



NEC3 Engineering & Construction Contract

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

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

for Design, Supply, Install and Refurbish Solar
Photovoltaic and Battery Energy Storage System in
Gauteng Cluster as needed - Microgrid Storage
Containers (Batteries)

| Contents: | No of pages |
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CONTRACT No. [Insert at award stage]

Part C1: Agreements & Contract Data

| Contents: | No of pages |
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| C1.1 Form of Offer and Acceptance | [•] |
| [to be inserted from Returnable Documents at award stage] | |
| C1.2a Contract Data provided by the <i>Employer</i> | [•] |
| C1.2b Contract Data provided by the <i>Contractor</i> | [•] |
| [to be inserted from Returnable Documents at award stage] | |
| C1.3 Proforma Guarantees | [•] |

C1.1 Form of Offer & Acceptance

Offer

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

Design, Supply, Install and Refurbish Solar Photovoltaic and Battery Energy Storage System in Gauteng Cluster as needed - Microgrid Storage Containers (Batteries)

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 B | The offered total of the Prices exclusive of VAT is | Rate based |
| | Sub total | Rate based |
| | Value Added Tax @ 15% is | Rate based |
| | The offered total of the amount due inclusive of VAT is ¹ | Rate based |
| | (in words) | |

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

Signature(s)

Name(s) _____

Capacity _____

For the tenderer:

(Insert name and address of organisation)

Name & signature of witness

Date

Tenderer's CIDB registration number (if applicable)

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: Works Information
- Part C4 Site 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 original copy signed between them of this document, including the Schedule of Deviations (if any).

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s) _____

Capacity _____

for the Employer

| | | |
|-----------------------------|---|-------|
| Name & signature of witness | 1 Dale Road, Eskom Academy of Learning, Midrand | Date |
| _____ | _____ | _____ |

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

Schedule of Deviations to be completed by the Employer prior to contract award

Note:

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

| No. | Subject | Details |
|-----|---------|---------|
| 1 | [•] | [•] |
| 2 | [•] | [•] |
| 3 | [•] | [•] |
| 4 | [•] | [•] |
| 5 | [•] | [•] |
| 6 | [•] | [•] |
| 7 | [•] | [•] |

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

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

For the tenderer:

For the Employer

Signature _____

Name _____

Capacity _____

On behalf of *(Insert name and address of organisation)*

1 Dale Road, Eskom Academy of Learning, Midrand

Name & signature of witness _____

Date _____



C1.2 ECC3 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)]

- 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.
- Some ECC3 options are always selected by Eskom Holdings SOC Ltd. The remaining ECC3 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 the data in full, according to the Options chosen, is essential to create a complete contract.

| Clause | Statement | Data |
|--------|---|--|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option | |
| |  dispute resolution Option | B: Priced contract with bill of Quantities W1: Dispute resolution procedure |
| |  | B: Priced contract with bill of Quantities W1: Dispute resolution procedure |
| | | X1: Price adjustment for inflation X2: Changes in the law X5: Sectional Completion X7: Delay damages X15: Limitation of Contractor's liability for design to reasonable skill and care X16: Retention X18: Limitation of liability Z: Additional conditions of contract |
| | of the NEC3 Engineering and Construction Contract, April 2013 (ECC3) | |
| 10.1 | The <i>Employer</i> is (Name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Ad | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| 10.1 | The <i>Project Manager</i> is: (Name) | TBC |
| | Address | [•] |

