



NEC3 Term Service Contract (TSC3)

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

and
(Reg No.)

for Boiler Tube Manipulation and Small Pipes

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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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:

Boiler Tube Manipulation and Small Pipes

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	As per price list
	Value Added Tax @ 15% is	As per price list
	The offered total of the amount due inclusive of VAT is ¹	As per price list
	As per price list	

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:

.....

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)

Mpho Motshegoa

Capacity

Snr Advisor Procurement

**for the
Employer**

Eskom Holdings SOC Limited
Matimba Power Station
Private Bag X215
LEPHALALE
0555

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	NONE	NONE

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

Name & signature of witness

Date

Mpho Motshegoa

Procurement Manager (Acting)
 Eskom Holdings SOC Limited
 Matimba Power Station
 Private Bag X215
 LEPHALALE
 0555

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	
	<p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option:</p> <p>dispute resolution Option and secondary Options</p>	<p>A: Priced contract with price list</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2 Changes in the law</p> <p>X18: Limitation of liability</p> <p>X19: Task Order</p> <p>Z: Additional conditions of contract</p>
	<p>of the NEC3 Term Service Contract April 2013² (TSC3)</p>	
10.1	<p>The <i>Employer</i> is (name):</p> <p>Address</p> <p>Tel No.</p> <p>Fax No.</p>	<p>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</p> <p>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</p> <p>014 763 8250</p> <p>086 268 0078</p>
10.1	<p>The <i>Service Manager</i> is (name):</p>	<p>Chief Mabunda</p>

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

Address	Matimba Power Station Private Bag X215 LEPHALALE 0557
Tel	014 763 8250
Fax	086 268 0078
e-mail	mabundnp@eskom.co.za

11.2(2)	The Affected Property is	Tubes and Small Pipes
11.2(13)	The <i>service</i> is	Manipulation of Boiler Tubes and Small Pipes
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	2 Days, unless stated otherwise on the Task Order
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	2 Days prior to the start of each task order, unless stated other on the task order
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	5 Years
4	Testing and defects	
	The <i>defects date</i> is	52 weeks after sectional completion of each unit
	The <i>defect correction period</i> is	The defects correction period is between one and seven calendar days depending on the level of the defects and access to the plant. The defects correction period is the period during which the contractor agrees to initiate a response to the Notification of a Defect and shall be such period for repair of a Defect shall be determined by the nature of the Defect and shall be such period as is reasonable in all the circumstances. The Contractor will repair or replace the defective part during the warranty period. The defective part will be inspected by the Contractor and a decision made as to whether it can be repaired or a replacement part ordered, decision whether to repair or replace must be taken in consultation with the employer.

5	Payment	
50.1	The <i>assessment interval</i> is	After completion of each task order.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	30 days after receipt of the contractor's invoice.
51.4	The <i>interest rate</i> is	<p>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</p> <p>(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 <i>mutatis mutandis</i> 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.</p>
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	Use of Equipment Plant and Materials	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 and insurance	
80.1	These are additional <i>Employer's</i> risks	None
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance).
83.1	The <i>Employer</i> provides these additional insurances	as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance)

83.1	The <i>Contractor</i> provides these additional insurances:	None
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
83.1	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	Contractor not required to insure as cover is provided under Employers assets all policy to the limit of liability of the policy (see insurance provided by Employer for details of deductibles)http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
83.1	The minimum amount of cover for insurance in respect of 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 for any one event is:	Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.
83.1	The minimum limit of indemnity for insurance in respect of 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 for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rand).
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
10	Data for main Option clause	
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	2 Days.
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).
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			
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		70%	Table C3 - Labour	SEIFSA
		15%	Table L2 - Transport	SEIFSA
		15%	Fixed Portion	
		100%	TOTAL	
X2	Changes in the law	Any law within the Republic of South Africa which applies to term services contract.		
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)		
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 described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx		
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of		
		<ul style="list-style-type: none"> the total of the Prices at the Contract Date and the amounts excluded and unrecoverable 		

from the *Employer's* insurance (other than the resulting physical damage to the *Employer's* property which is not excluded) plus the applicable deductibles in the *Employer's* assets and works / maintenance policies available on
http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

X18.4 The *Contractor's* total liability to the *Employer*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to

the total of the Prices other than for the additional excluded matters.

