



NEC3 Term Service Contract (TSC3)

Between **ESKOM HOLDINGS SOC Ltd**
(Reg No. 2002/015527/30)

and **[Insert at award stage]**
(Reg No. _____)

for **Provision of Maintenance Quality Control Service at
Kusile Power Station for a period of 60 Months**

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

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

| Contents: | No of pages |
|--|--------------------|
| C1.1 Form of Offer and 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>Contractor</i> | [•] |
| [to be inserted from Returnable Documents at award stage] | |
| C1.3 Proforma Guarantees | [•] |

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 of Maintenance Quality Control Service at Kusile Power Station

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

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 *Contractor* 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.

| | | |
|-----------|--|-------|
| Options A | The offered total of the Prices exclusive of VAT is | R [●] |
| | Value Added Tax @ 15% is | R [●] |
| | The offered total of the amount due inclusive of VAT is ¹ | R [●] |
| | (in words) [●] | |

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 *Contractor* 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

Tenderer's CIDB registration number:

¹ This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

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 Contractor 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: Service Information

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**

**Eskom Holdings SOC Ltd,
Kusile Power Station
R545 Kendal/Balmoral Rd
Haartebeesfontein Farm
Witbank**

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 to be completed by the Employer prior to contract award

Note:

1. 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)* _____

**Eskom Holdings SOC Ltd,
 Kusile Power Station
 R545 Kendal/Balmoral Rd
 Haartebeesfontein Farm
 Witbank**

Name & signature of witness _____

Date _____

C1.2 TSC3 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. Some TSC3 options are always selected by Eskom Holdings SOC Ltd. The remaining TSC3 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. Where the following symbol is used “[●]” - data is required to be inserted relevant to the specific option selected.]

Completion of this 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: | |
| | dispute resolution Option | A: Priced contract with price list |
| | and secondary Options | W1: Dispute resolution procedure |
| | | X1: Price adjustment for inflation |
| | | X2 Changes in the law |
| | | X17: Low service damages |
| | | X18: Limitation of liability |
| | | X19: Task Order |
| | | Z: Additional conditions of contract |
| | of the NEC3 Term Service Contract April 2013 ² (TSC3) | |
| 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 |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| | Tel No. | +27 11 800 8111 |
| | Fax No. | [●] |

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 www.ecs.co.za

| | | |
|----------|--|--|
| 10.1 | The <i>Service Manager</i> is (name): | Lunga Ntanzi |
| | Address | Kusile Power Station R545 Kendal/Balmoral Rd Haartebeesfontein Farm Witbank |
| | Tel | [•] |
| | Fax | [•] |
| | e-mail | [•] |
| 11.2(2) | The Affected Property is | Kusile Power Station |
| 11.2(13) | The <i>service</i> is | Provision of Maintenance Quality Control Service at Kusile Power Station |
| 11.2(14) | The following matters will be included in the Risk Register | Risk Identification and assessment meeting to be held subsequent to contract award and risk register compiled and managed <ol style="list-style-type: none"> 1. Community unrest around the Kusile site 2. SHEQ stats 3. Unplanned outages 4. Changes to the plant safety conditions 5. Contractor Overtime |
| 11.2(15) | The Service Information is in | Part 3: Scope of Work and all documents and drawings to which it makes reference. |
| 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 | Seven (7) calendar days |
| 2 | The Contractor's main responsibilities | Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data |
| 21.1 | The <i>Contractor</i> submits a first plan for acceptance within | Two (2) weeks of the Contract Date |
| 3 | Time | |
| 30.1 | The <i>starting date</i> is. | TBC |
| 30.1 | The <i>service period</i> is | 60 Months |
| 4 | Testing and defects | No data is required for this section of the conditions of contract |
| 5 | Payment | |
| 50.1 | The <i>assessment interval</i> is | between the 25th day of each successive month. |
| 51.1 | The <i>currency of this contract</i> is the | South African Rand |
| 51.2 | The period within which payments are made is | 60 Days after invoice submitted and processed. |

51.4 The *interest rate* is

the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

| | | |
|------|---|---|
| 6 | Compensation events | Any work or task undertaken outside the agreed scope of work. Any work or task undertaken outside the agreed price list |
| 7 | Use of Equipment Plant and Materials | Contractor to provide their own office equipment as specified in the BoQ. |
| 8 | Risks and insurance | |
| 80.1 | These are additional <i>Employer's</i> risks | <ul style="list-style-type: none"> • Effect to employee's health and Environment • Damage to the employer infrastructure and equipment's • Damage to the contractor equipment and machinery • Non-compliant with site SHEQ requirements |
| 9 | Termination | Failing to provide the service as specified in the scope of work. |
| 10 | Data for main Option clause | |
| A | Priced contract with price list | |
| 20.5 | The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than | 4 weeks. |
| 11 | Data for Option W1 | |
| W1.1 | The <i>Adjudicator</i> | 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 | | [•] |
| Tel No. | | [•] |
| Fax No. | | [•] |
| e-mail | | [•] |

| | | |
|---------|--|--|
| W1.2(3) | The <i>Adjudicator nominating body</i> is: | the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body. |
|---------|--|--|

| | | |
|---------|-------------------------|-------------|
| 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 | |
| | - if the Parties cannot agree a choice or | the Chairman for the time being or his nominee |
| | - if the arbitration procedure does not state who selects an arbitrator, is | of the Association of Arbitrators (Southern Africa) or its successor body. |

