

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO:**

In the matter between:

**CORRUPTION WATCH (RF) NPC**

Applicant

and



**ESKOM HOLDINGS SOC LIMITED**

First Respondent

**MARK VIVIAN PAMENSKY**

Second Respondent

**ANOJ SINGH**

Third Respondent

**BRIAN MOLEFE**

Fourth Respondent

**VENETE JARLENE KLEIN**

Fifth Respondent

**ZETHEMBE WILFRED KHOZA**

Sixth Respondent

**MINISTER OF PUBLIC ENTERPRISES**

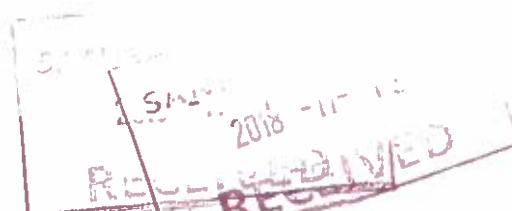
Seventh Respondent

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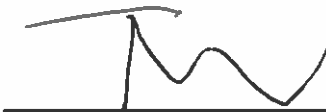
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DATED at Johannesburg on this 12<sup>th</sup> day of NOVEMBER 2018



**WEBBER WENTZEL**

Applicant's Attorneys  
90 Rivonia Road  
Sandton  
2196

Tel: (011) 530 5867

Fax: (011) 530 6867

Email: moray.hathorn@webberwentzel.com

Ref: M Hathorn / T Phala  
3025088

**TO: THE REGISTRAR**  
High Court  
**PRETORIA**

**AND TO: ESKOM HOLDINGS SOC LIMITED**  
First Respondent  
Eskom Megawatt Park  
2 Maxwell Drive  
Sunninghill  
Sandton

**AND TO: MARK VIVIAN PAMENSKY**  
Second Respondent  
Unit 24  
The Regency  
Dais Street  
Sandton  
2196

**AND TO: ANOJ SINGH**  
Third Respondent  
21 Silversands Avenue  
Wendywood  
Sandton  
2146

AND TO: **BRIAN MOLEFE**  
Fourth Respondent  
32 Bond Place  
Midstream Estate  
Gauteng  
1692

AND TO: **VENETE JARLENE KLEIN**  
Fifth Respondent  
11 Numeral Street  
Mookloof Estates  
Pretoria  
0059 /  
537 Chpin Street  
Constantia Park  
Johannesburg  
0000

AND TO: **ZETHEMBE WILFRED KHOZA**  
Sixth Respondent  
95 Pardy Road  
Isipingo Hills  
Durban  
KwaZulu Natal  
4133

AND TO: **MINISTER OF PUBLIC ENTERPRISES**  
Seventh Respondent  
Infotech Building  
1090 Arcadia Street  
Hatfield  
Pretoria

## Annexure

### Background to the Coal Supply Agreements concluded between Eskom and Tegeta

11. Tegeta Exploration and Resources ("Tegeta") is a coal mining company the major shareholder of which is Oakbay Investment (Pty) Ltd and Oakbay Resources and Energy Limited. In March 2015 Eskom contracted with Tegeta for the supply of coal.
12. An unsolicited bid was initially received from Idwala Coal Crypts (Pty) Ltd which submitted a proposal to supply coal to be mined and processed from Brakfontein Colliery. The subsequent offer was submitted by Tegeta Exploration and Resources (Pty) Ltd on 23 September 2014.
13. In the lead up to the conclusion of the Coal Supply Agreement with Tegeta, meetings were held on:
  - 13.1. 9 May 2014;
  - 13.2. 10 July 2014;
  - 13.3. 23 September 2014;
  - 13.4. 23 January 2015; and
  - 13.5. 30 January 2015.



