# NEC3 Supply Contract (SC3)

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

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

**for** **SUPPLY AND DELIVERY OF A SPARE (A.S.I.B) APPROVED KIRLOSKAR DV8 DIESEL ENGINE AND SERVICE KITS AT KUSILE POWER STATION (ONCE OFF)**

**Contents:**



**CONTRACT No.** **[Insert at award stage]**

# PART C1: AGREEMENTS & CONTRACT DATA

**Contents:** **No of pages**

# C1.1 Form of Offer & Acceptance

## Offer

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

**PROVISION OF SUPPLY AND DELIVERY OF A SPARE (A.S.I.B) APPROVED KIRLOSKAR DV8 DIESEL ENGINE AND SERVICE KITS AT KUSILE POWER STATION (ONCE OFF)**

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 *Supplier* 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** |
| | 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 Purchaser 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 *Supplier* 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

[1] This total is required by the *Purchaser* 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 Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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: Goods Information including Supply Requirements |

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 Purchaser 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 Purchaser'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) | Christopher Nani | |
| Capacity | General Manager: Kusile Power Station | |
| **for the Purchaser** | Eskom Holdings SOC Limited<br>Kusile Power Station<br>R545 Kendal/Balmoral Rd<br>Haartebeesfontein Farm<br>Witbank<br>*(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 to be completed by the *Purchaser* 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 Purchaser 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.

| STANDARD CONDITION[2] | PROPOSED CHANGE AS AGREED WITH SUPPLIER[3] (ADDITIONS/ AMENDMENTS/ DELETION) | RATIONALE FOR PROPOSED CHANGE[4] | STANCE OF THE BUSINESS UNIT PERSONNEL[5] | STANCE OF LEGAL ADVISER[6] | STANCE OF INSURANCE ADVISER[7] | STANCE OF PROJECT MANAGER[8] | RISK[9] AND MITIGATION | DEVIATION COMMITTEE COMMENTS[10] |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
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By the duly authorised representatives signing this Schedule of Deviations below, the Purchaser 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 Purchaser 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 Purchaser** |
|---|---|---|
| Signature | ............................................ | ............................................ |

[2] Copy and paste the wording of the clause to be amended, as it appeared in the tender contract documents that are going of have gone, out to tender.
[3] Here add the final wording of the final change as agreed with the supplier. **Your document will be returned** if you merely insert proposed changes. It is the result that is considered for approval.
[4] Explain the reason the change is requested.
[5] Add the comments of the business personnel whose areas are affected by these changes, for example OHS, engineering, etc. Confirm their approval of the intended change.
[6] The legal adviser must state that this is approved. If the legal adviser is not satisfied with the change, the matter is not ready for the Deviation Committee.
[7] Add the comments of the insurance adviser and confirm his or her approval of the intended change
[8] Add the comments of the project manager and confirm his or her approval of the intended change.
[9] Identify risks created, increased or minimised by the change, the extent thereof (low, medium, high) and include risk mitigation measures.
[10] Leave the column blank – the Deviation Committee chairman will complete it.

| | | |
|---|---|---|
| Name | | Christopher Nani |
| Capacity | | General Manager: Kusile Power Station |
| On behalf of | *(Insert name and address of organisation)* | Eskom Holdings SOC Limited<br>Kusile Power Station<br>R545 Kendal/Balmoral Rd<br>Haartebeesfontein Farm<br>Witbank |
| Name & signature of witness | | |
| Date | | |

# C1.2 SC3 Contract Data

## Part one - Data provided by the *Purchaser.*

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

| Clause | Statement | Data |
|---|---|---|
| 1 | **General** | |
| | The *conditions of contract* are the core clauses and the clauses for Options | |
| | | **X1: Price adjustment for inflation** |
| | | **X2 Changes in the law** |
| | | **X7: Delay damages** |
| | | **X17: Low performance damages** |
| | | **Z: *Additional conditions of contract*** |
| | of the NEC3 Supply Contract (April 2013) [1] | |
| 10.1 | The *Purchaser* 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. | |
| | Fax No. | |
| 10.1 | The *Supply Manager* is (name): | |
| | Address | **Eskom Holding SOC Ltd<br>Kusile Power Station<br>R545 Kendal/Balmoral<br>Haartebeesfontein Farm<br>Witbank** |
| | Tel | |
| | Fax | |
| | e-mail | |
| 11.2(13) | The *goods* are | **Kirloskar DV8 diesel engine and service kits as stated on C3.1 “Purchaser’s Goods”** |
| 11.2(13) | The *services* are | **Supply and Delivery of a spare (A.S.I.B)** |