12 Data for secondary Option clauses

| | | | |
|-----------|--|----------------------------------|----------------------------|
| X1 | Price adjustment for inflation | | |
| X1.1 | The <i>base date</i> for indices is | A Month before tender close date | |
| | The proportions used to calculate the Price Adjustment Factor are: | proportion | linked to index for |
| | Labour using table C3 | 75% | Labour |
| | Transport | 10% | Materials |
| | Fixed | 15% | Non-Adjustable |
| | | 1.00 | |
| X2 | Changes in the law | | |
| | | In the Republic of South Africa | |

| X17 | Low service damages | | | | | |
|--|---|--|--------|---------------|--|---|
| X17.1 | The <i>service level table</i> is in | <table border="1"> <thead> <tr> <th data-bbox="820 255 986 306">Amount</th> <th data-bbox="991 255 1449 306">Service level</th> </tr> </thead> <tbody> <tr> <td data-bbox="820 313 986 544">1% per total value of the monthly purchase order payment</td> <td data-bbox="991 313 1449 640"> <ol style="list-style-type: none"> 1. Poor communication response time 2. Failure to respond to call outs in the specified time of one (1) hour 3. Delays on staff compliment 4. Non-compliance with site SHEQ requirements </td> </tr> </tbody> </table> | Amount | Service level | 1% per total value of the monthly purchase order payment | <ol style="list-style-type: none"> 1. Poor communication response time 2. Failure to respond to call outs in the specified time of one (1) hour 3. Delays on staff compliment 4. Non-compliance with site SHEQ requirements |
| Amount | Service level | | | | | |
| 1% per total value of the monthly purchase order payment | <ol style="list-style-type: none"> 1. Poor communication response time 2. Failure to respond to call outs in the specified time of one (1) hour 3. Delays on staff compliment 4. Non-compliance with site SHEQ requirements | | | | | |
| X18 | Limitation of liability | | | | | |
| X18.1 | The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to | R0.0 (zero Rand)30% of the contract value | | | | |
| X18.2 | For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to | the amount of the deductibles relevant to the event | | | | |
| X18.3 | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to | <p>The greater of</p> <ul style="list-style-type: none"> • the total of the Prices at the Contract Date and • the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles | | | | |
| X18.4 | The <i>Contractor'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 | <p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property, • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right. | | | | |
| X18.5 | The <i>end of liability date</i> is | 12 months after the end of the <i>service period</i> . | | | | |

| | |
|------------|---|
| X19 | Task Order |
| X19.5 | The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within 5 working days of receiving the Task Order |
| Z | The <i>additional conditions of contract</i> are Z1 to Z14 always apply. |

Z1 Cession delegation and assignment

- Z1.1 The *Contractor* 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 *Contractor* 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 *Contractor* 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 *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* 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 *Contractor* in writing.

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

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Service.
- Z3.4 Failure by the *Contractor* 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 P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

- Z4.1 The *Contractor* 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 *Contractor*, enters

the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.

Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, 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 *Contractor* 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.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service Manager* 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.

Z6 Health, safety and the environment: Add to core clause 27.4

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the

Employer's procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (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 the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

Z9 *Employer's* limitation of liability

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

Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

Z10 Termination: Add to core clause 91.1, 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 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid

an obligation or incurring an obligation,

Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

Z 12 .1 Replace core clause 83 with the following:

Insurance cover 83

- 83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

| Insurance against | Minimum amount of cover or minimum limit of indemnity |
|---|--|
| Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property | The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance. |
| Loss of or damage to Plant and Materials | The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance. |
| Loss of or damage to Equipment | The replacement cost where not covered by the <i>Employer's</i> insurance. |

| | |
|---|---|
| | The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance. |
| The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service | <p><u>Loss of or damage to property</u> The replacement cost</p> <p><u>Bodily injury to or death of a person</u> The amount required by the applicable law.</p> |
| Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law |

Z 12.2 Replace core clause 86 with the following:

Insurance by the Employer

86

86.1 The *Employer* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

| Insurance against or name of policy | Minimum amount of cover or minimum limit of indemnity |
|---|--|
| Assets All Risk | Per the insurance policy document |
| Contract Works insurance | Per the insurance policy document |
| Environmental Liability | Per the insurance policy document |
| General and Public Liability | Per the insurance policy document |
| Transportation (Marine) | Per the insurance policy document |
| Motor Fleet and Mobile Plant | Per the insurance policy document |
| Terrorism | Per the insurance policy document |
| Cyber Liability | Per the insurance policy document |
| Nuclear Material Damage and Business Interruption | Per the insurance policy document |
| Nuclear Material Damage | Per the insurance policy document |

| | |
|-----------|--|
| Terrorism | |
|-----------|--|

Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

For the purposes of this Z-clause, the following definitions apply:

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.
- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.
- Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
- Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- Standard** means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing

Material, Equipment and Articles.