14. In sum, following an unsolicited approach to Eskom from Tegeta/ Goldridge/ Idwala, Eskom held a series of meetings to determine the terms and conditions upon which it could enter into a coal supply agreement with Tegeta/ Goldridge/ Idwala. Despite the clear indications from Eskom officials that some of the coal offered did not meet Eskom specifications and requirement, a coal supply agreement was eventually concluded for the unsuitable coal at inflated prices. These meetings are discussed in detail below.
15. At the meeting of 9 May 2014, between Goldridge and Eskom employees<sup>1</sup>, Goldridge proposed supplying coal to Eskom from two sources, namely Brakfontein Colliery and Vierfontein Colliery<sup>2</sup>.
16. At the same meeting, Ayanda Nteta, now Eskom's acting head of fuel sourcing, indicated to the representatives of Goldridge that Eskom preferred dealing with companies that are 50%+ 1 black owned.
17. At the time Tegeta was not 50%+ black owned as 50% of it was owned by Oakbay Investments. Another 21.5% was owned by Bhatia International, an Indian coal company. The minutes of the 9 May 2014 meeting are attached as Annexure [\*]. Despite this, negotiations with Tegeta continued.
18. On 10 June 2014, a further meeting was held where the quality of the coal came into sharp focus. In respect of the quality of the coal at Brakfontein, the meeting was informed that a sample of the Seam 4 Upper, seam 4 Lower and a blend of

<sup>1</sup> Eskom was represented by Ayanda Ntshanga, Shumani Muvhangu, Mabatho Mothupi, Sunjay Andhee and Thabani Mashego; Goldridge by Salish Mudaliar and Ravindra Nath.

<sup>2</sup> Ibid.

*[Handwritten signature]*

*[Handwritten signature]*

the two was collected on 13 June 2014 to perform a chemical analysis. The results of the chemical analysis indicated that only Seam 4 Lower was within Eskom specifications. However, Seam 4 Lower could only be considered for further assessment if the Hard Grove Index could meet Eskom's threshold of a minimum of 50. The analysis of Seam 4 Lower came back at 28.

19. Based on this the Eskom officials expressed some concerns as to the ability of Tegeta/ Goldrige to meet the offered qualities. The minutes of the 10 June 2014 are attached as Annexure [\*].

20. A subsequent meeting was held on 23 September 2014 between Tegeta/Idwala and Eskom<sup>3</sup> for purposes of discussing the concerns around the Hard Grove Index on the initial sample that was tested. A further sample had also been tested to undertake another chemical analysis and a combustion test.

21. Eskom's acting Technical Services Manager gave feedback on the combustion test results. He expressed the following concerns:

21.1. that the second sample revealed higher iron and calcium levels which could potentially cause slagging;

21.2. a low burn out time was noted;

21.3. and, calorific value was on the low side.

22. Eskom indicated that the combustion test results showed that the coal from

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<sup>3</sup> Eskom: Thabani Mashego, Ayanda Ntshanga, Philip Mostert. Tegeta/ IDWALA: Satish Mudliar, Ravindra Nath.



Brakfontein was potentially suitable for use at Kendal, Kriel units 4-6, Lethabo and Matimba Power Stations.

23. Eskom stressed that it could only consider the seam 4 Lower of Brakfontein as the seam 4 Upper of Brakfontein did not meet Eskom's requirements.
24. Tegeta suggested the possibility of blending the coal however Eskom officials stated that this would be problematic and that a new offer, on these terms, would have to be submitted by Tegeta.
25. As the Power Stations which could receive coal from Brakfontein had all their coal needs met for the financial year, an agreement between Eskom and Tegeta for the supply of coal could only be reached at the earliest on 1 April 2015.
26. It was agreed that Tegeta would provide a revised proposal only supplying the 4 seam Lower, this offer had to include price, volume and duration.
27. On 23 January 2015 a meeting was held between Tegeta, Idwala and Eskom. Eskom provided feedback about further test results that had been conducted on the available coal supply, indicating that only some of the production was suitable for Eskom's use at certain stations. It was again found that certain of the product was unsuitable for Eskom's use.
28. Presumably as a result of these test results, Tegeta offered to supply the coal at R17/GJ (for the seam 4 Lower output) and R15/GJ for the blended product

(seam 4 Upper and seam 4 Lower).

