroline.henry@eskom.co.za)

**From:** [emmerentia.vaneyslend@barclays.com](mailto:emmerentia.vaneyslend@barclays.com) [<mailto:emmerentia.vaneyslend@barclays.com>]

**Sent:** Thursday, December 10, 2015 2:12 PM

**To:** Anoj Singh; Caroline Henry

**Cc:** [Thuli.Zulu@absacapital.com](mailto:Thuli.Zulu@absacapital.com)

**Subject:** RE: ESKOM - R1,7bn

Dear Anoj and Caroline.

As stated in below email ,pricing quoted on an annualized basis.

To clarify, should you require the guarantee to run for 1 quarter only,pricing would be: 0,0375 pct per quarter for the Performance guarantee

And 0,075 pct for the Demand Guarantee.

Further to discussion with Caroline, the guarantee by its nature, is a fall back instrument ,where open account payment are assumed – thus not intended to be used to effect payment.

With the Performance guarantee, the written demand would therefore state the breach of contract ,in which the conditions were not met and payment are hence demanded.

I also provide details,below of the Escrow account ,for the purpose of this transaction.

**The Escrow Account**

The Escrow account, though is a financial instrument used to intermediate payment transactions in the international and local trade and services which protects both the buyer and the seller by appointing the Bank to act as the Escrow manager. The Bank is the custodian of the funds. Disbursement of the funds by the Bank is dependent on the fulfilment of the contractually agreed conditions by the transacting parties.

The product is currently used in the Trade and Non trade transactions. The parties involved in the Escrow accounts are:

Seller  
Client  
Escrow Agent (Bank)

The Trade and Non Trade Escrow accounts will deal with products which include but not limited to;

#### Trade Escrow Account

Purchase and sale of Goods

#### Non Trade Escrow Account

Share of Stock in a corporation  
Services rendered  
Mergers and Acquisition deals  
Debentures

#### Escrow Account

Escrow Account provides protection and convenience to both the Client and the Seller. The Escrow Agent is a third impartial party to the transaction. Escrow accounts enables the Client and the Seller to transact business with each other through an Escrow Agent (Bank), thereby minimizing their risk. The Escrow Account maybe viewed as a risk mitigation tool as it allows security for any payment risk that may not be evident when entering into the agreement. In the Escrow arrangement a tripartite agreement is signed between Client, Seller and the Escrow Agent.

#### Escrow Agreement

An Escrow Agreement is a legal document between the Client the Seller and the Escrow Agent (Bank). The Escrow Agreement outlines the conditions that parties are required to fulfil. All parties are agreeing on all terms and conditions relating to the delivery of goods or services to be rendered. The Bank who is nominated as an Escrow Agent acts only as a paymaster and is the custodians of the funds. Any changes or cancellation to the Escrow Agreement has to be agreed by all parties to the Escrow Agreement. The Bank has no right to alter/amend terms of the agreement or to prevent parties from making alteration to the original agreement if both parties have consented.

#### The Escrow Agent (Absa)

The Escrow Agent (Bank) or Manager is an added benefit to both parties as the Escrow Agent (Bank) has the operational capabilities to execute all payments under the agreement. Due to the simplicity of the structure of the structure of the Escrow account, this allows and makes a seemingly complicated transactions to become real and performable, hence making it more attractive without having to go into a detailed credit process as required by other trade instruments.



*Handwritten signature*





## 2.1 Only to be completed in respect of property guarantees

[illegible]

Amount in words

from and including	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465
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bank charges at

upon receipt of written advice from

that the following transactions have been completed

*\*Delete whichever is not applicable*

### Undertaking

The applicant hereby authorises the bank, acting reasonably, to withdraw from this undertaking at any time prior to registration of the transaction(s) should any circumstances arise which prevent or unduly delay the registration of the abovementioned transaction(s), whereafter the abovementioned amount will no longer be held at the disposal of the beneficiary mentioned herein.

### Bank charges

The bank is authorised to debit my/our account no \_\_\_\_\_ in your books with all

bank charges relating to the issue of the guarantee and all other reasonable costs in connection herewith.

### Undertaking

The bank is hereby irrevocably and *in rem suam* authorised to pay the said amount or any lesser amount in accordance with the guarantee on the first demand being made, without further reference to the applicant and without requiring proof or, to the extent allowed by law, the applicant's agreement that the amounts so demanded are or were due and notwithstanding that the applicant may dispute the validity of any such demands or payments; provided that the bank shall be obliged to act reasonably.

The applicant undertakes to pay to the bank on demand all amounts paid by the bank in terms hereof. A certificate issued by any manager of the bank shall be sufficient proof, until the contrary is proved, of the amount due by the applicant to the bank in terms of the guarantee and this request, and it shall not be necessary to prove the appointment of the person signing the certificate on behalf of the bank.

The bank is hereby authorised, at its own discretion, and if necessary, to debit any account in the applicant's name at any time with the said amount as well as costs and commission at a rate determined by the bank from time to time payable in connection with the guarantee and reasonable legal costs, including legal costs between attorney and own client and to credit the amount to a separate covering account pending the payment of the said amount.

The applicant shall be obliged to pay interest on any amount paid by the bank in accordance with the terms of the guarantee at a rate equal to the bank's prime rate or such other rate agreed upon between the bank and the applicant, calculated from the date upon which the bank effects payment until receipt by the bank of payment by the applicant of the amount owing by the applicant to the bank in terms hereof.

The applicant agrees that the applicant will have no claim against the bank should any payment be made by the bank under the guarantee even if such payment is not claimable from the applicant.

The nature of the above provision is that it constitutes an assumption of risks and/or liabilities by the applicant and its effect is to increase the applicant's obligations and/or liabilities.

The applicant further agrees that should the said guarantee at any time after issue be found to be invalid by reason of non-compliance with the provisions of Section 6 of Act No 50 of 1956, the bank shall be entitled in its reasonable discretion and without the applicant's knowledge or consent, to issue a valid guarantee in substitution for the invalid one; provided that the bank shall promptly provide the applicant with a copy of such revised guarantee.

The applicant chooses as *domicilium citandi et executandi* for the purpose of all notices and processes to be given or served in pursuance of this request, the applicant's address stated on this request or at such other address as may be indicated by the applicant in writing and confirmed by the bank.

**I/We confirm that his application has been completed in full before signing.**

The nature of the above provision is that it is an acknowledgement of fact by the applicant and its effect is to limit the applicant's right to claim that such fact is not accurate.

If this application and/or any goods and/or services provided under this application are regulated by the Consumer Protection Act No 68 of 2008, as amended, replaced or re-enacted from time to time ("Consumer Protection Act"), it is not intended that any provision of this application contravenes any provisions of the Consumer Protection Act and therefore all provisions of this application must be treated as being qualified, if necessary, to ensure that the provisions of the Consumer Protection Act are complied with.

Nothing in this application limits or exempts the bank from liability for loss directly or indirectly attributable to the gross negligence of the bank or any person acting for or controlled by the bank where the law does not allow this. This application also does not require the applicant to assume the risk or liability for this kind of loss where the law does not allow this.

Signed at JOHANNESBURG

on

2015

In the presence of the undersigned witnesses.

(Signature of applicant/for and on behalf of)

(Identity no/company stamp)

**WITNESSES**

1

(Signature of witness)

(Initials and surname of witness in block letters)

2

(Signature of witness)

(Initials and surname of witness in block letters)



Signed at

on

20

in the presence of the undersigned witnesses.

(Signature of applicant/for and on behalf of)

(Identity no/company stamp)

## WITNESSES

1

(Signature of witness)

(Initials and surname of witness in block letters)

2

(Signature of witness)

(Initials and surname of witness in block letters)

\*Assisted/consented to by me, his/her parent/legal guardian/spouse

(Signature of parent/legal guardian/spouse)

(Initials and surname of parent/guardian/spouse in block letters)

(Identity number of parent/guardian/spouse)

## WITNESSES

1

(Signature of witness)

(Initials and surname of witness in block letters)

2

(Signature of witness)

(Initials and surname of witness in block letters)

\*Complete only if applicable

## OFFICE USE

All future correspondence relating to this guarantee must be addressed to

(e-mail address or facsimile no)

for the attention of

## Credit approval

Amount approved: R

Authorised by:

Name (in block letters)

Signature and employee no

## Signature verification

Signatures verified by:

Name (in block letters)

Name (in block letters)

Signature and employee no

Signature and employee no



Absa Bank Limited, Reg No 1986/004794/06

Member of the BARCLAYS Group

## Application for the Issuance of a Local Guarantee

CONFIDENTIAL

OFFICER USE

CSA Ref

Absa Bank Ltd ("the bank") must comply with national and international laws, regulations, policies, rules and requirements to prevent criminal activities, money laundering and terrorist financing, sanctions and prohibited business activity laws and rules violations. The bank must therefore check all information from and about you and related parties, and monitor, verify, process and screen your and related party information, instructions and transactions on an ongoing basis. This may cause some delays or the limitation or the prohibition of transactions that you make or accounts you apply for. The bank may also have to end its relationship with you without warning.

The bank is not responsible for any losses or damages that you may suffer because of these checks or by the bank ending the relationship. This includes any loss of profits or savings that you would otherwise have expected to make.

Absa Bank Limited CAPITAL AND INVESTMENT BANK JHB 0895

10/12/2015

Date

Applicant's reference

I/We the undersigned ESKOM HOLDINGS SOC LTD

(full names of individual/company/close corporation, etc)

herein referred to as "the applicant") of

(full street address - not a PO Box address)

MEGAWATT PARK, MAXWELL DRIVE, SUNNINGHILL JOHANNESBURG 2001

with Identity/Company registration no

\*hereinafter represented by

(full name of representative)

\*and

(full name of representative)

\*in his/her capacity/capacities as

\*and

(capacity of representative)

(capacity of representative)

\*Complete only if applicable

do hereby request the bank irrevocably and in rem suam to issue a guarantee on my/our behalf, or on behalf of:

\*Delete if not applicable

(full names of individual/company/close corporation, etc)

In favour of TEGETA EXPLORATION AND RESOURCES (PTY)LTD

(full name of beneficiary)

TEGETA EXPLORATION AND RESOURCES (PTY)LTD

(full street address - not a PO Box address)

as is specified in detail below subject to the acceptance of the guarantee by the applicant by signing a copy thereof.

## GUARANTEE DETAILS

## 1 BENEFICIARY ACCOUNT DETAILS

Account no

Bank clearing code

Account type (eg cheque)

## 2 GUARANTEE

Type of guarantee

Bid Bond/  
Tender guaranteePerformance  
guaranteeProperty guarantee  
(\*Complete section 2.1 below)

Other (specify)

Guarantee amount

1 6 8 0 0 0 0 0 0 0 0 0 0 0

Amount in words ONE BILLION SIX HUNDRED

AND EIGHTY MILLION RAND

Expiry date of guarantee

2 0 1 5 10 13 11 and/or Expiry event

Guarantee to be issued:



In writing

Original guaranteed to be returned to applicant for delivery to the beneficiary

Contract no REFER TO ATTACHED WORDING

Description of goods/works

## 2.1 Only to be completed in respect of property guarantees

Guarantee amount together with/\*less interest at \_\_\_\_\_ per cent per annum on R \_\_\_\_\_ - \_\_\_\_\_

Amount in words \_\_\_\_\_

from and including \_\_\_\_\_ to \_\_\_\_\_ /date of payment/registration\* payable free of

bank charges at \_\_\_\_\_ upon receipt of written advice from \_\_\_\_\_

that the following transactions have been completed \_\_\_\_\_

\*Delete whichever is not applicable

## Undertaking

The applicant hereby authorises the bank, acting reasonably, to withdraw at its sole discretion from this undertaking at any time prior to registration of the transaction(s) should any circumstances arise which prevent or unduly delay the registration of the abovementioned transaction(s), whereafter the abovementioned amount will no longer be held at the disposal of the beneficiary mentioned herein.

## Bank charges

The bank is authorised to debit my/our account no \_\_\_\_\_ in your books with all

bank charges relating to the issue of the guarantee and all other reasonable costs in connection herewith.

## Undertaking

The bank is hereby irrevocably and *in rem suam* authorised to pay the said amount or any lesser amount in accordance with the guarantee on the first demand being made, without further reference to the applicant and without requiring proof or, to the extent allowed by law, the applicant's agreement that the amounts so demanded are or were due and notwithstanding that the applicant may dispute the validity of any such demands or payments; provided that the bank shall be obliged to act reasonably.

The applicant undertakes to pay to the bank on demand all amounts paid by the bank in terms hereof. A certificate issued by any manager of the bank shall be sufficient proof, until the contrary is proved, of the amount due by the applicant to the bank in terms of the guarantee and this request, and it shall not be necessary to prove the appointment of the person signing the certificate on behalf of the bank.

The bank is hereby authorised, at its own discretion, and if necessary, to debit any account in the applicant's name at any time with the said amount as well as costs and commission at a rate determined by the bank from time to time payable in connection with the guarantee and reasonable legal costs, including legal costs between attorney and own client and to credit the amount to a separate covering account pending the payment of the said amount.

The applicant shall be obliged to pay interest on any amount paid by the bank in accordance with the terms of the guarantee at a rate equal to the bank's prime rate or such other rate agreed upon between the bank and the applicant, calculated from the date upon which the bank effects payment until receipt by the bank of payment by the applicant of the amount owing by the applicant to the bank in terms hereof.

The applicant agrees that the applicant will have no claim against the bank should any payment be made by the bank under the guarantee even if such payment is not claimable from the applicant.

The nature of the above provision is that it constitutes an assumption of risks and/or liabilities by the applicant and its effect is to increase the applicant's obligations and/or liabilities.

The applicant further agrees that should the said guarantee at any time after issue be found to be invalid by reason of non-compliance with the provisions of Section 6 of Act No 50 of 1956, the bank shall be entitled in its reasonable discretion and without the applicant's knowledge or consent, to issue a valid guarantee in substitution for the invalid one; provided that the bank shall promptly provide the applicant with a copy of such revised guarantee.

The applicant chooses as *domicilium citandi et executandi* for the purpose of all notices and processes to be given or served in pursuance of this request, the applicant's address stated on this request or at such other address as may be indicated by the applicant in writing and confirmed by the bank.

I/We confirm that his application has been completed in full before signing.

The nature of the above provision is that it is an acknowledgement of fact by the applicant and its effect is to limit the applicant's right to claim that such fact is not accurate.

If this application and/or any goods and/or services provided under this application are regulated by the Consumer Protection Act No 68 of 2008, as amended, replaced or re-enacted from time to time ("Consumer Protection Act"), it is not intended that any provision of this application contravenes any provisions of the Consumer Protection Act and therefore all provisions of this application must be treated as being qualified, if necessary, to ensure that the provisions of the Consumer Protection Act are complied with.

Nothing in this application limits or exempts the bank from liability for loss directly or indirectly attributable to the gross negligence of the bank or any person acting for or controlled by the bank where the law does not allow this. This application also does not require the applicant to assume the risk or liability for this kind of loss where the law does not allow this.

Signed at JOHANNESBURG

on

2015

in the presence of the undersigned witnesses.

(Signature of applicant/for and on behalf of)

(Identity no/company stamp)

WITNESSES

1

(Signature of witness)

(Initials and surname of witness in block letters)

2

(Signature of witness)

(Initials and surname of witness in block letters)



Signed at

on

20

in the presence of the undersigned witnesses.

---

*(Signature of applicant/for and on behalf of)*

---

*(Identity no/company stamp)*

## WITNESSES

1

---

*(Signature of witness)*

---

*(Initials and surname of witness in block letters)*

2

---

*(Signature of witness)*

---

*(Initials and surname of witness in block letters)*

\*Assisted/consented to by me, his/her parent/legal guardian/spouse

---

*(Signature of parent/legal guardian/spouse)*

---

*(Initials and surname of parent/guardian/spouse in block letters)*

---

*(Identity number of parent/guardian/spouse)*

## WITNESSES

1

---

*(Signature of witness)*

---

*(Initials and surname of witness in block letters)*

2

---

*(Signature of witness)*

---

*(Initials and surname of witness in block letters)*

\*Complete only if applicable





SM85

**Subject:**

FW: Banking Details

**From:** Eric Wood [mailto:[EricW@regiments.co.za](mailto:EricW@regiments.co.za)]**Sent:** 10 December 2015 04:59 PM**To:** Anoj Singh <[SinghA3@eskom.co.za](mailto:SinghA3@eskom.co.za)>**Subject:** Banking Details

Account Name: Bank of Baroda

Bank: Nedbank

Account Number: 1454095326

Branch Code: 145405

Reference: Tegeta Exploration and Resources (Pty) Ltd

**Eric Wood**

Executive Director

CAPITAL MARKETS | REAL ESTATE | INVESTMENTS

**REGIMENTS**  
Enabling ProgressT +27 11 595 0742 C +27 83 626 0857 E [EricW@regiments.co.za](mailto:EricW@regiments.co.za) W [www.regiments.co.za](http://www.regiments.co.za)

35 Ferguson Road, Illovo, Johannesburg, SA, 2196 | Postnet Suite 25, Private Bag X11 Birnam Park, 2015

SM86

**Subject:** FW: Templates for Memorandum for CFO in colour - Tegeta guarantee Dec 2015  
**Attachments:** Templates for Memorandum for CFO in colour - Tegeta guarantee Dec 2015.docx

**From:** Caroline Henry [mailto:HenryCM@eskom.co.za]

**Sent:** 10 December 2015 05:00 PM

**To:** Anoj Singh <SinghA3@eskom.co.za>

**Subject:** Templates for Memorandum for CFO in colour - Tegeta guarantee Dec 2015

Hi Anoj,  
Please check if this is c=what you want before I print it off  
Thanks  
CH



A handwritten signature in black ink, located in the bottom right corner of the page.



## MEMORANDUM

**To:** Anoj Singh, Chief Financial Officer

**Reference:**

**From:** Caroline Henry, Senior General Manager (Treasury)

**Version:** 01

**Date:** 10/12/2015

**Classification:**

**SUBJECT:** Guarantee in favour of Tegeta Exploration and Resources Proprietary Limited

### PURPOSE:

1. The aim of this submission is to summarise the circumstances resulting in the issue of a performance guarantee in favour of Tegenta Exploration & Resources Pty Ltd (TER)
2. To request the Chief Executive to approve the issuance of the Guarantee as approved by the Board of Directors

### BACKGROUND:

3. On 10 December 2015, Eskom planned to enter into a coal supply agreement (CSA) with TER. In terms of the CSA Eskom agreed to pay an advance payment of R1 680 000 000.
4. The advance payment is payable on the conclusion of certain conditions precedent (CP). In order to provide TER payment certainty and shield Eskom from recovery of the funds in the case the CP's are not met Eskom contracted to issue a performance guarantee.

### DISCUSSION:

5. Given the immediacy of the required guarantee the CFO approached ABSA for pricing on a secured guarantee. The Treasury subsequently approached FNB and Standard Bank and ABSA fared best on the blended benefit on the deposit rate and the guarantee fee.
6. Eskom has deposited the funds on call with ABSA at market rates however this large deposit results in a breach of the targeted concentration limit across banks. The CFO has approved this breach for the duration of the guarantee.
7. The guarantee terms are:  
Period: 3 months

#### Finance/Treasury

Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 6841 Johannesburg 2000 SA  
Tel +27 11 800 2901 Fax +27 86 660 1088 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30



Amount: R1 680 000 000  
Cost: 0,0375% per quarter  
Secured by: call funds

**FINANCIAL IMPLICATIONS:**

8. As above: 0,0375% per quarter (incl VAT) on R1 680 000 000

**BUDGET IMPLICATIONS:**

9. Adequate capacity in interest & finance charges

**RECOMMENDATION:**

11. The CFO/Acting CE approve the utilization of ABSA for this guarantee as well as the temporary breach of concentration limits on investments.

**Compiled by:**

\_\_\_\_\_  
Name  
Title SGM - Treasury  
Date: 10/12/2015

Approved/Not Approved

\_\_\_\_\_  
Anoj Singh  
Chief Financial Officer  
Date:

A handwritten signature in black ink, located at the bottom right of the page.





2060

## ADDITIONAL SERVER EMAILS

---

**From:** MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za on behalf of matshela2010 <matshela2010@yahoo.com>  
**Sent:** 06 December 2015 16:18  
**To:** Matshela Koko  
**Subject:** Re  
**Attachments:** Re

Sender: matshela2010@yahoo.com

Subject: Re

Message-Id: <i28s36eiojrk8cjldijpfmfv.1449411466700@email.android.com>

Recipient: KokoMM@eskom.co.za



---

**From:** matshela2010 <matshela2010@yahoo.com>  
**Sent:** 06 December 2015 16:18  
**To:** Matshela Koko  
**Subject:** Re

Sent from my Samsung device

----- Original message -----

**From:** maleatlala raphela  
**Date:** 2015/12/06 14:50 (GMT+02:00)  
**To:** matshela2010  
**Subject:** Re: Re

My 3 g not working, hope you receive this.

Further to my email of yesterday, I am proposing the following:

At OCM, current supply arrangement with the business rescue practitioners end on 31 December 2015, and we are concerned that any re-negotiation or continuation of current arrangement are not in Eskom's or the national interest, and the possibility of OCM's liquidation is very real and will be detrimental to Eskom and the country. The Relationship of trust between Eskom and Glencore has broken down irrevocably. Non resolution of this matter before 25 December 2015, will create a crisis of an unparalleled proportion. Koornfontein, which is within the OCH stable, contract is ending on 31 December 2015 and will not be renewed under the current circumstances. The current supplier wants to hold the country and Eskom to ransom by making unrealistic demands, that are unaffordable for Eskom. This would if not properly managed, take place on eve of the State of the Nation Address leading to real national crisis, at a time when the country's leaders may not be available to intervene due to the December holidays.

The closure of Arnot, reported widely in the media last week means that come 1 January 2016, supply from 3 major mines, tied to Eskom power stations is seriously in doubt, endangering ?????? MW, which is equivalent to % of MW for the national grid. At this level, the country will have to go into stage ??? of load shedding or risk system blackout. As an interim measure, Eskom gets forced to rely on expensive short term contracts which are neither ideal nor suited for efficient coal supply at some of the power stations such as Hendrina power station.

Historical agreements entered into with these mines included risk sharing arrangements on financial provision and environmental management matters. Assessment of this model which is currently underway is revealing how unsustainable it is, especially given our precarious financial provision, and limitations to extent of influencing companies to act in a responsible manner. Whilst resolving this, and to ensure that national security considerations are not endangered, we are humbly appealing for a consideration to be made by the Department for a flexible yet practical approach to be taken, so that the energy security can be prioritised. As a company, we are willing to also do our part to ensure these matters are swiftly resolved.