[1] Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

| | | |
|---|---|---|
| | | **approved Kirloskar DV8 diesel engine and service kits** |
| 11.2(14) | The following matters will be included in the Risk Register | **1. Preservation constraints** |
| 11.2(15) | The Goods Information is in | **Part 3: Scope of Work / C3 1 SC3 Purchasers Goods Information and all documents and drawings to which it makes reference.** |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | **Annexure A to this Contract Data** |
| 12.2 | The *law of the contract* is the law of | **the Republic of South Africa** |
| 13.1 | The *language of this contract* is | **English** |
| 13.3 | The *period for reply* is | **Two (2) working days** |
| 2 | **The *Supplier's* main responsibilities** | **Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.** |
| 3 | **Time** | |
| 30.1 | The *starting date* is. | **Contract Signature Date** |
| 30.1 | The *delivery date* of the *goods* and *services* is: | ***goods and services*** / ***delivery date***<br>**As stipulated in each purchase order** / **As per Purchase Order** |
| 30.2 | The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date. | **All deliveries to be communicated and agreed upon prior delivery.** |
| 31.1 | The *Supplier* is to submit a first programme for acceptance within | **Five (5) working days after receipt of an official *Purchase Order*.** |
| 32.2 | The *Supplier* submits revised programmes at intervals no longer than | **Two (2) weeks.** |
| 4 | **Testing and defects** | |
| 42 | The *defects date* is | **Twelve (12) months from date of purchase or remaining warranty for the new item** |
| 43.2 | The *defect correction period* is | **One (1) week after notification of the defect** |
| 42.2 | The *defects access period* is | **One (1) day after notification** |
| 5 | **Payment** | |
| 50.1 | The *assessment interval* is | **Assessment will be done on the** 25th of every successive month |
| 51.1 | The *currency of this contract* is the | **South African Rand** |
| 51.2 | The period within which payments are | |

| | | |
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| | made is | **60 days after receiving the correct invoice.** |
| 51.4 | The *interest rate* is | **the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the South African Reserve Bank(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.** |
| 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 | **Title** | **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 | **Risks, liabilities, indemnities and insurance** | |
| 80.1 | These are additional *Purchaser's* risks | **None** |
| 88.1 | The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | **The Contractor's total liability for any damaged caused to the Employer's property, equipment, material, and plant shall be limited to a Task Order issued by the Employer as of the Task Order date and shall be capped at 25% of the damages caused per incident or to a deductible value of R500 000.00 whichever is the lesser.** |
| 88.2 | For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to | **(1) for the *Purchaser's* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event and**<br><br>**(2) for all other existing *Purchaser's* property the applicable deductible as at contract date** |
| 88.3 | The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to: | **the total of the price relevant to the event** |
| 88.4 | The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | **NA** |
| 88.5 | The *end of liability date* is | **Twelve (12) months after Delivery of the *goods*, in addition to applicable warranties.** |
| **9** | **Termination and dispute resolution** | |
| 94.1 | The *Adjudicator* 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 | |
| | Tel No. | |
| | Fax No. | |
| | e-mail | |
| 94.2(3) | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)** |
| 94.4(2) | The *tribunal* is: | **arbitration** |
| 94.4(5) | The *arbitration procedure* is | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** |
| 94.4(5) | The place where arbitration is to be held is | **South Africa** |
| | The person or organisation who will choose an arbitrator<br>- if the Parties cannot agree a choice or<br>- if the arbitration procedure 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.** |

## 10 Data for Option clauses

| | | | | |
|---|---|---|---|---|
| **X1** | **Price adjustment for inflation** | **N/A** | | |
| X1.1 | The *base date* for indices is | | | |
| | The proportions used to calculate the Price Adjustment Factor are: | **proportion** | **linked to index for** | **Index prepared by** |
| **X2** | **Changes in the law** | | | |
| X2.1 | A change in the law of | **The Republic of South Africa is a compensation event if it occurs after the Contract Date** | | |
| **X7** | **Delay damages** | | | |
| X7.1 | Delay damages for Delivery are | **Delivery of** | **amount per day** | |
| | | **Spares not as per contract lead times** | **2% (one) per day up to a maximum of 20 % of the purchase order value.** | |
| **X17** | **Low performance damages** | | | |

| | | | |
|---|---|---|---|
| X17.1 | The amounts for low performance damages are: | **amount**<br><br>**1 % per total value of the Purchase order(s). Limited to 5% of the total value of the Purchase Order(s).** | **performance level**<br><br>**for 1. For *Goods* delivered without brochure, item manual or any relevant documentation related to the items**<br><br>**2. For delivery of goods that does not meet the quality requirements** |
| **Z** | **The *additional conditions of contract* are** | **Z1 to Z15 always apply for Eskom** | |

**Z1 Cession delegation and assignment**

Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*

Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 *Supplier* 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 *Purchaser* for the performance of this contract.

Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.

Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier*'s B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.

Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.

Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier*'s obligation to Provide the Goods and Services.

Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

**Z4 Confidentiality**

Z4.1 The *Supplier* 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 *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.

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

Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* 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 *Supplier* 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 *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.

Z4.5 The *Supplier* 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 *Supply 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 25.4**

Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Supplier*:

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with 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 supply and
- undertakes, in and about the execution of the supply, to comply 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 *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Supplier*, in and about the execution of the supply, 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 *Supplier'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 *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* 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 *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Supplier* (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 *Purchaser*'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 the words, “unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption”.

**Z9 *Purchaser's* limitation of liability**

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

Z9.2 The *Supplier*'s entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser*'s liability under the indemnity is limited.