| | | |
|----------|---|--|
| | Tel | [•] |
| | Fax | [•] |
| | e-mail | [•] |
| 10.1 | The <i>Supervisor</i> is: (Name) | [•] |
| | Address | [•] |
| | Tel No. | [•] |
| | Fax No. | [•] |
| | e-mail | [•] |
| 11.2(13) | The <i>works</i> are | Design, Supply, Install and Refurbish Solar Photovoltaic and Battery Energy Storage System in Gauteng Cluster as needed - Microgrid Storage Containers (Batteries) |
| 11.2(14) | The following matters will be included in the Risk Register | <ul style="list-style-type: none"> • People: There is a risk of labour un-rest given the prevailing situation in South Africa • Skills Availability Authorisations • Safety: Injuries to employees due to lack of incident Prevention programmes (SHE systems) Contractor not complying to health and safety standards and Legislation. • Environment: SHEQ Policy communication |
| 11.2(15) | The <i>boundaries of the site</i> are | All projects to be executed in terms of this contract will be executed at various sites across the Eskom Distribution Division. |
| 11.2(16) | The Site Information is in | Part 4: Site Information |
| 11.2(19) | The Works 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 | One [1] weeks |
| 2 | The Contractor's main responsibilities | Data required by this section of the core clauses is provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data. |
| 3 | Time | |
| 11.2(3) | The <i>completion date</i> for the whole of the <i>works</i> is | 5 Year period |
| 11.2(9) | The <i>key dates</i> and the <i>conditions</i> to be met are: | Condition to be met key date |

| | | | | |
|----------|--|----------|---|-------------|
| | | 1 | Any key date and conditions will be specified in the Project Specific Agreement for any project executed in terms of this contract | |
| 30.1 | The <i>access dates</i> are: | | Part of the Site | Date |
| | | 1 | Access dates will be specified in the Project Specific Agreement for any project executed in terms of this contract | |
| 31.1 | The <i>Contractor</i> is to submit a first programme for acceptance within | | 1 week of Purchase Order | |
| 31.2 | The <i>starting date</i> is | | TBC | |
| 32.2 | The <i>Contractor</i> submits revised programmes at intervals no longer than | | 4 weeks. | |
| 35.1 | The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date. | | | |
| 4 | Testing and Defects | | | |
| 42.2 | The <i>defects date</i> is | | 52 weeks after Completion of the whole of the works. | |
| 43.2 | The <i>defect correction period</i> is | | Within one week upon notification of defect | |
| 5 | Payment | | | |
| 50.1 | The <i>assessment interval</i> is | | between the 15th and 20th day of each successive month. | |
| 51.1 | The <i>currency of this contract</i> is the | | South African Rand. | |
| 51.2 | The period within which payments are made is | | <p>For contracts valued below R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying Suppliers within 30 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.</p> <p>For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.</p> | |
| 51.4 | The <i>interest rate</i> is | | the publicly quoted prime rate of interest (calculated on a 365 day year) charged 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 | |

| | | |
|-----------|--|--|
| 6 | Compensation events | |
| 60.1(13) | <p>The place where weather is to be recorded is:</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are,</p> <p>The <i>weather measurements</i> are supplied by</p> <p>The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at:</p> <p>and which are available from:</p> | <p>The established site</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> <p>the number of days with minimum air temperature less than 0 degrees Celsius</p> <p>the number of days with snow lying at 09:00 hours South African Time</p> <p>and these measurements:</p> <p>The nearest weather station of the South African Weather Service to the site</p> <p>the South African Weather Bureau and included in Annexure A to this Contract Data provided by the <i>Employer</i></p> |
| 7 | Title | As per the terms and conditions of the NEC3 Engineering and Construction Contract, April 2013 (ECC3) |
| 8 | Risks and insurance | |
| 80.1 | These are additional <i>Employer's</i> risks | None |
| 9 | Termination | As per the terms and conditions of the NEC3 Engineering and Construction Contract, April 2013 (ECC3). |
| 10 | Data for main Option clause | |
| B | Priced contract with bill of quantities | |
| 60.6 | The <i>method of measurement</i> is | as stated in Part C2.1, Pricing Assumptions. |
| 11 | Data for Option W1 | |
| W1.1 | The <i>Adjudicator</i> is | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the |

Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).