Your letter must clearly reflect the gravity of the situation at hand.

On Sat, Dec 5, 2015 at 8:45 PM, maleatlala raphela <[maleatlala@gmail.com](mailto:maleatlala@gmail.com)> wrote:

Receipt of your email and its contents noted with thanks. Letter is being reviewed and to good and will be sent back with comments, covering::

significance of 31 December 2015 and we absence of decision makers around that time. I there's tingly all 3 mines without reliable suppliers come 1 Jan and number of megawatt being risked.

A more detailed comment will be sent tomorrow morning.

On 05 Dec 2015 12:48 PM, "matshela2010" <[matshela2010@yahoo.com](mailto:matshela2010@yahoo.com)> wrote:

Please review and advice



---

**From:** MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za on behalf of Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 06 December 2015 16:29  
**To:** Joel DG DMR  
**Subject:** Re  
**Attachments:** Re

Sender: KokoMM@eskom.co.za

Subject: Re

Message-Id: <is7pksmvrv12tjukr0iorbnu.1449412135712@email.android.com>

To: Maleatlala@gmail.com



---

**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 06 December 2015 16:29  
**To:** Joël DG DMR  
**Subject:** Re

Boss,

I really want to keep this letter factual.

Please advise







Dr Thibedi Ramontja  
Director General  
Department of Mineral Resources  
Private Bag X59  
ARCADIA  
0007

Dear Dr Ramontja

**OPTIMUM COAL MINE (PROPRIETARY) LIMITED: COAL SUPPLY TO HENDRINA POWER STATION**

As you may be aware, Eskom has been involved in a legal wrangle with the above supplier from about August this year.

In rather dramatic fashion, the company was placed under business rescue and Eskom was faced with intermittent veiled threats of liquidation while at the same time, the business rescue practitioners purportedly sought constructive engagement between the parties.

From Eskom's perspective, it was expected that as a Glencore operation, Optimum Coal Mine ("Optimum") would enjoy far more support than the conditional funding for limited time periods that was on offer. Optimum supplies one of Eskom's key contributors to the national power system as Hendrina Power Station is a stalwart in the Eskom fleet, supplying approximately 2000MW to the national grid. Glencore was fully aware of the dynamics and history relating to the nature of the coal supply agreement and its structure when it concluded the sale with its previous owners.

At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated to me that Optimum is been taken out of business rescue proceedings and that it would honour the contract in its current form with no amendments. They further advised that, they will follow the contract route to process the Eskom claim of R2200M. They made it very clear that they are not insisting on the extension of Koorfontein coal supply contract with Eskom. They insisted that the extension of Koorfontein coal supply contract is at the discretion of Eskom.

Eskom is perplexed by this about-turn given the events of the past few months and at the blatant disregard Optimum displays for the impact that the threats of liquidation has on the precarious balance of electricity security and commercial viability. As a Glencore operation, Optimum surely cannot be perceived to be acting in the national interest. As at date of this letter, I have not as yet received the formal notification of the status of Optimum.

While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability may compromise the security of supply to Hendrina Power

Station in the short to medium term. Therefore Eskom would require a firm resolution Optimum by December 2015. The risk of security of supply for Hendrina Power Station is of such key national interest that we thought it appropriate to bring to your attention.

I will keep you apprised of progress.

Yours sincerely

Matshela Koko

**GROUP EXECUTIVE: GENERATION**

Date:





koko server mails  
koko Disiplinary  
bundle

SM29  
324

**From:** Matshele Koko <KokoMM@eskom.co.za>  
**Sent:** 03 January 2016 14:30  
**To:** reception@grandastonball.com  
**Subject:** VISA FOR TRAVEL  
**Attachments:** TRAVEL-MATSHELA MOSES KOKO.jpg; TRAVEL-MOSIMA ELIZABETH KOKO.JPG; TRAVEL-PHEEHA KOKO.PDF

*Sent from my Samsung device*

----- Original message -----  
**From:** Business Man <infoportal1@zoho.com>  
**Date:** 2016/01/03 7:58 PM (GMT+08:00)  
**To:** matshele2010 <matshele2010@yahoo.com>  
**Subject:** Fwd: FW: 1 VISA FOR TRAVEL

===== Forwarded Message =====

3 x Koko Family visa.

Thanks

Warmest Regards

**SAAJIDA MAYET**

Your Personal Travel Agent

**Travel Excellence**

167 Rose Avenue, Ext 3, Lenasia, Johannesburg 1820.

Tel : (27) 11 852 3701/8

Cell : 082 819 8051

Email : [sajida@travelexcellence.co.za](mailto:sajida@travelexcellence.co.za)

<http://www.travelexcellence.co.za/>



41

325



Please note that all rates quoted are subject to change at anytime up until full payment has been received and final documentation issued.

Travel Excellence Terms and Conditions, EOE

Travel Excellence acts as an agent only and are not liable for any loss, damage, accident, delay or inconvenience caused by the principal. On collection of your travel documents, you will be requested to sign a Form of Acceptance of the above conditions. A copy of the above terms and conditions is available on request. All quotes are subject to availability and currency fluctuations at the time of payment.

From: Sameera [mailto:sameera@travelexcellence.co.za]  
Sent: Tuesday, December 22, 2015 12:25 PM  
To: Salim Essa <salimessa@gmail.com>  
Cc: Halima Allana <halima@travelexcellence.co.za>; 'Saafida' <saafida@travelexcellence.co.za>  
Subject: FW: 1 VISA FOR TRAVEL

Your one visa is out

**THANKING YOU AT ALL TIMES**

**SAMEERA SOOLIMAN**

**YOUR PERSONAL TRAVEL ADVISOR**

**Travel Excellence**

Shop 51, Signet Terrace, 140 Gernsbok Street, Lenasia, Johannesburg 1820.

Tel : (27) 11 852 3701

Tel : (27) 11 8302098

Fax : (27) 086 551 0340

Cell : 0824115879

BB : 23B7784D

Email : [sameera@travelexcellence.co.za](mailto:sameera@travelexcellence.co.za)

<http://www.travelexcellence.co.za/>



Please note that all rates quoted are subject to change at anytime up until full payment has been received and final documentation issued.

Travel Excellence Terms and Conditions, EOE

Travel Excellence acts as an agent only and are not liable for any loss, damage, accident, delay or inconvenience caused by the principal. On collection of your travel documents, you will be requested to sign a Form of Acceptance of the above conditions. A copy of the above terms and conditions is available on request. All quotes are subject to availability and currency fluctuations at the time of payment.

41



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From: SaaJida [mailto:saaJida@travelexcellence.co.za]  
 Sent: 22 December 2015 12:17 PM  
 To: 'Sameera travelexcellence'  
 Subject: FW: 1 VISA FOR TRAVEL

Warmest Regards

**SAAJIDA MAYET**

Your Personal Travel Agent

**Travel Excellence**

167 Rose Avenue, Ext 3, Lenasia, Johannesburg 1820.

Tel : (27) 11 852 3701/8

Cell : 082 819 8051

Email : [saaJida@travelexcellence.co.za](mailto:saaJida@travelexcellence.co.za)

<http://www.travelexcellence.co.za/>



Please note that all rates quoted are subject to change at anytime up until full payment has been received and final documentation issued.

Travel Excellence Terms and Conditions. EOE

Travel Excellence acts as an agent only and are not liable for any loss, damage, accident, delay or inconvenience caused by the principal. On collection of your travel documents, you will be requested to sign a Form of Acceptance of the above conditions. A copy of the above terms and conditions is available on request. All quotes are subject to availability and currency fluctuations at the time of payment.

From: Hajer.Majdi climaxtourism LLC . [mailto:hajer@climaxtourism.com]  
 Sent: Tuesday, December 22, 2015 11:22 AM  
 To: 'SaaJida' <[saaJida@travelexcellence.co.za](mailto:saaJida@travelexcellence.co.za)>  
 Cc: Halima Aliana <[halima@travelexcellence.co.za](mailto:halima@travelexcellence.co.za)>  
 Subject: FW: 1 VISA FOR TRAVEL

dear saajida

kindly find the visa of moses koko

441

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Thanks & Best Regards *ES*

Ms. Hajer Majdi Climax Tourism  
P.O. Box 184431 | T +971 4 2552440 | F +971  
4 2552447  
Dubai, United Arab Emirates Office 502 Al  
Dana center Al Maktoum Street |  
skype/hajer1117  
| msn : [Climaxtourism@hotmail.fr](mailto:Climaxtourism@hotmail.fr)



From: Visas [<mailto:visas@climaxtourism.com>]  
Sent: Tuesday, December 22, 2015 12:56 PM  
To: 'Hajer.Majdi climaxtourism LLC .'; Mohammed Abdou  
Subject: 1 VISA FOR TRAVEL

Thanks & Regards,

Avi Ventura | Visa Department  
P.O. Box 184431 | Office 502 Al Dana center | Al Maktoum Street  
Dubai | United Arab Emirates  
Phone: +971 42552440 | Fax: +971 42552447  
Our Office Hours: (09H00 – 1830 Hrs from Saturday to Thursday)  
Email: [visas@climaxtourism.com](mailto:visas@climaxtourism.com)



41  
9

29

478

United Arab Emirates  
MINISTRY OF INTERIOR

General Directorate of Residency & Foreigners Affairs



دولة الإمارات العربية المتحدة  
وزارة الداخلية  
الإدارة العامة للإقامة وشؤون الأجانب



12332313/8



0702108715731924

سياحية/سفرة-قصيرة  
Tourist/Single-Short

ENTRY PERMIT NO :

87731924 / 2015 / 210

Date &amp; Place Of Issue :

22-DEC-2015

Valid Until :

19-FEB-2016

U.I.D. No :

171987399

Allowed to Enter U.A.E to:

أجيز بدخول دولة الإمارات العربية المتحدة الى:

Full Name :

Mr.MATSHELA MOSES KOKO S/O KOKO

Nationality :

SOUTH AFRICA

Place of Birth :

ZAF

Date of Birth :

09-MAR-1969

Passport No :

NORMAL / A04728891

Profession :

BUSINESSMAN

Accompanied by

Wife :

None

Children :

None

إذن دخول رقم :

تاريخ ومحل الإصدار :

تاريخ صلاحية الدخول :

الرقم الموحد :

أجيز بدخول دولة الإمارات العربية المتحدة الى:

الاسم الكامل :

الجنسية :

محل الميلاد :

تاريخ الميلاد :

رقم الجواز :

المهنة :

المرافقون :

الزوجة :

الأبناء :

Sponsor الكفيل

Name :

CLIMAX TOURISM LLC

Address :

TEL:2552440, P.O.BOX :184431, 2/1/206242

الاسم :

العنوان :

Note: ENJOY YOUR VISIT! LEAVE BEFORE YOUR VISAS EXPIRES SO WE CAN WELCOME YOU AGAIN!

نتمنى زيارتكم وعلينا ان نتطاعا الترحيب بكم مرة اخرى



Director of Residency & Foreigners Affairs

استوائية الرسوم

مدير الإدارة العامة للإقامة وشؤون الأجانب

للتواصل مع الإدارة يرجى الاتصال بكلمة أمر  
هاتف: 8005111 / 04-3139999

كن آمنا في مجتمعك. تعاون مع الأمن  
A safer neighbourhood is a safer home.

479

United Arab Emirates  
MINISTRY OF INTERIOR

General Directorate of Residency & Foreigners Affairs



دولة الإمارات العربية المتحدة  
وزارة الداخلية  
الإدارة العامة للإقامة وشؤون الأجانب



12332313/9



0702108715731925

سياحية/سفرة قصيرة  
Tourist/Single-Short

ENTRY PERMIT NO :

87731925 / 2015 / 210

إذن دخول رقم :

Date &amp; Place Of Issue :

18-DEC-2015

تاريخ ومحل الاصدار :

Valid Until :

15-FEB-2016

تاريخ صلاحية الدخول :

U.I.D. No :

171987401

الرقم الموحد :

Allowed to Enter U.A.E to:

اجيز بدخول دولة الامارات العربية المتحدة الى:

Full Name :

Mrs. MOSIMA ELIZABETH KOKO W/O MATSHELA  
MOSES KOKO

الاسم الكامل :

Nationality :

SOUTH AFRICA

الجنسية :

Place of Birth :

ZAF

محل الميلاد :

Date of Birth :

27-DEC-1971

تاريخ الميلاد :

Passport No :

NORMAL / A04476102

رقم الجواز :

Profession :

HOUSE WIFE

المهنة :

Accompanied by

المرافقون

Wife :

None

الزوجة :

Children :

None

الأبناء :

Sponsor الكفيل

Name :

CLIMAX TOURISM LLC

الاسم :

Address :

TEL:2552440, P.O.BOX :18443 I, 2/1/206242

العنوان :

Note: ENJOY YOUR VISIT & LEAVE BEFORE YOUR VISA  
EXPIRES SO WE CAN WELCOME YOU AGAIN!

تتمتع بزيارتك في الإمارات العربية المتحدة قبل انتهاء صلاحية التأشيرة لكي نرحب بك مرة أخرى!



Director of Residency & Foreigners Affairs

استوفيت الرسوم

مدير الإدارة العامة للإقامة وشؤون الأجانب

للتواصل مع الإدارة يرجى الاتصال بخدمة أمر  
8005111 / 04-3139999 هاتف

إن أمنًا في مجتمعك، تعاون مع الأمن  
A safer neighbourhood is a safer home.

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MINISTRY OF INTERIOR

General Directorate of Residency & Foreigners Affairs



دولة الإمارات العربية المتحدة  
وزارة الداخلية  
الإدارة العامة للإقامة وشؤون الأجانب



12332313/10



0702108715731926

سياحية/سفرة-قصيرة  
Tourist/Single-Short

ENTRY PERMIT NO :

87731926 / 2015 / 210

Date & Place Of Issue :

18-DEC-2015

Valid Until :

15-FEB-2016

U.I.D. No :

171987403

Allowed to Enter U.A.E to :

أجيز بدخول دولة الإمارات العربية المتحدة الى :

Full Name :

Mr.PHEHA KOKO S/O MATSHELA MOSES KOKO

Nationality :

SOUTH AFRICA

Place of Birth :

ZAF

Date of Birth :

21-JAN-2009

Passport No :

NORMAL / A03543864

Profession :

NONE

Accompanied by

Wife :

None

Children :

None

إذن دخول رقم :

تاريخ ومحل الاصدار :

تاريخ صلاحية الدخول :

الرقم الموحد :

الاسم الكامل :

الجنسية :

محل الميلاد :

تاريخ الميلاد :

رقم الجواز :

المهنة :

المرافقون :

الزوجة :

الأبناء :

Sponsor الكفيل

Name :

CLIMAX TOURISM LLC

Address :

TEL:2552440, P.O.BOX :184431, 2/1/206242

الاسم :

المعنوان :

NO. 37 - ENJOY YOUR VISIT - WE'LL MISS YOU WHEN YOU GO -  
NO. 37 - ENJOY YOUR VISIT - WE'LL MISS YOU WHEN YOU GO -



Director of Residency & Foreigners Affairs

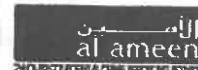
استوفيت الرسوم

مدبر الإدارة العامة للإقامة وشؤون الأجانب

للإتصال مع الإدارة يرجى الإتصال بخدمة أدر  
8005111 / 04-3139999 هاتف  
For any inquiry please call AMER SERVICE  
tel : 04-3139999 / 8005111



كن معنا في مجتمعك تدارين مع الامين  
A safer neighbourhood is a safer home.  
Toll free 8004888. www.alameen.ae



*[Handwritten signature]*



koko server emails  
koko disciplinary

JAM-453


SM1

23

**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 20 July 2015 07:56  
**To:** infoportal1@zoho.com  
**Subject:** Internal Consulting Directive-2.pdf  
**Attachments:** Internal Consulting Directive-2.pdf

[Print this](#)



241 

 <b>Eskom</b>	<b>Directive</b>	
--	------------------	--

**Title:** Directive for the  
Implementation of the  
National Treasury Cost  
Containment Instruction  
and Govt Gazette

**Document Identifier:** 240-78635659

**Alternative Reference Number:** N/A

**Area of Applicability:** Eskom Group

**Functional Area:** Finance

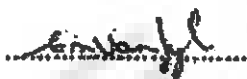
**Revision:** 1

**Total Pages:** 13

**Next Review Date:** July 2015

**Disclosure Classification:** Controlled Disclosure

**Compiler**



**CM Van Zyl**

**Middle Manager Solution  
Development  
Finance Project Services**

**Date:** 4/7/2014

**Functional Responsibility**



**N Velefi**

**Senior General Manager –  
Shared Services**

**Date:** 4/7/2014

**Authorised by**



**T Molefe**

**Finance Director**

**Date:** 7/7/2014

**Directive for the Implementation of the National Treasury  
Cost Containment Instruction and Govt Gazette**

Unique Identifier: 240-78635859

Revision: 1

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**Directive for the Implementation of the National Treasury  
Cost Containment Instruction and Govt Gazette**

Unique Identifier: 240-78835889

Revision: 1

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## **1. Introduction**

On 23 October 2013, Cabinet resolved that all departments, constitutional institutions and public entities must implement measures to contain operational costs and eliminate all non-essential expenditure.

In line with the resolutions of the above-mentioned Cabinet meeting, accounting authorities of public entities listed in Schedule 2 and 3 to the PFMA must, as a minimum, institute the measures outlined in paragraph 4 of the National Treasury Instruction 01 of 2013/2014: Cost Containment Measures (Instruction), to further reign in operational expenditure of their respective establishments.

As per the Government Gazette No.37042 dated 15 November 2013, the Treasury Regulations (published under Government Notice R225 of 15 March 2005, as amended) as set out in the Schedule were amended with respect to the use of credit and debit cards.

In Eskom's context, the Board of Directors is the accounting authority.

## **2. Directive Content**

### **2.1 Directive Statement**

This directive contains the principles or rules to be implemented within Eskom Holdings SOC Ltd divisions and subsidiaries, to give effect to the Instruction and Government Gazette referred to in Paragraph 1.

### **2.2 Directive Principles or Rules**

#### **2.2.1 Policies and Procedures**

The relevant policies, procedures and guidelines are to be drawn up/and or updated in accordance with the Instruction and Government Gazette referred to in Paragraph 1, with immediate effect.

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## **2.2.2 Engagement of Consultants**

**2.2.2.1** Consultants may only be contracted after a gap analysis has confirmed that the business does not have the requisite skills or resources in its full time employ to perform the specific scope of work in question.

**2.2.2.1.1** For Strategic, business and management consulting and professional services the gap analysis forms part of the business case/motivation presented for approval to Internal Consulting Department and signed off by the FD and relevant GE before submission to the relevant Commercial Committee.

**2.2.2.1.2** For Third Party Contractor, in addition to the approval of the business case/motivation by Internal Consulting Department and the relevant Commercial Committee, the approval of Head Management Committee (HMC) is required.

**2.2.2.2** A business case/motivation must be prepared to motivate the use of external consultants and must be approved by Internal Consulting Department and the relevant Commercial Committee.

**2.2.2.2.1** For Non-Panel Consulting services in addition to the business case/motivation being approved by Internal Consulting Department and the relevant Commercial Committee, a Senior Finance Manager is required to confirm that this service has been budgeted for.

**2.2.2.2.2** For Panel Consulting services in addition to the business case/motivation being approved by Internal Consulting Department, the approval of the Panel Controls Committee (PCC) is required. A Senior Finance Manager is also required to confirm that this service has been budgeted for.

**2.2.2.3** Consultants may not be remunerated higher than the rates:

- a) Determined in the "Guideline for fees", issued by the South African Institute of Chartered Accountants (SAICA);
- b) Set out in the "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or
- c) Prescribed by the body regulating the profession of the consultant.
- d) The agreed SAICA, DPSA or professional body rates are to be included in the signed NEC 3 Professional Services Contract (PSC)

**2.2.2.4** Hotel accommodation and related costs in respect of consultants may not exceed the amount prescribed in paragraph 2.2.3.3 of this directive. Air travel must be restricted to economy class and claims for use of private vehicles are R3.25 per kilometre. (These rates may not exceed the rates approved by the Automobile Association of South Africa.)

**2.2.2.5** All PSC's of consultants must include penalty clauses for poor performance and in this regard, accounting authorities must invoke such clauses where deemed necessary..

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**2.2.2.6** Accounting authorities must develop consultancy reduction plans by 31 March of each year for implementation in the ensuing financial year. The first consultancy reduction plan required in terms of the Treasury Instruction must be developed before 31 March 2014 for implementation in the 2014/15 financial year.

**2.2.2.7** All Group Executives/Divisional Executives are to develop the consultancy reduction plans referred to in 2.2.2.6 above and submit these to the Commodity Sourcing Department who will consolidate the organisational needs and set up long term enabling contracts on the basis of the rates as prescribed in 2.2.2.3 above, after the necessary approval processes have been followed. The consolidated view of the organisational needs must be presented to EXCO for approval.

**2.2.2.8** The request for appointment of consultants from panel contracts so established in 2.2.2.7 shall be supported by the requirements in 2.2.2.1 and 2.2.2.2 above.

### **2.2.3 Travel and Subsistence**

#### **2.2.3.1 Changes to Eskom Conditions of Service, Employment Conditions for Managerial Levels**

If an employee had breakfast / lunch / dinner at a hotel, no additional cost for meals on the same day will be allowed. The cost of alcohol will not be paid by Eskom.

#### **2.2.3.2 Flights**

**2.2.3.2.1** Local flights – All travellers, including CE and his/her direct reports ie. EXCO members, travel on economy class

**2.2.3.2.2** International flights – All travellers travel on economy class, except for CE and his/her direct reports who travel on business class.

**2.2.3.2.3** Notwithstanding the provisions of paragraph 2.2.3.2.1 and 2.2.3.2.2, EXCO members may approve business class travel for employees with disabilities or for those with special needs.

**2.2.3.2.4** No first class travel is allowed.


**2.2.3.2.5** The purchase of business class tickets for local and international flights is allowed for members of the accounting authority and non-executive members serving on governance committees.

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### 2.2.3.3 Accommodation

The provisions contained in paragraph 2.2.3.3.1 and 2.2.3.3.2 are applicable to ALL travellers including CE and his/her direct reports ie. EXCO members, members of the accounting authority and to non-executive members serving on governance committees:

**2.2.3.3.1** Domestic hotel accommodation may not exceed one thousand three hundred rand (R1 300), inclusive of VAT, per night per person (including dinner, breakfast and parking).

**2.2.3.3.2** EXCO members may only approve accommodation costs that exceed the amount in paragraph 2.2.3.3.1:

- During peak holiday periods.
- When South Africa is hosting an event in the country or in a particular geographical area that results in an abnormal increase in the number of local and/or international guests in the country or in that particular geographical area.