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

Z11.1 If the amount due for the *Supplier*'s payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

**Z12 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 *Supplier* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's

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|---|---|
| | 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 *Supplier*, 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. |

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Purchaser* may terminate the *Supplier*'s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* 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 *Purchaser* can terminate the *Supplier*'s obligation to Provide the Services for this reason.

Z12.3 If the *Purchaser* terminates the *Supplier*'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.

Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

**Z13 Insurance**

**Z 13.1 Replace core clause 84 with the following:**

**Insurance cover** **84**

**84.1** 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.

**84.2** The *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier*'s risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

**INSURANCE TABLE A**

| **Insurance against** | **Minimum amount of cover or minimum limit of indemnity** |
|---|---|
| Loss of or damage to the *goods*, plant and materials | The replacement cost where not covered by the *Purchaser*'s insurance.<br><br>The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance. |
| Liability for loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract | **Loss of or damage to property**<br>*Purchaser*'s property<br>The replacement cost where not covered by the *Purchaser*'s insurance.<br><br>The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance.<br><br>Other property<br>The replacement cost<br><br>**Death of or bodily injury**<br>The amount required by the applicable law. |
| Liability for death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law |

**Z 13.2 Replace core clause 87 with the following:**

**Insurance by the *Purchaser***

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

**INSURANCE TABLE B**

| **Insurance against or name of policy** | **Minimum amount of cover or minimu 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 Terrorism | Per the insurance policy document |

**Z14 Nuclear Liability**

Z14.1 The *Purchaser* 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.

Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* 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 *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.3 Subject to clause Z14.4 below, the *Purchaser* 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 *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.4 The *Purchaser* 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.

Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

**Z15 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 *Purchaser*'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.

Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* 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.

Z15.2 Upon written request by the *Supplier*, the *Purchaser* 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 *Supplier* may perform Parallel Measurements and related control measures at the *Supplier*'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 Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Purchaser* manages asbestos and ACM according to the Standard.

Z15.4 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.

Z15.5 The *Supplier*'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.

Z15.6 The *Supplier* 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.

Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser*'s expense, and conducted in line with South African legislation.

# Annexure A: Supply Requirements

*[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]*

## The Supply Requirements for this contract are based on the use of INCOTERMS:

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010[2] as follows:

[Select the group and then term within the group which applies and state the applicable delivery place. Delete all the other groups and this note]

| Group | Category | Term | Delivery Place |
|---|---|---|---|
| D | arrival | DAP | Kusile Power Station |

The Parties obligations described in Incoterms for the category and term selected are now incorporated into this contract as part of the Supply Requirements and hence the Goods Information.

The obligations of seller and buyer for the selected Incoterm determine each Party's costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Supplier* to *Purchaser*.

For each of the thirteen terms, Incoterms set out obligations of the seller (the *Supplier*) in ten paragraphs identified as A1 to A10 and the corresponding obligations of the buyer (the *Purchaser*) in paragraphs B1 to B10. These obligations cover the following subjects:

| A | **The *Supplier*'s obligations** | B | **The *Purchaser*'s obligations** |
|---|---|---|---|
| **A1** | Provision of goods in conformity with contract | **B1** | Payment of the price |
| **A2** | Licences, authorisations and formalities | **B2** | Licences, authorisations and formalities |
| **A3** | Contracts of carriage and insurance | **B3** | Contracts of carriage and insurance |
| **A4** | Delivery | **B4** | Taking delivery |
| **A5** | Transfer of risks | **B5** | Transfer of risks |
| **A6** | Division of costs | **B6** | Division of costs |
| **A7** | Notice to the buyer | **B7** | Notice to the seller |
| **A8** | Proof of delivery, transport document or equivalent electronic message | **B8** | Proof of delivery, transport document or equivalent electronic message |
| **A9** | Checking - packing - marking | **B9** | Inspection of goods |
| **A10** | Other obligations | **B10** | Other obligations |

*[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]*

All other information NOT pertinent to the above is given in the balance of the Goods Information

[2] International Chamber of Commerce, Incoterms 2010, Paris, January 2011

## The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

| | | |
|---|---|---|
| **1. The requirements for the supply are** | The supplier should effectively coordinate with the supply manager or employer regarding all scheduled deliveries, ensuring access and other logistical arrangements are properly managed. | |
| **2. The requirements for transport are** | The supplier must use roadworthy transportation that meets all safety requirements | |
| **3. The delivery place is** | Kusile Power Station, R545 Kendal/Balmoral Rd, Haartebeesfontein Farm, Witbank, 1035 | |
| **4. Actions of the Parties during supply** | **Action** | **Party which does it** |
| | Giving notice of Delivery | *Supplier* |
| | Checking packing and marking before dispatch | *Supplier* |
| | Contracting for transport | *Supplier* |
| | Pay costs of transport | *Supplier* |
| | Arrange access to delivery place | *Supplier* |
| | Loading the *goods* | *Supplier* |
| | Unloading the *goods* | *Purchaser* |
| **For international procurement** | Undertake export requirements | *Supplier* |
| | Undertake import requirements | *Supplier* |
| **5. Information to be provided by the *Supplier*** | **Title of document** | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the *goods* | |
| | Delivery Note | |
| | Test results and maintenance manuals | |
| **For international procurement** | Licences, authorisations and other formalities associated with export of the *goods* | |
| | Air Waybill or Bill of Lading with associated landing, delivery and forwarding order | |
| | The Bill of Entry endorsed by the importation authority | |
| | Customs work sheets, showing tax, duties and surcharges which the law of the country into which the *goods* are being imported requires the importer to pay | |
| | Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable | |
| | Specify other import documents required by authorised officials. | |