29. Eskom indicated that the price offered by Tegeta was too high. It was agreed that Tegeta would submit revised pricing to Eskom.
30. In addition, it was agreed that Tegeta would present technical plans to address quality issues. The minutes of the meeting of 23 January 2015 are attached as **Annexure [\*]**.
31. Surprisingly, and contrary to procurement best practice, Eskom negotiated a price for both seam 4 Lower and blended product (seam 4 Upper and seam 4 Lower) even though the blended product was not suitable for Eskom's use.
32. A week later, on 30 January 2015 a further meeting was held between Tegeta, Idwala and Eskom<sup>4</sup>. Tegeta offered a revised price of R13.50/GJ for a five-year contract supplying 65,000 tons per month from the Brakfontein Colliery, commencing on 1 April 2015.<sup>5</sup> This would be for a combination of seam 4 Upper and Lower.
33. A Coal Supply Agreement between Eskom and Tegeta, for the supply of coal from Brakfontein and Brakfontein Extension to Majuba Power Station, was subsequently entered into on or about 10 March 2015, with a commencement date of 1 April 2015 ("**10 March CSA**"). The Coal Supply Agreement is attached as **Annexure [\*]**.

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<sup>4</sup> Eskom: Thabani Mashego, Ayanda Ntshanga, Sunjay Andhee and Johann Bester. Idwala: Ravindra Nath, Satish Mudiliar and A.K Upadhy.

<sup>5</sup> Ibid.





34. In the months that followed, Eskom noted a significant increase in the number of out-of-specification coal stockpiles supplied by Tegeta in terms of the 10 March CSA.
35. As a result of this, on or about 31 August 2015 a letter was sent to Tegeta from Mr Matshela Koko ("Mr Koko") of Eskom under the subject '*Suspension of Coal Supply: Brakfontein Colliery and Brakfontein Colliery Extension*'. The contents of the letter were as follows:
- "a) Eskom notes the significant increase in the number of out-of-specification coal stockpiles from July to August 2015. During August 2015, 50% of the stockpiles have been out of specification resulting in rejection. Further, Eskom notes the inconsistency in the laboratory results as the outcome of coal samples provided by the mine; and*
  - b) This is of great concern to Eskom as it now calls into question the exact nature and quality of the coal that Brakfontein Colliery and Brakfontein Colliery Extension supplies to Eskom in terms of the coal supply agreement;*
  - c) Therefore as a precautionary measure, Eskom hereby notify you of the suspension of offtake from the mines in order to investigate the root cause of the inconsistency in the coal quality management process; and*
  - d) The suspension will come into effect by 16h00 today."*
36. Similar letters of suspension, signed 31 August 2015 were also sent to SGS Services South Africa (Pty) Ltd and Sibonisiwe Coal Laboratory Services CC, who were also supplying coal to Eskom.
37. Only a few days later and on or about 5 September 2015, a subsequent letter was sent to Tegeta from Mr Koko under the subject '*Upliftment of the Suspension of Coal Supply: Brakfontein Colliery and Brakfontein Colliery Extension*'. The content of the letter was as follows:



*"The above matter and our letter dated 31 August 2015 refer.*

*a) Eskom hereby lifts the suspension of coal supply from the Brakfontein Colliery and Brakfontein Colliery Extension effective immediately whilst it continues its investigation into the inconsistencies in the coal quality and management process."*

38. On or about 31 August 2015, Eskom instructed the SABS to test the coal from Tegeta. SABS performed tests from 6 September 2015 and issued results on 18 September 2015.
39. The results from SABS highlighted non-compliance with the coal quality specifications, mainly in Volatile, Sulphur, Ash and inherent moisture.
40. SABS test results (dated 18 September 2015) indicated that seven samples of coal that were tested contained Sulphur that was higher than the rejection limit of 1.3% and the worst sample contained more than 2% of Sulphur content.
41. According to the Treasury Report, there is no evidence that Eskom implemented any remedial action after receiving the SABS test report. This is contrary to the diligence and duties expected of the Directors.
42. In addition, and on 3 September 2015, the Department of Mineral Resources issued a "Notice of orders, suspension and instructions in terms of Section 54(1)(A) and 54(1)(B) of the Mine Health and Safety Act 1996 to Brakfontein Colliery.
43. As set out in more detail in the attached documents, Eskom's initial tests



revealed that only certain output by Tegeta was suitable for Eskom use at certain stations, but that other product was unsuitable for Eskom's use.

