



NEC3 Professional Services Contract (PSC3)

**Contract between Eskom Holdings SOC Ltd
(Reg No. 2002/015527/30)**

**and
(Reg No.)**

**for Provision for Environmental and Social Management
compliance audits at Kusile Power Station
(Construction)**

Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work: The Scope	[•]

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	No of pages
C1.1	Form of Offer & Acceptance [to be inserted from Returnable Documents at award stage]	[•]
C1.2a	Contract Data provided by the <i>Employer</i>	[•]
C1.2b	Contract Data provided by the <i>Consultant</i> [to be inserted from Returnable Documents at award stage]	[•]
C1.3	Securities proforma	[•]

C1.1 Form of Offer & Acceptance

Offer

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

Provision for Environmental and Social Management compliance audits at Kusile Power Station (Construction)

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Consultant* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

The offered total of the Prices exclusive of VAT is	R	NA- Rate based
Value Added Tax @ 14% is	R	NA
The offered total of the Prices inclusive of VAT is	R	NA
(in words) Term service contract		

If Option E or G apply, for each offered total insert in brackets, "(Not Applicable – Cost reimbursable)"

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Consultant* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s) _____

Capacity _____

For the tenderer:

(Insert name and address of organisation)

Name & signature of witness

Date

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Consultant the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part C2 Pricing Data
- Part C3 Scope of Work: The Scope

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

.....
(Insert name and address of organisation)

Name &
signature of
witness

Date

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

Schedule of Deviations

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature

.....

.....

Name

.....

.....

Capacity

.....

.....

On behalf
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature
of witness

.....

.....

Date

.....

.....

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. The PSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row.
3. Where the symbol "■" is used data is required to be inserted relevant to the clause and statement which requires it.]

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
■		A: Priced contract with activity schedule
	dispute resolution Option and secondary Options	W1: Dispute resolution procedure
■		X2 Changes in the law
		X10 Employer's Agent
		X11: Termination by the Employer
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Professional Services Contract (April 2013) ¹	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and www.ecs.co.za

	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	013 680 3153
	Fax No.	None
11.2(9)	The <i>services</i> are	Provision for Environmental and Social Management compliance audits at Kusile Power Station (Construction)
11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Impacts to health and safety of the affected communities for the remaining phase of the project. • Late submissions of reports to Eskom and the Lenders. • Insufficient time to cover more areas of compliance.
11.2(11)	The Scope is in	Part 3: Scope of Work
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	One (1) week
13.6	The <i>period for retention</i> is	Five (5) years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Kusile Power Station site	To be confirmed

3 Time

31.2	The <i>starting date</i> is.	To be confirmed						
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	To be confirmed						
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<table border="1"> <thead> <tr> <th>Condition to be met</th> <th>key date</th> </tr> </thead> <tbody> <tr> <td>1 Compliance audits (Including site visits)</td> <td>Bi-annual</td> </tr> <tr> <td>2 Monitoring Report</td> <td>Annual</td> </tr> </tbody> </table>	Condition to be met	key date	1 Compliance audits (Including site visits)	Bi-annual	2 Monitoring Report	Annual
Condition to be met	key date							
1 Compliance audits (Including site visits)	Bi-annual							
2 Monitoring Report	Annual							
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	Four (4) weeks of the Contract Date.						

32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	Twelve (12) weeks.				
4	Quality					
40.2	The quality policy statement and quality plan are provided within	Four (4) weeks of the Contract Date.				
42.2	The <i>defects date</i> is	None				
5	Payment					
50.1	The <i>assessment interval</i> is	between the 20th and the 26th day of each successive month.				
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<table border="1"> <thead> <tr> <th>Item</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td colspan="2">Refer to C2.2 PSC</td> </tr> </tbody> </table>	Item	Amount	Refer to C2.2 PSC	
Item	Amount					
Refer to C2.2 PSC						
51.1	The period within which payments are made is	Four (04) weeks after submission and approval of each invoice, excluding time for correction of invoice.				
51.2	The <i>currency of this contract</i> is the	South African Rand				
51.5	The <i>interest rate</i> is	the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due				
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
7	Rights to material	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
8	Indemnity, insurance and liability	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices				
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
10	Data for main Option clause					
G	Term contract					

21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	Six Months
50.4	The <i>exchange rates</i> are those published in	N/A

11 Data for Option W1

W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	
	Fax No.	
	e-mail	
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	[•] South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> • if the Parties cannot agree a choice or • if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

12 Data for secondary Option clauses

X2	Changes in the law	
X2.1	The law of the project is	Law of Republic of South Africa
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	Siphiwe Mahlangu
	Address	Kusile Power Station
	The authority of the <i>Employer's Agent</i> is	Siphiwe Mahlangu

X11	Termination by the <i>Employer</i>	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (Zero Rand)
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	The total of the Prices
X18.3	The <i>end of liability date</i> is	five (05) years after Completion of the whole of the <i>services/task order</i>.
Z	The <i>Additional conditions of contract</i> are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

- Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

- Z2.1 If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.
- Z2.3 The *Consultant* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.

Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.

Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z4 Ethics

Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the *Services* or taking any other action as appropriate against the *Consultant* (including civil or criminal action).

Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the *Services* if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

Z4.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z5 Confidentiality

Z5.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.

Z5.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the *Services* and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z6 Waiver and estoppel: Add to core clause 12.3:

Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z7 Provision of a Tax Invoice. Add to core clause 51

Z7.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

Z9 Employer's limitation of liability

Z9.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z11.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Annexure A: Notes to Consultants

This is guidance to Consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract and the Employer carries no liability for it. The Consultant must obtain its own advice.

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of "project" or "contract" value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A "project" is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A "contract" is a single contract not linked to or being part of a "project".

2. There are three main "formats" of cover and deductible structure; Format A, Format B and Format Dx.

Format A is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

Format B is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

Format Dx applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

Format A generally applies to Transmission Division projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. Further information and full details of all Eskom provided policies and procedures may be obtained from:

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

4. The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers some time after Completion of the whole of the *services*. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

C1.2 Contract Data

Part two - Data provided by the *Consultant*

[Instructions to the tendering consultant: (delete these notes in the final draft of a contract)]

1. The tendering consultant is advised to read both the NEC3 Professional Services Contract, April 2013 and the relevant parts of its Guidance Notes (PSC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 158 & 159 of the PSC3 April 2013 Guidance Notes.
2. The number of the clause in the PSC3 which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Whenever a cell is shaded in the left hand column it denotes this data is optional in PSC3 and would be required in relation to the option selected. The *Employer* should already have made the selection and deleted the rows not required.

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	
11.2(10)	The following matters will be included in the Risk Register	

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or www.ecs.co.za

11.2(13)	The <i>staff rates</i> are:	name/designation	rate
	Either complete here or cross refer to a schedule in Part C2.2		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to 1 2 3	access date
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
A	Priced contract with activity schedule		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	R	(in figures) (in words), excluding VAT
C	Target contract		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	R	(in figures) (in words), excluding VAT
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

PART 2: PRICING DATA

PSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	[•]
C2.2	The <i>activity schedule</i>	[•]

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

Option A is a lump sum form of contract where the work to be done is broken down into well defined activities each listed in the *activity schedule* and priced by the tendering consultant as a lump sum. (See clause 11.2(18)).

Only completed activities which are without Defects are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date. (See clause 11.2(15)).

The *activity schedule* may change after the Contract Date as a result of compensation events. (See clause 11.2(14)).

Function of the Activity Schedule

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

Preparing the activity schedule

Generally it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant*:

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant*

estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

Expenses

Expenses are not included in the *activity schedule* items and are assessed separately at each assessment date, unless an additional condition of contract (Z clause) is included which requires that expenses be included within activity Prices and not paid separately.

Expenses associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the activity schedule prices or *staff rates*.

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

Staff rates

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

This is because *staff rates* can be established in one of three ways:

- rates for named staff,
- rates for categories of staff or
- rates related to salaries paid to staff.

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13 and 14 in the PSC3 Guidance Notes.

C2.2 the *activity schedule*

This section can be used when the *staff rates* and *expenses* are considerable in number and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

The *staff rates* are:

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT

The *expenses* are:

No.	Expense item	Amount / rate excluding VAT

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i>	
C3.2	<i>Consultant's Scope</i>	
	Total number of pages	

C3.1: EMPLOYER'S SCOPE

Contents

When the document is complete, insert a 'Table of Contents'. To do this go to: Insert, → Reference, → Index and tables → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained.

Otherwise insert list of contents manually.

Description of the services

Executive overview

The project requires the service as a means of monitoring compliance to the conditions of Eskom lenders/funders, various Environmental Authorisations (EAs), Waste Management Licences (WMLs), Water Use Licenses (WULs), Air Emissions License (AEL), Heritage Permits, Standard Environmental Specification (SES) appended to the Construction Environmental Management Plan (CEMP), National Norms and Standards for Storage of Waste (NNS), Basic Assessment Authorisation for Wetland Rehabilitation and Lenders Requirements for Kusile power station. The relevant conditions from the Main RoD, condition 3.11.6 (a), which states, “the EMC has to monitor and audit project compliance to the conditions of this record of decision, environmental legislation and specific mitigation requirements as stipulated in the environmental impact report and the Environmental Management Plans”, and condition 3.18.6, which states, “the applicant shall be responsible for ensuring compliance with the conditions contained in this RoD . . .”. It is against this background that Eskom would like to contract with independent environmental auditors for the monitoring and reporting on compliance and performance to the above-mentioned legal documents, on a bi-annual basis.

Interpretation and terminology

Term	Definition
Record of Decision	It is an authorization document that was issued by Department of Environmental Affairs (now known as Department of Forest, Fisheries and Environment) for the construction of KPS
Environmental Monitoring Committee	A committee formed by stakeholders including Community, Authorities, Eskom, Contractors in terms of Environmental Authorization/ RoD
Lenders	An organisation/person that has lent money to Eskom.