All other information NOT pertinent to the above is given in the balance of the Goods Information

# C1.2 Contract Data

## Part two - Data provided by the *Supplier*

**[Instructions to the contract compiler: (delete this note 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 supplier:**

1. Please read both the NEC3 Supply Contract (SC3)[1] and the relevant parts of its Guidance Notes (SC3-GN)[2] 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 *Supplier* is (Name):<br>Address<br>Tel No.<br>Fax No. | |
| 11.2(8) | The Goods Information for the *Supplier's* design is in: | |
| 11.2(11) | The tendered total of the Prices is | **R ,**<br>**(in words)** |
| 11.2(12) | The *price schedule* is in: | |
| 11.2(14) | The following matters will be included in the Risk Register | |
| 25.2 | The restrictions to access for the *Supply Manager* and Others to work being done for this contract are | |
| 30.1 | The *delivery date* of the *goods* and *services* is: | ***goods and services*** — ***delivery date***<br>**1 [•] [•]**<br>**2 [•] [•]**<br>**3 [•] [•]** |
| 31.1 | The programme identified in the Contract Data is contained in: | |

[1] Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.
[2] Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or www.ecs.co.za

| | | |
|---|---|---|
| 63.2 | The *percentage for overheads and profit* added to the Defined Cost is | **%** |

# PART 2: PRICING DATA

## NEC3 Supply Contract

| **Document reference** | **Title** | **No of pages** |
|---|---|---|
| C2.1 | Pricing assumptions | 2 |
| C2.2 | The *price schedule* | **[•]** |

# C2.1 Pricing assumptions

## 1. How *goods* and *service*s are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

| | | |
|---|---|---|
| **Identified and defined terms** | 11<br>11.2 | (11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.<br><br>(12) The Price Schedule is the *price schedule* unless later changed in accordance with this contract. |
| **Assessing the amount due** | 50.2 | The amount due is<br><br>• the Price for each lump sum item in the Price Schedule which the *Supplier* has completed,<br>• where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate,<br>• plus other amounts to be paid to the *Supplier*,<br>• less amounts to be paid by or retained from the *Supplier*.<br><br>Any tax which the law requires the *Purchaser* to pay to the *Supplier* is included in the amount due. |

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *service*s which can be priced as lump sums or as expected quantities of *goods* and *service*s multiplied by a rate, or a mix of both.

## 2. Function of the Price Schedule

Clause 53.1 states: “Information in the Price Schedule is not Goods Information”. This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, “The *Supplier* Provides the Goods and Services in accordance with the Goods Information”. Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

## 3. Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier’s* risk;

- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

### 3.1. Format of the *price schedule*

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

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

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

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *service*s are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

# C2.2 the *price schedule*

| **PROJECT: SUPPLY AND DELIVERY OF SPARE A.S.I.B APPROVED KIRLOSKAR DV8 DIESEL ENGINE AND SERVICE KIT AT KUSILE POWER STATION (ONCE OFF)** | | | | | |
|---|---|---|---|---|---|
| | | | | | |
| **ITEM NO.** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **AMOUNT** |
| | | | | | |
| | **ITEM 1** | | | | |
| **1** | **PRELIMINARIES AND GENERALS** | | | | |
| | _ | | | | |
| 1.1 | Safety file submission | Once off | 1 | | |
| 1.2 | Security/Police Clearance Certification | Once Off | 1 | | |
| 1.3 | 12 Tonne truck Diesel | Per km | 1370 | | |
| 1.4 | Light Driven Vehicle | Per km | 1370 | | |
| | | | | | |
| | **Sub-total Item 1 (Preliminaries & Generals) carried to Final Summary :** | | | | |
| | | | | | |
| | **ITEM 2** | | | | |
| **2** | **KIRLOSKAR DIESEL ENGINE** | | | | |
| | _ | | | | |
| 2.1 | DV8 Kirloskar Diesel Engine | No | 1 | | |
| 2.2 | Fire Ready | No | 1 | | |
| 2.3 | BTL-LZ Fire Ready Spare Batteries | No | 12 | | |
| 2.4 | SRV-40 Engine Service Kit | No | 6 | | |
| 2.5 | PCK111 Final Packaging | No | 1 | | |
| | | | | | |
| | **Sub-total Item 2 (Kirloskar Diesil Engine) Carried to Final Summary :** | | | | |
| | | | | | |
| | **ITEM 3** | | | | |
| **3** | **TESTS** | | | | |
| | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| 3.1 | Dynomometer Test | No | 1 | | |
| 3.2 | A.S.I.B Test | No | 1 | | |
| | **Sub-total Item 3 (Tests) Carried to Final Summary :** | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | **Final Summary Total (Excl. VAT)** | | | | |
| | | | | | |