| | | |
|---------|---|---|
| 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 London Institution of Civil Engineers. (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 | Midrand, 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(a) | The <i>base date</i> for indices is | One month prior to tender closing date. | | |
| X1.1(c) | The proportions used to calculate the Price Adjustment Factor are: | proportion | linked to index for | Index prepared by |
| | Labor | 0,85 | Table C4 SEIFSA at hourly paid employees | SEIFSA |
| | | 0,15 | fixed | |
| | Total | 1.00 | | |
| | Transport | 0,85 | Table L2B | SEIFSA |
| | | 0,15 | fixed | |
| | Total | 1.00 | | |
| | Prices will be fixed and firm for the first 12 months of the contract | | | |
| X2 | Changes in the law | | As per the terms and conditions of the NEC3 Engineering and Construction Contract, April 2013 (ECC3). | |

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

| | | | |
|--------------------|--|---|--|
| X5 | Sectional Completion | | |
| X5.1 | The <i>completion date</i> for each <i>section</i> of the <i>works</i> is: | Section | Description |
| | | | The <i>completion date</i> for each <i>section</i> of the <i>work</i> will be specified in the Project Specific Agreement for any project executed in terms of this contract |
| X5 & X7 | Sectional Completion and delay damages used together | | |
| X7.1 X5.1 | Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are: | | The delay damage for each <i>section</i> of the <i>work</i> will be specified in the Project Specific Agreement for any project executed in terms of this contract and will be relevant to the specific project being executed. |
| X13 | Performance bond | | |
| X13.1 | The amount of the performance bond is | To be advised at contract award stage. | |
| | | This will only be applicable should the Financial Analysis report recommend that the Performance bond be obtained. | |
| X15 | Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care | There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data. | |
| X16 | Retention (not used with Option F) | | |
| X16.1 | The <i>retention free amount</i> is | TBA | |
| | The <i>retention percentage</i> is | 5% of Labour Value | |
| 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: | Total of Purchase Order Value |
| X18.2 | For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to: | the amount of the deductibles relevant to the event |
| X18.3 | The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate 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 <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date. |
| X18.4 | The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to: | the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site, • loss of or damage to property (other than the <i>works</i>, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right. |
| X18.5 | The <i>end of liability date</i> is | (i) 5 years after the <i>defects date</i> for latent Defects and (ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter. A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period. If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect. |

- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

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

- Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. 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 Site;
 - 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 *works*; and
 - undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z6.2 The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

- Z7.1 Within one week of receiving a payment certificate from the *Project 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 Works Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in

time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

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

Z9 *Employer's* limitation of liability

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

Z9.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer'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 *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* obligation to Provide the Works 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 *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

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

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

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor 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 *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.
- Z12.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

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 *Contractor* provides the insurances stated in the Insurance Table A.
- 84.3** The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

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

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

Z 13.2

Replace core clause 87 with the following:

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

INSURANCE TABLE B

| Insurance against or name of policy | Minimum amount of cover or minimum 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 *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or

resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

- Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- 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 <i>Employer's</i> 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 *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z15.3 The *Employer* 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 *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Part two - Data provided by the Contractor

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

Whenever a cell is shaded in the left hand column it denotes this data is optional. If not required select and delete the whole row, otherwise insert the required Data.]

Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 (April 2013) Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

| Clause | Statement | Data |
|----------|--|--------|
| 10.1 | The <i>Contractor</i> is (Name): Address Tel No. Fax No. | |
| 11.2(8) | The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is | % % |
| 11.2(18) | The <i>working areas</i> are the Site and | |
| 24.1 | The <i>Contractor's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience: | |