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
AEL	Air Emissions License
AMR	Annual Monitoring Report
AEL	Air Emissions License
CEMP	Construction Environmental Management Plan
SES	Site Environmental Specification
DEA	Department of Environment Affairs
EA	Environmental Authorisation
ECO	Environmental Control Officer
EMPs	Environmental Management Plans
EMC	Environment Monitoring Committee

IESC	Independent Environmental and Social Consultants
IFC	International Finance Corporation
KPS	Kusile Power Station
NNS	National Norms and Standards
PPE	Personal Protective Equipment
RoD	Record of Decision
RSA	Republic of South Africa
SHE	Safety Health and Environment
WML	Waste Management Licence

Specification and description of the services

The Contractor is required to provide sufficient resources to conduct for Environmental and Social audits at KPS for a period of 24 months as per section 3.2.

The scope comprises of the following:

The environmental and social auditors are required to provide the following scope of services (in accordance with the Lenders' Environmental Requirements, refer to Annexure 1 for specific aspects to be covered):

A1) Conduct compliance audits of the Project

Note that tasks under A1 require the Consultant to independently undertake an audit on identified requirements to determine compliance.

- Familiarize themselves with the project, existing Environment and Social Due Diligence, Environment and Social Assessment Procedure, previous monitoring reports and the Lender's Environmental Requirements.
- Align the Report Structure to the reporting template attached in Annexure 2 that is adapted to and meets Eskom's Lenders requirements and environment and social requirements per Kusile's authorisations and EMPs, as well as lenders recommended international documents.
- Provide audit /assessment methodology and approach including number of site visit days. An estimated 4-5 days visit in the beginning which may reduce when auditors are familiar with site and authorisations.
- Conduct external bi-annual (twice a year) compliance audits, including site visits to:
 - Monitor Kusile coal fired power station's compliance in terms of the conditions of the Environmental Authorisations (EAs), Waste Management Licences (WMLs), Air Emissions License (AEL), Heritage Permits, Construction Environmental Management Plan (CEMP) and Standard Environmental Specification (SES) and Lenders Requirements for Kusile power station.
 - Undertake the required external audits as referred to in the Waste Management Licenses (WML),
- These audits should take place from February 2022 to December 2023, a total of four (04) audits, 04 audit reports and two (2) annual reports.

A2) Review of available documentation and information with a focus on reporting on the Environmental and Social Performance of the Project

Note that tasks under A2 do not require the Consultant to independently undertake an audit on identified requirements to determine compliance, but rather use existing information to report on the overall progress and performance in terms of requirements.

- Review the Project's Schedule and main construction/engineering/procurement activities performed during the last 6 months prior to the audit and prepare as concise but short technical description to allow full correlation of Project's development with Project's E&S performance and CEMP/SES review.

- Evaluate the Construction Environmental Management Plans and associated Standard Environmental Specification as a result of Legal and Lenders requirements and monitoring their implementation (Key Performance Indicators).
- Reviewing the Construction Environmental Management Plan and associated Standard Environmental Specification and their implementation if they are consistent with Eskom's obligations and the Lenders requirements and highlight any gaps.
- The IESC will also review actions plans based on findings made during the assessment and provide input to timelines for implementation.

As part of the Compliance Audits mentioned under A1 above, the following performance determination will be required:

- Review External Water Use License (WUL) Audits and report on the overall performance, any gaps identified and reported in the WUL Audits, as well as to make recommendation on proposed remedial actions,
- Assess the project's Legal Obligations (Kusile Environmental Authorisations (EAs), Waste Management Licences (WMLs), National Norms and Standards for Storage of Waste (NNS), Water Use Licenses (WULs), Air Emissions License (AEL), Construction Environmental Management Plan (CEMP) and Standard Environmental Specification (SES). This assessment will be detailed by a section on the overall performance and major gaps identified, as well as proposed remedial actions for consideration.
- Other relevant monitoring reports (water monitoring, dust monitoring, health screening, temporal stack emission monitoring reports, continuous emissions monitoring systems (CEMS), and biomonitoring) will be reviewed to provide an overview of performance in terms of general and statutory compliance. Compliance will mostly be covered within the report to be generated under the relevant International Finance Corporation (IFC) Standard. Any additional comments will be included in a relevant section.
- Verify whether written procedures have been adequately followed
- Verify whether procedures regarding social and environmental incidents (including environmental spills) have adequately been followed and that incidents are being addressed within reasonable time and whether appropriate lessons have been drawn to avoid similar incidents in the future.

A3) Develop the Environmental and Social Compliance and Performance Report

- After carrying out the relevant analysis and audits as stipulated in A1 and A2 above, provide the reports (the structure of the report shall be aligned to the template in Annexure 2) inclusive of an executive summary, key photographic summary and all relevant necessary maps of the performance and compliance analysis for Kusile Project Management (it is important that management receive the reports and not just the environmental team) and the Lenders for review. This should clearly articulate the findings of the conducted analysis and should include specific recommendations or corrective actions for improvement of conditions from the IESC in case any of the Lenders' Environmental and Social Requirements are not met (or will not be met). The IESC will also include comments on proposed actions plans and timelines for implementation.
- If the IESC identifies within any report provided, any situation where any remedial action is required, service provider will provide further advice to any Facility Manager as may be requested.
- Both the mid-year and the annual monitoring reports should include the requirements listed in point B below and Annex I and II.