# PART 3: SCOPE OF WORK

| Document reference | Title | No of pages |
|---|---|---|
| | This cover page | 1 |
| C3.1 | *Purchaser*'s Goods Information | |
| C3.2 | *Supplier*'s Goods Information | |
| | Total number of pages | |

# C3.1: *PURCHASER'S* GOODS INFORMATION

## Contents

# 1 Overview and purpose of the *goods* and *service*s

**Works Information**

Kusile Power Station requires a spare diesel engine for fire service, to drive their KSB Omega 250-600B Fire Pumps. Furthermore, Kusile Power Station also required service kits for three Kirloskar DV 8 Diesel Engines. The scope of work (SOW) specifies the requirements for the Kirloskar DV8 diesel engine and accessories, as well as service kits for these engines, to be supplied and delivered to Kusile Power Station by the Supplier. This service is for the Supply and Delivery a new Kirloskar DV8 diesel engine and associated accessories, as well as service kits for these engines, as they are the currently installed diesel engine brand and model on site driving the fire pumps.

# *2* Specification and description of the *goods*

# Description of the work

## 2.1 Plant Description

Kusile Power Station is a 4 800MW rated power station, with each of the six (6) Units rated at 800MW.

### 2.1.1 Description of the works

The works is to supply and deliver, a new A.S.I.B approved Kirloskar DV 8 diesel engine to drive Omega 250-600B Fire Pumps for Kusile Power Station. This diesel engine shall be A.S.I. B approved, suitable for fire services, with the same specifications (technically and dimensionally) as our currently installed diesel engines (Kirloskar DV 8 Diesel Engines). This engine will be used to drive KSB Omega 250 - 600B (566 mm impeller diameter) fire pumps with a duty point of 750 m3/h at 102m head at a speed of 1480 rpm. This engine will be kept as a spare in the fire pump building/stores. Also, six OEM approved service kits shall be provided for Kirloskar DV8 diesel engines.

The Diesel Engines shall meet the requirements of the latest revision of SANS 10287 [6], A.S.I.B rules [7] and NFPA 20 [9]. The engine shall be supplied complete with battery operated starting as well as an electronically controlled governor valve.

The new A.S.I.B approved diesel engine to drive two Omega 250-600B Fire Pumps shall also be tested to A.S.I.B requirements prior to being delivered to site.

Details of the currently installed engines are given in Appendix A of this document. The length, width and height dimensions of the two new diesel engines shall be the same as the currently installed engines. The weight of the engines shall also be similar to the currently installed engines.

## 2.2 Documentation

The following are the *Employers* requirements from the *Supplier*:

a) The *Supplier* will ensure proper handling of the engines (from procurement of equipment, storage and transportation)

b) The *Supplier* will supply any additional information such as brochures, general arrangement drawing, certificates (including material certificates), detailed specification, data sheets, settings, documents, check sheets or drawings for quality inspections, detail drawings, etc.

c) The *Supplier* provides the *Employer* with additional spares information.

d) The *Supplier* provides the *Employer* with all inspection, testing and maintenance requirements for the new engines.

e) The *Supplier* shall supply preservation and storage procedure/s, where applicable.

f) The Employer may make clarification sessions available to prospective *Supplier*s to further assist the prospective *Supplier*s to meet the requirements of the work to be performed by the *Supplier*.

g) The *Supplier* must ensure that all components supplied loosely (such as filters, exhaust diffusers, etc) must be individually packed in such a way as to protect the parts during transportation and storage. The packaging must also include the necessary labels to identify the items.

## 2.3 Acceptance of the New Spare A.S.I.B Diesel Engine

### 2.3.1 Inspections and A.S.I.B testing Prior to Delivery (HOLD POINT)

The Supplier shall ensure that Employer’s Engineering and Quality Control team are invited to inspect and witness the A.S.I.B testing of the new engine.

### 2.3.2 Obsolescence

The Supplier shall inform the Employer immediately if the requested diesel engine is found to be obsolete before any alternative engines are supplied, the Supplier shall indicate this to the Employer and indicate viable alternatives thereof.

### 2.3.3 Packaging

a) The diesel engine, associated accessories and service kits shall be packaged in such a manner that it will be transported and stored without damage. This includes preventing damage due to moisture ingress, dust and foreign objects. The OEM’s Transportation and Storage procedure shall be used for Transportation and Storage.

b) Where possible, packaging and/or loose parts are to be such that procured spares can be positively identified through the packaging. Where this is not possible, the packaging to be such that it allows opening and closing of packaging and still maintain the packaging integrity thereafter.

c) Delivery packaging shall include as a minimum the following details:

   i. Purchase Order Number
   ii. Part Description
   iii. Part number
   iv. Eskom SAP Material number
   v. Drawing number, where applicable
   vi. Physical address of Kusile Power Station and the *Supplier*
   vii. Contact details of the *Supplier*
   viii. Delivery note number

### 2.3.4 Acceptance of spares

a) Incorrect, damaged, or faulty diesel engines and loose parts (if any) will NOT be accepted.

b) The engine and loose parts (if any) will be inspected and accepted by Engineering, Quality Control and/or OEM Representative before payment can be processed.

c) Upon delivery of the diesel engine at the Eskom Kusile stores / Fire Pump Building, an inspection of goods and the receipt must be conducted by the End-user and the Supplier within 48 hours of delivery.

d) The Supplier must supply the Employer with warranty certificates, test certificates and the complete data book of manufacture and testing of the engines at the time of delivery.

e) The Supplier must deliver the diesel engine and service kits as per the agreed to delivery times.

f) The Supplier to provide Material certificates as a minimum, where applicable.