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)³ in order to understand the implications of this Data which the tenderer is required to complete.
2. 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.
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

| Clause | Statement | Data |
|----------|---|------------|
| 10.1 | The <i>Contractor</i> is (Name): Address Tel No. Fax No. | |
| 11.2(8) | The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is | % % |
| 11.2(14) | The following matters will be included in the Risk Register | |
| 11.2(15) | The Service Information for the <i>Contractor's</i> plan is in: | |
| 21.1 | The plan identified in the Contract Data is contained in: | |
| 24.1 | The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job | |

³ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or www.ecs.co.za

Responsibilities:

Qualifications:

Experience:

CV's (and further key person's data including CVs) are in _____ .

| | |
|----------|--|
| A | Priced contract with price list |
| 11.2(12) | The <i>price list</i> is in _____ |
| 11.2(19) | The tendered total of the Prices is R _____ |

PART 2: PRICING DATA

TSC3 Option A

| Document reference | Title | No of pages |
|---------------------------|-------------------------------|--------------------|
| C2.1 | Pricing assumptions: Option A | 2 |
| C2.2 | The <i>price list</i> | [•] |

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract (TSC3) core clauses and Option A states:

| | | |
|-------------------------------------|------------|--|
| Identified and defined terms | 11 11.2 | (12) The Price List is the <i>price list</i> unless later changed in accordance with this contract. (17) The Price for Services Provided to Date is the total of <ul style="list-style-type: none">the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed andwhere a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate. (19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |
|-------------------------------------|------------|--|

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

Function of the Price List

Clause 54.1 in Option A states: "Information in the Price List is not Service Information". This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Service in accordance with the Service Information". Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

Link to the *Contractor's* plan

Clause 21.4 states "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance". Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price list* and result in a satisfactory cash flow in terms of clause 11.2(17).

Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor*:

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A;
- Understands the function of the Price List and how work is priced and paid for;
- Is aware of the need to link operations shown in his plan to items shown in the Price List;
- Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

Format of the *price list*

(From the example given in an Appendix within the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

C2.2 the *price list*

PROJECT: PROVISION OF MAINTENANCE QUALITY CONTROL SERVICE AT KUSILE POWER STATION FOR A PERIOD OF FIVE (5) YEARS REV. 2

| ITEM NO. | DESCRIPTION | UNIT | QUANTITY | RATE | TOTAL AMOUNT |
|----------|---|-------------|----------|------|--------------|
| 1 | ITEM 1 PRELIMINARIES AND GENERAL | | | | |
| 1.1.1 | Establishment of Facilities on the Site (<i>Once Off Delivery of Containers</i>) | Once Off | 1 | | |
| 1.1.2 | De-establishment of Facilities on the Site (<i>Once Off Collection of Containers</i>) | Once Off | 1 | | |
| 1.1.3 | Safety File | Once Off | 1 | | |
| 1.1.4 | Entry Medicals (11 Off Per Year) | Once a Year | 55 | | |
| 1.1.5 | Exit Medicals (11 Off) | Once Off | 11 | | |

| | | | |
|------------|--|-------------|-----|
| 1.1.6 | Security Clearance Certification (11 Off Per Year) | Once a Year | 55 |
| 1.1.7 | Site Office Container (2 Insulated, with Air-Con) (1 Off): 6m x 3m | Monthly | 60 |
| 1.1.8 | Site Kitchen Container (1 Off): 6m x 3m | Monthly | 60 |
| 1.1.9 | Site Storage Container (1 Off): 6m x 3m | Monthly | 60 |
| 1.1.10 | Ablution Split M/F (1 Off): 6m x 3m | Monthly | 60 |
| 1.1.11 | Travelling (1 No, Kombi 14 Seater) | Monthly | 60 |
| 1.1.12 | Site Bakkie (4x4 Double Cab Bakkie) (2 Off) | Monthly | 120 |
| 1.2 | Occupational Hygiene Services | | |
| 1.2.1 | Personal and Area Noise Sampling (1 Off Per Year) | Once a Year | 5 |
| 1.2.2 | Illumination Survey for Site Kitchen Container: 6m x 3m | Biennial | 3 |
| 1.2.3 | Illumination Survey for Site Storage Container: 6m x 3m | Biennial | 3 |
| 1.2.4 | Illumination Survey for Ablution split M/F: 6m x 3m | Biennial | 3 |
| 1.2.5 | Ergonomics for Site Office Container (2 Insulated, with Air-Con): 6m x 3m | Biennial | 3 |
| 1.2.6 | Illumination Survey for Site Office Container (2 Insulated, with Air-Con): 6m x 3m | Biennial | 3 |
| 1.2.7 | Indoor Air Quality for Site Office Container (2 Insulated, with Air-Con): 6m x 3m | Biennial | 3 |
| 1.3 | Safety Trainings | | |
| 1.3.1 | Training (Confined space) (Valid for 3 years) (10 Off) | Per Person | 20 |
| 1.3.2 | Training (Working at heights) (Valid for 3 years) (10 Off) | Per Person | 20 |
| 1.3.3 | First Aid (Valid for 3 years) (1 Off) | Per Person | 2 |
| 1.3.4 | Basic Fire Fighting (Valid for 2 years) (1 Off) | Per Person | 3 |
| 1.3.5 | OHS Act (Valid for 2 years) (1 Off) | Per Person | 3 |
| 1.3.6 | Legal Liability (Once Off) (1 Off) | Once Off | 1 |
| 1.3.7 | Supervisory Safety (Valid for 2 years) (1 Off) | Per Person | 3 |
| 1.3.8 | Planned Job Observation (Once Off) (1 Off) | Once Off | 1 |
| 1.3.9 | HIRA (Valid for 2 years) (2 Off) | Per Person | 6 |
| 1.3.10 | Incident Investigator (Valid for 2 years) (2 Off) | Per Person | 6 |
| 1.4 | Personal Protective Equipment | | |
| 1.4.1 | Overall Trouser (11 Off Twice a Year) | Yearly | 110 |
| 1.4.2 | Overall Jacket (11 Off Twice a Year) | Yearly | 110 |
| 1.4.3 | Arc Flash Jacket (9 Off Twice a Year) | Yearly | 90 |
| 1.4.4 | Arc Flash Trouser (9 Off Twice a Year) | Yearly | 90 |
| 1.4.5 | Under Garment for Arc Flash (9 Off Twice a Year) | Yearly | 90 |
| 1.4.6 | Safety Boots (11 Off Twice a Year) | Yearly | 110 |
| 1.4.7 | Hardhat (11 Off Twice a Year) | Yearly | 110 |
| 1.4.8 | Socks (11 Off Twice a Year) | Yearly | 110 |
| 1.4.9 | Reflector Vest (11 Off Twice a Year) | Yearly | 110 |
| 1.4.10 | Mask (11 Off - Box of 20 - Thrice a Year) | Yearly | 165 |
| 1.4.11 | Safety Gloves (11 Off Twice a Year) | Yearly | 110 |
| 1.4.12 | Safety glasses (11 Off Twice a Year) | Yearly | 110 |
| 1.4.13 | Ear Protection (11 Off Thrice a Year) | Yearly | 165 |