**2.2.3.3.3** Eskom negotiates competitive rates in all the main urban areas, and in the majority of rural areas. There are, however, areas where the rates do exceed the limit set by National Treasury eg. where Eskom encourages individuals to stay closer to the site or meeting venue, to reduce any driving that could lead to a greater safety risk. Eskom has requested a deviation for the Accounting Authority to approve accommodation costs that exceed R1,300 (including dinner, breakfast and parking) in these exceptional instances. This deviation request has still to be granted by National Treasury, and while not granted we need to adhere to the National Treasury Instruction.

### 2.2.3.4 Car Hire

The provisions contained in paragraph 2.2.3.4.1 and 2.2.3.4.2 are applicable to ALL travellers including CE and his/her direct reports ie. EXCO members, members of the accounting authority and to non-executive members serving on governance committees:

**2.2.3.4.1** All travellers may not hire vehicles from a category higher than Group B or an equivalent class. Group B vehicles contain the following specifications:


- 5 Door
- Manual
- Air Conditioning
- Radio/CD
- Power Steering
- Airbags
- Central Locking
- ABS

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**2.2.3.4.2** Where a different class of vehicle is required for a particular terrain or to cater for the special needs of an employee, such a vehicle may only be hired with the prior written approval of the responsible EXCO member.

**2.2.3.5 Other**

**2.2.3.5.1** The number of employees travelling to Parliament on official duty for the same matter is limited to three (3) employees, unless otherwise approved in advance by the accounting authority or appropriate authority.

**2.2.3.5.2** The number of employees travelling by air to other centres (for example to regional or district offices) to attend an official engagement on the same matter is also limited to three (3) employees, unless otherwise approved in advance by the responsible EXCO member.

**2.2.3.5.3** Para 2.2.3.5.1 and 2.2.3.5.2 do not apply to:

- Accounting authority
- Non-executive members serving on governance committee
- CE
- CE direct reports (EXCO)

**2.2.3.5.4** With the limitation of the number of employees travelling by air to other centres to attend an official engagement on the same matter to three (3) employees, Board will do an annual once off in advance approval for the Executive Forum and GM Forum.


**2.2.3.5.5** The respective divisions are to prepare an annual request to Board to approve people travelling to the Divisional Executive forums for the upcoming year. This request for approval is to be submitted with the division's annual budget presentations to EXCO.

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## **2.2.4 Expenses related to Catering and Events**

**2.2.4.1** Eskom may not incur catering expenses for internal meetings, i.e. for meetings attended only by persons in its employ, unless approved by the responsible EXCO member. This is not applicable to SAP Learning Solution (LSO) registered training.

**2.2.4.2** Catering and events that are intended to advance Eskom's initiatives and or strategic objectives are defined below. These functions will only be provided if they were budgeted for by the department/Business Unit's cost centres, at the beginning of the financial year. Only internal venues may be used for these events. No event management companies or external suppliers may be appointed to oversee or co-ordinate the event, do voice-overs, take videos or do photography. Only subsidised meals are allowed:

- Strategic alignment meetings
- Governance committee meetings
- Awards functions. Note: A separate position paper is being issued to the business to reduce the cost of awards and related functions
- Safety and related events
- Farewell functions in respect of employees leaving Eskom's service through normal and ill-health retirement and for those who have been with Eskom for ten years and longer.

**2.2.4.3** No provision for the benefits listed below will be budgeted or paid from the department/Business Unit's cost centres, or by suppliers or sponsors:

- Breakaways
- Team building exercises
- Entertainment (meals for business-related guests)
- Family days
- Year end functions
- Baby and bridal shower functions
- Farewell functions in respect of employees being transferred
- Promotional functions and events
- Secretaries Day and any other social function not listed above.

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## **2.2.5 Arrangements related to debit and credit cards**

**2.2.5.1** In terms of Government Gazette No. 37042 dated 15 November 2013, Eskom may only operate debit and credit cards under the following conditions:

**2.2.5.1.1** No new credit/debit cards to be issued from 15 November 2013

**2.2.5.1.2** Existing cards to be cancelled with effect from 1 December 2013, or earliest date thereafter where a notice period applies

**2.2.5.1.3** Eskom may however have the following:

- A credit/debit card lodged with a travel agency, for purposes of payment for travel and accommodation related expenses
- One credit/debit card in the name of Eskom with approval authority by only one office-bearer or official for purposes of travel and accommodation related expenses, on-line transactions and petty cash
- Fleet management, petrol and garage cards.

**2.2.5.1.4** National Treasury may exempt Eskom, subject to conditions, from 2.2.5.1.1 and 2.2.5.1.2, if special circumstances justify it.

## **2.2.6 Deviations requested**

Any requests for deviations from the instruction, which must be submitted to National Treasury for consideration:

**2.2.6.1** be made in exceptional cases only

**2.2.6.2** be based on recommendations from relevant Functional Senior Managers after collating and consolidating such requests from the organisation

**2.2.6.3** be policy-driven and not be based on ad-hoc requests

**2.2.6.4** relevant functional managers must submit their recommendations and detailed motivations to EXCO for approval. These must be signed off by Finance and Regulation and Legal prior to EXCO submission

**2.2.6.5** be approved for submission to National Treasury by BOARD.

**2.2.6.6** after BOARD approval the PFMA office will then facilitate submission to National Treasury.

**Note:** Any request for a deviation in terms of section 79 of the PFMA shall only be considered after The Presidency has been consulted on the request and has consented to the deviation.

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### 2.3 Effective Date

The effective date for the implementation of this Directive is 1 July 2014. This directive will take precedence over existing policies, procedure and guidelines, where there are conflicting details.

## 3. Supporting Clauses

### 3.1 Scope

#### 3.1.1 Purpose

The purpose of this directive is to specify the principles or rules to be implemented within Eskom Holdings SOC Ltd divisions and subsidiaries, to give effect to the instruction and Government Gazette referred to in Paragraph 1, until such time as the relevant policies, procedures and guidelines have been drawn up/or updated accordingly.

#### 3.1.2 Applicability

This directive shall apply throughout Eskom Holdings SOC Limited Divisions and Subsidiaries.

### 3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

#### 3.2.1 Normative

- [1] National Treasury Instruction 01 of 2013/2014: Cost containment measures
- [2] Government Gazette No.37042 dated 16 November 2013.

#### 3.2.2 Informative

- [1] Public Finance Management Act (No 1 of 1999) (PFMA)
- [3] ISO 9001 Quality Management Systems.

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### 3.3 Definitions

Definition	Explanation
Instruction	National Treasury Instruction 01 of 2013/2014: Cost Containment Measures
Accounting Authority	Eskom Holdings SOC Ltd Board of Directors
CE Direct Reports	EXCO members
Eskom	Eskom Holdings SOC Ltd Divisions and Subsidiaries
BOARD	Eskom Holdings SOC Ltd Board of Directors
Non-executive member	Refers to a member of the Board who is not involved in the day-to-day activities or management of the company

### 3.4 Abbreviations

Abbreviation	Explanation
CE	Eskom Chief Executive
EXCO	Eskom Executive Committee
FD	Finance Director
GE	Group Executive
HMC	Head Management Committee
LSO	SAP Learning Solution
PGC	Panel Controls Committee
PFMA	Public Finance Management Act (No 1 of 1999)
PSC	Professional Services Contract

### 3.5 Roles and Responsibilities

All Group Executives and Divisional Executives to ensure that this directive is implemented within their respective Groups/Divisions.

Shared Services to ensure that the contract with the service provider is specific and explicit with regard to the rules of this directive.

### 3.6 Process for Monitoring

The compliance officers in the respective divisions need to ensure that this directive is included in the compliance framework.

Internal audit shall conduct regular audits to ascertain compliance with this directive.

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#### 4. Acceptance

This document has been seen and accepted by:

Name	Designation
E Pule	Senior General Manager – Human Resources
NJ Veletl	Senior General Manager – Shared Services
M Sekhasimbe	General Manager Commodity Sourcing
I Mulla	General Manager Internal Consulting
M Buys	Acting Group Finance Controller
L Sherman	General Manager Financial and Management Reporting
M Bhana	Finance Business Partner - Subsidiary and Services
S Cronje	Finance Business Partner - Generation
S Abrahams	Finance Business Partner - Wires
M Ncube	Finance Business Partner – Group Capital
B Mahanyane	Finance Business Partner – Group Customer Services, Group IT and Services

#### 5. Revisions

Date	Rev.	Remarks
July 2014	1	New directive

#### 6. Development Team

The following people were involved in the development of this document:

- Aziz Laher
- Bernardene Smith
- Bongli Makuyana
- Carol van Zyl
- Dale Sicard
- Malesela Sekhasimbe
- Muvenda Khomoia
- Ntombizodwa Mokoatle
- Rochelle Chetty
- Selby Mgaga
- Suzanne Daniels

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- Tertius Van De Venter
- Wilma Jankowitz

## **7. Acknowledgements**

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SM2

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**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 20 July 2015 07:57  
**To:** infoportal1@zoho.com  
**Subject:** Top engineers-2.pdf  
**Attachments:** Top engineers-2.pdf



41 



**Approval Conditions agreed to between Acting CFO &  
Acting GE: GC&T on Friday, 26 June 2015  
(TOPE ENGINEERS DEVELOPMENT PROGRAM)**

1. Retention strategy to be developed as soon as possible to ensure Eskom does not invest for a period of 3 years in Top Engineers and then lose the resources to external market
2. Budget has been set for the next 3 years and it is critical that BPP savings are achieved. Activities (projects) should be done within allocated budget.
3. National Treasury instruction must be complied with. (Consultant Rates and if alternative methodology such as incentive-based is used, need to verify that it is allowable within the rules of National Treasury).
4. Commercial process is adhered to.
5. Clarify on services to be rendered through the consulting services in Eskom vs. Top Engineers in the Business to avoid duplication. EXCO to be engaged as the program unfolds to consider merging the 2 functions on a broader mandate.
6. In determining benefits that kicks-off incentive payments, methodologies be agreed upfront to ensure bottom-line benefits actually flows to income statements for each of the 3 years.

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SM3 40


**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 20 July 2015 08:01  
**To:** infoportal1@zoho.com  
**Subject:** Top engineers-2.pdf  
**Attachments:** Top engineers-2.pdf



A handwritten signature in black ink is located in the bottom right corner of the page.

**Approval Conditions agreed to between Acting CFO &  
Acting GE: GC&T on Friday, 26 June 2015**  
**(TOPE ENGINEERS DEVELOPMENT PROGRAM)**

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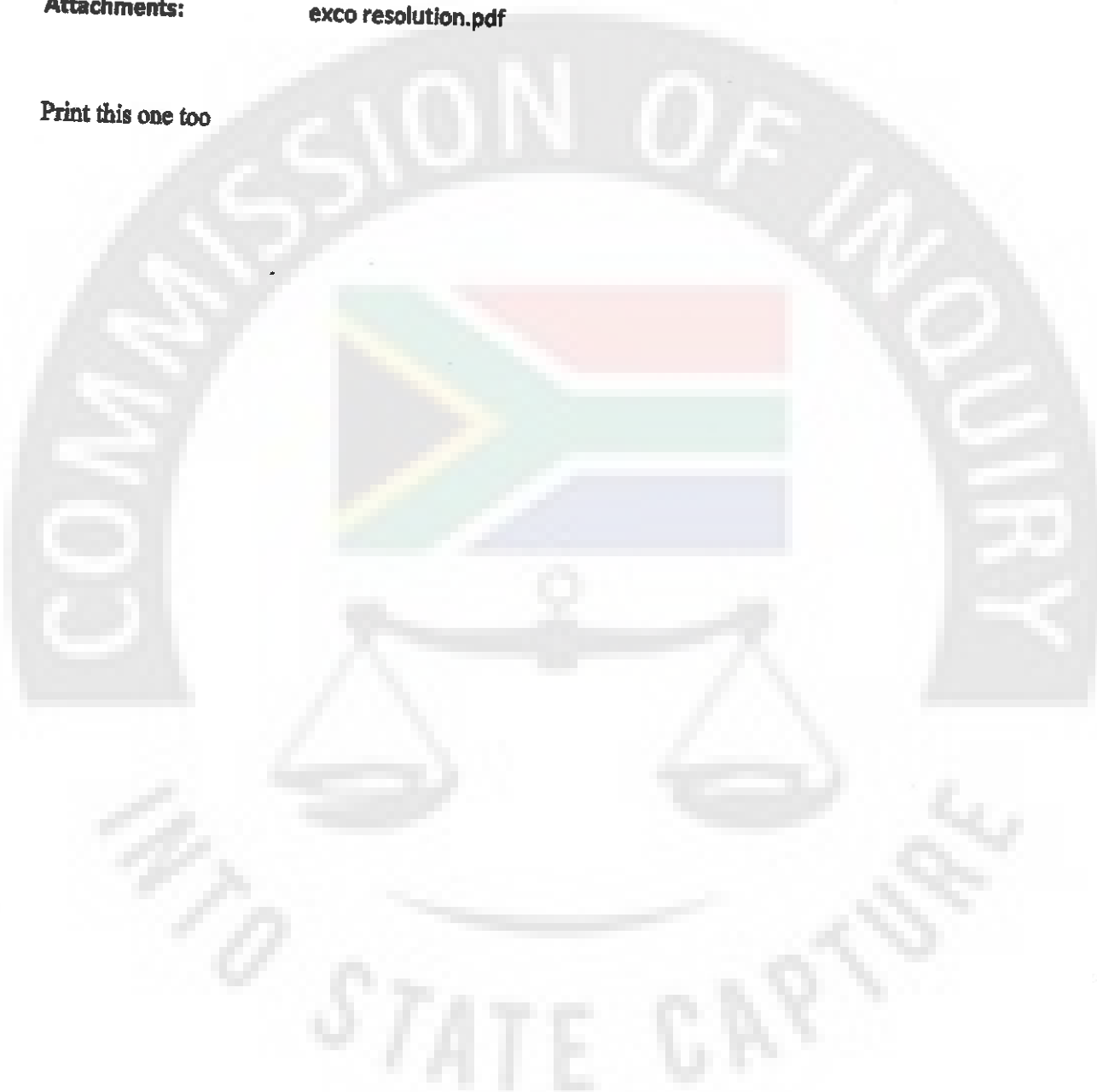
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SM4

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**From:** Matsheia Koko <KokoMM@eskom.co.za>  
**Sent:** 20 July 2015 08:01  
**To:** infoportal1@zoho.com  
**Subject:** exco resolution.pdf  
**Attachments:** exco resolution.pdf

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	<b>ROUND ROBIN RESOLUTION</b>	Unique Identifier	
		Document Type	CFM
		Revision	
		Effective Date	
		Regulatory and Legal Division	

Members of the EXCO Committee	Date	5 March 2014
	Enquiries	K Lakmeharan
	Contact Person	W Venner
	Telephone number	011 800 3250

<b>TITLE OF SUBMISSION</b>	Business case for the creation of a permanent Top Engineers programme that will (a) help to deliver and accelerate critical business projects for Eskom whilst reducing dependency on external consultants, and (b) continue the development of Top Engineers beyond the foundational year currently on offer.
----------------------------	--

### RESOLUTION REQUIRED

The EXCO is requested to approve:


1. THAT the overall strategy of developing a permanent Top Engineers programme is valid and should be pursued as detailed out;
2. THAT selected Top Engineers be immediately transferred into Group Commercial and Technology until the relevant programme structure and reporting department has been confirmed;
3. THAT the Group Technology partnership with a supporting Consultancy firm be approved in principle to continue beyond the current Top Engineers training programme, with the sole purpose of Top Engineer mentorship and development. A normal commercial process will be followed to engage a firm;
4. THAT a principal be appointed who will lead this programme and provide overall strategic direction; source and approve projects for Top Engineers; and engage with senior Eskom leadership to ensure effectiveness and impact. The principal must be sourced from an established, external consulting firm. ;
5. THAT the Divisional Executive, Group Technology be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.

### SUMMARY OF THE FACTS

#### 1. Salient Facts

##### 1.1 Context and objective of the effort

The Top Engineers programme was established in collaboration with McKinsey & Company in late 2012. The primary objective of this programme was to develop future engineering leaders with a broader skill set including core problem solving skills. McKinsey supported us as part of

	<b>ROUND ROBIN RESOLUTION</b>	Unique Identifier	
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		Revision	
		Effective Date	
		Regulatory and Legal Division	

their Supplier Development and Localisation commitment, and their desire to help Eskom fulfil its organisational potential.

McKinsey designed the programme based around the training they provide to their own consultants. McKinsey provided the training material, trainers and mentors. In addition, they staffed the engineers within the current McKinsey teams that supported Eskom projects. This provided these engineers with real-world opportunities to solve complex problems for Eskom, in an environment where they have significant executive exposure and support.

This full time programme lasted for one year and was based on the field and forum principle. This comprised on-the-job training (field) with McKinsey teams and formal classroom learning (forum) over three phases. The pilot phase of this programme comprised of 17 top Engineers who were seconded from their departments to Group Commercial and Technology from February 2013 to February 2014.

During this period, the Top Engineers have worked on a number of projects and been widely acclaimed for the real impact that they had. This has included:

- **Business Productivity Programme (BPP):** facilitated operational planning sessions and development of the structure of the BPP
- **Medupi:** supported and worked with the Project Manager on the overall construction build programme
- **Outage Performance Improvement Centre (OPIC):** monitored and implemented improvement initiatives across all outages
- **Outage support:** direct station support of outages and implemented best practice outage execution
- **Transformers Supplier Qualification Process:** developed a standardised supplier qualification process for low cost Asian suppliers
- **Rotek strategic partnership business case:** developed a business case for Rotek to partner with an external company to enhance performance

Their performance on these projects has been truly remarkable and they have had positive feedback from their project managers to Exco members. This is a testament not only to their dedication but also to the significant investment made into this programme by Eskom and McKinsey. Based on this unprecedented positive feedback on the pilot programme, we launched Cohort 2 of this programme with a second group of Top Engineers.

The initial expectation had been that after the one-year training period, the Top Engineers would either return to their original departments or would be offered positions within a new business unit dependent on performance. It is now apparent that in order for them to continue having such organisation-wide impact, we will need to create a new separate unit or programme. This will enable us to retain a number of these Top Engineers and staff them on some of our most pressing and challenging problems.

At the same time, it will allow us to deliver further, custom-made training and development, e.g. the skill set required to lead such projects.

This solution becomes even more pertinent given the urgent and immediate need to reduce



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our overall spend. This programme will therefore enable Eskom to reduce its current consultant spend and better utilise and develop internal resources whilst retaining key skills and capabilities in-house.

### 1.2 Programme structure and approach

In order to develop an impactful programme, it will be critical that we design a high-level structure that outlines the governance approach, resourcing model and the key roles and responsibilities. It will also be critical to develop a mechanism to determine the appropriate projects for Top Engineers that will ensure maximum organisation-wide impact. It will also be critical to determine the approach for performance management, personal growth and project impact to ensure personal and organisational impact.

The initial design approach is based on a creating a structure that is appropriate to Eskom but also takes in key design elements from leading global strategy consultants.

Based on this, it is expected that over the long term, the programme will comprise a 25 person-strong team that will be split across four management levels/grades. The proposed structure comprises:

- **Principal (Grade GM)** – A principal who will lead this programme and provide overall strategic direction; source and approve projects for Top Engineers; and engage with senior Eskom leadership to ensure effectiveness and impact
- **Senior Top Engineer (Grade PE)** – Up to two positions available and they will oversee project pipeline and provide overall project leadership
- **Top Engineer (Grade P18)** – Up to 7 Top Engineers who will manage key workstreams and run small projects
- **Junior Top Engineer (Grade P17)** – Up to 15 Junior Top Engineers, who will have completed their yearlong foundation programme and who will provide analytical and consulting support on project teams

In order to become operational, we will enrol our current Top Engineers and look to immediately recruit two external experienced consultants to act as the Principal and Senior Top Engineer. This will require the immediate transfer by 31 January 2014 of identified Top Engineers currently on the programme to Group Commercial and Technology until the permanent structure has been set up.

### 1.3 External support required to design the programme

A key element that resulted in the success of this programme was the openness and collaboration of our partners, McKinsey & Company who shared their own internal Intellectual Property (IP) and extensive project experience with Eskom.

This ensured our colleagues were able to expedite their development and benefit from the continual support, project management and mentorship of McKinsey consultants.

In order to make this programme impactful and to ensure that we develop it using world-class standards, it will be fundamental that we partner again with a strategy consultancy to ensure





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the seamless continuation of our colleagues' development and the impact that they have achieved.

The strategy consultancy will need to deliver and gradually handover the following key elements:

- Design overarching programme approach and format
- Provide light-touch project management support Set-up governance structure
- Design Impact tracking approach
- Design and deliver development programmes for Top Engineers that build on, but go beyond, the current foundational training

In order to ensure success, Eskom will need to deliver a number of key elements including:

- Steering and operational support to set up the programme
- Operational management of the foundational programme, which we term "Top Engineers-in-training"
- Allocation of programme members to projects
- Project tracking and personal support

### 1.4 Concrete next steps required for implementation

A set of immediate actions are required to ensure that the Top Engineers programme continues to have the right level of success and impact. These actions comprise:

- Confirmation of senior owner/ sponsors of the Top Engineers Programme
- Facilitation of post-programme assessment of Cohort 1 of Top Engineers-in-training (finishing 31 January 2014) and confirmation of transfer to Group Commercial and Technology
- Creation of short-term operating model to retain momentum and to ensure deployment of Top Engineers onto their next projects
- Appointment of day-to-day taskforce leadership to enable immediate delivery of the programme
- Confirmation of the required external support model for full delivery


### 2. Key assumptions

Not applicable

### 3. Financial implications

In order to ensure the continued success of this programme, it is proposed that we continue the relationship and support of a strategy consulting firm to establish the permanent Top Engineers programme, by working with consecutive cohorts over a period of three years until the programme is fully established. The firm will be required to provide:

- Design support to establish the operating model, structure, governance and core processes required to run Top Engineers on a permanent basis


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- Deliver the next phase of training and development programmes, building on the foundational training currently provided. More specifically, the firm will take graduates from "Top Engineer-in-Training" and develop them over 3 years to a level where they should be able to lead teams on improvement projects.
- Involvement of at least one top engineer-in-training, who could learn on the project while also helping deliver on their overall SD&L requirements


The Top Engineer programme has had significant impact on our best engineering talent and on our business. It is therefore essential and hugely beneficial to Eskom that we move onto the next phase of this programme.