44. Despite these uncontested test results, Eskom entered into the 10 March CSA for the supply of the 4 seam Upper and the blended product. Eskom accordingly allowed Tegeta to supply stockpile coal which did not conform to its standards.
45. Moreover, subsequent evidence from SABS that Tegeta was providing sub-standard coal revealed that the coal samples were unsuitable and Eskom failed to implement any remedial action after receiving the SABS test results dated 18 September 2015.



Mr Lungisa Fuzile  
Director-General  
National Treasury  
Private Bag X115  
PRETORIA  
0001

Dear Mr Fuzile

**RESPONSE FROM ESKOM ON THE REPORT ON THE VERIFICATION OF COMPLIANCE  
WITH TREASURY NORMS AND STANDARDS - APPOINTMENT OF TEGETA BRAKFORTEIN  
COLLIERY**

I refer to letters dated 12 April 2016 and 18 May 2016 from Mr Kenneth Brown regarding the above mentioned subject (attached for ease of reference).

The report containing the findings of National Treasury's review of compliance with norms and standards during the bidding process was not tabled before the Eskom Board as per National Treasury's request contained in a letter dated 12 April 2016 but due to National Treasury's recent media comments on this matter, I have decided to provide the response as requested. Eskom's Board Tender Committee has reviewed and noted the contents of the responses, however, if the Board has additional comments I will communicate this to you accordingly.

Eskom takes note of National Treasury's recommendations relating to Tegeta's Brakfontein Colliery Coal Supply Agreement (CSA). At the outset it must be recorded that Eskom has managed and continues to manage its risk relating to coal supply from Tegeta and other suppliers prudently and within the framework provided for in terms of the CSAs. Eskom shall take such necessary steps against suppliers who breach the terms of such CSAs and expose Eskom to risk.

Our responses to your specific concerns and issues are contained below together with detailed supporting documents as requested in the above mentioned letters.



**13.1 The Accounting Authority must submit evidence of effective and appropriate steps taken to ensure that Tegeta Exploration and Resources (Pty) Ltd (Paragraph reference are as per the National Treasury Report 12 April 2016):**

**13.1.1 Supplied and continue to supply coal that conform to Eskom's standards;**

All the coal that is supplied to Eskom in relation to Brakfontein Colliery is pre-certified as per the provisions of the CSA. Pre-certification is a process that involves the creation, sampling and management of stockpiles. This process ensures that coal that does not meet the required specification does not get dispatched from the mine. The stockpiles are classified as pre-certified if they meet the coal quality that conforms to Eskom's standards only after the results of the samples are received from the laboratory that confirm that the coal is of suitable quality. The quantity and quality of all approved coal deliveries are recorded on quality control sheets signed off by Eskom. Consequently, only coal of appropriate quality will be received and paid for by Eskom.

Coal Quality Management Procedure document sets out the above process in detail and is attached for ease of reference.

Refer to attachments in response to question 13.2 and 13.5 for signed quality control sheets.

Based on the above pre-certification process, Eskom is satisfied that Brakfontein Colliery supplied and continues to supply coal that conforms to the CSA.

**13.1.2 Complied and continue to comply with all its obligations under applicable laws (clause 6.1 of the coal supply agreement);**

Prior to contracting with the supplier, the supplier was evaluated by Eskom as to whether they complied with the applicable laws as per the Environmental sign off process which highlighted their non-compliance to the Water Use Licence requirements (see attached environmental report, 16 April 2014).

One of the requirements for entering into a Coal Supply Agreement with Eskom is the submission of a valid Water Use License. At the conclusion of the CSA with the Supplier in March 2015, the Supplier had a valid Water Use License issued on 22 December 2014 (see attached).

On receipt of the valid Water Use License issued above, it is Eskom's conclusion that any fine or potential fine that was due and payable by the supplier would have been settled with the competent authority prior to the said authority issuing the required license.

In addition, the supplier in concluding the CSA in March 2015 warranted to Eskom that it is complying with all relevant applicable laws and legislations.

Also, a review of their audited financial statements by KPMG and approved by its board on the 26 September 2014 and subsequent financial statements received from Tegeta

does not indicate any non-compliance (see attached financial statements issued 17 October 2015).

To ensure continued compliance to clause 6.1 of the CSA the Eskom Water and Environmental Department conducted a review of Brakfontein Colliery (see attached report issued 20 August 2015) with no adverse findings as it relates to environmental compliance.