| | | | |
|---|--|--------|-------|
| 1.4.14 | Dust Overalls (52 Yearly for 9 Off) (26 Yearly for 2 Off) | Yearly | 2600 |
| Subtotal Item 1 (Preliminaries and General) carried to Final Summary | | | |
| ITEM 2 | | | |
| 2 | <u>SITE RESOURCES</u> | | |
| | - | | |
| 2.1 | <u>NORMAL TIME</u> | | |
| 2.1.1 | Site Supervisor - 3000018064 (1 Off) | Hours | 10380 |
| 2.1.2 | Safety Officer - 3000021310 (1 Off) | Hours | 10380 |
| 2.1.3 | Quality Controller (Electrical Trade)- 3000017703 (2 Off) | Hours | 20760 |
| 2.1.4 | Quality Controller (C&I Trade) - 3000017703 (2 Off) | Hours | 20760 |
| 2.1.5 | Quality Controller (Turbine Mechanical Trade) - 3000017703 (1 Off) | Hours | 10380 |
| 2.1.6 | Quality Controller (Boiler Mechanical Trade) - 3000017703 (1 Off) | Hours | 10380 |
| 2.1.7 | Quality Controller (FGD Mechanical Trade) - 3000017703 (1 Off) | Hours | 10380 |
| 2.1.8 | Quality Controller (C&A, BOP, Limestone Mechanical Trade) - 3000017703 (1 Off) | Hours | 10380 |
| 2.1.9 | Quality Controller (Welding Trade) - 3000031419 (1 Off) | Hours | 10380 |
| Subtotal Item 2.1 (Normal Time) | | | |
| 2.2 | <u>NORMAL OVERTIME & SATURDAYS</u> | | |
| 2.2.1 | Quality Controller (Electrical Trade)- 3000017703 (2 Off) | Hours | 4320 |
| 2.2.2 | Quality Controller (C&I Trade) - 3000017703 (2 Off) | Hours | 4320 |
| 2.2.3 | Quality Controller (Turbine Mechanical Trade) - 3000017703 (1 Off) | Hours | 2160 |
| 2.2.4 | Quality Controller (Boiler Mechanical Trade) - 3000017703 (1 Off) | Hours | 2160 |
| 2.2.5 | Quality Controller (FGD Mechanical Trade) - 3000017703 (1 Off) | Hours | 2160 |
| 2.2.6 | Quality Controller (C&A, BOP, Limestone Mechanical Trade) - 3000017703 (1 Off) | Hours | 2160 |
| 2.2.7 | Quality Controller (Welding Trade) - 3000031419 (1 Off) | Hours | 2160 |
| Subtotal Item 2.2 (Normal Overtime) | | | |
| 2.3 | <u>SUNDAYS & P/H OVER TIME</u> | | |
| 2.3.1 | Quality Controller (Electrical Trade)- 3000017703 (2 Off) | Hours | 2960 |
| 2.3.2 | Quality Controller (C&I Trade) - 3000017703 (2 Off) | Hours | 2960 |
| 2.3.3 | Quality Controller (Turbine Mechanical Trade) - 3000017703 (1 Off) | Hours | 1480 |
| 2.3.4 | Quality Controller (Boiler Mechanical Trade) - 3000017703 (1 Off) | Hours | 1480 |
| 2.3.5 | Quality Controller (FGD Mechanical Trade) - 3000017703 (1 Off) | Hours | 1480 |
| 2.3.6 | Quality Controller (C&A, BOP, Limestone Mechanical Trade) - 3000017703 (1 Off) | Hours | 1480 |
| 2.3.7 | Quality Controller (Welding Trade) - 3000031419 (1 Off) | Hours | 1480 |
| Subtotal Item 2.3 (Sundays & P/H Overtime) | | | |
| 2.4 | <u>STANDBY</u> | | |
| 2.4.1 | Quality Controller (Electrical Trade)- 3000017703 (2 Off) | Hours | 6000 |
| 2.4.2 | Quality Controller (C&I Trade) - 3000017703 (2 Off) | Hours | 6000 |
| 2.4.3 | Quality Controller (Turbine Mechanical Trade) - 3000017703 (1 Off) | Hours | 3000 |
| 2.4.4 | Quality Controller (Boiler Mechanical Trade) - 3000017703 (1 Off) | Hours | 3000 |
| 2.4.5 | Quality Controller (FGD Mechanical Trade) - 3000017703 (1 Off) | Hours | 3000 |