**RESOLVED THAT:**

1. the overall strategy of developing a permanent Top Engineers programme is valid and should be pursued as detailed out;
2. selected Top Engineers should be immediately transferred into Group Commercial and Technology until the relevant programme structure and reporting department has been confirmed;
3. the Group Technology partnership with a Consultancy Firm is approved in principle to continue beyond the current Top Engineers training programme, with the sole purpose of Top Engineer mentorship and development. A normal commercial process will be followed to engage the firm;
6. a principal should be appointed who will lead this programme and provide overall strategic direction; source and approve projects for Top Engineers; and engage with senior Eskom leadership to ensure effectiveness and impact. The principal must be sourced from an established, external consulting firm. ;
7. the Divisional Executive, Group Technology is authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.


COMMITTEE MEMBER	APPROVED (Signature)	NOT APPROVED	DATE
B DAMES			20/3/14
T GOVENDER			
E JOHNSON			
K LAKMEEHARAN			
A NOAH			
S LENNON			



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D MAROKANE			
T MOLEFE			
M NTSOKOLO			




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		Effective Date	
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Members of the EXCO Committee	Date	5 March 2014
	Enquiries	K Lakmeharan
	Contact Person	W Vanner
	Telephone number	011 800 3250

TITLE OF SUBMISSION	Business case for the creation of a permanent Top Engineers programme that will (a) help to deliver and accelerate critical business projects for Eskom whilst reducing dependency on external consultants, and (b) continue the development of Top Engineers beyond the foundational year currently on offer.
---------------------	--

#### RESOLUTION REQUIRED

The EXCO is requested to approve:

1. THAT the overall strategy of developing a permanent Top Engineers programme is valid and should be pursued as detailed out;
2. THAT selected Top Engineers be immediately transferred into Group Commercial and Technology until the relevant programme structure and reporting department has been confirmed;
3. THAT the Group Technology partnership with McKinsey be approved in principle to continue beyond the current Top Engineers training programme, with the sole purpose of Top Engineer mentorship and development. A normal commercial process will be followed to engage McKinsey;
4. THAT a principal be appointed who will lead this programme and provide overall strategic direction; source and approve projects for Top Engineers; and engage with senior Eskom leadership to ensure effectiveness and impact. The principal must be sourced from an established, external consulting firm.;
5. THAT the Divisional Executive, Group Technology be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.


#### SUMMARY OF THE FACTS

##### 1. Salient Facts

##### 1.1 Context and objective of the effort

The Top Engineers programme was established in collaboration with McKinsey & Company in late 2012. The primary objective of this programme was to develop future engineering leaders with a broader skill set including core problem solving skills. McKinsey supported us as part of their Supplier Development and Localisation commitment, and their desire to help Eskom fulfil its organisational potential.

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McKinsey designed the programme based around the training they provide to their own consultants. McKinsey provided the training material, trainers and mentors. In addition, they staffed the engineers within the current McKinsey teams that supported Eskom projects. This provided these engineers with real-world opportunities to solve complex problems for Eskom, in an environment where they have significant executive exposure and support.

This full time programme lasted for one year and was based on the field and forum principle. This comprised on-the-job training (field) with McKinsey teams and formal classroom learning (forum) over three phases. The pilot phase of this programme comprised of 17 Top Engineers who were seconded from their departments to Group Commercial and Technology from February 2013 to February 2014.

During this period, the Top Engineers have worked on a number of projects and been widely acclaimed for the real impact that they had. This has included:

- **Business Productivity Programme (BPP):** facilitated operational planning sessions and development of the structure of the BPP
- **Medupl:** supported and worked with the Project Manager on the overall construction build programme
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and capabilities in-house.

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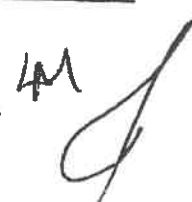
In order to become operational, we will enrol our current Top Engineers and look to immediately recruit two external experienced consultants to act as the Principal and Senior Top Engineer. This will require the immediate transfer by 31 January 2014 of identified Top Engineers currently on the programme to Group Commercial and Technology until the permanent structure has been set up.

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achieved.

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- Creation of short-term operating model to retain momentum and to ensure deployment of Top Engineers onto their next projects
- Appointment of day-to-day taskforce leadership to enable immediate delivery of the programme
- Confirmation of the required external support model for full delivery

### 2. Key assumptions


Not applicable

### 3. Financial implications

In order to ensure the continued success of this programme, it is proposed that we continue the relationship and support with McKinsey & Company to establish the permanent Top Engineers programme, by working with consecutive cohorts over a period of three years until the programme is fully established. McKinsey will be required to provide:

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- Deliver the next phase of training and development programmes, building on the foundational training currently provided. More specifically, McKinsey will take graduates from "Top Engineer-in-Training" and develop them over 3 years to a level where they should be able to lead teams on improvement projects (analogous to a McKinsey "Engagement Manager")
- Involvement of at least one top engineer-in-training, who could learn on the project while also helping deliver on their overall SD&L requirements
- Experts from their Business Building Practice. These individuals have experienced a wide variety of business building efforts, have deep insights into the required processes, and would provide international best practice input to establishing Top Engineers as an economically robust entity


The overall consulting team would be led by Michael Kloss, a director in their Johannesburg office; Alexander Weiss, a director from their Berlin office; and Lorenz Jungling, a partner from their Johannesburg office.

Based on the three year nature of this programme, McKinsey & Company will be offering a customised quotation based on resource requirements at a cost of R20m in year 1, R15m in year 2 and R15m in year 3 (excluding 18% expenses and VAT). Currently, the FY 2013/2014 year to date Group Technology Outages spend on McKinsey is R64 M, with FY 2013/2014 spend at R107 M.

The Top Engineer programme has had significant impact on our best engineering talent and on our business. It is therefore essential and hugely beneficial to Eskom that we move onto the next phase of this programme.

**RESOLVED THAT:**

1. the overall strategy of developing a permanent Top Engineers programme is valid and should be pursued as detailed out;
2. selected Top Engineers should be immediately transferred into Group Commercial and Technology until the relevant programme structure and reporting department has been confirmed;
3. the Group Technology partnership with McKinsey is approved in principle to continue beyond the current Top Engineers training programme, with the sole purpose of Top Engineer mentorship and development. A normal commercial process will be followed to engage McKinsey;
6. a principal should be appointed who will lead this programme and provide overall strategic direction; source and approve projects for Top Engineers; and engage with senior Eskom leadership to ensure effectiveness and impact. The principal must be sourced from an established, external consulting firm.;
7. the Divisional Executive, Group Technology is authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above

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including the signing of any agreements or other documentation necessary or related thereto.

COMMITTEE MEMBER	APPROVED (Signature)	NOT APPROVED	DATE
B DAMES			
T GOVENDER	<i>[Signature]</i>		05/03/14
E JOHNSON	<i>[Signature]</i>		13/3/2014
K LAKMEEHARAN	<i>[Signature]</i>		4/3/2014
A NOAH	<i>[Signature]</i>		04-03-2014
S LENNON	<i>[Signature]</i>		12/3/14
D MAROKANE	<i>[Signature]</i>		5/3/14
T MOLEFE	<i>[Signature]</i>		5/3/2014
M NTSOKOLO	<i>[Signature]</i>		5/3/2014

① A commercial process needs to be followed to select the firm in making bids. \* We need to push for a further 10% reduction.

NOTE: - I don't believe we should be paying McKinsey to meet their SD+L commitment

- This appointment is subject to new Treasury requirements relating to Consultants
- I support the continuation of the Top Engineers programme

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### EXECUTIVE SUMMARY

#### SUBMISSION TO THE EXCO

#### 1. TITLE OF THE SUBMISSION

Business case for the creation of a permanent Top Engineers programme that will (a) help to deliver and accelerate critical business projects for Eskom whilst reducing dependency on external consultants, and (b) continue the development of Top Engineers beyond the foundational year currently on offer.

#### 2. RESOLUTION REQUIRED

The EXCO is requested to approve:

- 2.1 THAT the overall strategy of developing a permanent Top Engineers programme is valid and should be pursued as detailed out;
- 2.2 THAT selected Top Engineers be immediately transferred into Group Commercial and Technology until the relevant programme structure and reporting department has been confirmed;
- 2.3 THAT the Group Technology partnership with McKinsey be approved in principle to continue beyond the current Top Engineers training programme, with the sole purpose of Top Engineer mentorship and development. A normal commercial process will be followed to engage McKinsey;
- 2.4 THAT a principal be appointed who will lead this programme and provide overall strategic direction; source and approve projects for Top Engineers; and engage with senior Eskom leadership to ensure effectiveness and impact. The principal must be sourced from an established, external consulting firm.;
- 2.5 THAT the Divisional Executive, Group Technology be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.


#### 3. SUMMARY OF FACTS


##### 3.1 Salient Facts

##### 3.1.1 Context and objective of the effort

The Top Engineers programme was established in collaboration with McKinsey & Company in late 2012. The primary objective of this programme was to develop future engineering leaders with a broader skill set including core problem solving skills. McKinsey supported us as part of their Supplier

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Development and Localisation commitment, and their desire to help Eskom fulfil its organisational potential.

McKinsey designed the programme based around the training they provide to their own consultants. McKinsey provided the training material, trainers and mentors. In addition, they staffed the engineers within the current McKinsey teams that supported Eskom projects. This provided these engineers with real-world opportunities to solve complex problems for Eskom, in an environment where they have significant executive exposure and support.

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At the same time, it will allow us to deliver further, custom-made training and development, e.g. the skill set required to lead such projects.

This solution becomes even more pertinent given the urgent and immediate need to reduce our overall spend. This programme will therefore enable Eskom to reduce its current consultant spend and better utilise and develop internal resources whilst retaining key skills and capabilities in-house.

### 3.1.2 Programme structure and approach

In order to develop an impactful programme, it will be critical that we design a high-level structure that outlines the governance approach, resourcing model and the key roles and responsibilities. It will also be critical to develop a mechanism to determine the appropriate projects for Top Engineers that will ensure maximum organisation-wide impact. It will also be critical to determine the approach for performance management, personal growth and project impact to ensure personal and organisational impact.

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In order to become operational, we will enrol our current Top Engineers and look to immediately recruit two external experienced consultants to act as the Principal and Senior Top Engineer. This will require the immediate transfer by 31 January 2014 of identified Top Engineers currently on the programme to Group Commercial and Technology until the permanent structure has been set up.

### 3.1.3 External support required to design the programme



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A key element that resulted in the success of this programme was the openness and collaboration of our partners, McKinsey & Company who shared their own internal Intellectual Property (IP) and extensive project experience with Eskom.

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### 3.2 Key assumptions

Not applicable

### 3.3 Financial Implications

In order to ensure the continued success of this programme, it is proposed that we continue the relationship and support with McKinsey & Company to establish the permanent Top Engineers programme, by working with consecutive cohorts over a period of three years until the programme is fully established. McKinsey will be required to provide:

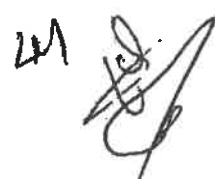
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The Top Engineer programme has had significant impact on our best engineering talent and on our business. It is therefore essential and hugely beneficial to Eskom that we move onto the next phase of this programme.

### 3.4 Human Resource Implications



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Set out in section 3.1.2 above.

**3.5 Risks (Including Environment, Legal or Contractual risks)**

**3.6 Verification by Independent party (if applicable)**

Not applicable.

**4. OTHER APPROVALS REQUIRED**

None

**KANNAN LAKMEEHARAN**  
**GROUP EXECUTIVE TECHNOLOGY AND COMMERCIAL (ACTING)**




**SIGNATURE**


Who hereby represents that the above information is correct.

24/2/2014  
**DATE**

Submission prepared by: **Mtshela Koko**

Contact Number: **(011) 800 4852**



	<b>SUBMISSION CHECKLIST</b>	Unique Identifier	221-221
		Document Type	OGSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

## CHECKLIST 1

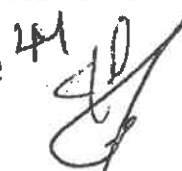
### TITLE OF SUBMISSION: BUSINESS CASE FOR THE CREATION OF A PERMANENT TOP ENGINEERS PROGRAMME


Please note:

The headings should **NOT** be deleted if it is not applicable to the project, the sequence of the headings should not be changed.

Tick the applicable box (✓).

	N/A	Yes	No
<b>1. INTERNAL PROCESS</b>			
<b>1.1 BUSINESS PLAN</b>			
Has the project/issue been included in the business plan? (If no, information/explanation to be highlighted in documentation/presentation/attachment.)		✓	
<b>1.2 BUDGET</b>			
If financial approval is required, is the project/matter within the approved budget? (If no, information/explanation to be highlighted in documentation/presentation/attachment.)		✓	
<b>1.3 HUMAN RESOURCE IMPLICATIONS</b>			
Does the project have any HR implications? (If yes, information/explanation to be highlighted in documentation/presentation/attachment.)		✓	
<b>1.4 FINANCIAL EVALUATION</b>			
- Has the project/issue undergone a financial evaluation? (If yes, by whom)			
- Has the evaluation been verified?	✓		
- By whom (internally or independent)?			
<b>1.5 LEGAL/CONTRACTUAL ISSUES</b>			
- Are there legal implications?	✓		
- Has Corporate legal department input been obtained?	✓		✓
- If so, is the approval sought consistent with the legal input?	✓		
<b>1.6 TAX IMPLICATIONS</b>			
- Are there tax implications?	✓		✓
- Has Corporate tax department input been obtained?	✓		
- If so, is the approval sought consistent with the tax input?	✓		
<b>1.7 CAPITAL PROJECTS</b>			
If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.	✓		



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**1.8 TECHNICAL EVALUATION**

- Has the project/issue undergone a technical evaluation? (If yes, by whom)
- Has the evaluation been verified?
- By whom (internally or independent)?

**1.9 BLACK ECONOMIC EMPOWERMENT IMPLICATIONS**

Does the project have any BEE implications?

**1.10 EMPLOYMENT EQUITY**

Was due consideration given to employment equity in terms of the following:

- Project team
- Drafting of submission documentation
- Individual(s) presenting to EXCO

**2. ADDITIONAL APPROVALS**
**2.1 NERSA**

- Is NERSA approval/consultation required?
- If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.

**2.2 PUBLIC FINANCE MANAGEMENT ACT (PFMA)**

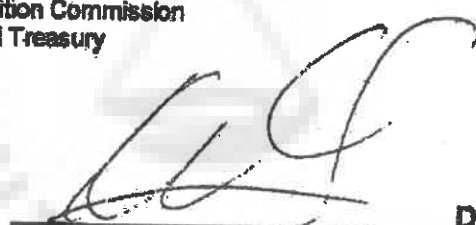
- Is any PFMA approval required?

**2.3 ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR**

- Reserve Bank
- Competition Commission
- National Treasury

N/A	Yes	No
✓		
✓		
✓		
✓		
✓		
✓		

SIGNATURE:



DATE:

24/6/2015

GROUP EXECUTIVE

Who hereby confirms that all of the above requirements have been complied with.

PRINT NAME:

KANNAN LAKMEEHARAN





SM8 71

**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 08 August 2015 22:20  
**To:** Infoportal1@zoho.com  
**Subject:** On-line Vending.pdf  
**Attachments:** On-line Vending.pdf

We did not finish our discussions about this transaction.


This is what is going to board of 18 August.



4M 

5118

351

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		Document Type	OCSDE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

### EXECUTIVE SUMMARY

**SUBMISSION TO THE EXCO PROCUREMENT SUB-COMMITTEE (EXCOPS) ON 11 AUGUST 2015**  
**SUBMISSION TO THE BOARD TENDER COMMITTEE (BTC) ON 18 AUGUST 2015**

#### **1. TITLE OF THE SUBMISSION**

Feedback on the results of the negotiations held to negotiate but not conclude with ten (10) service providers for the provision of online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC Ltd.

#### **2. RESOLUTION REQUIRED**

Approval be and is hereby granted:

- 2.1 That as the results of negotiations are within the ambit of the approved mandate;
- 2.2 To conclude contracts with the 9 (nine) service providers, to provide the online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC Ltd for a period of 3 (three) years with an option to extend by 1 (one) year for a value not exceeding R1 014 064 480.00 (one billion, fourteen million, sixty four thousand and four hundred and eighty Rands) excluding Value Added Tax (VAT); Contract Price Adjustment (CPA), contingency and travel and subsistence allowance.
- 2.3 To extend the existing Cigicell contract no. 480007102 by a further 6 (six) months to allow for further negotiations with the supplier.

#### **3. SUMMARY OF FACTS**


##### **3.1 Sallent Facts**

##### **3.1.1 Background**

On 21 July 2015 the BTC granted a mandate to negotiate with 10 (ten) suppliers but not conclude as follows:

- To negotiate and not conclude enabling commission contracts and Service Level Agreements (SLA) with 10 (ten) service providers for the provision of the online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC Ltd.
- That the contract value will not exceed R1 014 064 480.00 (one billion, fourteen million, sixty four thousand and four hundred and eighty Rands) excluding VAT, CPA, contingency, and travel and subsistence allowance.
- That the contract duration will be for the period of 36 (thirty six) months with an option to extend for an additional 12 (twelve) months.



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		Revision	0
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- To revise the commission rates from an old range of 4.48c/kwh – 4.73c/kwh; to a new range of 4.73c/kwh - 5.48c/kwh (using the previous high as the new low) for service provision sustainability. The proposed new range of commission rates offering is for base scope plus the value adds up to 5.48c/kwh. The value adds are rural redeployment incentive, magnetic card token dispensing, free basic electricity dispensing and cash handling component of debt recovery.
- To negotiate savings in line with the aspiration base of 4.48c/kWh – 5.00c/kWh.
- To negotiate the objective criteria for both SD&L targets and quality requirements as per PPPFA. Conditions relating to SD & L were as follows:
  - Black ownership should be moved to 50% and above;
  - 30% of the contract value should be spend with Black suppliers through sub-contracting;
  - For every R7 000 000.00 (seven million rand) paid by Eskom, the contracted suppliers are expected to train 1 (one) candidate;
  - 2 (two) Black owned suppliers (EME, QSE's) must be incubated by the Generic suppliers (other Non-Black owned Suppliers) in the panel.
- That the Group Executive, Distribution Division be authorised, with the power to delegate further, to take all the necessary to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

### 3.1.2 Negotiation results

Negotiations were held from 23 July 2015 to 29 July 2015 at Megawatt Park and follow up negotiations on 4 August 2015. The Results of the negotiations are summarised as follows:

- Technical requirements were accepted by all suppliers;
- The required documents were submitted accordingly;
- For those suppliers that are not ISO 9001 certified submitted plans for implementation within 6 (six) months;
- The financial security options were tabled and suppliers had to choose the relevant security with an option to adjust within 6 (six) months depending on the sales volume;
- All SD&L requirements were accepted by the suppliers however, the suppliers agreed to achieve full compliance to the Black Ownership requirements by 2018. Suppliers are therefore required to submit an ownership migration plan to Eskom and this will form part of the contract;
- The aspiration rate was achieved for 8 (eight suppliers). 1 (one) supplier does not fall under the aspiration rate however, the supplier is recommended because of its speciality in magnetic tokens. The negotiations with Cigicell are continuing as the parties could not reach an agreement as at 4 August 2015.




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### Negotiation results summary

The table below reflects the results of the negotiation;

Supplier	Status of Agent technical capability	Quality	Financial security	Commission proposed before	Eskom final offer	Commission Rate 4/23 5/18 c/kWh	BEE ownership before	BEE ownership after
Current Eskom Vending Agent. Targeted deployment areas	Accepted	Accepted						
	Banking, Retail, Rural and Urban	submitted	option 3	5.11	4.73, 4.80 & 4.87	Not agreed. Risk identified	39.45%	51% BY 2018 PLANNING TO COMMENCE END 2015 WITH NO MIGRATION PLAN.
Current Eskom Vending Agent. Urban Township	Accepted	Accepted						
	Urban Township	submitted	option 1	5.4	4.87 & 4.95 & 5.05	5.05 agreed	50.41%	ALREADY ABOVE 51% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE
New supplier with New Innovations to the vending capability	Accepted	Accepted						
	Mostly rural and some in urban.	submitted	option 1	7.5	4.87		0%	ADDITIONAL 25% OWNERSHIP BY DEC 2016, 2017 A FURTHER 25.9% FOR BLACK OWNERSHIP. A2 PAY HAS COMMITTED WITH NATIONAL TREASURY TO BE 88BEE BY FEB 2017
Current Eskom Vending Agent	Accepted	Accepted						
	Banking, Retail, Urban and some Rural.	submitted	option 2	4.68	4.65 or 4.85 fixed for 3 years		0%	AT NEGOTIATIONS THEY COMMITTED TO MIGRATE TO 51% HOWEVER THEY HAVE NOT SUBMITTED THE MIGRATION PLAN AS REQUESTED
Current Eskom Vending Agent	Accepted	Accepted						
	Banking and Urban	submitted	option 2	4.95	4.84		14.81%	AT NEGOTIATIONS THEY COMMITTED TO MIGRATE TO 51% HOWEVER THEY HAVE NOT SUBMITTED THE MIGRATION PLAN AS REQUESTED
New service provider	Accepted	Accepted						
	Retail, Urban and Rural	submitted	option 1	9.36	4.87		100% & 100%	ALREADY 100% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE
New service provider	Accepted	Accepted						
	Retail, Urban and Rural	submitted	option 1	4.85	4.73		59.61%	ALREADY ABOVE 59% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE
New service provider	Accepted	Accepted						
	Retail (Pepcor group), Rural and Urban.	submitted	option 1	4.95	4.85		70%	ALREADY 70% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE
New service provider	Accepted	Accepted						
	Banking, Retail, Rural and Urban	submitted	option 1	5.76	4.73		51%	ALREADY 51% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE
New service provider	Accepted	Accepted						
	Rural and Urban.	submitted	option 1	5.76	4.73		80%	ALREADY 80% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE

Rates as agreed are moderately aligned with small variances. All of these suppliers are within the aspiration range 4.48 - 5.00 c/kWh. All Savings have been achieved.

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### 3.2 Key assumptions

The spend against these contracts is of an operational nature. Provision has been made in the divisional budgets for FY16 – FY20.

### 3.3 Financial Implications

The commission range revision is influenced by:

- Compounded interest on variables for the past 4 (four) years and forecasted consumer price index (CPI).
- Initial capital outlay and marketing on the service.