A follow up review has already been initiated on 26 August 2016 (see attached).

Based on the above environmental due diligence process, Eskom is satisfied that Brakfontein Colliery complies with the requirements of the CSA as it relates to clause 6.1.

**13.1.3 Submitted prescribed information to Eskom within 30 days after the publication of the annual report (clause 29.2 of the coal supply agreement);**

The latest audited annual report of Tegeta is dated 17 October 2015 (see attached). Clause 29.2 provides that supplier shall supply Eskom with the information on an annual basis within 30 days after publication of its annual report. Consequently Tegeta has provided the following most recent reports in compliance with clause 29.2 of the CSA:

- a) The summary of the qualities, quantities and dates of dispatch of contract coal are part of the monthly invoice pack that is signed off by both parties (see attached invoice pack)
- b) See attached resource and reserve statements
- c) The CSA is one year into its life and therefore no long term issues have been identified as yet
- d) See attached tax clearance certificate issued 20 January 2016
- e) See attached BEE certificate issued 11 February 2016
- f) See attached Employment equity report issued 27 January 2016
- g) See attached Financial statement issued 17 October 2015

Based on the above due diligence process, Eskom is satisfied that Brakfontein Colliery complies with the requirements of the CSA as it relates to clause 29.2 of the CSA.

**13.1.4 Settled the fine for contravening environmental laws imposed by competent authorities;**

Please refer to the response in 13.1.2 above

**13.1.5 Complied with additional Water Use License requirements; and**

Please refer to the response in 13.1.2 above.



**13.1.6 Selectively mined the seam, use a grader to remove the major in-seam partings and avoid over drilling and blasting to improve the quality of coal.**

Eskom coal operations conducts site visits to monitor the mining and related processing of coal to produce pre-certified stockpiles. Technical liaison meetings are also held to ensure compliance to the above requirement (see attached minutes of technical liaison meetings).

Please refer to response 13.1.1 for pre-certification and delivery of Contract Coal.

Based on the above due diligence process, Eskom is satisfied that Brakfontein Colliery complies with the requirements of the CSA.

**13.2 After receiving the SABS coal test results dated 18 September 2015 which confirmed that Tegeta Exploration and Resources (Pty) Ltd's coal do not conform to contracted standards.**

Attached are both the SABS quality report on the 18 September 2015 being referred to as well as the invoice pack that includes the Quality Sheets, on the last three pages, that reflect the actual stockpiles that were delivered and paid for.

Refer to the Air Dried qualities in both the reports which relates to the 1.3% Air Dried limit that is contracted with Brakfontein. So any Sulphur exceeding 1.3% will be considered as Reject Coal against the Brakfontein Contract.

The stockpiles, reported on the SABS Test Report, that do not meet the contractual Sulphur limit are:

S/P B (07-09-2015) @ 1.72%  
S/P A 06/09/2015 @ 1.89%  
S/P A (11/09/15) @ 1.55%  
S/P A 12/09/2015 @ 1.39%  
S/P A (14/09/15) @ 1.45%  
S/P A 14/09/15 @ 1.77%  
S/P B 16/09/2015 @ 2.17%  
S/P A 16/09/2015 @ 1.35%

An independent review was conducted by internal audit that verified that no payments were made for the above mentioned samples.

Refer to responses 13.1.1 and 13.5 in this regard.

Consequently, Eskom confirms that none of the above rejected stockpiles are recorded on the Quality Sheet and as such that Eskom did not make payment on any of these stockpiles that exceeded the sulphur quality limit.

**13.3 After Tegeta Exploration and Resources (Pty) Ltd justified its high coal price because of the increased BEE shareholding.**

At the meeting held on 23rd January 2015 (Annexure D of the report), Eskom re-iterated to Tegeta that the prices offered were high. The prices were R17/GJ for the 4 seam lower and R15/GJ for the blended product. Tegeta were then requested to revise their pricing and revert back to Eskom. At the meeting held on 30<sup>th</sup> January 2015 (Annexure E of the report) Eskom stated that the parties were far apart in terms of the price offered. Tegeta justified its high price based the need to finance the BBBEE partners as well as changes in environmental law as well as royalties.