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

| | | | | |
|------------|--|---|-------------------------|-------------|
| | | CV's (and further key persons data including CVs) are appended to Tender Schedule entitled . | | |
| 11.2(3) | The <i>completion date</i> for the whole of the <i>works</i> is | | | |
| 11.2(14) | The following matters will be included in the Risk Register | | | |
| 11.2(19) | The Works Information for the <i>Contractor's</i> design is in: | | | |
| 31.1 | The programme identified in the Contract Data is | | | |
| B | Priced contract with bill of quantities | | | |
| 11.2(21) | The <i>bill of quantities</i> is in | (in figures) (in words), excluding VAT | | |
| 11.2(31) | The tendered total of the Prices is | | | |
| | Data for Schedules of Cost Components | <i>Note "SCC" means Schedule of Cost Components starting on page 60, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).</i> | | |
| B | Priced contract with bill of quantities | Data for the Shorter Schedule of Cost Components | | |
| 41 in SSCC | The percentage for people overheads is: | % | | |
| 21 in SSCC | The published list of Equipment is the last edition of the list published by The percentage for adjustment for Equipment in the published list is | Minus % | | |
| 22 in SSCC | The rates of other Equipment are: | Equipment | Size or capacity | Rate |
| 61 in SSCC | The hourly rates for Defined Cost of design outside the Working Areas are Note: Hourly rates are estimated 'cost to company of the employee' and not selling rates. Please insert another schedule if foreign resources may also be used | Category of employee | Hourly rate | |
| 62 in SSCC | The percentage for design overheads is | % | | |

| | | |
|------------------|---|---|
| 63 in SSCC | The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are: | |
| 62 in SCC & SSCC | The percentage for design overheads is | % |
| 63 in SCC & SSCC | The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the <i>works</i> and Equipment done outside the Working Areas are: | |

PART 2: PRICING DATA

ECC3 Option B

| Document reference | Title | No of pages |
|---------------------------|-------------------------------|--------------------|
| C2.1 | Pricing assumptions: Option B | |
| C2.2 | The <i>bill of quantities</i> | |

C2.1 Pricing assumptions: Option B

How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract (ECC3) Option B states:

| | | |
|-------------------------------------|------------|---|
| Identified and defined terms | 11 11.2 | (21) The Bill of Quantities is the <i>bill of quantities</i> as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration. (28) The Price for Work Done to Date is the total of <ul style="list-style-type: none">• the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and• a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed. Completed work is work without Defects which would either delay or be covered by immediately following work. (31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities. |
|-------------------------------------|------------|---|

This confirms that Option B is a re-measurement contract and the bill comprises only items measured using quantities and rates or stated as lump sums. Value related items are not used. Time related items are items measured using rates where the rate is a unit of time.

Function of the Bill of Quantities

Clause 55.1 in Option B states, "Information in the Bill of Quantities is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Bill, but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Bill of Quantities. The Bill of Quantities is only a pricing document.

Guidance before pricing and measuring

Employers preparing tenders or contract documents, and tendering contractors are advised to consult the sections dealing with the bill of quantities in the NEC3 Engineering and Construction Contract Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

There is no general provision in Option B for payment for materials on Site before incorporation into the *works*. If secondary Option X14 Advanced payment has not been used then the tendering contractor may obtain the same effect by inserting appropriate items in the method related charges where the *method of measurement* allows, or alternatively making allowance in the rates of the *bill of quantities* for the financing of Plant and Materials until they are incorporated in the *works*.

When compensation events arise, the default position is that the Bill of Quantities is not used to calculate the cost effect of the event. Defined Cost and the resulting Fee is used and Defined Cost includes all components of cost which the *Contractor* is likely to incur, including so called P & G items. Rates and lump sums from the Bill of Quantities, or from any other source, may be used instead of Defined Cost and the

Fee only if the *Contractor* and *Project Manager* agree. If they are unable to agree, then Defined Cost plus Fee is used.

Measurement and payment

Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:

| Abbreviation | Unit |
|----------------------|-----------------------|
| % | percent |
| h | hour |
| ha | hectare |
| kg | kilogram |
| kl | kilolitre |
| km | kilometre |
| km-pass | kilometre-pass |
| kPa | kilopascal |
| kW | kilowatt |
| l | litre |
| m | metre |
| mm | millimetre |
| m ² | square metre |
| m ² -pass | square metre pass |
| m ³ | cubic metre |
| m ³ -km | cubic metre-kilometre |
| MN | meganewton |
| MN.m | meganewton-metre |
| MPa | megapascal |
| No. | number |
| sum | Lump sum |
| t | tonne (1000kg) |

General assumptions

Unless otherwise stated, items are measured net in accordance with the drawings, and no allowance has been made in the quantities for waste.