B) Annual Environmental and Social Monitoring Report

The IESC will, on or before 31 August each year after the Facility Agreements is entered into force, provide an Annual Monitoring Report (AMR) on the project's environmental and social performance and extent of compliance with all applicable national regulations and the Lenders' Environmental and Social Requirements based on the biannual reporting and any further information provided by the client. The IESC will update the monitoring report incorporating Lenders' comments.

The IESC will also inter alia elaborate on formulated Action Plans, including the following aspects for inclusion in the AMR:

- A list of findings of issues and concerns identified during audits/site visits, with particular emphasis on the areas for improvement and why these exist. All new and previously existing non-conformances must be covered, and progress reported on.

Action plan should include:

- Corrective actions, collated in a corrective action plan, to address non-compliances and ESHS issues and risks, including required deliverables, root cause, responsibilities and time-bound deadlines,
- Monitoring of items transferred from the bi-annual Lenders Audit Action Plan issued on the previous audit report,
- A commentary against the Action plan actions on the status of implementation, including materiality of the risk of any non-compliances/overdue actions.
- Commitments, timelines, and resources from the client in terms of mitigation measures in a form satisfactory to the Lenders. In the event of any non-compliance or potential non-compliance (meaning at risk for noncompliance) with the Construction Environmental Management Plan, the conditions of the Environmental Authorisations (EAs), Waste Management Licences (WMLs), National Norms and Standards for Storage of Waste (NNS), Water Use Licenses (WULs), Air Emissions License (AEL), Heritage Permit, Construction Environmental Management Plan (CEMP) and Standard Environmental Specification (SES) and Lenders Requirements for Kusile power station, the IESC will include recommendations including inter alia:
 - Recommendations to reduce the impact of an activity on the environment and on social aspects (e.g. impacts on affected people / affected communities),
 - Other environmental and social recommendations for the Construction Phase of the Project.
 - Provision of outline of main CEMP or RoD activities for the next years report period, provide main corrective actions defined that need to be followed-up. Compile an annual performance/monitoring report as required by the Lenders.

C) Additional Services

Upon the request from Eskom, prepare any other report on any environmental and/or social issues requested for the purposes of providing such report to the Lenders. An estimated 2 ad hoc short reports per year on environmental compliance should be provided for, excluding the annual report, as and when requested.

Any additional service such as meetings or engagements requested by Eskom, or the Lenders will be handled on a time-cost basis. The time-costs per resource must be included in the proposal.

A.1 Annexure 1

Lender's Environmental Requirements

The items listed below are expected to be addressed comprehensively during the audits:

IFC performance Standards:

- The bi-annual monitoring report should assess the project's compliance with each of the IFC Performance Standards.
- The commitments of the Construction Environmental Management Plan for Project Bravo, as developed by Ninham Shand Consulting Services (Report No.: 4446/401281, dated September 2007) including the Standard Environmental Specification (SES) - Lenders Requirements:
- The IFC Performance Standards (2012), or any as required by the client/ lenders
- The OECD Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits (TAD/ECG (2007) 9) dated 12 June 2007.
- The "Thermal Power: Guidelines for New Plants", Pollution Prevention and Abatement Handbook, 1998, published by the World Bank Group (effective July 1998)
- The relevant World Bank Group Environmental Health & Safety (EHS) Guidelines dated 30 April 2007.
- Management Systems: Status of development/refinement for Social elements, Community engagements and Reporting.
- Policy: Status of development of social policy.
- Legal requirements: Status of identifying and recording of Legal Requirements for social parameters.
- Training: Status of providing training in social performance and OHS, and provision of such training in a formal training plan.