### 3.4 Human Resource Implications

None

### 3.5 Risks (Including Environment, Legal or Contractual risks)


The following risks were identified during negotiations:

Principles of on-line vending are such that the principal agents use sub-agents to sell to the customers. The 2 (two) sub agents for Cigicell viz, Flash mobile and A 2 pay have now become principal agents and will compete with Cigicell for the market share. Cigicell's rates could not align with the rest of the suppliers as they prefer to be the market leader and do not agree to a rate reduction. Even though the rate is within the mandate parameters, this poses a risk. Some of the risks identified are as follows:

- Cigicell are the current market leaders with a market share of 60% and provide Online vending services with a national vending outlet footprint of 4800. They disclosed the intention to maintain their dominance in the market and even increase it to 100% and that is against the principles of market dilution.
- If Cigicell's market share may increase beyond the current 60% and this could put security of supply at risk should their vending system experience problems or crash.
- Cigicell were reluctant to accept quality and SD&L requirements as they perceived them to be additional costs that were supposed to be remunerated. Cigicell's motivation for the 5.11c/kWh rate is motivated by the perception that Eskom received the 12.8% tariff increase and believe Eskom is unfair by offering below 12.8% increase. Further Cigicell believe that Eskom's future increases over the 3 (three) year contract will be around and above 12% resulting in their situation being worse off.






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- In light of the above, an acceptance of the Cigicell rate would cost Eskom more by an additional R30m (finance report – Annexure A) and therefore render the service expensive rather than sustainable and reasonable.
- CigiCell has not offered any rate reduction whilst competitors Easypay and Itron have both agreed on rates lower than their current contract rates. (Itron agreed rate 4.84c/kWh down from 4.95 c/kWh in June 2015, Easypay agreed rate 4.65 c/kWh down from 4.68 c/kWh in June 2015)

In order to mitigate the risks above the team recommends the following options:

Settlements Options	Negative impact on Eskom	Positive impact on Eskom
<b>Option 1</b> Offer ALL suppliers the same standard rate of 5.11c/kWh	<ul style="list-style-type: none"> <li>• This risk is high as this will erode all the potential savings. With only 1 supplier Cigiell at 5.11c/kWh the additional costs are R30m for the duration of the contract. With 10 suppliers the additional costs would be at least R50m.</li> <li>• For every 0.01c/kWh it is estimated that it will cost Eskom R1.2m</li> </ul>	<ul style="list-style-type: none"> <li>• Barriers to entry would be avoided with market being shared by more participants</li> <li>• Supplier development and localization will be implemented accordingly</li> </ul>
<b>Option 2:</b> Eskom accepts CigiCell's submitted request of 5.11c/kWh	<ul style="list-style-type: none"> <li>• This rate is 0.024c/kWh higher than their current 4.87c/kWh and will increase Eskom's cost by an estimated R30m over the 3 year contract period.</li> </ul>	<ul style="list-style-type: none"> <li>• Eskom facilitate enterprise development to ensure that new service providers rapidly grow and capture a significant portion of the market share that will dilute the current prominence of CigiCell.</li> </ul>
<b>Option 3:</b> Extend the current Cigicells' contract by 6 months and Continue with negotiations and pursue a settlement that is within mandated aspiration range. 4.48c/kWh to 5.00c/kWh	<ul style="list-style-type: none"> <li>• Prolonged negotiations/engagement</li> </ul>	<ul style="list-style-type: none"> <li>• Allow the new participants to enter the market.</li> </ul>



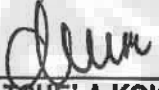
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		Revision	0
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### 3.6 Verification by Independent party (if applicable)

Not applicable


### 4 OTHER APPROVALS REQUIRED

None

  
 MATSHELA KOKO  
 GROUP EXECUTIVE  
 TECHNOLOGY AND COMMERCIAL

8/8/15  
 DATE



	<b>SUBMISSION CHECKLIST</b>	Unique Identifier	221-221
		Document Type	OCSDFM
		Revision	0
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## CHECKLIST 1

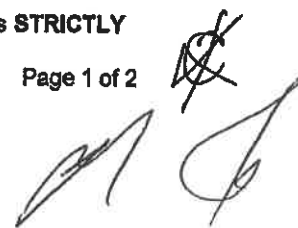
**TITLE OF SUBMISSION:** Feedback on the Negotiations for On line vending services


**Please note:**

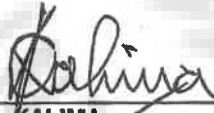
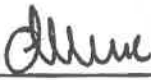
The headings should **NOT** be deleted if it is not applicable to the project, the sequence of the headings should not be changed.

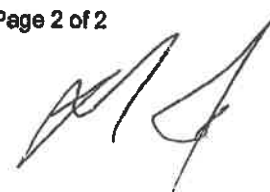
Tick the applicable box (✓).


	N/A	Yes	No
<b>1. INTERNAL PROCESS</b>			
<b>1.1 BUSINESS PLAN</b> Has the project/issue been included in the business plan? (If no, information/explanation to be highlighted in documentation/presentation/attachment.)		✓	
<b>1.2 BUDGET</b> If financial approval is required, is the project/matter within the approved budget? (If no, information/explanation to be highlighted in documentation/presentation/attachment.)		✓	
<b>1.3 HUMAN RESOURCE IMPLICATIONS</b> Does the project have any HR implications? (If yes, information/explanation to be highlighted in documentation/presentation/attachment.)			✓
<b>1.4 FINANCIAL EVALUATION</b> - Has the project/issue undergone a financial evaluation? (If yes, by whom) - Has the evaluation been verified? - By whom (internally)?		✓ ✓ ✓	
<b>1.5 LEGAL/CONTRACTUAL ISSUES</b> - Are there legal implications? - Has Corporate legal department input been obtained? - If so, is the approval sought consistent with the legal input?		✓ ✓ ✓	
<b>1.6 TAX IMPLICATIONS</b> - Are there tax implications? - Has Corporate tax department input been obtained? - If so, is the approval sought consistent with the tax input?	✓ ✓		✓
<b>1.7 CAPITAL PROJECTS</b> If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.			✓



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		N/A	Yes	No
1.8	<b>TECHNICAL EVALUATION</b>			
	- Has the project/issue undergone a technical evaluation? (If yes, by whom)	✓		
	- Has the evaluation been verified?	✓		
	- By whom (internally or independent)?	✓		
1.9	<b>BLACK ECONOMIC EMPOWERMENT IMPLICATIONS</b>			
	Does the project have any BEE implications?		✓	
1.10	<b>EMPLOYMENT EQUITY</b>			
	Was due consideration given to employment equity in terms of the following:		✓	
	- Project team		✓	
	- Drafting of submission documentation		✓	
	- Individual(s) presenting to EXCO		✓	
2.	<b>ADDITIONAL APPROVALS</b>			
2.1	<b>NERSA</b>			
	- Is NERSA approval/consultation required?	✓		
	- If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.	✓		
2.2	<b>PUBLIC FINANCE MANAGEMENT ACT (PFMA)</b>			
	- Is any PFMA approval required?			✓
2.3	<b>ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR</b>			✓
	- Reserve Bank	✓		
	- Competition Commission	✓		
	- National Treasury	✓		
SIGNATURE: 		DATE: 8/8/2015		
C. KALIMA GENERAL MANAGER: COMMODITY SOURCING (ACTING)				
Who hereby confirms that all of the above requirements have been complied with.				
SIGNATURE: 		DATE: 8/8/15		
M. KOKO GROUP EXECUTIVE TECHNOLOGY AND COMMERCIAL				
Who hereby confirms that all of the above requirements have been complied with.				



	<b>Feedback Report</b>	Unique Identifier	240-53463042
		Revision	Rev. 1
		Revision Date	August 2015
		<b>Group Technology and Commercial</b>	
TO:	<b>The Chairman</b>  <b>The EXCO Procurement Sub-Committee (EXCOPS)</b>  <b>The Board Tender Committee (BTC)</b>	Date:	<b>11 August 2015</b>  <b>18 August 2015</b>
COMPILER:	Nokuthula Ntshingila	Tel:	011 800 2874
BUSINESS UNIT & NAME OF END-USER	Strategy Enablement and Segment Steering- Distribution & Customer Service	Rev: 0	
DESCRIPTION	<b>Feedback on the results of the negotiations held with 10 suppliers for the provision of Online vending Agency Services, selling prepaid electricity on behalf of Eskom Holdings SOC Limited</b>		
ENQUIRY NO.:	CORP 3024		
PR NO.:			

## 1. INTRODUCTION

In accordance with a mandate approved by the Board Tender Committee (BTC), at a meeting held on 21 July 2015, to negotiate but not conclude a contract and Service Level Agreements with the following 10 (ten) Service Providers:

- 1) CigiCell (Pty) Ltd
- 2) Qhakaza Amps (Pty) Ltd
- 3) A 2 L Trading as A 2 Pay
- 4) Anytime Power
- 5) Flash Mobile Vending (Pty) & Lancaster Electricity/Solutions (Pty) Ltd.
- 6) Contour Technology
- 7) Pamodzi Phasha (JV)
- 8) Easy Pay (Pty) Ltd
- 9) Sandulela Technologies
- 10) Itron Metering Solutions South Africa

This report reflects the results thereof and requests acceptance of the feedback. The mandate provided was as follows:

On 21 July 2015 the BTC granted a mandate to negotiate with 10 suppliers but not conclude as follows:

- o to negotiate and not conclude enabling commission contracts and Service Level Agreements (SLA) with 10 (ten) service providers for the provision of the online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC Ltd.


240-53463042

CONTROLLED DISCLOSURE

 TE – Group Technology & Commercial,  
 Effective 20 August 2012





	Feedback Report	Unique Identifier	240-53463042
		Revision	Rev. 1
		Revision Date	August 2015
		Group Technology and Commercial	


- o the contract value will not exceed R1 014 064 480.00 (one billion, fourteen million, sixty four thousand and four hundred and eighty rands) excluding VAT, CPA, contingency, and travel and subsistence allowance. The contract duration will be for the period of 36 (thirty six) months with an option to extend for an additional 12 (twelve) months.
- o to negotiate but not conclude contracts with the 10 (ten) service providers following an open tender
- o to revise the commission rates from an old range of 4.48c/kwh – 4.73c/kwh; to a new range of 4.73c/kwh - 5.48c/kwh (using the previous high as the new low) for service provision sustainability. The proposed new range of commission rates offering is for base scope plus the value adds up to 5.48c/kwh. The value adds are rural redeployment incentive, magnetic card token dispensing, free basic electricity dispensing and cash handling component of debt recovery.
- o to negotiate at the aspiration base of 4.48c/kWh – 5.00c/kWh
- o to negotiate the objective criteria for both SD & L targets and quality requirements as per PPPFA.

*Conditions relating to SD & L were:*

- Black ownership should be moved to 50% and above
  - 30% should be spend with Black suppliers through sub-contracting
  - For every R7 000 000.00 (seven million rand) paid by Eskom, the contracted suppliers are expected to train one (1) candidate.
  - 2 Black owned suppliers (EME, QSE's) must be incubated by the Generic (Other non-black owned ) suppliers in the panel
- o that the Group Executive, Distribution Division be authorised, with the power to delegate further, to take all the necessary to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

Negotiations were held from 23 July 2015 to 29 July 2015 at Megawatt Park, and follow up negotiations were held on 04 August 2015.



	Feedback Report	Unique Identifier	240-53463042
		Revision	Rev. 1
		Revision Date	August 2015
		Group Technology and Commercial	

## 2. APPROVED MANDATE PARAMETERS AND NEGOTIATION RESULTS

The table below reflects the approved mandate parameters and the results of the negotiations.


Approved Mandate Objectives	Results Achieved
<b>Real Base:</b>  Maximum commission per kwh Range: 4.73c/kWh to 5.38c/kWh  <b>Commission variables:</b> Rural deployment incentive=0.3507c - 0.5916 cents 0.2078 - 0.4156 Magnetic card token dispensing = Fixed @60c Free Basic Electricity dispensing= R1.50 - R2.50 per transaction Cash component of debt recovery=1.2% - 1.5%  <b>Aspiration Base:</b>  Minimum commission per kwh Range : 4.48c/kWh to 4.73c/kWh  <b>Commission variables:</b> Rural deployment incentive=0.2078c - 0.4156 cents Magnetic card token dispensing = Fixed @40c Free Basic Electricity dispensing= R1.00 - R1.50 per transaction Cash component of debt recovery=1 % - 1.2%	<ul style="list-style-type: none"> <li>All the Suppliers are within the range as per the approved mandate with a risk identified on Cigicell. Please refer to the summary of negotiations below.</li> <li>All suppliers have agreed to the all-inclusive price</li> </ul>
<b>SD &amp; L Requirements</b>  1) BEE ownership 51% and above by the end of the contract. Proposal to be given to Eskom on or before the 5th Aug 2015 (Generic Supplier) 2) Target for subcontracting is 30% of revenue of the country's demographics (Generic Supplier) 3) Select at list 2 of the suppliers who participated in the tender for mentoring. (Generic Supplier) 4) For every R7 million of revenue = training of 1 skill is required (Both Generic & QSE)	<b>SD &amp; L Requirements</b>  1) All the Generic suppliers have provided the plan on how to meet the 51% black ownership before the end of the contract. 2) All suppliers have agreed to subcontract as mandated. 3) All suppliers have agreed and the incubation list of suppliers is available for select 4) All suppliers have agreed and training schedules have been submitted.

240-53463042

CONTROLLED DISCLOSURE

TE – Group Technology & Commercial,  
Effective 20 August 2012




	Feedback Report	Unique Identifier	240-53463042
		Revision	Rev. 1
		Revision Date	August 2015
		Group Technology and Commercial	

<b>Conditions of Contract:</b>	<b>Agreed Terms and Conditions:</b>
<b>NEC TERM CONTRACT</b>  Main Option : E : Cost Reimbursable W1 : Dispute Resolution Procedure X1: Price Adjustment for Inflation X2: Changes in the Law X18: Limitation of Liability Z : Additional clauses	<b>NEC TERM CONTRACT</b>  Main Option : E : Cost Reimbursable W1 : Dispute Resolution Procedure X1: Price Adjustment for Inflation X2: Changes in the Law X18: Limitation of Liability Z : Additional clauses
<b>Quality Requirements</b>	<b>Negotiated Quality Requirements</b>
Quality Management System Requirements ISO 9001:2008 Evidence of QMS in operation Contract Quality Plan Quality Control plan requirements	The required documents were submitted accordingly.  For those suppliers that do not have the Quality systems in place, the plans were submitted on how to implement the system within 6 (six) months period.
<b>Financial Security options</b>	<b>Negotiated Financial Security options</b>
<b>Option 1</b> Cash deposit of 25% (daily banking) <b>Option 2</b> Bank guarantee of 25% monthly (daily banking) <b>Option 3</b> Bank guarantee of 50% (bank weekly)	Each supplier selected an option method for the Financial Security.  The information is reflected in the negotiation summary spreadsheet
<b>Approved Negotiation Team:</b>	<b>Negotiation Team Participants:</b>
1. Lead Negotiator – Tshiamo Makoloane	1. Lead Negotiator – Tshiamo Makoloane
2. Commercial – Nokuthula Mda	2. Commercial – Nokuthula Mda
3. Financial – Boitumelo Mahlanyane	3. Financial – Agnes Mlambo
4. Financial – Rehaz Abramia	4. Financial – Rehaz Abramia
5. Technical – Deon Van Rooyen	5. Technical – Deon Van Rooyen
6. Contract Manager – Brian Mokgele	6. Contract Manager – Brian Mokgele
7. Quality- Sipho Sambo	7. Quality- Sipho Sambo
8. SD&L- Ishmael Modiko	8. SD & L – Ishmael Modiko

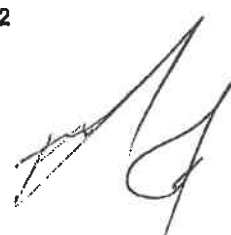
Boitumelo Mahlanyane did not attend the negotiation meetings because she has resigned from Eskom, however, Agnes Mlambo attended the meeting on her behalf.




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### 3. NEGOTIATION SUMMARY SHEET

Supplier	Status of Agent technical capability	quality	Financial security	Commission proposed before	Eskom final offer	Commission Rate 4.78-5.48 c/kwh	BEE ownership before	BEE ownership after	
Diketo	Current Eskom Vending Agent. Targeted deployment areas	Accepted	Accepted	5.11	4.73 , 4.80 & 4.87	Not agreed. Risk identified	39.45%	51 % BY 2018 PLANNING TO COMMENCE END 2015 WITH NO MIGRATION PLAN.	
	Banking, Retail, Rural and Urban	submitted	option 3						
Qakaza	Current Eskom Vending Agent. Urban Township	Accepted	Accepted	5.4	4.87 & 4.95 & 5.05	5.05 agreed	50.41%	ALREADY ABOVE 51% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE	
	Urban Township	submitted	option 1						
Mavima	New supplier with New Innovations to the vending capability	Accepted	Accepted	7.5	4.87	Rates as agreed are moderately aligned with small variances. All of these suppliers are within the aspiration range 4.48 - 5.00c/kWh. All Savings have been achieved.	0%	ADDITIONAL 25% OWNERSHIP BY DEC 2015, 2017 A FURTHER 25.9% FOR BLACK OWNERSHIP. A2 PAY HAS COMMITTED WITH NATIONAL TREASURY TO BE B8BEE BY FEB 2017	
	Mostly rural and some in urban.	submitted	option1						
Mavima	Current Eskom Vending Agent	Accepted	Accepted	4.68	4.65 or 4.85 fixed for 3 years		0%	AT NEGOTIATIONS THEY COMMITTED TO MIGRATE TO 51% HOWEVER THEY HAVE NOT SUBMITTED THE MIGRATION PLAN AS REQUESTED	
	Banking, Retail, Urban and some Rural.	submitted	option 2						
Iron	Current Eskom Vending Agent	Accepted	Accepted	4.95	4.84		14.81%	AT NEGOTIATIONS THEY COMMITTED TO MIGRATE TO 51% HOWEVER THEY HAVE NOT SUBMITTED THE MIGRATION PLAN AS REQUESTED	
	Banking and Urban	submitted	option 2						
Mavima	New service provider	Accepted	Accepted	8.36	4.87		100% & 100%	ALREADY 100% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE	
	Retail, Urban and Rural	submitted	option1						
Mavima	New service provider	Accepted	Accepted	4.85	4.73		59.61%	ALREADY ABOVE 59% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE	
	Retail, Urban and Rural	submitted	option 1						
Mavima	New service provider	Accepted	Accepted	4.95	4.85		70%	ALREADY 70% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE	
	Retail (Pepcor group), Rural and Urban.	submitted	option 1						
Sandulela	New service provider	Accepted	Accepted	5.76	4.73		51%	ALREADY 51% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE	
	Banking, Retail, Rural and Urban	submitted	option 1						
	New service provider	Accepted	Accepted				80%	ALREADY 80% BLACK OWNED BUT MUST MAINTAIN OR IMPROVE	
	Rural and Urban.	submitted	option 1						





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#### 4. FINANCIAL EVALUATION OF NEGOTIATED CONTRACT PRICE

CigiCell being one of the 10 recommended vending agents is a current service provider to Eskom with a history since 2007. They currently have a market share of 60% and provides on line vending services with a national vending outlet footprint of 4800.

Table - Current capacity of the deployment of outlets


Vending Agent	Targeted deployment areas	Vending Channel or Equipment Type	Vending Outlet deployment Numbers
CigiCell	Banking, Retail, Rural and Urban	<ul style="list-style-type: none"> <li>Standalone Self-Service Kiosk,</li> <li>Touch Screen Terminals,</li> <li>Portable hand held vending device,</li> <li>Prepaid bulk vouchers,</li> <li>Internet &amp; Mobile App</li> </ul>	4800
Q-Amps	Urban Township and Remote / Rural	<ul style="list-style-type: none"> <li>PC vending terminal,</li> <li>Portable hand held vending device.</li> </ul>	632
EasyPay	Banking, Retail, Urban and some Rural.	<ul style="list-style-type: none"> <li>Mobile Virtual Card,</li> <li>Portable hand held vending device,</li> <li>Retail desktop terminal,</li> <li>Internet &amp; Mobile App</li> <li>Standalone Self-Service Kiosk.</li> </ul>	3852
ITRON	Banking and Urban	<ul style="list-style-type: none"> <li>Desktop point of sale terminal,</li> <li>Internet &amp; Mobile App</li> </ul>	3472
FNB	Banking Customers	<ul style="list-style-type: none"> <li>Internet &amp; Mobile App</li> <li>ATMs,</li> </ul>	4504 (ATMs)
Total number of Vending Outlets as at end June 2015			17260

#### Issues noted during the negotiations with financial impact

- A rate higher than 4.87c/kWh will give CigiCell an advantage over new comers to the industry and possibly be a barrier to entry for them.





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- o CigiCell has not made the transformation from % (percentage) based remuneration to c/kWh for commissions to sub-agents. Instead they are looking to maintain their methodology and pass the % cost to Eskom in their current offer.
- o Cigi's main argument to maintain a +-5% commission on turnover is not aligned to the cost incurred to provide services. We have estimated that only .58c/kWh is linked to cost that are aligned to Rand value e.g Bank Charges (+0.6% of turnover)
- o CigiCell has grown significantly in the market and should be in a position to pass savings to Eskom as a partner in the Vending process. CigiCell has enjoyed an average >20% annual increase on commission over the past 5 years. Their monthly commission in June 2015 was R18.2m compared to their 2011 comparative of R8.5m
- o The team has only negotiated 1 vendor at a high rate i.e Qamps at 5.05c/kWh. The drivers for the higher rate for Qamps is based on their sustainability.
  - o This company's commission has only grown on average 7% per annum. The impact of bank charges has thus significantly reduced their profitability.
  - o The increased in rate from 4.95c/kWh to 5.05c/kWh was based on sustainability considerations and the proportion of deep rural deployment that the company has.
  - o The difference between 5.05c/kWh and 4.87c/kWh being .18c/kWh is lower than the min in the mandate for rural deployment (had we not been negotiating on an all-inclusive rate)
  - o Table below has been included to illustrate the current deployment of existing vendors.
- o CigiCell has not offered any savings whilst competitors EasyPay and Itron have both agreed on rates lower than their current contract. (Itron agreed rate 4.84 c/kWh down from 4.95 c/kWh in June 2015, EasyPay agreed rate 4.65c/kWh down from 4.68 c/kWh in June 2015)

## 5. TECHNICAL ASPECTS

Eskom mandate is focusing on deploying targeted areas, finding out on the vending channels and footprint deployment. The results of the technical negotiations differ from company to company as follows:


Supplier	Targeted deployment areas	Vending Channels / Equipment / Services and Deployment
CigiCell (Pty) Ltd	Banking, Retail, Rural and Urban	Stand-alone self-service unit, Touch Screen Terminals, Portable hand held vending device, Prepaid bulk vouchers, Internet and Mobile App.
A 2 L Trading as A 2 Pay	Mostly rural and some in urban.	Deploying 'Blizz Booths' providing a variety of pre-paid products including electricity. Using Smart Point of Sale, Portable hand held vending device and Cash acceptance terminal with verification and recycling capabilities.
Easy Pay (Pty) Ltd	Banking, Retail, Urban and some Rural.	Mobile Virtual Card, Portable hand held vending device, Retail desktop terminal, Virtual top up, Internet, Mobile App and stand-alone self-service Kiosk.