The Prices and rates stated for each item in the Bill of Quantities shall be treated as being fully inclusive of all work, risks, liabilities, obligations, overheads, profit and everything necessary as incurred or required by the *Contractor* in carrying out or providing that item.

An item against which no Price is entered will be treated as covered by other Prices or rates in the *bill of quantities*.

The quantities contained in the Bill of Quantities may not be final and do not necessarily represent the actual amount of work to be done. The quantities of work assessed and certified for payment by the *Project Manager* at each assessment date will be used for determining payments due.

The short descriptions of the items of payment given in the *bill of quantities* are only for the purposes of identifying the items. Detail regarding the extent of the work entailed under each item is provided in the Works Information.

Departures from the *method of measurement*

Amplification of or assumptions about measurement items

The following is provided to assist in the interpretation of descriptions given in the *method of measurement*. In the event of any ambiguity or inconsistency between the statements in the *method of measurement* and this section, the interpretation given in this section shall be used.

C2.2 the *bill of quantities*

Refer to the BOQ as per the Invitation to Tender

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER’S WORKS INFORMATION

1. Description of the works

1.1 Executive overview

Eskom, in alignment with South Africa’s national energy policies and sustainability goals, is accelerating the integration of renewable energy technologies to promote cleaner, more efficient, and resilient power solutions. The purpose of this procurement is to appoint qualified service providers who will enable Eskom to successfully deliver microgrid and photovoltaic (PV) projects. This initiative supports Eskom’s commitment to reducing carbon emissions, advancing South Africa’s transition to cleaner energy, and diversifying the national energy mix to ensure long-term sustainability and reliability.

1.2 Employer’s objectives and purpose of the works

Interpretation and terminology

The following abbreviations are used in this Works Information:

| Abbreviation | Meaning given to the abbreviation |
|--------------|-----------------------------------|
| AFC | Approved for construction |
| OBL | Outside battery limits |

2. Management and start up.

Management meetings

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

| Title and purpose | Approximate time & interval | Location | Attendance by: |
|--|-----------------------------|----------|--|
| Risk register and compensation events | TBC | TBC | <i>Employer, Contractor, Supervisor, and Quantity Surveyor</i> |
| Overall contract progress and feedback | TBC | TBC | <i>Employer, Contractor, Supervisor, and Quantity Surveyor</i> |
| | | | |
| | | | |

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

Documentation control

All correspondence will be on NEC letters or forms attached to e-mails and will follow a chronological numbering system

Health and safety risk management

The *Contractor* shall comply with the health and safety requirements contained in the Invitation to Tender

Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in Invitation to Tender

Quality assurance requirements

The *Contractor* shall comply with the Quality Requirements and constraints stated in Invitation to Tender

Programming constraints

A comprehensive and fully detailed programme is to be submitted within the seven (7) days after the introductory meeting and should indicate all milestones and critical dates. This programme must first be approved by the Project Manager and must be updated on an as and when required basis by the Project Manager.

Contractor's management, supervision and key people

The following dates shall be clearly reflected on the programme:

- Starting and completion dates for all activities as well as relevant key dates for hold or witness points. All relevant significant activities shall be shown in order to monitor the progress in the factory/workshop.
- The programme shall also reflect a 2-week period for inspection and correcting of Defects before the completion date.

Updated programmes must be available at all meetings reflecting progress to date and the date when delivery will take place through the use of task orders.

FORMAT OF THE PROGRAM

- The *Contractor* shall submit his construction program in terms of the conditions of contract.
- The *Contractor* is to submit a revised programme for acceptance at each site meeting.
- This program shall be in the form of an approved Gantt Chart containing the following information:
- All construction activities, including milestones, initial tasks, critical path, required Outages, and target *Dates*. All potential risk activities should be clearly indicated on the critical path.