The *Contractor's* total liability for the additional excluded matters is not limited.

The additional excluded matters are amounts for which the *Contractor* is liable under this contract for

- 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 *Employer's* property, Plant and Materials),
- death of or injury to a person and
- infringement of an intellectual property right.

X18.5 The end of liability date is

12 months after the end of the *service period*.

X19 Task Order

X19.3 The *delay damages* for delivery of goods

1% of Task order value per day up to a limit of 10% of Task order value

X19.5 The *Contractor* submits a Task Order programme to the *Service Manager* within

2 days of receiving the Task Order

Z The additional conditions of contract are

Z1 to Z11 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 Ethics

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

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

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

Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

Z5.1 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.

Z5.2 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*.

Z5.3 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.

Z5.4 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*.

Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, 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.

Z7 Health, safety and the environment: Add to core clause 27.4

Z7.1 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.

Z7.2 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.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

Z8.1 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.

Z8.2 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.

Z8.3 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.

Z9 Notifying compensation events

Z9.1 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.

Z10 *Employer's* limitation of liability

Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 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.

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z11.1 or had a business rescue order granted against it.

Annexure A: Insurance provided by the Employer

These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the *service* provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
6. Further information and full details of all Eskom provided policies and procedures may be obtained from:

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_
From_1_April_2014_To_31_March_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

Annexure B: The *Employer's* Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
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Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

C1.2 Contract Data

Part two - Data provided by the Contractor

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	%
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience:	
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	ZAR
11.2(19)	The tendered total of the Prices is	As per price list

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

The conditions of contract

How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (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*

It will be assumed that the tendering contractor has read Pages 14, 15 and 73 of the TSC3 Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he considers necessary. Whichever party provides the items in the *price list* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Service as described at the time of entering into this contract.

- 1 As the *Contractor* has an obligation to correct Defects (core clause 42.1) and there is no compensation event for this unless the Defect was due to an *Employer's* risk, the lump sum Prices and rates must

also include for the correction of Defects.

- 2 If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost to the *Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- 3 There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.
- 4 Hence the Prices and rates tendered by the *Contractor* in the *price list* 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.
- 5 The Contractor does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

Format of the *price list*

(From page 73 of 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*

Part 1

The rates and Prices entered for each item includes for all work and other things necessary to complete the item.

Item no.	Description	Unit	Quantity	Price
1.	38x4 15Mo3 90 deg 200 radius	ea	1	
2.	38x5.6 15Mo3 Bends 90 deg 200 radius	ea	1	
3.	44.5x3.6 15Mo3 90 deg 200 radius	ea	1	
4.	44.5x5 15Mo3 90 deg 200 radius	ea	1	
5.	42.4x6.3 15 Mo3 (rear wall outlet box off set tube 2)	ea	1	
6.	42.4x6.3 15 Mo3 (rear wall outlet box off set tube 3)	ea	1	
7.	42.4x6.3 15 Mo3 (rear wall outlet box off set tube 4)	ea	1	
8.	42.4x6.3 15 Mo3 (rear wall outlet box off set tube 5)	ea	1	
9.	44.5x5.6 10CrMo910 90 deg 200 radius	ea	1	
10.	44.5x6.0 10CrMo910 90 deg 200 radius	ea	1	
11.	63.5x6.3 10CrMo910 90 deg 200 radius	ea	1	
12.	70x5.0 10CrMo910 90 deg 200 radius	ea	1	
13.	38x6.3 X20CrMoV121 90 deg 200 radius	ea	1	
14.	44.5x3.6 13CrMo44 90 deg 200 radius	ea	1	
15.	44.5x4 13CrMo44 90 deg 200 radius	ea	1	
16.	44.5x5 13CrMo44 90 deg 200 radius	ea	1	
17.	70x6.0 T91 Bend 90 deg 200 radius	ea	1	
18.	38x5.6 15Mo3 90 deg 200 radius	ea	1	
19.	38x5.6 "U" B end 15Mo3 70 radius	ea	1	
20.	42.4x6.3 16Mo3 (1.5m) Side wall tube - rear	ea	1	
21.	42.4x6.3 16Mo3 (1.5m) Side wall tube - side	ea	1	
22.	42.4x6.3 16Mo3 (1.5m) Side wall tube	ea	1	
23.	33.4x3.38 ST45.8 90 deg 200 radius	ea	1	
24.	33.7x2.6 ST35.8 90 deg 200 radius	ea	1	
25.	33.7x4 13CrMo4-5 90 deg 200 radius	ea	1	
26.	60.3x3.6 ST35 90 deg 200 radius	ea	1	
27.	114.3x5.6 15Mo3 90 deg 200 radius	ea	1	