240-53463042

CONTROLLED DISCLOSURE

TE – Group Technology & Commercial,  
Effective 20 August 2012



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Qhakaza (Pty) Ltd	Amps	Urban Township	PC Based vending terminal, Portable hand held vending device.
Itron Metering		Banking and Urban	Desktop point of sale terminal, Internet, Mobile App.
Pamodzi Phasha (JV)		Retail, Urban and Rural	Portable hand held vending device.
Anytime Power		Retail, Urban and Rural	Portable hand held vending device.
Flash Mobile & Lancaster		Retail (Pepcor group), Rural and Urban.	Portable hand held vending device and Mobile App.
Contour Technology		Banking, Retail, Rural and Urban	PC Based vending terminal, Portable hand held vending device, card encoding device and Banking Interface.
Sandulela Technologies		Rural and Urban.	Cellphone and PC based vending terminal


## 6. RISKS

The following risks were identified during negotiations:

Principles of on-line vending are such that the principal agents use sub-agents to sell to the customers. The 2 (two) sub agents for Cigicell viz, Flash mobile and A 2 pay have now become principal agents and will compete with Cigicell for the market share. Cigicell's rates could not align with the rest of the suppliers as they prefer to be the market leader and do not agree to a rate reduction. Even though the rate is within the mandate parameters, this poses a risk. Some of the risks identified are as follows:

- Cigicell are the current market leaders with a market share of 60% and provide Online vending services with a national vending outlet footprint of 4800. They disclosed the intention to maintain their dominance in the market and even increase it to 100% and that is against the principles of market dilution.
- If Cigicell's market share may increase beyond the current 60% and this could put security of supply at risk should their vending system experience problems or crash.
- Cigicell well reluctant accept quality and SD&L requirements as they perceived them to be additional costs that were supposed to be remunerated. Cigicell's motivation for the 5.11c/kWh rate is motivated by the perception that Eskom received the 12.8% tariff increase and believe Eskom is unfair by offering below 12.8% increase. Further Cigicell believe that Eskom's future increases over the 3 (three) year contract will be around and above 12% resulting in their situation being worse off.




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- In light of the above, an acceptance of the Cigicell rate would cost Eskom more by an additional R30m (finance report – Annexure A) and therefore render the service expensive rather than sustainable and reasonable.
- CigiCell has not offered any rate reduction whilst competitors EasyPay and Itron have both agreed on rates lower than their current contract rates. (Itron agreed rate 4.84c/kWh down from 4.95 c/kWh in June 2015, EasyPay agreed rate 4.65 c/kWh down from 4.68 c/kWh in June 2015)

In order to mitigate the risks above the team recommends the following options:

Settlements Options	Negative Impact on Eskom	Positive Impact on Eskom
<b>Option 1</b> Offer ALL suppliers the same standard rate of 5.11c/kWh	<ul style="list-style-type: none"> <li>• This risk is high as this will erode all the potential savings. With only 1 supplier Cigiell at 5.11c/kWh the additional costs are R30m for the duration of the contract. With 10 suppliers the additional costs would be at least R50m.</li> <li>• For every 0.01c/kWh it is estimated that it will cost Eskom R1.2m</li> </ul>	<ul style="list-style-type: none"> <li>• Barriers to entry would be avoided with market being shared by more participants</li> <li>• Supplier development and localization will be implemented accordingly</li> </ul>
<b>Option 2:</b> Eskom accepts CigiCell's submitted request of 5.11c/kWh	<ul style="list-style-type: none"> <li>• This rate is 0.024c/kWh higher than their current 4.87c/kWh and will increase Eskom's cost by an estimated R30m over the 3 year contract period.</li> </ul>	<ul style="list-style-type: none"> <li>• Eskom facilitate enterprise development to ensure that new service providers rapidly grow and capture a significant portion of the market share that will dilute the current prominence of CigiCell.</li> </ul>
<b>Option 3:</b> Extend the current Cigicells' contract by 6 months and Continue with negotiations and pursue a settlement that is within mandated aspiration range. 4.48c/kWh to 5.00c/kWh	<ul style="list-style-type: none"> <li>• Prolonged negotiations/engagement</li> </ul>	<ul style="list-style-type: none"> <li>• Allow the new participants to enter the market.</li> </ul>



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## 7. RECOMMENDATION

1. To conclude contracts with the 9 (nine) service providers, to provide the online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC Ltd for a period of 3 (three) years with an option to extend by 1 (one) year for a value not exceeding R1 014 064 480.00 (one billion, fourteen million, sixty four thousand and four hundred and eighty Rands) excluding Value Added Tax (VAT), Contract Price Adjustment (CPA), contingency and travel and subsistence allowance.
2. To extend the existing Cigicell contract no. 460007102 by a further 6 (six) months to allow for further negotiations while the supplier.
3. To conclude enabling contracts and service level agreements with 9 (nine) service providers for the provision of the online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC Limited viz Pamodzi - Phasha Joint Venture, Sandulela Technology (Pty) Ltd, Contour Technology (Pty) Ltd, A2L Media Corporation (Pty) Ltd TA A2Pay, Easy Pay (Pty) Ltd, Qhakaza Amps (Pty) Ltd, Itron Metering, Anytime Power, Flash Mobile.

### SIGNED:

**Mandla Gobingca**  
 General Manager Commercial  
 Supplier Development & Localisation

\_\_\_\_\_  
Date

**Nosipho Maphumulo**  
 General Manager  
 Distribution and Customer Services

\_\_\_\_\_  
Date

**Charles Kalima**  
 General Manager Commercial (Acting)  
 Commodity Sourcing

\_\_\_\_\_  
Date




**SM10 118**

**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 21 September 2015 16:32  
**To:** infoportal1@zoho.com  
**Subject:** Me  
**Attachments:** Disciplinary Intention to suspend - PED 31 08 2015 SNP.docx

Re



LM 





Mr SN Phetla  
Unique Number: 943572  
Primary Energy Division

Date:  
31 August 2015

Dear Mr Phetla

**INTENTION TO EFFECT SUSPENSION WITH PAY PENDING AN INVESTIGATION INTO ALLEGED MISCONDUCTS AND/OR DISCIPLINARY ACTION**

Allegations have come to Eskom's attention that you may have committed a serious misconduct or misconducts by, among others, inconsistency in the management of the coal quality assurance process. Eskom has, therefore, taken a decision to investigate the alleged misconduct or misconducts.

Further, there is reason to believe that your presence at work may have a negative effect on the investigation process referred above, in that:

1. You may possibly hamper the investigation process;
2. You may possibly temper with potential evidence;
3. You may possibly intimidate witnesses;

Having considered the above, including your status in Eskom, a decision has been taken to immediately, but temporarily, suspend your services with pay. Kindly submit written representations to my office, within two (2) working days of the date of the receipt of this letter, on why this temporary suspension should not be made final.

Kindly note that Eskom will consider your submission, make a determination and inform you accordingly. Should you fail to submit written representations or waive your rights to do so, your temporary suspension would be made final and you will be informed accordingly.

During the period of your temporary suspension you are required to observe the following:

1. You shall not to contact any employee, supplier or customer of Eskom;
2. You shall not perform any work at any Eskom work site and/or enter any Eskom premises for work purposes without an express permission from my office;

You are required to immediately return to Eskom all Eskom property within your possession and control, including but not limited to your access card, lap top computer and any Eskom documentation.

Group Commercial & Technology  
Primary Energy Division  
Eskom Megawatt Park Maxwell Drive Sunninghill Sandton  
P O Box 1090 Johannesburg 2000 SA  
Tel +27 11 800 4852 Fax +27 86 668 2072 www.eskom.co.za  
Eskom Holdings SOC Ltd Reg No 2002/015527/30

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Should you require contacting Eskom during your suspension period, please do so through my office at telephone number 011 800 4852.

Yours sincerely

Matshela Koko  
GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL



A handwritten signature in black ink is located in the bottom right corner of the page.

**SM15 235**

**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 30 September 2015 14:47  
**To:** infoportal1@zoho.com  
**Subject:** Re  
**Attachments:** 20150930\_144408.jpg



241 



SM 15

# SECTION OF

THE STATE OF NEW YORK  
IN SENATE  
JANUARY 15, 1915  
REPORT OF THE  
COMMISSIONERS OF THE  
LAND OFFICE  
IN RESPONSE TO A  
RESOLUTION PASSED  
BY THE SENATE  
JANUARY 14, 1915  
RELATIVE TO THE  
LANDS BELONGING TO  
THE STATE OF NEW YORK  
AND THE LANDS BELONGING  
TO THE STATE OF NEW YORK  
AND THE LANDS BELONGING  
TO THE STATE OF NEW YORK

## STATE OF NEW YORK

*[Handwritten signature]*

SM18  
310

**From:** Matshele Koko <KokoMM@eskom.co.za>  
**Sent:** 14 November 2015 10:36  
**To:** infoportal1@zoho.com  
**Subject:** Re  
**Attachments:** d-3.docx



4M  
9



5/17/18.

372

## ELECTRICITY LOADSHEDDING REVIEW AND WAYFORWARD

### Executive Summary

It is now apparent that the choices made by Eskom executives has contributed significantly to the recent levels of load shedding and financial difficulties.

Some time ago and in response to a growing maintenance backlog and delays in new build, Eskom EXCO created a sub-committee with a view to create space to reduce the maintenance backlog. Senior Executives were put in charge of the committee.

The committee's choice was to load shed in order to create more space for maintenance. They did not explore alternative ways of doing maintenance without the need to load shed. As example, they did not support using OCGTs to minimize load shedding pointing to the perceived impact on profitability as an excuse.

Despite the devastating impact of these choices to the economy and society, the committee continued to manipulate timings for taking off generating plant such that the resulting load shedding had the biggest impact on government and its agenda. A similar pattern occurred simultaneously for the new build program and financial stability of the organization. Politicians were misled through manipulated "switch-ons" giving false hope that the new build was delivering when it was not.

At the time, it made little sense but now mal-intentions cannot be ruled out. With just a change of leadership, the situation appear to have improved almost overnight even at this early stage.

The brief from the current leadership is that they are recognizing the need to address the maintenance needs of the plant but are also focusing on daily decisions that are taken around plant availability and new build milestones. This focus is resulting in proactive management of side issues that had created unnecessary distractions in the past and both plant maintenance and new build milestones are being hit with increasing accuracy.

The next step will be to embed processes that eliminate manipulations and detects mal-intends early enough to ensure that the country never returns to levels of load shedding seen recently. In this way, the entire organization is being mobilized and aligned. This includes in the area of financial stability and delivery of new build projects.

### Introduction

Eskom started regular loading shedding activities during 2014 after having successfully avoided it for 6 years following the crippling but brief events of 2008. The intensity of load shedding grew exponentially after the collapse of the Majuba Silo in November 2014 that led to a temporal loss of 50% of station output. Within a relatively short space of time, the production loss at Majuba improved and the station was able to feed up to 80% of its capacity into the grid.

Despite this improvement, the intensity of load shedding never rescinded to pre-incident levels.



In the meantime and following the incident, Cabinet implemented the War Room that developed and implemented a 5-point plan meant to assist Eskom and the country to manage and mitigate risks to the electricity supply environment and thereby limit the extend of load shedding.

#### **NEW Build & Planned Maintenance**

In an effort to mitigate growing mis-match between supply and demand, Eskom developed aggressive new build and exiting plant maintenance plans and dedicated critical and high-cost resources to the programs to ensure timeous delivery and plant performance recovery in as much a short space of time as possible and guaranteed results. Examples of such efforts include creating of Engineering & Project Management Panels to create access to international resources to support the build program and planned maintenance.

These efforts, despite extensive pressure on them, did not yield the desired results mainly due to multitudes of sideline issues (mainly errors and omissions) that impacted significantly on the programs.

#### **Light at the end-of-the-tunnel**

To manage demand and execute maintenance, Eskom is developing a Generation Turnaround plan and focusing on new build program.

This plan aims to stabilize and improve the availability of Eskom's generating plant by focusing on three main components namely the execution of the generation maintenance plan, a continued focus on People, Plant and Process and effective outage management & execution.

The maintenance plan prioritizes safety, statutory and risk maintenance in order to minimize unplanned capacity losses in the short-term. Key to the success of the plan is Tetris. Tetris is a visualization tool which assists in scheduling maintenance optimally. This allows Eskom to proactively review the plan, from an outage schedule perspective as well as sourcing required supply- and demand-side levers to minimize load shedding. See annexure A.

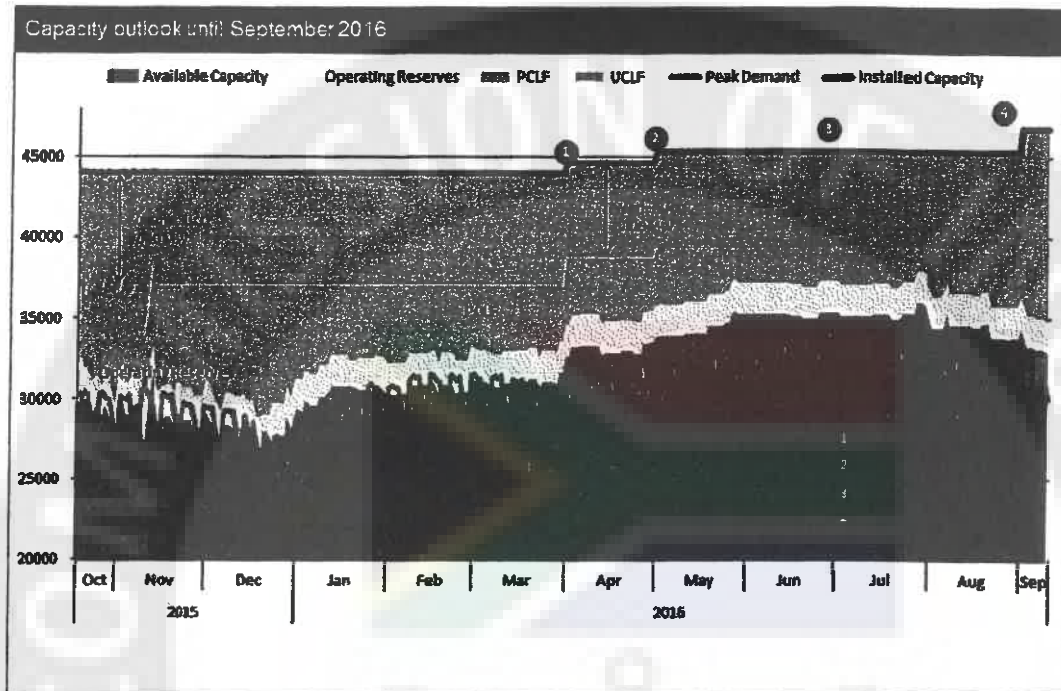
#### **Conclusion**

No doubt the biggest game changer for the dramatic reduction in load shedding incidents has been change in leadership that introduces a much higher motivation and resolve to eliminate load shedding.

Going into the future, it is imperative that these traits be embedded into the organization and be emulated across all levels of decision making.



## Annexure A .



SM19

311

**From:** Matshela Koko <KokoMM@eskom.co.za>  
**Sent:** 25 November 2015 15:47  
**To:** infoportal1@zoho.com  
**Subject:** Re  
**Attachments:** 20151125 Total Cost Plus Mine Investments by Eskom (Future fuel).xlsx

Give the boss please



41

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SM19

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Actual rands (Future  
fuel) invested by  
Eskom according to  
SAP since inception of  
Cost Plus Agreements

Arnot Mine - Prior 2000	300 112 484	
Arnot Mine - After 2000	536 890 839	
Khutala Mine - Prior 2000	141 912 278	
Khutala Mine- After 2000	1 450 933 792	
Khutala Loan Financing - Agreement 1	374 988 038	capital portion excluding interest payments
Khutala Loan Financing - Agreement 2	124 323 182	capital portion excluding interest payments
Matla Mine - Prior 2000	550 389 278	
Matla Mine- After 2000	1 458 875 116	
New Denmark Mine- After 2000	1 159 329 234	
New Denmark Mine - Prior 2000	2 006 595 803	
New Vaal Mine - Prior 2000	397 139 266	
New Vaal Mine- After 2000	1 235 842 491	
Kriel - Prior 2000	- 842 825 305	
Kriel - After 2000	1 558 418 081	
<b>Total</b>	<b>12 138 575 185</b>	

Therefore summarised per agreement

Arnot	837 003 323
Khutala	2 092 157 289
Matla	2 009 264 393
New Denmark	3 165 925 036
New Vaal	1 632 981 757
Kriel	2 401 243 386
<b>Total</b>	<b>12 138 575 185</b>



		Acquis.val.	Accum.dep.	Book val.	Crcy	
ARNOTMN	Arnot Mine	300 112 483.93	-212 794 551.12	87 317 932.81	ZAR	Prior to 2000
ARNOTNOT	Arnot Mine New	536 890 838.68	-216 438 762.67	320 452 076.01	ZAR	After 2000
KHUTALAM	Khutala Mine	141 912 278.16	-86 690 181.52	55 222 096.64	ZAR	Prior to 2000
KHUTANOT	Khutala Mine New	1 450 933 792.08	-453 686 801.18	997 246 990.90	ZAR	After 2000
MATLAMN	Matla Mine	550 389 277.63	-475 073 270.00	75 316 007.63	ZAR	Prior to 2000
MATLANOT	Matla Mine New	1 458 875 115.73	-653 275 314.14	805 599 801.59	ZAR	After 2000
NDENMN	New Denmark Mine	1 159 329 233.66	-441 268 789.46	718 060 444.20	ZAR	After 2000
NEWDENMIN	New Denmark Mine New	2 006 595 802.62	-841 690 362.54	1 164 905 440.08	ZAR	Prior to 2000
NEWVAALM	New Vaal Mine	397 139 265.97	-331 737 137.73	65 402 128.24	ZAR	Prior to 2000
NVAALNOT	New Vaal Mine New	1 235 842 491.42	-286 834 767.75	949 007 723.67	ZAR	After 2000
KRIELMN	Kriel Mine	842 825 305.17	-436 717 373.10	406 107 932.07	ZAR	Prior to 2000
KRIELNOT	Kriel Mine New	1 558 418 081.18	-534 073 390.20	1 024 344 690.98	ZAR	After 2000

SM27

322

**From:** Anoj Singh <SinghA3@eskom.co.za>  
**Sent:** 08 December 2015 15:36  
**To:** Metshela Koko  
**Subject:** Fwd: 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL  
**Attachments:** Image001.png; ATT00001.htm; 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL.docx; ATT00002.htm

Hi M

Please review revised submission and if happy sign and give to Maya.

Thx

A

Sent from my iPhone

Begin forwarded message:

**From:** Faheema Badat <FaheemaB@regiments.co.za>  
**Date:** 08 December 2015 at 3:28:03 PM SAST  
**To:** "anoj.singh@eskom.co.za" <anoj.singh@eskom.co.za>  
**Cc:** Eric Wood <EricW@regiments.co.za>, Mahommed Bobat <mbobat@regiments.co.za>  
**Subject:** 20151208 RRR Optimum Coal Mine Pty Ltd\_FINAL

Dear Anoj

Please find attached the Optimum Coal Mine Board memo.

Thank you.


Regards,  
Faheema Badat

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SM27

473

	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	4
		Effective Date	December 2015
		Office of the Company Secretary	

### EXECUTIVE SUMMARY

#### ROUND ROBIN SUBMISSION TO BOARD OF DIRECTORS (BOD)

##### 1. TITLE OF THE SUBMISSION

Prepurchase of coal from Optimum Coal Mine (Pty) Ltd ("OCM")

##### 2. RESOLUTION REQUIRED

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

##### 2.2 Executive summary and conclusion

2.2.1 Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5Mtpa by OCM as a result of business rescue proceedings.

2.2.2 There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.

2.2.3 The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk. Counterparty risk is mitigated via a cession of the coal to Eskom.


2.2.4 The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.

2.2.5 This proposal will result in a net present value benefit to Eskom of R238.9 million.

2.2.6 In conclusion this proposal provides much needed coal for business operations; mitigates the supply risk and provides a commercial benefit to Eskom.



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### 3. SUMMARY OF FACTS

#### 3.1 Background

- 3.1.1 OCM was placed into business rescue around August 2015.
- 3.1.2 Eskom requires continuity of supply to the Hendrina Power Station of 5.5Mtpa at an average price of R150 per tonne. OCM cannot produce coal at a price of less than R450 per tonne.
- 3.1.3 The business rescue practitioners have maintained that the only manner in which the business could survive is that Eskom increase the price paid for coal received in terms of this contract.
- 3.1.4 Eskom maintained its position that it will not look at an increased coal price and that the supplier is expected to continue supplying at the contracted price.
- 3.1.5 On 24 November 2015, the Group Executive Generation met with the business rescue practitioners to discuss the way forward.
- 3.1.6 The business rescue practitioners indicated that they were looking at disposing the interest to the proposed purchaser. The Due Diligence commenced around the 10<sup>th</sup> November 2015 and is currently underway. The purpose of the meeting was to understand Eskom's concerns.
- 3.1.7 The proposed purchaser representatives present at the meeting confirmed that the company had commenced the Due Diligence and that it was committed to a 30 day due diligence with a definitive agreement to be in place by 15 December 2015.
- 3.1.8 The business rescue practitioners advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought from Eskom.
- 3.1.9 At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated that OCM is being taken out of business rescue proceedings and that it would honour the contract in its current form with no amendments.
- 3.1.10 They further advised that they will follow the contract route to process the Eskom claim of R2.2 billion.
- 3.1.11 As at date of this submission, Eskom has not yet received the formal notification of the status of OCM from the business rescue practitioner.



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3.1.12 Koorfontein Mine, a subsidiary of OCM, currently supplies Komati Power Station and this contract expires 31 January 2016 with supply commitments to be met by mid-January 2016.

3.1.13 While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability has compromised the security of supply to Hendrina Power Station in the short to medium term. Therefore Eskom would require a firm resolution on OCM by mid December 2015.

3.1.14 The risk of security of supply for Hendrina Power Station and Komati Power Station is of such key national interest that Eskom thought it appropriate to bring it to the attention of the Department of Mineral Resources.