| | | | | | |
|--------|---|-------|------|--|--|
| 2.4.6 | Quality Controller (C&A, BOP, Limestone Mechanical Trade) - 3000017703 (1 Off) | Hours | 3000 | | |
| 2.4.7 | Quality Controller (Welding Trade) - 3000031419 (1 Off) | Hours | 3000 | | |
| | Subtotal Item 2.4 (Stanby) | | | | |
| | Subtotal Item 2 (Site Resources) carried to Final Summary | | | | |
| | <u>FINAL SUMMARY</u> | | | | |
| ITEM 1 | - PRELIMINARIES AND GENERAL | | | | |
| ITEM 2 | SITE RESOURCES | | | | |
| | Final Summary Total (Excl. VAT) | | | | |

The total of the Prices

PART 3: SCOPE OF WORK

| Document reference | Title | No of pages |
|-----------------------|---|-------------|
| | This cover page | 1 |
| C3.1 | <i>Employer's Service Information</i> | |
| C3.2 | <i>Contractor's Service Information</i> | |
| Total number of pages | | |

C3.1: EMPLOYER'S SERVICE INFORMATION

Contents

| | |
|--|----|
| Part 3: Scope of Work | 24 |
| C3.1: Employer's service Information | 24 |
| 1 Description of the <i>service</i> | 26 |
| 1.1 Executive overview | 26 |
| 1.2 <i>Employer's</i> requirements for the <i>service</i> | 26 |
| 1.3 Interpretation and terminology | 26 |
| 2 Management strategy and start up. | 27 |
| 2.1 The <i>Contractor's</i> plan for the <i>service</i> | 27 |
| 2.2 Management meetings | 27 |
| 2.3 <i>Contractor's</i> management, supervision and key people | 27 |

| | | |
|--------|---|----|
| 2.4 | Provision of bonds and guarantees | 28 |
| 2.5 | Documentation control | 28 |
| 2.6 | Invoicing and payment | 28 |
| 2.7 | Contract change management | 29 |
| 2.8 | Records of Defined Cost to be kept by the <i>Contractor</i> | 29 |
| 2.9 | Insurance provided by the <i>Employer</i> | 29 |
| 2.10 | Training workshops and technology transfer | 29 |
| 2.11 | Design and supply of Equipment | 29 |
| 2.12 | Things provided at the end of the <i>service period</i> for the <i>Employer's</i> use | 29 |
| 2.12.1 | Equipment 29 | |
| 2.12.2 | Information and other things 29 | |
| 2.13 | Management of work done by Task Order | 29 |
| 3 | Health and safety, the environment and quality assurance 31 | |
| 3.1 | Health and safety risk management | 31 |
| 3.2 | Environmental constraints and management | 31 |
| 3.3 | Quality assurance requirements | 31 |
| 4 | Procurement 32 | |
| 4.1 | People | 32 |
| 4.1.1 | Minimum requirements of people employed 32 | |
| 4.1.2 | BBBEE and preferencing scheme 32 | |
| 4.1.3 | Accelerated Shared Growth Initiative – South Africa (ASGI-SA) Error! Bookmark not defined. | |
| 4.2 | Subcontracting | 32 |
| 4.2.1 | Preferred subcontractors 32 | |
| 4.2.2 | Subcontract documentation, and assessment of subcontract tenders 32 | |
| 4.2.3 | Limitations on subcontracting 32 | |
| 4.2.4 | Attendance on subcontractors 32 | |
| 4.3 | Plant and Materials | 32 |
| 4.3.1 | Specifications 32 | |
| 4.3.2 | Correction of defects 32 | |
| 4.3.3 | <i>Contractor's</i> procurement of Plant and Materials 32 | |
| 4.3.4 | Tests and inspections before delivery 33 | |
| 4.3.5 | Plant & Materials provided "free issue" by the <i>Employer</i> 33 | |
| 4.3.6 | Cataloguing requirements 33 | |
| 5 | Working on the Affected Property 34 | |
| 5.1 | <i>Employer's</i> site entry and security control, permits, and site regulations | 34 |
| 5.2 | People restrictions, hours of work, conduct and records | 35 |
| 5.3 | Health and safety facilities on the Affected Property | 35 |
| 5.4 | Environmental controls, fauna & flora | 35 |
| 5.5 | Cooperating with and obtaining acceptance of Others | 36 |
| 5.6 | Records of <i>Contractor's</i> Equipment | 36 |
| 5.7 | Equipment provided by the <i>Employer</i> | 36 |
| 5.8 | Site services and facilities | 36 |
| 5.8.1 | Provided by the <i>Employer</i> 36 | |
| 5.8.2 | Provided by the <i>Contractor</i> 36 | |
| 5.9 | Control of noise, dust, water and waste | 37 |
| 5.10 | Hook ups to existing works | 37 |
| 5.11 | Tests and inspections | 37 |
| 5.11.1 | Description of tests and inspections 37 | |
| 5.11.2 | Materials facilities and samples for tests and inspections 37 | |
| 6 | List of drawings 38 | |
| 6.1 | Drawings issued by the <i>Employer</i> | 38 |