Total of the Prices for Part 1

Part 2

The rates and Prices entered for each item includes for all work and other things necessary to complete the item.

Item no.	Description	Unit	Quantity	Price
	Bends-Bottom Bank Economiser (16Mo3 38 x 4)			
28.	A "U" Bends 38 x 4 mm 90° r = 75 mm	ea	1	
29.	B "U" Bends 38 x 4 mm 90° r = 75 mm	ea	1	
30.	C "U" Bends 38 x 4 mm 90° r = 75 mm	ea	1	
31.	D "U" Bends 38 x 4 mm 90° r = 75 mm	ea	1	
32.	E "U" needle Bends 38 x 4 mm r = 75 mm	ea	1	
	Bends-Top Bank Economiser (16Mo3 44.5 x 5)			
33.	A "U" Bends 44.5 x 5 mm 90° r = 75 mm	ea	1	
34.	B "U" Bends 44.5 x 5 mm 90° r = 75 mm	ea	1	
35.	C "U" Bends 44.5 x 5 mm 90° r = 75 mm	ea	1	
36.	D "U" Bends 44.5 x 5 mm 90° r = 75 mm	ea	1	
37.	E "U"Needle Bends 44.5 x 5 mm r = 75 mm	ea	1	
	RH1 "U" Needle Bends (16Mo3 44.5 x 3.6)			
38.	A "Needle" Bends 44.5 x 3.6 mm r = 75 mm	ea	1	
	OTHER			
39.	T.U.V charges per call	Per visit	1	
40.	Transport - bakkie	Per visit	1	
41.	Transport – Truck 3 ton	Per visit	1	
42.	Transport – Truck 5 ton	Per visit	1	
43.	Heat treatment	Per run	1	

The total of the Prices for Part 2

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

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1 Description of the service

1.1 Executive overview

To supply labour, transport and equipment to manipulate boiler tubes to the V.G.B specifications as and when required.

1.2 Employer's requirements for the service

1. Description of the *WORKS INFORMATION*

To supply labour, transport and equipment to manipulate boiler tubes and small pipes to the V.G.B specifications as and when required.

1.1 Transport to and from Matimba Power Station:

After the tubes are released from Matimba Power Station the contractor will transport the material to his site in a controlled manner to prevent the following:

- Distortion and deformation
- Internal and external corrosion of the tubes
- Any intrusion of foreign matter into the tubes
- Fading of the material identification stamps

1.2 Manipulation/bending of tubes and small pipes:

- The cold process shall be used for all bending of tubes. **Heat treatment is required after cold bending for X20CrMoV121 material.**
- All bending shall be carried out in accordance with the VGB – Directives for construction and inspection of high-Capacity Steam Boilers (VGB - R 501 He)
- The contractor to ensure that the bend ovalates and wall thinning are within the tolerance as per VGB directives
- The Appointed Inspection Authority (AIA) to verify all the bends against the results given by the contractor. The Appointed Inspection Authority must submit a report with technical detail per bend
- The contractor to ensure that all ends of the tubes are covered with an end cap before the bends are sent back to Matimba P/S
- No petrochemical substances will be present on or in the tubes after manipulation. AIA must inspect all tubes for this prior to release from workshop and release note to accompany delivery to site
- Normal turnaround time required is 14 working days
- Urgent turnaround time is 24 hours for tube leak repairs and any other emergency