3.1.15 This upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key authorities to assist in assuring resolution to the coal supply situation and certainty going forward.

3.1.16 A copy of the correspondence addressed to the Director General, Department of Mineral Resources, is attached hereto.

3.1.17 The reply from the Department of Mineral Resources is attached hereto.

3.1.18 The Department of Mineral Resources has requested that Eskom consider solutions to ensure the security of supply risk is mitigated in National Interest.

### 3.2 Key assumptions

The submission and decision required set out herein, is based on the following key assumptions:

3.2.1 OCM is formally declared not to be in business rescue as required by the provisions of the Companies Act.

3.2.2 The transaction between OCM and the proposed purchaser is formally approved by the regulatory authorities.


3.2.3 Eskom is securing its coal supply for two Power Stations facing imminent adversity, based on the mine plan provided by OCM.

### 3.3 Financial implications

3.3.1 Koorfontein Mine had offered a 9% increase on the current price to R415 per tonne. The proposed buyer has advised Eskom that it will adhere to the current price of R380 per tonne for the next 12 months as compared to the R415 per tonne proposed. This will translate into a net present value benefit of R72 million over the year.





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- 3.3.2 The proposed buyer has also committed to providing a 5% discount to the current OCM price which amounts to R88.7 million.

### 3.4 Benefits of the advance purchase of coal

- 3.4.1 The advance purchase of R1.68 billion will secure a future supply of coal to Eskom and will be funded by a reduction of Eskom's coal stockpile from 54 days to 40 days.
- 3.4.2 OCM will cede the unsupplied portion of coal under the prepurchase agreement as security.
- 3.4.3 The net present value of the proposed transaction results in cash benefit of circa R238.9 million

Net present value of cash flows	
Cost of funding R1.68 billion for 12 months (*1)	(R135.8m)
Reduction in working capital at WACC – 14.5%	R213.4m
5% discount on pre-purchased coal from OCM	R88.7m
Discount received from Koorfontein Colliery	R72.6m
<b>Net present value benefit to Eskom</b>	<b>R238.9m</b>

1. Funded at 3 month JIBAR plus 140 basis points over a period of 12 months as a bullet redemption

### 3.5 Human Resource implications

No implications.


### 3.6 Risks (including Environment, Legal or Contractual risks) and other considerations

The risk identified at this stage relate to security of supply being compromised, regulatory approvals not timeously obtained and that there would be no contract in place by end December 2016. It is submitted that the strategy set out herein goes a long way to mitigating the identified risks.

- 3.6.1 Operational and supplier risk mitigation by pledge and cession of coal purchased.
- 3.6.2 Proceeds of R1.68 billion prepayment of coal are to be used by OCM to extinguish existing liabilities to ensure the business continues as a going concern.
- 3.6.3 Proposed purchaser will lift current empowerment ownership from 30% to 51%.
- 3.6.4 The shutdown of OCM could potentially result in thousands of job losses and add to the negative publicity surrounding Eskom.



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### 3.7 Verification by independent party (if applicable)

Regiments Capital (Proprietary) Limited

#### SIGNED

\_\_\_\_\_  
**Anoj Singh**  
**CHIEF FINANCIAL OFFICER**

\_\_\_\_\_  
**DATE**

Who hereby represents that the above information is correct.

\_\_\_\_\_  
**Matshela Koko**  
**GROUP EXECUTIVE: GENERATION**

\_\_\_\_\_  
**DATE**

Who hereby represents that the above information is correct.

Submission prepared by: M Koko  
 Contact Number: +2782 859 9334



Daniels Server emails  
Daniels Disiplinary

SM1

Subject:

FW: Fwd:

From: Suzanne Daniels [mailto:danielshome@mweb.co.za]

Sent: 08 March 2016 04:48 PM

To: Suzanne Daniels &lt;DanielSM@eskom.co.za&gt;

Subject: Fwd:

----- Forwarded message -----

From: "Nazeem Howa" &lt;nazeemh@tnamedia.co.za&gt;

Date: 04 Mar 2016 07:34

Subject:

To: &lt;danielshome@mweb.co.za&gt;

Cc:

**CESSION AND ASSIGNMENT OF THE COAL SUPPLY AGREEMENT BETWEEN OPTIMUM COAL HOLDINGS (PTY) LTD AND ESKOM HOLDINGS SOC LTD TO TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

Pursuant to your request for consent to cede the coal supply agreement from OCH to Tegeta as set out in your letter dated the 3 February 2016, kindly be advised that Eskom hereby consents to:

1. The cession and assignment of the coal supply agreement between Optimum Coal Holdings (Pty) Ltd ("OCH") and Eskom Holdings SOC Ltd ("Eskom") to Tegeta Exploration and Resources (Pty) Ltd ("Tegeta")
2. The sale and purchase of shares of Optimum Coal Mine (Pty) Ltd (OCM); and
3. The release of the guarantee given by OCH to Eskom

Subject to the following conditions:

- a) Tegeta Exploration to issue a parent company guarantee in favour of Eskom pertaining to the performance of the coal supply agreement.
- b) Tegeta assumes all the responsibilities related to the CSA with effect of the closing date.
- c) Tegeta with OCM concluding an addendum to the CSA to substitute OCH with Tegeta, including the addition of the Coal Quality Management Programme ("CQMP") as an annexure to the CSA to formally agree the coal qualities go forward.
- d) Evidence to be provided that all conditions precedent in the sale agreement between OCH and Tegeta on or about 10 December 2015 have been met and that Tegeta to provide sufficient proof that all financial requirements pertaining the CSA can be met.

**From:** Suzanne Daniels  
**Sent:** 11 June 2016 12:40  
**To:** baldwin.ngubane  
**Cc:** Business Man  
**Subject:** Re: FW: Draft Statement by Chairman

SM3

Ok will do.

Yours sincerely,

**SUZANNE DANIELS**  
Group Company Secretary  
Eskom Holdings SOC Ltd  
Phone: +27 11 800 3091 Mobile: +27 82 580 7832

Fax: +27 86 662 7327  
Email: [danielsm@eskom.co.za](mailto:danielsm@eskom.co.za)

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** "baldwin.ngubane" <[baldwin.ngubane@gmail.com](mailto:baldwin.ngubane@gmail.com)>  
**Date:** 2016/06/11 12:19 (GMT+02:00)  
**To:** Suzanne Daniels <[DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)>  
**Cc:** Business Man <[infoportal1@zoho.com](mailto:infoportal1@zoho.com)>  
**Subject:** Re: FW: Draft Statement by Chairman

Suzanne I suggest we list the eight points at the end of the statements as a summary of the boards position.





Sent from my Samsung device

----- Original message -----

From: Suzanne Daniels <[DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)>  
Date: 11/06/2016 11:56 (GMT+02:00)  
To: "baldwin.ngubane" <[baldwin.ngubane@gmail.com](mailto:baldwin.ngubane@gmail.com)>  
Subject: FW: Draft Statement by Chairman

Regards

Suzanne

**From:** Suzanne Daniels  
**Sent:** 11 June 2016 11:56 AM  
**To:** 'MABUDE CHWAYITA' <[chwayitam@yahoo.com](mailto:chwayitam@yahoo.com)>; 'Zethembe Khoza' <[khozazw@telkomsa.net](mailto:khozazw@telkomsa.net)>; Mark Vivian Pamensky <[mark@markpam.com](mailto:mark@markpam.com)>  
**Subject:** Draft Statement by Chairman  
**Importance:** High  
**Sensitivity:** Confidential

Dear All

As per Chairman's telephone call, for your consideration and review.

Yours sincerely

**SUZANNE DANIELS**

Group Company Secretary

Eskom Holdings SOC Ltd

Phone: +2711 800 3091 Mobile: +2782 580 7832 Fax: +2786 662 7327

Email: [danielism@eskom.co.za](mailto:danielism@eskom.co.za)



I'm part of the 49Million initiative...  
[www.eskom.co.za/idm](http://www.eskom.co.za/idm)

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*[Handwritten signature]*

SM4

**From:** Business Man <infoportal1@zoho.com>  
**Sent:** 11 June 2016 13:13  
**To:** Suzanne Daniels  
**Subject:** Re: FW: Draft Statement by Chairman

Please add ok line about the big 4 that they supply 80% of eskoms coal and Tegeta supply less than 5%

I am then happy that we issue asap

----- On Sat, 11 Jun 2016 14:39:41 +0400 Suzanne Daniels <DanielSM@eskom.co.za> wrote  
-----

Ok will do.

Yours sincerely,

**SUZANNE DANIELS**  
Group Company Secretary  
Eskom Holdings SOC Ltd  
Phone: +27 11 800 3091 Mobile: +27 82 580 7832

Fax: +27 86 662 7327  
Email: [danielSM@eskom.co.za](mailto:danielSM@eskom.co.za)

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: "baldwin.ngubane" <[baldwin.ngubane@gmail.com](mailto:baldwin.ngubane@gmail.com)>

Date: 2016/06/11 12:19 (GMT+02:00)

To: Suzanne Daniels <[DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)>



Cc: Business Man <[infoportal1@zoho.com](mailto:infoportal1@zoho.com)>

Subject: Re: FW: Draft Statement by Chairman

Suzanne I suggest we list the eight points at the end of the statements as a summary of the boards position.

Sent from my Samsung device

----- Original message -----

From: Suzanne Daniels <[DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)>

Date: 11/06/2016 11:56 (GMT+02:00)

To: "baldwin.ngubane" <[baldwin.ngubane@gmail.com](mailto:baldwin.ngubane@gmail.com)>

Subject: FW: Draft Statement by Chairman

Regards

Suzanne

---

**From:** Suzanne Daniels

**Sent:** 11 June 2016 11:56 AM

**To:** 'MABUDE CHWAYITA' <[chwayitam@yahoo.com](mailto:chwayitam@yahoo.com)>; 'Zethembe Khoza' <[khozazw@telkomsa.net](mailto:khozazw@telkomsa.net)>; Mark Vivian Pamensky <[mark@markpam.com](mailto:mark@markpam.com)>

**Subject:** Draft Statement by Chairman

**Importance:** High

**Sensitivity:** Confidential

Dear All

As per Chairman's telephone call, for your consideration and review.

Yours sincerely

**SUZANNE DANIELS**



Group Company Secretary

Eskom Holdings SOC Ltd

Phone: +2711 800 3091 Mobile: +2782 580 7832 Fax: +2786 662 7327

Email: [danielism@eskom.co.za](mailto:danielism@eskom.co.za)

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ANNEXURE SM5a

---

**Subject:** FW: FW: Draft Statement by Chairman  
**Attachments:** RE\_ FW\_ Draft Statement by Chairman.eml (506 KB)

From: MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za  
[mailto:MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za] On Behalf Of Suzanne Daniels  
Sent: 11 June 2016 01:21 PM  
To: baldwin.ngubane <baldwin.ngubane@gmail.com>  
Cc: MABUDE CHWAYITA <chwayitam@yahoo.com>; Mark Vivian Pamensky <mark@markpam.com>; Zethembe Khoza <khozazw@telkomsa.net>  
Subject: RE: FW: Draft Statement by Chairman

Sender: DanielSM@eskom.co.za  
Subject: RE: FW: Draft Statement by Chairman  
Message-Id: <285ED16040FCDD4485B6F5D99E8ADA0C8E60EA7C@MWPXMB10.elec.eskom.co.za>  
To: baldwin.ngubane@gmail.com  
Cc: chwayitam@yahoo.com  
Cc: mark@markpam.com  
Cc: khozazw@telkomsa.net  
Bcc: infoportal1@zoho.com



S.N.N 4

SM5

**From:** Suzanne Daniels  
**Sent:** 11 June 2016 13:21  
**To:** 'baldwin.ngubane'  
**Cc:** MABUDE CHWAYITA; 'Mark Vivian Pamensky'; Zethembe Khoza  
**Subject:** RE: FW: Draft Statement by Chairman  
**Attachments:** 20160611 Statement by Chairman final draft.doc

**Importance:** High

Chairman

Herewith the updated draft incorporating the comments.

Regards  
 Suzanne

---

**From:** baldwin.ngubane [mailto:baldwin.ngubane@gmail.com]  
**Sent:** 11 June 2016 12:19 PM  
**To:** Suzanne Daniels <DanielSM@eskom.co.za>  
**Subject:** Re: FW: Draft Statement by Chairman

Suzanne I suggest we list the eight points at the end of the statements as a summary of the boards position.

Sent from my Samsung device

----- Original message -----

**From:** Suzanne Daniels <DanielSM@eskom.co.za>  
**Date:** 11/06/2016 11:56 (GMT+02:00)  
**To:** "baldwin.ngubane" <baldwin.ngubane@gmail.com>  
**Subject:** FW: Draft Statement by Chairman

Regards  
 Suzanne

---

**From:** Suzanne Daniels  
**Sent:** 11 June 2016 11:56 AM  
**To:** 'MABUDE CHWAYITA' <chwayitam@yahoo.com>; 'Zethembe Khoza' <khozazw@telkomsa.net>; Mark Vivian Pamensky <mark@markpam.com>  
**Subject:** Draft Statement by Chairman  
**Importance:** High  
**Sensitivity:** Confidential

Dear All

As per Chairman's telephone call, for your consideration and review.

Yours sincerely



**SUZANNE DANIELS**

Group Company Secretary

Eskom Holdings SOC Ltd

Phone: +2711 800 3091 Mobile: +2782 580 7832 Fax: +2786 662 7327

Email: [danielsm@eskom.co.za](mailto:danielsm@eskom.co.za)

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*JA*



## **POSITION STATEMENT BY CHAIRMAN OF ESKOM, DR BEN NGUBANE**

---

### **Eskom's Coal Supply for Winter 2016**

**Saturday, 11 June 2016:** I am advised that Carte Blanche will be airing an interview with Eskom's Group Executive for Generation Mr Mātshela Koko, alleging that Eskom's coal contracts were not concluded in accordance with the procurement procedure.

I am concerned about the recent media speculation and sensationalism around the procurement of coal. Eskom stands firm by its process undertaken to conclude extensions of its coal supply agreements with its suppliers. I am satisfied that due process has been followed and we can be proud of the savings achieved by the executive team to date.

Eskom regularly engages all its coal suppliers on the required volumes and qualities as the demand varies from time to time and contracting relationships are concluded on sound commercial principles and considerations.

In emergency situations, Eskom has utilised the prepayment mechanism to ensure security of supply. Furthermore, it is important to note that prepayment is a common commercial practice that is used widely and not unique to Eskom. The principle of prepayment is prevalent in Eskom's cost-plus supply contracts with the large mining houses such as Anglo American, BECSA and Exxarro. These mining houses supply approximately 80% of Eskom's coal while Tegeta supplies less than 5% of the coal volume required by Eskom.

The coal supply market is in need of major transformation as it has and continues to benefit a small monopoly of companies. This phenomenon is now under review as requested by the Minister of Public Enterprises in her recent budget speech and Eskom is determined to ensure that emerging black miners also benefit from Eskom's buying power.

More pertinently, Eskom's supply mix changed in April 2016 leaving Eskom with a deficit of 2.1 million tonnes which was required to meet the winter supply plan. Eskom approached its existing suppliers to source additional supply to mitigate this shortfall.

It must be noted that the Exxarro Arnot Colliery had a contract with Eskom to supply coal to Arnot Power Station for 40 years. This contract expired in December 2015. The cost of coal at date of expiry was R1132/ton.

A handwritten signature in black ink, located in the bottom right corner of the page.



I am advised that Tegeta now supplies Arnot at an average price of R500/ton. The unit cost of coal supplied under this contract is at a discounted rate of 3%, resulting in a further saving to Eskom of billions of rand in an eight month period and ultimately, the consumer.

Tegeta was one of the suppliers able to meet Eskom's need for this additional coal supply at the required coal quality. You will recall that this company also stepped in to avert a crisis at the Hendrina Power Station by offering to take the Optimum Coal Mine out of business rescue from Glencore thereby saving thousands of jobs and continuing the supply to Eskom.

Eskom rejects any insinuation of favouritism towards suppliers such as Tegeta who are willing to step in to avert the coal supply crisis and allow Eskom to meet the winter demand.

The Board's position can be summarised as follows:

- It is concerned at the recent media speculation and sensationalism.
- It must be noted that Eskom was paying R1132/ton to Exxarro and this was on a cost plus basis.
- Tegeta supplies Arnot at an average price of R500/ton, leading to savings of over a billion rand in the 8 months of supply leading to direct savings to the taxpayer.
- Tegeta is a 51% black owned emerging miner which meets Eskom's requirements.
- Eskom has no issue doing business with the company based on sound commercial considerations and is not driven by unsubstantiated media issues.
- Tegeta stepped in to avert a crisis at Hendrina Power Station by saving jobs and continues to supply Eskom at the original contracted price.
- All due process has been followed and Eskom is proud of the savings achieved by its executives.
- Prepayment is a common practice in coal purchasing and Eskom has used this mechanism previously. In fact, the cost plus mines have been the recipients of an average amount of R38 billion to date this year to companies such as Anglo American, BHP Billiton and Exxarro.
- Eskom firmly rejects the suggestion that Tegeta is favoured or that due process was not followed.

**ENDS**

A handwritten signature in dark ink, appearing to be 'J.M.' or similar, located in the bottom right corner of the page.



SM42

**Subject:** FW: RE: Request letter  
**Attachments:** 20151209 FINANCING AGREEMENT v1.doc

**From:** Suzanne Daniels [mailto:DanielSM@eskom.co.za]  
**Sent:** 09 December 2015 09:28 PM  
**To:** Matshela Koko <KokoMM@eskom.co.za>  
**Subject:** RE: Request letter

My first attempt at the agreement.

**From:** Matshela Koko  
**Sent:** Wednesday, December 9, 2015 5:35 PM  
**To:** Suzanne Daniels  
**Subject:** FW: Request letter

**From:** Ravindra Nath [mailto:nath@oakbay.co.za]  
**Sent:** Wednesday, December 9, 2015 4:11 PM  
**To:** Matshela Koko  
**Subject:** Request letter

Dear Sir,  
Please find enclosed the request letter as per our meeting.  
Regards,  
R. Nath

## Info

## 20151209 FINANCING AGREEMENT v1

E-mail attachments C:\Users\WIONKER\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\RIJFPIQ\20151209 FINANCING AGREEMENT v1.doc



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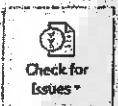
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## Properties

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## Related Dates

Last Modified	09/12/2015 09:27 PM
Created	09/12/2015 08:13 PM
Last Printed	

## Related People

Author	Suzanne Daniels
	Add an author
Last Modified By	Suzanne Daniels

Show All Properties

## **AGREEMENT**

between

### **ESKOM HOLDINGS SOC LIMITED**

(Registration Number 2002/015527/06)

(Hereinafter referred to as the "Secured Party")

and

### **TEGETA EXPLORATION AND RESOURCES (PTY) LTD**

(Registration Number 2006/014492/07/07)

(Hereinafter referred to as the "Debtor")

jointly referred to as ("the Parties")

## 1. INTRODUCTION

- 1.1 The Secured Party has obtained a mandate to prepurchase coal from Optimum Coal Mine (Pty) Ltd for the supply and delivery of coal to the Secured Party's Power Stations for a 12 month period beginning [•] ending [•], in accordance with the Secured Party's approvals framework.
- 1.2 In appropriate circumstances and in order to enable the Debtor to undertake the required supply and delivery of coal to the Secured Party's Power Station, the Secured Party shall advance funds to the Debtor in order for the Debtor to commence the coal supply and delivery to the Secured Party within the required timeframes, to be determined by the Secured Party from time to time.
- 1.3 The Parties wish to enter into a binding Agreement, to facilitate the financial commitments which each party will be required to make in order to procure the timely supply and delivery of the coal required by the Secured Party.

## 2. DEFINITIONS AND INTERPRETATION

In this Agreement, clause headings are for ease of reference and shall not be used in the interpretation, and unless the context clearly indicates a contrary intention:

2.1 An expression which denotes –

- 2.1.1 any gender includes the other gender;
- 2.1.2 a natural person includes an artificial or juristic person and vice versa;
- 2.1.3 the singular includes the plural and vice versa.

2.2 The following expressions shall bear the meanings assigned to them and cognate expressions shall bear corresponding meanings:

- 2.2.1 **"Agreement"** means this Equipment Financing Agreement and any schedules hereto;
- 2.2.2 **"Commitment Period"** means a period starting from signature date and ending on [insert the last day of the contract]
- 2.2.3 **"Contract Value"** is [insert the value of the contract]
- 2.2.4 **"Equipment"** means each item of machinery, equipment and other property individually an 'item' or 'item of equipment' and collectively the Equipment, described in the Schedules executed by the parties;
- 2.2.5 **"Equipment Location"** means the site of operation identified by the Parties at which the Equipment shall be utilised for the due performance of the Coal Supply Agreement which the parties have entered into as per the provisions of clause 1.1



**2.2.6 "Prime Rate"** means the publicly quoted prime rate of interest per annum quoted by the Secured Party's bankers from time to time.

**2.2.7 "Security Interest"** means a lien on the Debtor's right, title and interest in and to the Equipment described in the Schedules executed by the parties which shall at all times during the commitment period be equal or above the contract value.

**2.2.8 "Signature Date"** means the date of signature of this Agreement by the Party last signing;

**2.3** Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.

**2.4** Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.

**2.5** A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.

**2.6** Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time.

**2.7** Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

**2.8** Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

**2.9** No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.





- 2.10** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.11** The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.12** The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.13** Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.14** In this Agreement the words "clause" or "clauses" refer to clauses of this Agreement.

### **3. SECURITY INTEREST <sup>1</sup>**

- 3.1** The terms and conditions of this Agreement cover the Equipment described in a schedule now or hereafter executed by the parties hereto and made a part of this Agreement by means of the execution of this Agreement.
- 3.2** The Debtor hereby grants the Secured Party a security interest in and to all Debtor's right, title and interest in and to the Equipment under the laws of South Africa. This grant with respect to the Equipment shall be as of the signature date.
- 3.3** Such security interest is granted by the Debtor to secure performance by the Debtor of its obligations to the Secured Party hereunder and under any other Agreements under which the Debtor has or may hereafter have obligations to the Secured Party.
- 3.4** The Debtor shall ensure that such security interest will be and remains a sole and valid first lien and the value of the Equipment remains equal or above the prepurchase value.

<sup>1</sup> Drafting note: This needs to be validated. Assumption on the part of the drafter.