- Emergency Preparedness and Response: Information of (1) alignment with the IFC PS EPRP requirements, (2) if it is reviewed periodically and (3) if it was developed in collaboration with appropriate and relevant third parties?
 - Monitoring and Review: Information on what social aspects have been included in the monitoring plan.
 - Internal & External Reporting: Information on what internal and external reporting mechanisms are in place and what exactly is reported internally and externally (from an EHSS perspective).
 - Stakeholder Engagement: Status of development, implementation, and communication of a Stakeholder Engagement Plan.
 - Carbon emissions: Information on how this is addressed monitored and reported on.
 - Resettlement: (1) Assessment to see if resettlement was done according to the resettlement (i.e., actions taken), (2) assessment to see if resettlement plan is in line with IFC PSs, and (3) information any outstanding issues (e.g., compensation, building, etc.) information on any outstanding issues should also include numbers of affected people and affected locations.
 - Human Resources Policies and Procedures: status of addressing Child Labour and Forced Labour within the HR and IR Policy Document.
 - Working conditions: Status of training employees and workers on their working conditions and terms of employment, including entitlement to wages and benefits, hours of work, overtime arrangements and compensation etc.
 - Migrant Workers: Status of revision of the current HR and IR Policy Directive to include specifics on the Management of Migrant Workers.
 - Grievance Mechanism: Information on internal and external grievance mechanisms, how issues are handled, and summary of issues raised during the previous year (including items that are open).
 - Protecting the Work Force: Information on measures to protect the workforce compared to the IFC PS 2 requirements.
 - The monitoring report should include accident and fatality statistics for the monitoring period and a trend comparison with the previous monitoring periods. The report should include any ongoing or completed in each monitoring period accident-related investigations and corrective actions.
 - Workers Engaged by Third Parties: Status of development and implementation of formal procedure for the Management of Independent (Third Party) Contractors.
 - Resource Efficiency: Details on all resource efficiency plans (noted water and energy and any others)
 - Greenhouse Gases: Status of completion annual GHG emission estimation based on the current/actual operations of the plant.
 - Water consumption: Water balance information (supply vs need), information on all water supply sources, status of the pipeline from the existing Kendal power station and confirmation of use of groundwater and/or surface water for any purpose?
 - Waste: Information on all waste streams and how and where each waste stream is ultimately disposed of.
 - Pesticide Use and Management: Status of development and implementation of a formal Integrated Pest Management plan/programme.
 - Community H&S: Information on the assessment of risks and impacts to the health and safety of the Affected Communities for the remaining phases of the project (operational and decommissioning/closure).
 - Indirect impacts: Information on how indirect impacts (air emissions -> social damage cost/impact on economy/lack of productivity/health costs) have been addressed.
 - Infrastructure and Equipment Design and Safety: Status of development and implementation of a Quantitative Risk Assessment for the project based on the actual design.
- Community Exposure to Disease: Status of development and implementation of a programme or plan which aims at reducing or avoiding the risk of occurrence of vector borne diseases, provision of preventative medication as well as raising awareness of the workforce and local communities.
- Ecosystem Services: Information on the method for identification, assessment, and management of ecosystem services (as defined by the IFC).
- Security: Information on how Eskom assessed the risks posed by its security arrangements to those within and outside the project site (and the outcome of the assessment). The monitoring reports should include ongoing updates on security related matters and implementation of security arrangements.

- Loss of income or livelihood: Stated that "The Resettlement Report provided (dated September 2015) states that agreements were made with the families to ensure livelihood and a sustainability plan was adopted for implementation (such as providing grazing land, establishing greenhouses for food production, drilling boreholes)." Are there any outstanding issues/compensation claims related to this resettlement? Livelihood Restoration Plan: Status of development and implementation of a Livelihood Restoration Plan. Specific focus during site visits to be placed on livelihood restoration (LR), formulation of and monitoring recommendations for LR gaps.
 - Grievance Mechanism: Clear statement if Grievance Mechanism covers aspects about compensation and relocation raised by displaced persons or members of host communities. Biodiversity offsets: Clear information on how biodiversity offsets have been assessed and implemented.
 - Site alternatives: Detailed information on what site alternatives were considered during the EIA process and the outcome of those assessments.
 - Legally protected area: Clear statement to confirm if the site is located within or close to legally protected areas or internationally recognized areas.
 - Alien Eradication Plan: Assessment to establish if an Alien Eradication Plan has been developed in accordance with the NEM: Biodiversity Act, 2004 (particularly the Alien and Invasive Species Regulations, 2014).
 - Cultural Heritage: Clear and detailed assessment against IFC PS 8. Clear statement if a Chance Find Procedure exists and what it entails.
- Legal Compliance
- Records of Decision/Environmental Authorisations: List of all RoDs and EAs, as well as an assessment of compliance with the conditions of each Water Use License: Details of each Water Use License, compliance with each, and details on each non-compliance related to each WUL. Details on what audit reports have been submitted to the DWS and when, as well as feedback from the DWS on these reports.
 - Heritage permits: List/provide the necessary Heritage Permits obtained from SAHRA. A comparison of the Heritage Impact Assessment findings vs. the permits issued may be required to ensure all necessary Heritage Permits have been obtained from SAHRA.
- Other permits: List and details on any other environmental permits/consents/authorisations issued to the site.
- Confirmation if all risk reduction recommendations made in the Hydrogeological Assessment by GCS (Pty) Ltd has been implemented.
 - Confirmation that the coal stockyard was constructed according to design specifications (for the liner and base). Confirmation of the Certificate of Completion for the coal stockyard.
 - Lining of Dams: Confirmation if the final drawings of the HDPE liner design signed-off by the design engineer and submitted to the Department of Water & Sanitation (DWS).
 - Water: Details on the plan to get the water flow meters to within the 0.5% accuracy criteria (as required in the RoD), and action plans and budgets developed/implemented for monthly water and salt balances.
 - Leak detection: Details and concrete proof of the installation of all leak detection systems in pipelines.
 - Sludge removal and disposal: Details on formal plans/procedures in place for sludge removal and disposal from the cold lime softening process, raw water storage dams and reservoirs.
 - SAR: Details on how the Sodium Absorption Ratio was calculated and what data was used to inform the calculation.
 - Irrigation: Confirmation if the Site plans to use "process" or "dirty water" for irrigation in the future.
 - Groundwater: Information on baseline groundwater quality results, and summary of current site impacts compared to the baseline groundwater quality results.
 - Water supply: Confirmation if any ground or surface water is used for drinking purposes.
 - Information on what is going to be done to improve the groundwater quality (i.e., faecal coliforms, iron, manganese and aluminium, turbidity, etc.).
 - Ground and surface water: Details on monitoring for other contaminants (e.g., hydrocarbons). Ash Dumps: Clear information on status of 10 year and 60-year ash disposal facilities.
 - Environmental Noise Survey: Details of results of latest noise surveys and comparison to limits specified for Rural Districts (and not Industrial Districts as the site is located within a Rural District).
 - Noise: Details on exactly how buildings housing noise equipment have been insulated.