### Information to be provided to supplier

The Supplier will be provided with SOW document for execution, Purchase Order for the required stock items will be generated .

### Spares Management

The Purchaser may request the Supplier to provide accurate description of all spare parts included in the spares list.

### Equipment Required

The Supplier and his sub-suppliers must possess the tools and equipment to satisfy the requirements for the scope.

### Workshop

The Supplier and his sub-suppliers are required to have suitable premises with the required tools and equipment to be able to conduct the scope of work. Eskom reserves the right to inspect the workshop premises to make sure that it is kept up to standard.

### Planned Key Performance Indicators (KPI)

N/A

## 2.4 *Purchaser*'s design

Lists all the spares to be procured under this SOW. This list corresponds to the provided electronic copy of the DCF's that contain more information about the required spares.

Each spare is identifiable by means of an Eskom SAP Material number (as is used in the Power Station), part description, OEM and/or OEM part number.
In addition, refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 2.5 Procedure for submission and acceptance of *Supplier*'s design

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## <u>Obsolescence</u>

The supplier shall inform the Employer immediately where spares are found to be obsolete, the supplier shall provide equivalent technical datasheets for approval by the end-user before initiating any procurement. No equivalent spares shall be accepted upon delivery if prior consent was not received from Eskom Power Station Engineering.

**Acceptance of spares**

a. No incorrect, damaged, or faulty spares will be accepted by Eskom

b. All the spares will be inspected and accepted by Engineering and/or OEM Technician before payment could be processed.

c. Technical Material Datasheets information must be supplied and must meet an acceptable level.

d.

e. The Supplier must ensure that the supply and preservation of spares is done in compliance with preservation specifications and good engineering practice.

f. The Supplier must deliver all spares on a pallet for ease of storing at stores warehouse.

g. Upon delivery of the goods at the Eskom stores, an inspection of goods and the receipt must be conducted by the end-user within 7 working days after delivery.

h. The Supplier must supply the Purchaser with warrantee certificates, test certificates and the complete data book of spares at the time of delivery which shall be uploaded into the SAP system Goods Receipt document as per Work Instruction, Receive Materials - 240-54820279.

i. The Supplier must deliver the goods as per the agreed to delivery times.

j. The Supplier to provide technical datasheets as a minimum, where applicable.

## 2.6 Other requirements of the *Supplier*'s design

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 2.7 Use of *Supplier*'s design

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 2.8 Manufacture & fabrication

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 2.9 Factory acceptance testing (FAT)

In addition to Core Clause 40 and 41, refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193. Furthermore, quality inspection and verification at the contractor's premises will be required during the diesel engine modification process, prior to delivery of the spare unit to site. This inspection will ensure that all modifications have been completed in accordance with the technical specifications, quality standards, and operational requirements before acceptance and commissioning.

## 2.10 Other tests and inspections and commissioning in place of use

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

### 2.11 Operating manuals and maintenance schedules

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

# 3 Supply Requirements

The Supply Requirements for this contract are in an Annexure A to the Contract Data provided by the *Purchaser*.
In addition to Core Clause 11.2(16) 11.2(8), refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

**The following are the *Supplier*'s requirements:**

a) The Supplier will supply any additional information such as brochure, general arrangement drawing, certificates, detailed specification, data sheet, Settings Document for programmable electronic cards etc. Check sheets or drawings for quality inspections.

b) The Supplier provides the Employer with additional spares information if so, required by the end-user

c) The supplier shall supply the preservation, storage, and handling procedures, where applicable.
d) The Supplier must ensure that all components supplied must be individually packed in such a way as to protect the parts during transport and storage. The packaging must also include the necessary labels to identify the items.

e) The spare must be to the exact same specification as installed in the plant and specified on this scope of work document. Notwithstanding the stipulated condition that the Supplier is responsible for verifying the correctness of the spare's information provided by the Employer in relation to the existing installed spare. This may include the Supplier consulting the original supplier of the spare to ensure correctness of information provided by the Employer.

f) The Supplier will ensure proper handling of the spares (from procurement of equipment, storage, and transportation).
g) The Employer may make clarification sessions available to either prospective Supplier/s to further assist the prospective Supplier's to meet the requirements of the work to be performed by the Supplier.

# 4 Specification of the *service*s to be provided.

refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193.

# 5 Constraints on how the *Supplier* Provides the Goods

## 5.1 Programming constraints

In addition to clause Core 31, refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 5.2 Work to be done by the Delivery Date

### Packaging

1.All supplied spares shall be packaged in such a manner that they will be transported and stored without damage. This includes preventing damage due to moisture ingress, dust, and foreign objects. All spares shall be packaged and placed on a pallet crate for ease of handling.