Eskom stated that the price offered (R17/GJ for the 4 seam lower and R15/GJ for the blended product) would set a new benchmark and stated that if the parties were unable to agree on a price, Eskom would look at alternative suppliers.

Tegeta then revised their price offer after discussions with their board to R13.50/GJ. The parties agreed to the revised offer as it was a competitive offer based on the price per gigajoule when compared to other available coal for Majuba Power Station. Details on the price comparison and explanation for differences has been provided in previous correspondence to National Treasury officials, and is attached for easy reference.

Based on the above, Eskom is satisfied with the price paid for coal from Brakfontein Colliery is not high because of the increased BEE shareholding but is price competitive. This competitive price is the basis upon which the CSA was concluded in March 2015 and not the initial prices offered by Tegeta.

**13.4 To ensure compliance with clause 30 of the Coal Supply Agreement with regards to the submission of the legislative submission associated with compliance by the supplier.**

The following information (attached) was submitted by the supplier:

- a) Brakfontein EIA and EMP report
- b) Brakfontein extension Mining right
- c) DMR letter for EMP approval
- d) NEMA Approval
- e) NEMA Authorisation
- f) Mining right and EMPR for Brakfontein
- g) Letter from supplier regarding the increase in BEE shareholding

Based on the above due diligence process, Eskom is satisfied that Brakfontein Colliery complies with the requirements of the CSA as it relates to clause 30.



13.5 To ensure that Tegeta Exploration and Resources (Pty) Ltd was not paid for the tons of coal that did not comply with its standards.

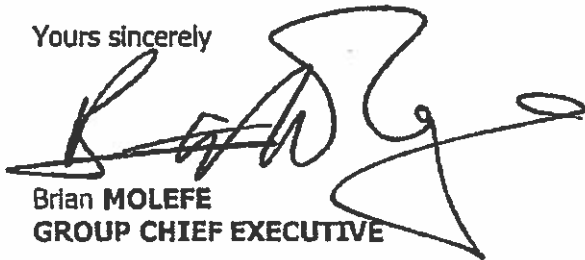
Please refer to 13.1.1 and 13.2.

Furthermore, also attached are the system generated payments for the period 01 September 2015 to 30 April 2016 as requested in the letter of the 18 May 2016.

I would like to point out that the information contained in this letter as well as the supporting documentation is subject to clause 39 (confidentiality) of the CSA.

Eskom apologises for the delay in providing the requested information and was not meant to undermine National Treasury or the Office of the Chief Procurement Officer but Eskom was in the process of complying with your request to table the report at the Eskom Board and thereafter submitting the requested information. In this regard, the next scheduled Eskom Board is on 27 September 2016.


Yours sincerely



Brian MOLEFE  
GROUP CHIEF EXECUTIVE

Date: 30. 8. 16.

CC: Mr. R Seleke – DG Department of Public Enterprises

 Eskom	Procedure	
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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


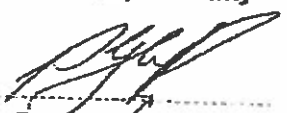

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V Panday Middle Manager Group Technology and Commercial - Risk & Governance	PG Le Rodx Senior Manager (Acting) Group Technology and Commercial - Risk & Governance	M Koko Group Executive (Acting) Technology and Commercial
Date: 16.05.2014	Date: 16/5/2014	Date: 19/5/14

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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: <ul style="list-style-type: none"> <li>a) Citizens of the Republic of South Africa by birth or descent; or</li> <li>b) 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>c) 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> </ul>

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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
PPFA	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 pre-requisite 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
Overall Minimum Threshold for Qualification	75	DISQUALIFY	PASS	DISQUALIFY