- Waste: Confirmation that gypsum from FGD processes will/will not be disposed of at the 60-year co-disposal facility.
 - Air: Information on any initiatives (other than the site's FFP and FGD plants) that could be supported by Eskom that have been identified.
 - Air: Confirmation of any construction/pre-operational conditions in the AEL that must be adhered to/implemented and an assessment of compliance with these conditions.
 - Air: Details on actions planned to identify and implement strategies to reduce the emission of the mercury. Statement if FGD is suitable enough. Confirmation if the FGD system is a dry or wet flue gas desulfurization system. Confirmation if the FGD systems is operational or not.
 - Details on what EMC Meeting Minutes and ECO Reports were submitted to the DEA, and information on feedback from the DEA on such reports. - CEMP: Details on the status for amending the CEMP and getting these amendments approved by the DEA.
 - Dangerous goods: Detailed information on training, Professional Drivers Permits, Tremcards, Declarations, Safety Data Sheets, etc. requirements related to transportation of Dangerous Goods.
 - Details on the outcome of the latest ECO and Eskom KET monitoring reports related to the 24G Authorisation and WUL (for activities occurring on the edge of streams, rivers or wetlands). List non compliances and state what have been done to date to correct non compliances.
 - Air: Details on what is being done to address the PM10 dust exceedances.
 - Air: Provide details on operational conditions of the AEL(s) that must be adhered to and the status of compliance and corrective actions undertaken for non-compliances.
 - Information on all Environmental Incidents for the last 12 months and details on those Environmental Incidents that have been/required to be reported to the DEA.
 - Detailed assessment against the requirements in the Construction EMP (stating the EMP requirement text as well).
 - Confirmation if the dirty water pipeline has been installed/part of design as described or not (Requirements states "The construction of a dirty water pipeline between the ash dump and the ash dump dirty dam; silt retention dams; and toe drains within the low integrity wetlands located between the power station and the 10-year ash dump area").
 - Confirmation if attenuation ponds, gabion structures and riprap have been provided at all storm water discharge points.
 - Details on the action plans (or actions undertaken to date) to control the erosion at the co-disposal facility.
 - Details on (1) who undertook the latest biannual external audit on the co-disposal facility, (2) the outcome of the latest external audit, and (3) condition if the DEA acknowledged, accepted and responded to this report submitted to them?
 - Details on how many people work with hazardous waste and how many people received the training.
 - Confirmation if the emergency stockpiling area for ash is subject to the National Norms and Standards for Storage of Waste. And if so, confirmation if internal and/or external audits have been undertaken to assess compliance with the National Norms and Standards for Storage of Waste. Details, if there is non-compliances identified, and how these have been addressed to date.
 - If groundwater is not used for drinking water supply, a statement as to why the groundwater quality results are compared to domestic limits?
 - Confirmation if the 60-year ash disposal facility will trigger an AEL or If it does need an AEL, details on whether and application has been submitted yet.
- Details on what activities are covered by the current AEL
- Confirmation if the stream diversion around Coal Stock Yard and construction of road and water pipeline at Kusile Power Station) are in line with regulatory requirements.
 - Details and clarity on what "waste storage facility" status of the 12 non-Compliances, and 4 Partial Compliances identified in terms of the Norms and Standards for Storage of Waste related to this facility.

Monitoring Report Structure

The Consultant shall report environmental and social issues as listed below and at a minimum cover the following topics:

Reporting Period and Context

Also include a statement on the methodology and indicators used

Summary of Project Status:

Inter alia construction progress, trial/start-up, regular operation, non-regular operation, incidents, accidents, comparison with the previous reporting period, if applicable including progress on associated infrastructure

Regulatory Compliance:

Provide information on regulatory permit(s) clearances and conditions and specific requirements along with most recent review and corrective action reports, inspections, fines, corrective actions, etc.

Implementation Status of Environmental and Social Mitigation Measures

The annual report shall make clear reference to the respective requirements and plans and report on compliance with requirements incl. any changes or difficulties and corrective actions the borrower may have taken. Provide information on the implementation status of the different management plans.

Report Progress on the Implementation of the Issues Mentioned In the ESAP

Energy and Resource Usage and Electricity Output

E.g., electricity use; water use; wastewater discharge; amount of different types of waste Generation

Environmental Monitoring Program and Results of Ambient Monitoring

Air and Noise Emissions/Wastes/Effluents Monitoring Results and comparison against national law and World Bank Group EHS Guidelines

Green House Gas Emissions

This shall also be published on the website if the annual emission exceeds 100,000 t/a

Human Resources Management status

Number of current project workforce, changes, number of contractors and contractor workforce; performance and status of training and qualification

Occupational Health and Safety

(i) During construction (contractors incl. contractual and daily wage labourers) and
(ii) Ongoing/extended operation and maintenance (project staff and contractors, other contractual labourers) figures and summaries for events resulting in fatalities, injuries, key indicator figures (work hours lost, accident frequency rate). This to be obtained from existing safety audit reports

Stakeholder Engagement Activities and CSR / Community Development Activities

Inform about stakeholder engagement plan and records of grievances by external stakeholders; emergency preparedness and response capability including the community; use of chemicals and accidental releases of hazardous materials affecting community, discharges of wastewater or other wastes to areas affecting local communities; exacerbation of flooding; limits of water availability use and physical access; diminution of quality of life due to the operation. Any activities that are related to stakeholders (e.g., consultation with statutory stakeholders and summary of outcomes) and any activities related to support in the local communities.