2. Where possible, packaging to be such that procured spares can be positively identified through the packaging. Where this is not possible, the packaging to be such that it allows opening and closing of packaging and still maintain the packaging integrity thereafter.

3. Different spare types shall be packaged separately such that each spare type can be stored separately. Packaging shall be such that the spare can be identified without opening the packaging. Packaging shall be of material that will not be damaged, to an extent possible, by harsh weather conditions during transportation. If that is not possible, then the packaging shall be protected against such conditions.

4. Delivery packaging shall include as a minimum the following details:

a) Purchase Order Number
b) Part Description
c) Part number
d) Eskom SAP Material number
e) Drawing number, where applicable
f) Physical address of Kusile Power Station and the Supplier
g) Contact details of the Supplier
h) Delivery notes number

Refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 5.3 Marking the *goods*

Material to be clearly marked, labelled, and packed according to the required specifications.
In addition, refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 5.4 Constraints at the delivery place and place of use

- Supplier to make delivery arrangements prior to the delivery date to ensure delivery logistics are planned and confirmed to avoid unnecessary delays.
- End user will determine the offloading point at the time of delivery.
- Offloading will be done by the purchaser.
- refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 5.5 Cooperating with Others

In addition to Core Clause 23, the Supplier shall comply to the access requirement as stated or prescribed by the station security standards.

## 5.6 Services & other things to be provided by the *Purchaser* or *Supplier*

**Workshop**

The Supplier and his sub-suppliers are required to have suitable premises with the required tools and equipment to be able to conduct the scope of work. Eskom reserves the right to inspect the workshop premises to make sure that it is kept up to standard.

**Equipment Required**

The Supplier and his sub-suppliers must possess the tools and equipment to satisfy the requirements for the scope.

In addition to Core Clause 23, refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

## 5.7 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 | As and When required | Kusile PS / MS Teams | *Purchaser*, *Supplier*, and or *Others* |
| Overall contract progress and feedback | As and When required | Kusile PS / MS Teams | *Purchaser*, *Supplier*, and or *Others* |
| Kick-Off meeting | First week after the contract signature date | Kusile PS / MS Teams | *Purchaser*, *Supplier*, and or *Others* |
| | | | |

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply 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.

## 5.8 Documentation control

- Each instruction, test certificate, acceptance, notification, reply and other communication which this contract requires is to be 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 over to Eskom.
- All method statements to be discussed compiled and handed over to Eskom where applicable.
- All communications, Certificates, Method Statements must be printed and filed in the Purchaser's Data file.

- Eskom:
- Shall be granted electronic and hard-copy access to all quality plans, procedures, documentation, and other quality records relating to the work, including, but not limited to, data extracts;

- Reserves the right to review, inspect, and audit any or all parts of the supplier's QMS, as well as any documentation, materials, or equipment associated with the work, at any time or project work location; and
- Reserves the right to carry out assessments and audits on all new suppliers and sub-suppliers.
- The supplier:
- Shall support Eskom's effort to monitor, verify, and/or witness any activities associated with the work at any time;
- Shall cooperate with Eskom requests for documentation, records, and inspection and witnessing. Eskom participation in audits, appraisals, assessment of plans, and verification shall be conducted at no extra cost to Eskom;
- Shall ensure that a sub-supplier provides access to Eskom to all work procedures, records, and supporting documentation through provision of access to view and photocopy, as required, to support verification of scope of work requirements. Access shall include the ability to photograph Eskom equipment, systems, system components, materials, etc.;
- Shall provide access to all quality-related information pertaining to activities performed by itself or sub-suppliers, where Eskom might not have participated in the witnessing of their quality assurance or control (this refers to inspections, audits, etc. performed by the supplier on its own sub-suppliers);
- allow Eskom to assess, audit, approve, or reject any sub-suppliers employed by Eskom's suppliers to assist with the product and/or service delivery to Eskom; and
- Shall ensure that the above requirements flow down to sub-suppliers.
- 
- The standard NEC forms to be used by the *Supplier* in the administration of the contract, such as early warning and compensation event notifications are to be submitted to the *Purchaser* and shall be on the NEC
- document format which shall be made available to the *Supplier* by the *Purchaser*
- 
- All formal contractual communication shall be in the form of properly compiled letters or forms attached to emails and not as a message not the email itself Emails shall only be used to follow up on formal contractual
- communication or for information purposes only.
- 
- All formal contractual communication shall have a reference number in a chronological sequence.
- 
- A formal email will be set-up for this specific contractual communication.
- 

## 5.9 Health and safety risk management

**The *Supplier* shall comply with the Occupational Health and Safety Act and relevant regulations, Eskom Contractor Health and Safety Requirements, Eskom Lifesaving rules, National Road Traffic Act and Eskom Vehicle Safety Specifications. The supplier shall submit its internal offloading safe-work procedures to the client prior contract awarding. It is also necessary for the supplier to be in Good Standing with COIDA**

The *Supplier* shall comply with the health and safety requirements [stated here or contained in Annexure "Kusile Power Station OHS Specification for Supply and Delivery of spare A.S.I.B approved Kirloskar DV 8 Diesel Engine and Kirloskar DV 8 Diesel Engine Service kits (KUS-20260462).