- 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 delegees. 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 lender 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 BBBEE), 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 sequestrated 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 record 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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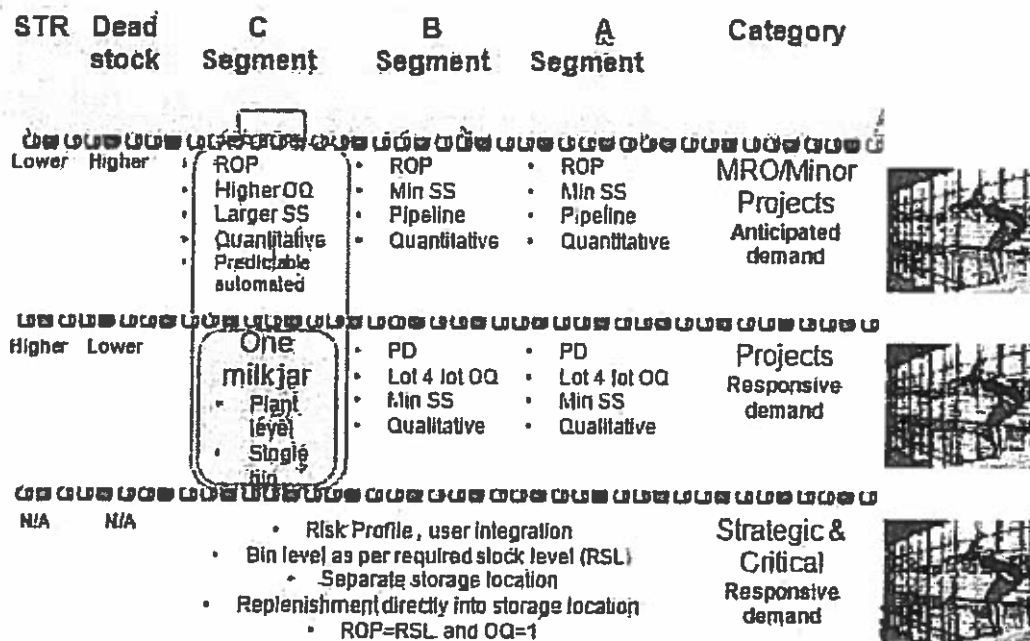


Figure 1: MRP types and lot sizes

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

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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

Powers/Authority	Approval Authority	Recommends /Supports
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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Land & Rights: Acquisition and disposal of Land & Rights related to the build programme and infrastructure development		
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
Land & Rights: Acquisition and disposal of Land & Rights, Commercial Property, Leasing of property		
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
Specific Procurement		
Gx/Tx/Dx 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
Coal 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> <p>18. Must be provided for in the tender</p>

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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 Veg. tables	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 Bed 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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requirements <ul style="list-style-type: none"> <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>	for Eskom's rules & requirements <ul style="list-style-type: none"> <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 –the SHE requirements must be scope-of-work-specific.</i>
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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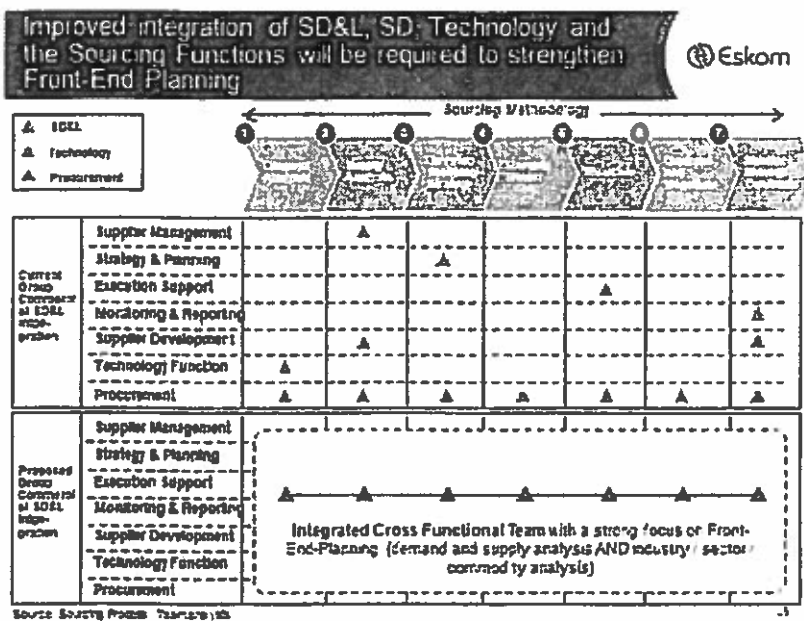
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commodities)	threshold)		contractual obligation
Job creation	Job creation declaration	Objective criteria or special condition of tender	Inclusion of job creation declaration to be completed. Target proposed will become contractual obligation
Developmental 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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