- Every activity on the programme will be clearly linked to labour resources and equipment required to perform the specific activity.
- Projected weekly progress on *site* for the entire duration of the contract.
- Completion and hand-over *Dates* for formal inspection by the site supervisor must be indicated.
- A column showing the daily tempo of all the construction activities must be indicated next to the activity on the programme.
- Project expenditure on a monthly basis for the entire duration of the contract.
- The following project phases and activities are minimum requirements for the programme:
- Site Establishment and Material Delivery – Lead times to be specified.
- Preparation work – Work that can be completed without the necessity of power outages
- Outage work – Work that must be completed under outage conditions
- Planned outages to be included in the programme
- *Contractors* float to be included in the programme
- The Contract Program will be on display in the *Contractors Site Offices* and will be updated weekly. In addition to the maintaining of this programme, the *Contractor* will report progress to the *Project Manager* at each site meeting or at request of the *Project Manager*.
- The *Contractor* shall also provide an organisation chart showing the personnel to be employed for the *works*, along with a detailed CV of all key personnel.
- Should any deviations to the program be found the *Contractor* shall submit a revised program to the *Project Manager* within one week of such deviations being brought to the *Contractor's* attention.
- The Outages must be arranged with *Employer* via the Outage arrangement procedures, as a pre-requisite for the acceptance of the programme by the *Project Manager*.
- Acceptance of any program by the *Project Manager* shall have no contractual status other than an indication that the *Project Manager* is satisfied as to the order in which the work is to be carried out, and that the *Contractor* undertakes to perform all work in accordance with the accepted program.
- The *Project Manager* retains the right to alter the accepted program should circumstances on *site* necessitate such a change.

OTHER INFORMATION TO BE SHOWN ON THE PROGRAM.

The following Statutory non-working days are included within the contract period:

- All Public Holidays for the duration of the contract.
- The programme must clearly indicate the non-working days for the entire construction period.

Invoicing and payment

Within one week of receiving a payment certificate from the *Project 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 *Project Manager's* payment certificate.

The *Contractor* shall address the tax invoice to Eskom Holdings SOC Ltd and include on each invoice the following information:

- Name and address of the *Contractor* and the *Project 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)

| | |
|---|----------|
| General Information | X |
| - No Pro-forma Invoice | |
| - Check Vendor number against the Address and name on Tax invoice | |
| - Insert the Vendor number on Tax invoice (Top right hand corner) | |
| - Bank details must be on the invoice or on a attach sheet, but it does not require a bank stamp just a letter) | |
| - Check banking details on invoice against SAP system. If more than one banking account check bank account against banking details on invoice. If banking details not on invoice, write the bank code next to the vendor account (bank code 0002) | |
| - Check Vendor VAT number against the vendor master. (FK03) If VAT number not on master records, prepare a list and forward to Vendor Management to check and update the vendor master records | |
| - No fax copies of Tax invoices allowed | |
| - No copies of Tax invoices allowed unless originally printed by the Vendor if a photocopy tax invoice, it must be an original "certified copy" (i.e. not a copy of a "certified copy" invoice) from the vendor and check in system if not previously be paid. Put stamp "not previously paid" on invoice and sign. | |
| - Ensure that date received stamp is clear on invoice | |
| - Stamp all Invoices with the Vat stamp, complete and sign (only when VAT is applicable) | |
| - The stamp should not be stamped over any written information | |
| - When scanning invoice, check the quality before linking in SAP (inboxes) | |
| | |
| With Reference Invoices | X |
| - Goods receipt must be done (payment with reference) | |
| - Ensure that the SAP purchase order number is clear and correct on the invoice | |
| - GR number to be written on the Invoices | |
| - If multiple lines on invoice write the line number of the order against the line to ensure that the processors match the correct lines (to ensure that 191100 is matched correctly) | |

Insurance provided by the Employer

Refer to Annexure A

Contract change management

Any changes in the contract will be dealt with my using the NEC process and forms as well as the Eskom Procurement and Supply Chain Policy 32-1034.

Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Project Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer's* right to termination stated in this contract.

Records of Defined Cost, payments & assessments of compensation events to be kept by the Contractor

Record of defined cost to be kept in the project file and will be submitted to the project Manager for assessments of compensation events.