1. Description of the service

1.1. Executive overview

Kusile Power Station Management has decided to partner with a suitable and qualified service provider for the Provision of Maintenance Quality Control Services at Kusile Power Station for the period of Five (5) years. The strategy to outsource these services is compelled by the urgent need to ensure that maintenance tasks executed when units are online and offline are executed to the highest quality standard. This will be achieved by the Co-ordination and Controlling of Quality Control Activities (Assurance/ Inspection) and Performance of Physical Inspection in Maintenance and Outage Services.

1.2. Employer's requirements for the service

Refer to the following Specification Document:
240-167060077: Kusile Power Station Provision of Maintenance Quality Control Service Scope of Work

1.3. Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Service Information easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Service Information:

| Abbreviation | Meaning given to the abbreviation |
|--------------|-----------------------------------|
| OBL | Outside battery limits |
| SHE | Safety Health Environmental |
| SOW | Scope of Work |

2. Management strategy and start up.

2.1. The Contractor's plan for the service

The Contractor must provide the Employer with their Contractor's plan inline with the SOW. The plan must include the following but not limited to the following;

- Safety plan including implementation programme
- Staff qualifications and experience and/or time frame for appointment of staff.
- A program and resources schedule for the services
- Any staff replacement must be accepted by the Employer and the replacement must meet the conditions stipulated above

2.2. Management meetings

Regular meetings of a general nature may be convened and chaired by the Supply Manager as follows:

| Title and purpose | Approximate time & interval | Location | Attendance by: |
|--|-----------------------------|--------------------------------|----------------------|
| Risk register and compensation events | Weekly on | MS Teams/ Kusile Power station | Employer, Contractor |
| Overall contract progress and feedback | Monthly | MS Teams/ Kusile Power station | Employer, Contractor |
| Maintenance Safety Meetings | Monthly | MS Teams/ Kusile Power station | Employer, Contractor |
| Work Progress Meetings | Quarterly | MS Teams/ Kusile Power station | Employer, Contractor |

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the service. Records of these meetings shall be submitted to the Service Manager by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the conditions of contract to carry out such actions or instructions.

2.3. Contractor's management, supervision and key people

- The Contractor's shall ensure that only competent persons be allowed to work on plant.
- The Employer's Service Manager is entitled to verify the qualifications of the Contractor's employees.
- b) The Contractor must be knowledgeable about the condition and scope of work contained in this contract
- The Service Manager may, having stated reasons, instruct the Contractor to remove a key person.
- d) The Contractor must ensure that all personnel operating Employer's vehicles are authorised in writing with the required competency training
- The Contractor must manage the resource allocation, working hours and the fatigue management properly

2.4. Provision of bonds and guarantees

N/A

2.5. Documentation control

Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded.

- Writing is in the Language of this contract.
- All reports to be discussed, compiled and handed in to the Eskom
- All communications must be printed and filed in the *Employer's* file

2.6. Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Service Manager's* payment certificate.

The *Contractor* shall address the tax invoice to : invoiceseskomlocal@eskom.co.za and include on each invoice the following information:

Name and address of the Supplier and the Supply Manager;
Eskom Holdings SOC Ltd
Finance Department (Account Payable Section)
Kusile Power Station
Hartebeesfontein Farm R545
Kendal/Balmoral Road WITBANK

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

Procedure for invoice submission and payment

- All Electronic invoices must be sent in PDF format only.
- An Invoice that was printed and then scanned to PDF by the Vendor is not acceptable as this is not an original tax invoice by SARS definition but a copy.
- The following wording needs to appear on the invoice: "Your invoice is encrypted in order to comply with SARS requirements that invoices, and statements sent electronically are tamperproof."
- All queries and follow up on invoice payments should be made by contacting the FSS Contact Centre:
Tel: 011 800 5060 or email: fss@eskom.co.za

2.7. Contract change management

Refer to the NEC3 Term services Contract Core Clause 6, in the event any changes to the contract must be managed.

2.8. Records of Defined Cost, payments & assessment of compensation events to be kept by the Contractor

The Contractor must keep all the records of documentation as stated in this section and make them available as and when required by the Employer.