#### 4. DEBTOR'S OBLIGATIONS

- 4.1 The obligations of the Debtor under this Agreement shall commence upon the grant to the Secured Party of a security interest in the Equipment and the prepayment.
- 4.2 The Debtor's obligations hereunder with respect to the Equipment and the Secured Party's security interest therein will continue until payment of all amounts due, and performance of all terms and conditions required hereunder has been effected.
- 4.3 Upon termination of the Secured Party's security interest in the Equipment, the Secured Party will execute such release of interest with respect thereto as the Debtor reasonably requests.
- 4.4 The Debtor shall maintain the Equipment and a valid insurance policy as set out in clauses 12 and 16 respectively.

#### 5. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 5.1 Each warranty, representation and undertaking set out in this Agreement shall be a separate warranty, representation and undertaking and shall in no way be limited or restricted by reference to or inference from the terms of any other warranty, representation and undertaking.
- 5.2 The Debtor acknowledges that it makes the representations and gives the warranties and undertakings in this Agreement with the intention of inducing the Secured Party to enter into this Agreement and that the Secured Party enters into this Agreement on the basis of, and in full reliance on, each of such warranty, representation and undertaking.
- 5.3 The warranties, representations and undertakings set out below shall be continuing and shall be deemed to be repeated until the date upon which this Agreement terminates.
- 5.4 The Debtor hereby warrants to and in favour of the Secured Party that -
  - 5.4.1 it is a limited liability company, duly incorporated in accordance with the laws of the Republic of South Africa;
  - 5.4.2 it has the power to enter into and perform in terms of this Agreement and the transactions contemplated hereby and has taken all necessary action to authorise the entry into and performance of this Agreement and the transactions contemplated hereby in accordance with its terms;
  - 5.4.3 this Agreement constitutes legal, valid and binding obligations on it in accordance with its terms;
  - 5.4.4 the entry into and performance by the Debtor of its obligations in terms of this Agreement and the transactions contemplated hereby do not:-



5.4.4.1 conflict with any law or regulation or any official or judicial order;

5.4.4.2 conflict with its memorandum and articles of association;

5.4.4.3 conflict with any agreement or document to which it is a party or which is binding upon it or any of its assets; or

5.4.4.4 result in the creation or imposition of (or enforceability of) any encumbrance on any of its assets or the provisions of any agreement or document;

5.4.5 all authorisations, approvals, consents, licences, exemptions, filings, regulations, notarisations and other matters, official or otherwise, required of the Debtor in connection with the entry into and performance by the Debtor and the validity and enforceability against it of this Agreement have been obtained or effected and, if obtained and effected, are in full force and effect and all fees (if any) payable by the Debtor in connection therewith, if due, have been paid and there has been no default in the performance of any of the terms or conditions thereof which is material to the effectiveness of any of the foregoing;

5.4.6 the assets of the Debtor, fairly valued, exceed its liabilities;

5.4.7 the Equipment which form part the Security Interest and the Rights and Interests in such Equipment under this Agreement has not been pledged, ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise disposed of or hypothecated to anyone else, and the Debtor agrees, without prejudice to anything contained in this Agreement, that should it nevertheless transpire that it has at any time pledged, ceded or otherwise disposed of any of the right, title and interest in and to any of the Equipment or the Rights and Interests, then this Agreement will operate as a Security Interest and cession of all the Debtor reversionary rights and all the Debtor's remaining right, title and interest in and to the Equipment or Rights and Interests, including all the Debtor's rights of action whatsoever against any prior cessionary, pledgee or other holder of such Equipment or Rights and Interests for the time being; and

5.4.8 it is and will remain the sole and beneficial owner of all the Equipment and the Rights and Interests to the exclusion of all others and no person will have an option or right of first refusal over the Equipment and/or the Rights and Interests.

5.5 The Debtor undertakes and agrees —

5.5.1 not to exercise any and all rights in respect of the Equipment and/or the Rights and Interests which it may have which will be in conflict with the rights of the Secured Party in terms of this Agreement;

5.5.2 that it may not cede, assign, transfer or pledge or in any other manner encumber or deal with the Equipment and/or the Rights and Interests without the prior written consent of the Secured Party;



**5.5.3** to the extent possible, –

**5.5.3.1** to prevent any variation of the rights relating to the Equipment or the Rights and Interests which could reduce their value without the prior written consent of the Secured Party;

**5.5.3.2** not to authorise the conversion of the Company into a close corporation.

## **6. PRE- PAYMENTS AND OTHER PAYMENTS**

**6.1** The advances made by the Secured Party shall be offset against the cost of coal in the amounts and at the times set forth in the Schedules.

**6.2** *Drafting note: terms of payment to be provided.*

## **7. FINANCING AGREEMENT**

**7.1** This Agreement is solely a financing Agreement.

**7.2** The Debtor acknowledges that

**7.2.1** the Equipment has or will have been selected and acquired solely by the Debtor for the Debtor's purposes;

**7.2.2** the Secured Party is not and will not be the vendor of any Equipment; and

**7.2.3** the Secured Party has not made and will not make any Agreement, representation or warranty with respect to the condition, qualification or fitness for a particular purpose or value of the Equipment or any other matter with respect thereto in any manner whatsoever.

## **8. NO AGENCY**

**8.1** The Debtor acknowledges that no agent of the manufacturer or other supplier of an item of Equipment or of any financial intermediary in connection with this Agreement is an agent of the Secured Party.

**8.2** The Secured Party is not bound by a representation of any such party and, as contemplated in Clause 21.1 herein, the entire Agreement between the parties in respect of the financing of the Equipment is contained herein.


## 9. ACCEPTANCE

- 9.1 The execution by the parties of the Schedules covering the Equipment or any Items thereof shall conclusively establish that such Equipment has been included in the Agreement and will be subject to the terms and conditions of this Agreement.
- 9.2 In the event that the Debtor has not furnished the Secured Party with an executed Schedule by the Signature Date, the Secured Party may terminate its obligation to advance funds in respect of the applicable Equipment.

## 10. LOCATION, INSPECTION, USE OF EQUIPMENT

- 10.1 The Debtor shall keep, as appropriate, each Item of Equipment in the Debtor's possession and control at the Equipment Location designated in the applicable Schedule, or at such other location to which such Equipment may have been moved with the prior written consent of the Secured Party.
- 10.2 Whenever requested by the Secured Party, the Debtor will advise the Secured Party of the exact location of an Item of Equipment.
- 10.3 The Secured Party will have the right to inspect the Equipment and observe its use during normal business hours, subject to the Debtor's security procedures and to enter into and upon the premises where the Equipment may be located for such purpose.
- 10.4 The Equipment shall at all times be used solely for the purposes indicated herein and operated in a due and proper manner and in compliance with all the applicable laws, by-laws, rules and regulations and conditions and requirements of the governing insurance policies required to be carried out by the Debtor under the terms of this Agreement and all the manufacturer's instructions and warranty requirements.

## 11. ALTERATIONS, REPLACEMENTS AND SUBSTITUTIONS

- 11.1 The Debtor shall not make any alterations, additions or improvements to any Item of Equipment which shall detract from its economic value or functional utility, except as may be required pursuant to the provisions of clause 1010 herein, without the prior written consent of the Secured Party.
- 11.2 The Secured Party's security interest in the Equipment will include all modifications and additions thereto and replacements and substitutions therefore, either wholly or in part.
- 11.3 Such reference to replacements and substitutions shall not grant the Debtor greater rights to replace or substitute than are provided in clause 1313 herein or as may be allowed upon prior written consent of the Secured Party.
- 



## **12. MAINTENANCE**

- 12.1** The Debtor shall maintain the Equipment in good condition and working order.
- 12.2** The Debtor shall further cause each Item of Equipment for which a service contract is generally available to be covered by such a contract which provides coverage typical to property of the type involved and is issued by a competent servicing entity.

## **13. LOSS AND DAMAGE**

- 13.1** In the event of the loss of, the theft of, damage to or destruction of an Item of Equipment, the Debtor shall give the Secured Party immediate notice thereof in writing and shall thereafter place such Equipment in good repair condition and working order, provided, however, that if such Equipment is determined by the Secured Party to be lost, stolen, destroyed or damaged beyond repair, or suffers total loss as defined in any applicable insurance policy carried by the Debtor in accordance with clause 16 herein, the Debtor shall, at the Secured Party's option,

**13.1.1** replace such Equipment with like Equipment in good condition and working order whereupon such replacement Equipment will be deemed the such Equipment for all purposes in terms of this Agreement; or

**13.1.2** Pay such amount due to the Secured Party at the time of such loss, theft, damage or destruction.

## **14. OWNERSHIP AND RISK**

- 14.1** The advancement of payments in terms of this Agreement will constitute a financing Agreement between the parties.

**14.2** Ownership, risk including risk of loss and benefit of the Equipment procured in terms of this Agreement, shall vest in the Debtor at all times during the Commitment Period.

## **15. TAXATION**

The Debtor shall submit all returns and pay when due all taxes, fees, charges and assessments based on the ownership or use of the Equipment.

## 16. INSURANCE

**16.1** The Debtor shall procure and continuously maintain all risk insurance against loss or damage to the Equipment from any cause whatsoever for not less than the full replacement value thereof naming the Secured Party as beneficiary.

**16.2** Such insurance must

**16.2.1** be in a form and with companies approved by the Secured Party and the Debtor;

**16.2.2** provide at least 30 (thirty) days' advance written notice to the Secured Party of cancellation, change or modification in any term, condition or amount of cover provided therein;

**16.2.3** provide full breach of warranty protection; and

**16.2.4** provide that the coverage is 'primary coverage' and does not require contribution from any other applicable coverage.


**16.3** The Debtor shall provide the Secured Party with an original policy or certificate as confirmation of such insurance.

## 17. SECURED PARTY'S PAYMENT AND REALISATION

**17.1** Should the Debtor be in material breach of any of the clauses of this Agreement and fail to remedy such breach within the period allowed therefor (if any), the Secured Party may be entitled to pursue any remedy available to it in law including, but not limited to, any one of the forms of relief set out below:

**17.1.1** If the Debtor fails to pay any amount due hereunder or to perform any of its other obligations under this Agreement, the Secured Party may, at its option, but without any obligation to do so, pay such amount or perform such obligations, and the Debtor will reimburse the Secured Party the amount of such payment or cost of such performance, plus interest at the prevailing prime rate per month;

**17.2** The Secured Party may elect to effect transfer of the Equipment into its own name as beneficial owner, to the extent permitted in law, in which event a market related price of the Equipment at the time the election is made shall be agreed in writing between the Parties, or failing written agreement within 5 (five) business days of such election, will be determined by independent party appointed in terms of [], acting as experts and not as arbitrator. Any excess of the market related price of the Equipment over the amount owing by the Debtor to the Secured Party in respect of this Agreement shall be paid by the Secured Party to the Debtor within 10 (ten) business days of the agreement as to, or the determination of, the fair price. Any shortfall will be paid by the Debtor on demand. The Debtor shall be responsible for and shall pay the independent party's charges for determining the fair price.



**17.3** The Secured Party shall subsequent to obtaining an order of court, to the extent permitted in law, be entitled to –

**17.3.1** exercise all the rights, powers and privileges attaching to the Equipment;

**17.3.2** sell, assign, transfer or otherwise dispose of or realise the Equipment or to realise the underlying value of the Equipment in such manner by public auction or by private treaty and on such terms as may appear to it most expedient.

**17.3.3** give good, valid and sufficient receipts and discharges for the purchase price or proceeds of the Equipment or the proceeds of the underlying assets; and

**17.4** Notwithstanding any other provision of this Agreement, the Secured Party shall be entitled at any time to sue for the recovery of the moneys remaining due and payable to the Secured Party in respect of this Agreement, or any portion thereof, and to obtain judgment and to attach and sell in execution the Equipment any other property or effects belonging to the Debtor, as may be necessary to settle the Debtor's indebtedness to the Secured Party in respect of this Agreement.

## **18. INDEMNITY**

**18.1** The Parties agree to release and hold each other harmless from and against any damages or liabilities including, any losses, damages, claims, fines and penalties, deaths, illness, diseases to any person or property arising out of or in connection with the execution of this Agreement except if such act is occasioned by negligence or failure to perform in terms of the Agreement.

**18.2** The Parties further agree that this Agreement shall not be construed as an acknowledgement, confirmation, cancellation and/or extension of any other agreement/s or similar transaction/s concluded by the Parties prior to this Agreement.

## **19. BREACH AND TERMINATION**

In the event that a party commits a material breach of any provision of this Agreement or fails to carry out its obligations in terms of this Agreement and continues with such breach or failure for a period of 10 (ten) days after having received a notice in writing from the aggrieved party to remedy the breach or failure, the aggrieved party may terminate this Agreement without further notice and without prejudice to any other remedies which it may have in law or under this Agreement.

## **20. CESSION AND ASSIGNMENT**

Neither Party shall be entitled to cede and/or assign any of its rights and/or obligations in terms of this Agreement to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed.



## 21. GENERAL

### 21.1 Whole Agreement

**21.1.1** This Agreement is the sole record of the Agreement between the parties and supersedes any previous agreements between them relating to the matters referred to herein.

**21.1.2** No variation or amendment to the terms and conditions of this Agreement, addition hereto, deletion herefrom or modification or waiver of any of the provisions hereof nor any consent to any departure by either party herefrom, shall in any event be of any force or effect unless the same shall be confirmed in writing and signed on behalf of both parties, and then such variation, modification, waiver or consent shall be effective only in the specific instance and for the purposes and to the extent for which it was made or given..

### 21.2 Dispute Resolution

**21.2.1.1** Any Dispute which may arise between the Parties concerning this Agreement shall be determined as follows:

**21.2.1.1.1** the Dispute shall first be referred to the Secured Party's General Manager (Primary Energy) and the Debtors appropriate Manager who shall negotiate in good faith in an attempt to resolve the Dispute as speedily as possible. The Parties agree that, in attempting to resolve the dispute they may utilise, by mutual Agreement, whatever means or methods they deem necessary in the circumstance to facilitate such resolution including but not limited to, the appointment of a facilitator.

**21.2.1.1.2** In the event of the Parties failing to resolve their dispute through the process set out in clause 21.1.3.1.1 above, the dispute shall be submitted to and decided by arbitration. The arbitrator shall be, if the question is an issue of:

**21.2.1.1.2.1** primarily an accounting matter, an independent chartered accountant;

**21.2.1.1.2.2** primarily a legal matter, a practising senior counsel;

**21.2.1.1.2.3** any other matter, a common independent person;

agreed upon between the Parties and, failing Agreement, appointed by the Chairman for the time being of the Johannesburg Bar Association.

**21.2.1.2** If agreement cannot be reached within 7 (seven) business days after the arbitration has been demanded as to whether the question in issue falls under clause 21.1.3.1.2.1, 21.1.3.1.2.2 and 21.1.3.1.2.3, then a practising senior counsel agreed upon between the Parties and

failing such agreement, appointed by the Chairman for the time being of the Johannesburg Bar Council as soon as possible thereafter, shall determine whether the question in issue fall under 21.1.3.1.2.1, 21.1.3.1.2.2 or 21.1.3.1.2.3 so that the arbitrator can be appointed in terms of 21.1.3.1.2.

**21.2.1.3** The arbitrator shall decide the matter submitted to him in accordance with formalities and/or procedures settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or the strict rules of evidence.

**21.2.1.4** The arbitrator shall be entitled;

21.2.1.4.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the matters referred to him in arbitration and for that purpose shall have the widest powers of investigating all the relevant books and records of any party to the arbitration and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purposes;

21.2.1.4.2 to interview and question under oath all the Parties or their representatives having knowledge of any matter pertaining to the dispute in question;

21.2.1.4.3 to decide the matter referred to him for arbitration according to what he considers just and equitable in the circumstances.

**21.2.1.5** The Parties irrevocably agree that the decision in those proceedings:

21.2.1.5.1 shall be final and binding on them;

21.2.1.5.2 shall be carried into effect;

21.2.1.5.3 may be made and order of the High Court of South Africa.

**21.2.1.6** The arbitration shall be heard in Johannesburg, South Africa

### **21.3 Relaxation and Waiver**

Any extension of time, waiver or relaxation or suspension which is given to any party in terms of this Agreement shall not be binding unless recorded in writing and signed by all parties to this Agreement. Any such extension, waiver, relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.





## **21.4 Severability**

Should any of the provisions of the Agreement be enforceable at law on the grounds that any such provision is void for vagueness, such provisions shall be severable from the remaining provisions of the Agreement and shall not affect the operation or the interpretation of any such remaining provision.

## **21.5 Relationship between the Parties**

Except as otherwise expressly provided herein, or save as may be expressly authorized hereunder in writing from time to time, the parties acknowledge that nothing in this Agreement shall:

21.5.1 constitute either party the partner, agent or legal representative of the other or create a fiduciary relationship between the parties, or create any trust or any partnership for any purpose whatsoever; or

21.5.2 confer on any party the authority to act or to assume any obligation or responsibility on behalf of the other party or otherwise to bind the other party as to any matter or thing to be done in relation to this Agreement.

## **21.6 Implied Warranties**

Except as expressly set out in this Agreement, the parties disclaim any other representations or warranties, express or implied and each party acknowledges that it has not relied upon any such representation or warranty not contained in this Agreement by the other.

## **21.7 Non Exclusive Remedies**

Except as otherwise provided in this Agreement, the rights, powers and remedies contained in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise under this Agreement.

## **21.7 Governing Law**

This Agreement will be governed by, and construed in accordance with, the laws of South Africa.

## **22 DOMICILIA AND NOTICES**

22.1 The Parties choose as their domicilia citandi et executandi for the purposes of serving any notice and for purposes of making payment hereunder and giving any notice in terms of this Agreement, the following addresses:

22.1.1 Eskom to:



Fax no:

22.1.2 **Tegeta Exploration and Resources (Pty) Ltd to:**

*Drafting Note: Insert Physical Address*

Fax no:

SIGNED AT SUNNINGHILL ON THE 9<sup>th</sup> DAY OF DECEMBER 2015

AS WITNESSES:

For: Eskom Holdings SOC Limited

who warrants that he is duly authorized  
hereto

SIGNED AT PRETORIA ON THE 9<sup>th</sup> DAY OF DECEMBER 2015

AS WITNESSES:

For: Tegeta Exploration and Resources (Pty) Ltd

who warrants that he is duly authorized  
hereto

*[Handwritten signature]*

ANNEXURES



*[Handwritten signature]*

SM61

**Subject:** FW: RE: OPTIMUM COAL MINE / HENDRINA POWER STATION  
**Attachments:** 20160420 DMRDG Optimum Coal Mine (Pty) Ltd execution copy.docx

**Importance:** High

**From:** Suzanne Daniels [mailto:DanielSM@eskom.co.za]  
**Sent:** 20 April 2016 08:51 AM  
**To:** Matshela Koko <KokoMM@eskom.co.za>  
**Subject:** RE: OPTIMUM COAL MINE / HENDRINA POWER STATION  
**Importance:** High

Herewith the follow up letter for your sign off.

Regards  
 Suzanne

---

**From:** Matshela Koko  
**Sent:** 07 December 2015 06:02 PM  
**To:** Suzanne Daniels <DanielSM@eskom.co.za>; Edwin Mabelane <MabelaET@eskom.co.za>  
**Subject:** FW: OPTIMUM COAL MINE / HENDRINA POWER STATION

---

**From:** Mantebu Lengoabala [mailto:Mantebu.Lengoabala@dmr.gov.za]  
**Sent:** Monday, December 7, 2015 5:23 PM  
**To:** Matshela Koko  
**Subject:** FW: OPTIMUM COAL MINE / HENDRINA POWER STATION

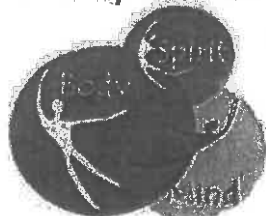
Good day

Please find attached letter from DG Ramontja in response to your letter of 06 December 2015.

Regards

Ms Mantebu Lengoabala  
 T: 012 444 3977  
 Cel: 082 303 2764

"Not my will, but let Your will be done"



Health  
&  
Wellness

Everyday  
WORLD AIDS DAY

#RiseActProtect



**From:** nwabisa.gwanyashe@dmr.gov.za [mailto:nwabisa.gwanyashe@dmr.gov.za]  
**Sent:** Monday, December 07, 2015 4:38 PM  
**To:** Mantebu Lengoabala  
**Subject:**



*[Handwritten signature]*  
H/





Dr Thibedi Ramontja  
 Director General  
 Department of Mineral Resources  
 Private Bag X59  
 ARCADIA  
 0007

Dear Dr Ramontja

**OPTIMUM COAL MINE (PROPRIETARY) LIMITED: COAL SUPPLY TO HENDRINA POWER STATION**

Your correspondence received on 7 December 2015 has reference.

As you may be aware, Tegeta Mining and Exploration Resources (Pty) Ltd ("Tegeta") has now formally become the owner of Optimum Coal Mine ("Optimum"). I can confirm receipt of notification from the business rescue practitioners in this regard.

Following on your request for Eskom to play an active role in providing support for the project to succeed, Eskom wishes to express its unequivocal support and commitment to working with the new owners and all stakeholders in resolving the matters which affect the continued operation of the mine.

I note from your last correspondence that you have referred to historical liabilities estimated at R1.7 billion and that your department would be working with all stakeholders concerned. As highlighted in previous discussions and correspondence, Optimum supplies one of Eskom's key contributors to the national power system and Hendrina Power Station is a stalwart in the Eskom fleet, supplying approximately 2000MW to the national grid. The risk of security of supply for Hendrina Power Station is of such key national interest that it is imperative that Optimum remain a viable business concern.

Accordingly, Eskom remains available to participate in any stakeholder engagement forums that you deem necessary to ensure the sustainable operation of the Optimum mine and uninterrupted supply for Eskom.

Should you require any information from Eskom, please do not hesitate to contact me.

Yours sincerely

Matshela Koko  
**GROUP EXECUTIVE: GENERATION**  
 Date:

SM67

**Subject:**

FW: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD

From: [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za](mailto:MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za)  
[mailto:[MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za](mailto:MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@eskom.co.za)] On Behalf Of Suzanne Daniels  
Sent: 28 August 2016 05:09 PM  
To: Matshela Koko <[KokoMM@eskom.co.za](mailto:KokoMM@eskom.co.za)>  
Cc: Ayanda Nteta <[NtshanAK@eskom.co.za](mailto:NtshanAK@eskom.co.za)>; Marumo Lekoto <[LekotoMH@eskom.co.za](mailto:LekotoMH@eskom.co.za)>  
Subject: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD

Sender: [DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)  
Subject: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD  
Message-Id: <285ED16040FCDD4485B6F5D99E8ADA0C8E68CB97@MWPMXB10.elec.eskom.co.za>  
To: [KokoMM@eskom.co.za](mailto:KokoMM@eskom.co.za)  
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