Training workshops and technology transfer

Refer to the Technical Requirements

3. Engineering and the Contractor's design

The contractor is responsible for 100% of the design

Employer's design

Employer's operating philosophy / user requirement specification (URS) / performance specification, Refer to EPC: FUNCTIONAL SPECIFICATION FOR A SOLAR PHOTOVOLTAIC AND BATTERY ENERGY STORAGE: ESKOM GAUTENG CLUSTER, CUSTOMER NETWORK CENTERS **Unique Identifier 240 - D X - G P - 016T** for the *works* which the *Contractor* is to design. U

The contractor is responsible for all the design scope.

Procedure for submission and acceptance of Contractor's design

- The Contractor designs the parts of the works which the Works Information states he is to design.
- The Contractor submits the particulars of his design as the Works Information requires to the Project Manager for acceptance. A reason for not accepting the Contractor's design is that it does not comply with either the Works Information or the applicable law.
- The Contractor does not proceed with the relevant work until the Project Manager has accepted his design.
- The Contractor may submit his design for acceptance in parts if the design of each part can be assessed fully.

Other requirements of the Contractor's design

Refer to the Technical Specification/User Requirements

Use of Contractor's design

The Employer may use and copy the Contractor's design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information.

Design of Equipment

Refer to Technical Specification/User Requirements

Equipment required to be included in the works

Refer to Technical Specification/User Requirements

As-built drawings, operating manuals and maintenance schedules

The *Contractor* is required to provide the necessary drawings, operating manuals, test certificates and training program details, as well as a commitment letter for providing ongoing product support.

4. Procurement

People

Minimum requirements of people employed on the Site

The Contractor's employees shall be sober when carrying out their duties and may be subjected to random Breathalyzer tests when visiting the Employers' premises. All the employees shall also adhere to Eskom Life Saving rules while on Eskom premises

BBBEE and preferencing scheme

Supplier Development , Localisation and Industrialisation

Subcontracting

Preferred subcontractors

Subcontract documentation, and assessment of subcontract tenders

Negotiable as per the Project Specific requirements underpinned by Clause 2.

Limitations on subcontracting

Refer to the SDL & I requirements

Attendance on subcontractors

5. Plant and Materials

Quality

Refer to the Technical Requirements/Specification

Plant & Materials provided "free issue" by the Employer

Not Applicable

Contractor's procurement of Plant and Materials

Refer to the Technical Requirements/Specification

Spares and consumables

Refer to the Technical Requirements/Specification

Tests and inspections before delivery

Refer to the Technical Requirements/Specification

Marking Plant and Materials outside the Working Areas

Refer to the Technical Requirements/Specification

Contractor's Equipment (including temporary works).

Refer to the Technical Requirements/Specification

Cataloguing requirements by the Contractor

Refer to the Technical Requirements/Specification

6. Construction

Temporary works, Site services & construction constraints***Employer's Site entry and security control, permits, and Site regulations***

- The Contractor is responsible to comply with all site regulations during construction phase of the project until completion date.
- The Contractor is responsible for the safety of all personnel involved in the works as well as the safety of all personnel and other members of the public affected by the construction of the works.
- The Contractor is responsible for the design, erection, maintenance and removal of all temporary bracing or propping or falsework required for the execution of the works.
- All construction works complies with SANS 1200 standardised specification for civil engineering construction.

Restrictions to access on Site, roads, walkways and barricades

In addition to the above, there may be restrictions on access to sites, roads, walkways, and the use of barricades which are crucial for safety and traffic management. These measures, often involving signage and physical barriers, are implemented to control the flow of people and vehicles, protect infrastructure, and minimize hazards. The Contractor shall comply to site specific rules.

People restrictions on Site; hours of work, conduct and records

Restrictions and hours of work may apply on some Sites. It is very important that the Contractor keeps records of his people on Site, including those of his Subcontractors which the Project Manager or Supervisor have access to at any time. These records may be needed when assessing compensation events.

Health and safety facilities on Site

The Employer prioritize health and safety in all construction sites, adhering to national standards, legislative requirements, and industry best practices. Contractors are responsible for managing their own health and safety programs, ensuring compliance with Eskom's policies and procedures, as well as relevant legislation.