1.3 Components specifications:

Below are the specification ranges of the typical boiler tubes and small pipes that will require manipulation:

Boiler Tubes:

Material	OD Range (mm)	WT range (mm)
16 MO3	30 – 63,5	3,6 – 8
13CrMo4-5	44,5 – 51	3,6 – 5,6
10CrMo9-10	44,5 – 70	4 – 8
X10CrMoVNb9-1	70	4,5 – 5
X20CrMoV11-1	38	4 – 6,3

Small pipes:

Material	OD Range (mm)	WT range (mm)
St35	60,3	3,6
13CrMo44	33,7	4
15Mo3	33,7 – 114,3	2,6 - 5,6
ST45.8	33,4	3,38
ST35.8	33,7	2,6

2 Management strategy and start up.

2.1 The *Contractor's* plan for the *service*

Upon the signing of the Task order, the *contractor* shall give daily updates in terms of progress and commutate key delivery dates

2.2 Management meetings

N/A

2.3 Invoicing and payment

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

_____ and include on each invoice the following information:

- 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)

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

2.4 Records of Defined Cost to be kept by the *Contractor*

N/A

2.5 Insurance provided by the *Employer*

N/A

2.6 Things provided at the end of the *service period* for the *Employer's* use

2.6.1 Equipment

None

2.6.2 Information and other things

None

2.7 Management of work done by Task Order

N/A

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *service* and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

The Divisional Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in Annexure _____ to this Service Information.

3.2 Environmental constraints and management

Describe or cross refer to environmental constraints applicable to the *Contractor's* plan and his activities on the Affected Property and how they should be managed. Include here or cross refer to an Annexure to the Service Information.

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure _____

3.3 Quality assurance requirements

Eskom appointed QC to inspect all the manipulated tubes and small pipes on site before they are installed in the plant. The contractor will adhere to international and Eskom specifications. The *contractor* shall supply all test certificates and data books for the manipulated tubes.

4 Procurement

4.1.1 BBBEE and preferencing scheme

The contractor is required to maintain or improve their B-BBEE level at the time of concluding this contract. Should the contractor decrease their B-BBEE level, they will be required to remedy such a decrease within a period not exceeding six (6) calendar months.

4.2 Plant and Materials

4.2.1 Specifications

Tubes and small pipes manipulation specifications to be sent out to the contractor by the Employer with each RFQ (Request for Quotation) before the start of each task order

4.2.2 Correction of defects

The *Contractor* shall correct defects to manipulated tubes that are deemed not to be in accordance with the specifications set out by the *Employer* at no extra cost

4.2.3 *Contractor's* procurement of Plant and Materials

The contractor shall be responsible for safe handling of the material at their workshops and during transportation.

4.2.4 Tests and inspections before delivery

The Manipulated tubes and small pipes shall be verified and released by AIA at the *Contractor's* workshop prior to delivery to site

4.2.5 Plant & Materials provided "free issue" by the *Employer*

Tubes for bending will be provided by *Eskom*

5 Working on the Affected Property

This part of the Service Information addresses constraints, facilities, services and rules applicable to the *Contractor* whilst he is doing work on the Affected Property.

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

N/A

5.2 People restrictions, hours of work, conduct and records

N/A

5.3 Health and safety facilities on the Affected Property

N/A

5.4 Environmental controls, fauna & flora

N/A

5.5 Cooperating with and obtaining acceptance of Others

N/A

5.6 Records of *Contractor's* Equipment

N/A

5.7 Equipment provided by the *Employer*

N/A

5.8 Site services and facilities

5.8.1 Provided by the *Employer*

N/A

5.8.2 Provided by the *Contractor*

N/A

5.9 Control of noise, dust, water and waste

N/A

5.10 Hook ups to existing works

N/A

5.11 Tests and inspections

5.11.1 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].

5.11.2 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.

6 List of drawings

6.1 Drawings issued by the *Employer*

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

Drawing number	Revision	Title
None		