2.9. Insurance provided by the Employer

First read TSC3 Core Clause 86.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the Contractor may have, as well as to whom the information required by Marine Insurance (if any) may be addressed.

Refer to C1.2 TSC3 Contract Data section 8

2.10. Training workshops and technology transfer

Describe type and frequency of any on job training workshops, as well as any obligation for technology transfer being included as part of the *service* or at the end of the *service period*.

The Contractor shall conduct skills transfer to the Employer's Maintenance, Engineering and Operating staff. Skills transfer shall also be conducted during breakdown situations by the Contractor so that the Employer's staff knowledge base can be enhanced.

The following training that will be provided by the Employer to the Contractor:

- Plant Safety Regulations (PSR)
- Operating Regulations for High Voltage System (ORHVS)
- Fossil Fuel Firing Regulation (FFFR)

2.11. Design and supply of Equipment

N/A

2.12. Things provided at the end of the service period for the Employer's use

2.12.1. Equipment

N/A

2.12.2. Information and other things

Refer to 240-167060077: Kusile Power Station Provision of Maintenance Quality Control Service Scope of Work and all the documents which it makes reference to.

In the event that the information and other things are required, it will be discussed by two parties, and the provision of information and other things will be mutually agreed upon.

2.13. Management of work done by Task Order

- a) A Task order starting with 45* series number will be issued to the contractor for every services to be provided.

3. Health and safety, the environment and quality assurance

3.1. Health and safety risk management

The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the service.

- The *Contractor* shall comply with the health and safety requirements contained in the **OHS Specification for provision of Maintenance Quality Control Services - KUS-20241230**
- A SHEQ file to be handed in at the SHEQ department for approval prior to work commencement and kept up to date for the duration of the contract.

3.2. Environmental constraints and management

N/A

3.3. Quality assurance requirements

1. Contractor to meet the requirements as stipulated on the Eskom specification document (QM 58), and ISO 9001 STD.

4. Procurement

There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information MUST include any such procedures to be able to administer Disallowed Cost.

4.1. People

4.1.1. Minimum requirements of people employed

Specify any constraints relating to people employed to Provide the Service; for example, permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

4.1.2. BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

4.2. Subcontracting

4.2.1. Preferred subcontractors

N/A

4.2.2. Subcontract documentation, and assessment of subcontract tenders

N/A

4.2.3. Limitations on subcontracting

N/A.

4.2.4. Attendance on subcontractors

N/A

4.3. Plant and Materials

4.3.1. Specifications

N/A

4.3.2. Correction of defects

N/A

4.3.3. *Contractor's* procurement of Plant and Materials

N/A

4.3.4. Tests and inspections before delivery

The Contractor will represent the employer for off site witness testing to the service providers before delivery to site.

4.3.5. Plant & Materials provided “free issue” by the *Employer*

N/A

4.3.6. Cataloguing requirements by the *Contractor*

N/A

5. Working on the Affected Property

to the Eskom management plans

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

5.1.1. Permit to Work System (PTW)

The Eskom Permit to Work System (PTW) specify and provide requirements for the application of compulsory health and safety standards and procedures for the safeguarding of Plant and persons. This system forms an integral part of the approval process for work under the Work Coordination Process. The following Eskom Regulations shall be complied with:

- Eskom Plant Safety Regulations, GGR 0992;
- Eskom Operating Regulations for High Voltage Systems, ESKPVAEY6

The contractor shall ensure that adequately experienced personnel with the required levels of education are nominated by the contractor to attend all relevant training specific to the Appointments required by the roles. Training shall be provided free of charge by Eskom; however, the candidates time shall be for the Contractor's own account.

5.1.2. Induction training

The appointed contractor shall ensure that all his / her employees have undergone the Kusile Power Station Safety contractor management induction training prior to commencing work on site and shall be renewed annually. Appropriate time must be set aside for training (induction and other) of all Contractors' personnel including the annual re-induction training.

The Contractor shall have no claim against the Employer in respect of delay at the security main gate

5.1.3. Visitors to site induction

- o Visitors to the site shall be required to undergo and comply with the appointed contractor's site-specific safety induction prior to being allowed access to site.
- o All visitors must remain in the care and custody of a person (host) who has been properly inducted. No visitors are permitted to undertake any work onsite, of any nature.
- o Visitors who have completed site induction must be provided with a record of proof of Induction training.
- The Contractor provides security necessary for the protection of the works at all times until the Completion of the whole of the works.
- The Contractor is informed of the access procedures through Site Regulations and note that such procedures may change depending on the prevailing security situation.
- No firearms, weapons, alcohol, illegal substances and cameras (including cell phones with cameras) are permitted on Site. No 'Private Work' is carried out for or on behalf of any Eskom employee. Kusile Power Station has zero tolerance to alcohol and drugs. There is 100% alcohol breathalyser testing for all persons coming to site. Any person that tests positive will not be granted access to site and shall be considered to be in violation of the Eskom's Life Saving Rules. If an employee or Contractor employee is suspected of being under the influence of alcohol is tested and if proved positive, he/she is refused entry to site. Formal disciplinary action shall be constituted by the Contractor.