Grievances ((i) community and (ii) workforce) and Conflict Resolution

Summary of received grievances and how they have been resolved.

Action Plan

Addressing issues of concern identified during the audit and site-visits including commitments and corrective actions to be taken and timelines for their completion in a form satisfactory to the lenders; include any outstanding corrective action requests from previous audit reports.

The ESAP (environmental and social action plan), shall be provided in a separate section of the report and not as annex or separate document. Further to assessing the compliance with ROD, the compliance with IFC PS and OECD CA as reference shall be assessed by the consultant and when deviations/non-conformities identified, aspects added to the report using the same format and providing about the completion date, classification (or risk level) and Completion Status.

- Corrective actions, collated in a corrective action plan, to address non-compliances and ESHS issues and risks, including required deliverables, root cause, responsibilities and time-bound deadlines,
- Monitoring of items transferred from the bi-annual Lenders Audit Action Plan issued previously.
- A commentary against the Action plan actions on the status of implementation, including materiality of the risk of any non-compliances/overdue actions.

Annexure 2

List of Authorisations, Permits, Licenses and Approved Documents to be audited.

The Consultant will conduct a compliance audit against the following documents:

- The relevant issued Environmental Authorisations:
- Construction of the ESKOM Generation proposed 5400MW Coal-Fires Power Station (Ref: 12/12/20/807, dated 17 March 2008)
- Construction of the 60-year Ash Disposal Facility and associated infrastructure for Kusile Power Station (Ref: 12/12/20/2412, dated 17 July 2015)
- Construction of Ash and Gypsum Co-Disposal Facility and associated infrastructure at Kusile Power Station (Ref: 14/12/16/3/3/3/51, dated 18 June 2015)
- Construction of a dirty water pipeline between the ash dump and the ash dump dirty dam, silt retention dams; and the toe drains within wetlands at Kusile Power Station (Ref: 14/12/16/3/3/1/700, dated 05 April 2013)
- Stream diversion around Coal Stock Yard and construction of a road and water pipeline at Kusile Power Station (Ref: 12/12/20/2105, dated 26 July 2012)
- National Norms and Standards for Storage of Waste, as promulgated under the National Environmental Management: Waste Act, 2008 (Act 59 of 2008),
- Government Notice Regulation 926 dated 29 November 2013 o Air Emissions License (License Number: 17/4/AEL/MP311/12/01, dated 06 June 2013)
- MES postponement dated 05 June 2023 and its subsequent appeal decision reference LSA 233027 dated 25 September 2023.
- Construction of storm water drainage and associated infrastructure at Kusile Power Station (DFFE Reference: 14/12/16/3/3/1/2663, dated 03 April 2023)
- Heritage Permits:
 - ✓ Main site
 - ✓ Stream diversion
 - ✓ Ash dump
 - ✓ Etc

Stage 1 Preparation

The services of Independent Environmental and Social Consultants (IESC) are required in order to conduct external bi-annual (twice a year) compliance audits (including site visits), review of available documentation and information with a focus on reporting on the Environmental and Social Performance of the Project, compile an Annual Monitoring Report (AMR) on the project's environmental and social performance and extent of compliance with all applicable national regulations and the Lenders' Environmental and Social Requirements based on the biannual reporting. The services are required from January 2024 – December 2025. The audits will be undertaken in February 2024 & 2025 and July 2024 & 2025 and annual reports in August 2024 & 2025. Auditors are expected to be on site for a week during each audit cycle and then prepare audit reports. The contractor is also expected to have annual compliance report which is the consolidation of February and August reports. The expected end of the contract is December 2025.

Constraints on how the *Consultant* Provides the Services.

Management meetings

Any additional service such as meetings or engagements requested by Eskom or the Lenders will be handled on a time cost basis. The time cost per resource must be included in the proposal.

Consultant's key persons

Not Applicable.

Provision of bonds and guarantees

Not Applicable.

Documentation control and retention

Identification and communication

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from PSC3 who issues what to whom.

Retention of documents

Clause 13.6 states that the *Consultant* retains copies of drawings, specifications, reports and other documents which record the *services* in the form stated in the Scope. State here what that form is. Note the time period for which the *Consultant* is to retain such documents is the *period for retention* stated in the Contract Data.

Records and forecasting of expenses

First read clause 21.3 (Option A) and 21.4 (Option C E and G) and then state here any additional requirements you may need for the record keeping and forecasting of expenses. Otherwise delete.