## 5.10 Environmental constraints and management

The *Supplier* shall comply with the environmental regulations as well as the following:

- Contractor to be familiarised with Environmental Statement of Commitment.
- Contractor shall report all incidents or risks whilst on site to the Eskom Project leader who will inform the environmental department.
- In addition to the above, also refer to "Kusile Power Station OHS Specification for Supply and Delivery of spare A.S.I.B approved Kirloskar DV 8 Diesel Engine and Kirloskar DV 8 Diesel Engine Service kits (KUS-20260462).

## 5.11 Quality

To ensure compliance to Quality Management System requirements, the following requirements shall be adhered to:

- 240-68099512 Form A : The tenderer must complete and sign this form to acknowledge and accept Eskom Supplier Quality Requirements as per QM 58 Specification and ISO 9001 Standard
- Category 3 - Quality Assessment Criteria : Stipulated documented information to be provided for evaluation purposes
- QM 58_240-105658000 – Supplier Quality Management Specifications
- Documented information that permits the Supplier to provide highest level of quality assurance to confidentially state that the method used on the product are accurate, documented and validated.
- Documented information which allows the Supplier to legally transport hazardous goods
- Documented information on determining the knowledge, skill and competency required for the achieved conformity of product/ service (Driver, handling of hazardous goods…)
- In addition, quality inspection and verification at the contractor's premises will be required during the diesel engine modification process, prior to delivery of the spare unit to site. This inspection will ensure that all modifications have been completed in accordance with the technical specifications, quality standards, and operational requirements before acceptance and commissioning.

## 5.12 Invoicing and payment

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

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

- Name and address of the *Supplier* and the *Supply Manager;*
- The contract number and title;
- *Supplier*'s VAT registration number;
- The *Purchaser*'s VAT registration number.
- Description of *goods* and *service*s provided for each item invoiced based on the Price Schedule;
- 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) |
|---|

In terms of core clause 50 the Supplier assesses the amount due and applies to the Purchaser for payment. The Supplier applies for payment with a tax invoice addressed to the Purchaser as follows:

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 made by contacting the FSS Contact Centre:
Tel: 011 800 5060 or email:fss@eskom.co.za

## 5.13 Insurance provided by the *Purchaser*

Refer to section 8 of the core clauses.

## 5.14 Contract change management

Refer to section 6 of the Core Clauses

## 5.15 Provision of bonds and guarantees

Not Applicable

## 5.16 Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier.*

Shall be provided to *Supply Manager* in hard copy or electronically.
In addition Refer to Core Clause 63.2 and 11.2.4

# 6 Procurement

## 6.1 Subcontracting

### 6.1.1 Preferred subcontractors

tbc

### 6.1.2 Limitations on subcontracting

tbc
tbc

### 6.1.3 Spares and consumables

The Supplier must supply his own consumables to satisfy the requirements for scope. In addition refer to Supply and Delivery of a spare A.S.I.B approved Kirloskar DV8 diesel engine and service kits at Kusile power station Document Identifier: KUS-20260193

### 6.1.4 Other requirements related to procurement

tbc

### 6.1.5 Cataloguing requirements by the *Supplier*

## Information to be provided to the Supplier.

The Supplier is provided with electronic Data Capture Form (DCF) for each spare required. The Supplier is required to ensure that the correct information is captured on the DCF's. The DCF's are required by the Purchaser's Material Management System to be able to book the item in the store and the information should also be sufficient to procure the correct spares in future. Most of the DCF's have been populated by the Purchaser where information was available. This information may not be correct and needs to be reviewed and verified/corrected as part of the Services.

The DCF's are provided in Microsoft Word format. The Supplier needs to ensure the 'Track Changes' function is selected 'on' so that any changes to the existing information as well as inserted information can easily be identified and tracked. The following information needs to be to be provided as detailed as possible on the DCF's.

a. Verify the existing information that is already populated on the DCF's and make changes where required. Ensure the 'track changes' function is on.
b. Populate/verify all fields highlighted in 'yellow' on the DCF's, in the electronic format provided.
c. Supply additional information in the field "Free Format Text" or "Purchase order text" on the DCF's. This includes:
   i. The standards or specification that the product has to conform to.
   ii. Add any spares information which has been omitted, which is deemed relevant for spares identification, packaging and protection requirements during transportation and storage.
   iii. The Quality Control requirements for manufacturing and testing of the product to ensure that the spares conform to the correct specifications or standards, including certificates and test results, that is required with delivery of the goods.
d. Supply any other additional information that has not been specified on the DCF's but necessary for storage, preservation, installation and utilisation of spares where applicable. Such information includes brochures, technical data, etc. These DCF's with the added information needs to be made available electronically to the employer.
e. Supply any other additional information that has not been specified on the DCF's but necessary for storage, preservation, installation, and utilisation of spares where applicable. Such information includes brochures, technical data, etc.

# 7 List of drawings

## 7.1 Drawings issued by the *Purchaser.*

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

| Drawing number | Revision | Title |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

# C3.2 *SUPPLIER*'S GOODS INFORMATION

***Refer to Annexure A: Scope of Work***