5.1.4. Eskom Life-saving Rules

1. Six Life-saving rules have been developed that will apply to all Eskom Employees, agents, consultants, and contractors. Failure to adhere to these rules by any Eskom employee or employee of an Appointed Contractor or sub-contractor will be considered a serious transgression. These rules are being implemented

to prevent serious injury or death of any employee, labour broker or contractor working in any area within Eskom.

2. If any contractual work will be performed on any Eskom premises (including delivery of any product), then the rules shall be obeyed by any contractor and their employees.

The Life-saving rules are: RULE DESCRIPTION OF RULE

Rule 1 OPEN, ISOLATE, TEST, EARTH, BOND, AND/OR INSULATE BEFORE TOUCH
(That is plant, any plant operating above 1000 V)

Rule 2 HOOK UP AT HEIGHTS

Working at height is defined as any work performed above a stable work surface or where a person puts himself/herself in a position where he/she exposes himself/herself to a fall from or into.

Rule 3 BUCKLE UP

No person may drive any vehicle on Eskom business and/or on Eskom premises: Unless the driver and all passengers are wearing seat belts.

Rule 4 BE SOBER

No person is allowed to be under the influence of intoxicating liquor or drugs while on duty

Rule 5 PERMIT TO WORK

Where an authorisation limitation exists, no person shall work without the required permit to work.

Rule 6 NO REVERSING WITHOUT A SPOTTER/FLAGMAN

Whenever a construction vehicle has to reverse, there must be a flagman to guide the

- Eskom will take a stance of zero tolerance on these rules.
- Non-compliance to a Life Saving rule will be considered serious misconduct and will lead to serious disciplinary action, which may include dismissal.
- This is to ensure that every person who works on or visits an Eskom returns home safely to his or her family.

5.2. People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors. State that the *Service Manager* shall have access to them at any time. These records may be needed when assessing compensation events. Record of time sheets assessment

Working hours

Monday- Thursday 07h00 to 16h15

Fridays 07h00 to 12h00

A standby service must be available on demand outside normal working hours.

5.3. Health and safety facilities on the Affected Property

Section 3 deals with contractual H & S requirements in addition to those of the OHSA Act. This section allows the *Employer* to state what measures are to be taken on the Affected Property by describing where First Aid facilities provided by the *Employer* are located and any other emergency arrangements. Do not use if already addressed in 2.3.

There is a medical station on site and a fire and rescue service for assistance with serious incidents and treatment of all serious injuries during normal working hours. Emergency services are available during normal working hours. The Contractor however is expected to handle all minor incidents in-house.

5.4. Environmental controls, fauna & flora

This sub-paragraph may not be required in a service contract or if these matters are dealt with in the general environmental requirements referred to in section 3 above.

N/A

5.5. Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the Affected Property. See clause 11.2(9) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

Proper co-ordination and work planning must be done when working in any area where others are performing work or activities. Interfacing may be required with the site maintenance personnel and others

5.6. Records of Contractor's Equipment

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Affected Property.

All materials, tools and equipment brought onto site are the responsibility of the *Contractor* and shall comply with the *Employer's* policies and procedures. The *Contractor* shall ensure that all tools and equipment are listed on an inventory list, be regularly inspected at least monthly or as required by legislation and risk assessments. All the assets must be declared and registered with security upon entering site. This includes portable assets such as a laptop.

The requirements for the use of machinery are covered in the various regulations of the Occupational Health and Safety Act. Since incorrectly used machinery or using unsafe machinery can cause serious harm and/or damage, it is important to ensure that all mechanical equipment is safeguarded in order to protect the health and safety of persons who may be exposed to such mechanical equipment, and also to ensure that competent persons operate the machinery.

Kusile power station reserves the right to inspect tools or items of equipment brought to site by contractors for use on this project

5.7. Equipment provided by the Employer

Provide details of equipment (e.g. overhead cranes) made available for use by the employer and set out conditions relating thereto.

5.8. Site services and facilities

5.8.1. Provided by the Employer

This is a mandatory cross reference from clause 25.2 in TSC3. State what the *Employer* will provide in the way of power, water, waste disposal, telecomms, ablutions, fire protection and lighting (etc) on the Affected Property. Give hook up locations and any constraints on how the hook up is to be done. Always conclude by stating that the *Contractor* shall provide everything else necessary for Providing the Service.

Sanitary services, water, compressed air and electricity shall be provided by Eskom at fixed point on he plant.

5.8.2. Provided by the Contractor

Describe what the *Contractor* is to provide in the way of accommodation, laboratories, storage, vehicles and office equipment for the *Service Manager* and any restrictions or minimum requirements concerning the *Contractor's* own facilities. Also state what happens to these facilities upon completion of the contract.

The Contractor is to supply all the personal protective equipment, accommodation, transport, tools, equipment and consumables to perform all the required tasks on site.

5.9. Control of noise, dust, water and waste

State requirements, if any.

5.10. Hook ups to existing works

State any constraints

6. Tests and inspections

6.1. Description of tests and inspections

Describe the tests and inspections to be carried out by the *Contractor* and the *Service Manager* and others [40.1].

6.2. Materials facilities and samples for tests and inspections

State what materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.