Records and forecasting of the Time Charge

If Option C E or G applies first read clause 21.4 then state here any additional requirements you may need for the record keeping and forecasting of the Time Charge. Otherwise delete and delete in any case if Option A applies.

Invoicing and payment

Clause 50.2 states invoices submitted by the *Consultant* include the details stated in the Scope to show how the amount due has been assessed. Also state what must be shown on the Invoice. The following text is suggested.

The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

[List them]

The *Consultant* shall address the tax invoice to _____ and include on it the following information:

Name and address of the *Consultant* and the *Employer's Agent*;

The contract number and title;

Consultant's VAT registration number;

The *Employer's* VAT registration number 4740101508;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

(add other as required)

[Add procedures for invoice submission and payment (e. g. electronic payment instructions)]

Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

Inclusions in the programme

First read clause 31.2 and then include here any matters regarding the order and timing of the work of the *Employer* and Others which the *Consultant* is take account of in his programme. Also describe any information other than that already requested in clause 31.2 which the *Consultant* is to show on each programme he submits for acceptance.

Quality management

System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the Scope. Include your requirements here

Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. Include your requirements here

The Parties use of material provided by the *Consultant*

Employer's purpose for the material

Clause 70.1 states that the *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. State here what your intended purpose is.

Restrictions on the *Consultant's* use of the material for other work

Read clause 70.4 first and if you want to restrict the *Consultant's* use of material provided by him for this contract on other work state these here.

Transfer of rights if Option X 9 applies

Only use this heading if Option X9 is included in the conditions of contract.

Read the first sentence of Option X9 and then state whether there is any exception to the ownership rights as may have been agreed with the *Consultant* prior to contract award. For example, ownership of some of the material may not be required or is excluded, or the ownership may be the subject of a separate licence agreement. If there are no exceptions, state there is no exception.

If other rights - per the second sentence of X9.1 - are required state these here.

The third sentence of X9.1 requires that the *Consultant* provide to the *Employer* the documents which transfer these rights to the *Employer*. It would be sensible to specify here exactly what documents the *Employer* is expecting the *Consultant* to provide, and may be even in what form they are to be provided.

State any other constraints on the *Consultant* relating to the transfer of rights. For example that the *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

Management of work done by Task Order

Only use this heading if main Option G applies to this contract.

Please read Option G before drafting requirements here as much of the procedure for the use of Task Orders is already provided in Option G. For example clause 55.1 specifies what a Task Order should include.

Information included here could be:

- That Task Orders will be prepared in the format stated in an Annexure attached to the Scope
- What the basis or formula will be for calculation of delay damages for a Task Order (if required).
- How expenses for a Task will be assessed and managed.
- (etc)

Health and safety

Health and Safety Risk Management

- Occupational Health and Safety (OHS) plan / OHS manual
- Baseline OHS risk assessment

- Valid letter of good standing or equivalent
- OHS policy (must be signed)

Environmental Constraints and Management

The Contractor shall comply with the environmental criteria and constraints stated in the Kusile Environmental Management Plan (EMP), Standard Environmental Specification (SES), Waste Management Plan and RoD.

Quality Assurance Requirements

- The supplier and sub-supplier shall develop, implement and maintain a formal quality management system that conforms to the latest ISO 9001 standard or any applicable standard of quality management system (latest applicable revision) and in accordance with the requirements of this specification.
- Such a formal system shall consist of the appropriate documentation such as a quality manual, quality plans, work procedures, work instructions, method statements, workflow documentation, quality policy, quality objectives etc.

Other

- Proposal is to be submitted by the tenderers for the mentioned scope of work
- Hereafter a contract shall be negotiated with the successful service provider.

Procurement

BBBEE and preferencing scheme

BBBEE level 1 to remain the same until the end of the contract, should there be any changes the employer to be notified with 5 working days.

Other constraints

Not applicable

Preferred subconsultants

PSC3 does not make use of nominated subconsultants but the *Employer* may list which subconsultants or suppliers the *Consultant* is required to enter into subcontracts with. This is usually only required where very specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

Subcontract documentation, and assessment of subcontract tenders

Specify any constraints on how the *Consultant* is to prepare subcontract documentation, whether use of the NEC3 system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

Limitations on subcontracting

The *Employer* may require that the *Consultant* must subcontract certain specialised work, or that the *Consultant* shall not subcontract more than a specified proportion of the whole of the contract.

Attendance on Subconsultants

State requirements for attendance on Subconsultants, if any

Correction of Defects

Not Applicable

Working on the *Employer's* property

***Employer's* entry and security control, permits, and site regulations**

Kusile Power Station have very strict entrance requirements which tendering consultants need to allow for in their prices, and the *Consultant* has to comply with. In addition to the above there may be other restrictions once on the site.

People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Consultant* keeps records of his people working on the *Employer's* property, including those of his Subconsultants. The *Employer's Agent* shall have access to these records at any time. These records may be needed when assessing compensation events.

Cooperating with and obtaining acceptance of Others

Not Applicable

Things provided by the *Employer*

Provide details of any facilities and equipment made available by the *Employer* for the *Consultant's* use during performance of the *services*. State any conditions relating thereto.

List of drawings

Drawings issued by the *Employer*

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

Drawing number	Revision	Title