Environmental controls, fauna & flora, dealing with objects of historical interest

This has been addressed under section 2.4 of the works information.

Title to materials from demolition and excavation

- The Contractor removes Equipment from the Site when it is no longer needed unless the Project Manager allows it to be left in the works.
- The Contractor has no title to an object of value or of historical or other interest within the Site. The Contractor notifies the Project Manager when such an object is found, and the Project Manager instructs the Contractor how to deal with it. The Contractor does not move the object without instructions.

Cooperating with and obtaining acceptance of Others

The Contractor shall co-operate with Others in obtaining and providing information which they need in connection with the works. Furthermore, He shall co-operate with Others and share the Working Areas with them.

Publicity and progress photographs

All pictures taken must be used for Contract purpose/ requirement. The Contractor must get an approval from the Employer to use site pictures for reasons outside the Contract.

Contractor's Equipment

The Contractor must provide all equipment and tools required to execute the works and complete the project. The Contractor is responsibility for safeguard of his equipment on site.

Equipment provided by the Employer

The Employer provides no equipment to the Contractor for execution of this scope of work.

Site services and facilities

Ablution Facilities:

Contractors are required to provide adequate and clean ablution facilities, often chemical toilets, or connect to existing Eskom facilities if available.

Wastewater Management:

A system for managing wastewater, such as a septic tank or a portable toilet system, is crucial for environmental compliance.

Potable Water:

Access to clean, potable water is essential for drinking and other site activities.

Contractor's Yard:

A designated area for the contractor's use, including space for storing materials and equipment.

Facilities provided by the Contractor

The Contractors must provide and manage their facilities that supports their work and personnel. These include site offices, storage areas, waste management solutions, and health and safety provisions like toilets. They are also responsible for ensuring access roads are maintained and restored to their original condition after construction.

Existing premises, inspection of adjoining properties and checking work of Others

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

Survey control and setting out of the works

Not applicable.

Excavations and associated water control

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

Underground services, other existing services, cable and pipe trenches and covers

The Contractor must conduct underground survey/ detection to check and confirm existing services/ cables/ infrastructure in the specific area before excavating or trenching the ground.

Control of noise, dust, water and waste

The Contractor must comply with SHE specification requirements.

Sequences of construction or installation

Not applicable.

Giving notice of work to be covered up

The Contractor must give the Supervisor early notice before covering up work. This allows the Supervisor to inspect the work before it's covered. The specific notice period should be sufficient to allow for inspection. The Contractor is obligated to provide all necessary information and assistance for the inspection. Failing to provide proper notice could lead to delays or issues if the Supervisor needs to inspect the work after it's been covered.

Hook ups to existing works

The Contractor must comply with SHE specification requirements.

7. Completion, testing, commissioning and correction of Defects

i. Work to be done by the Completion Date

On or before the Completion Date the *Contractor* shall have done everything required to Provide the Works except for the work listed below which may be done after the Completion Date but in any case before the dates stated. The *Project Manager* cannot certify Completion until all the work except that listed below has been done and is also free of Defects which would have, in his opinion, prevented the *Employer* from using the *works* and Others from doing their work.

| | Item of work | To be completed by |
|--|--|--|
| | As built drawings of | Within days after Completion |
| | Performance testing of the <i>works</i> in use as specified in paragraph of this Works Information. | See performance testing requirements. |
| | | |

Use of the *works* before Completion has been certified

The Contractor will have to carry out the supervision of the installations, as per the instruction of the Project Manager

Materials facilities and samples for tests and inspections

From time-to-time random sample test and inspections may be requested, to ensure good quality of the goods being supplied.

The Contractor and the Employer must provide materials, facilities and samples for tests and inspections. These include but not limited to smart meter itself, along with communication modules, testing equipment, and potentially specialized facilities for handling and storing the meters, as well as samples for quality assurance.

Commissioning

Commissioning is to be done before or after Completion depending on the Programme from the Project Manager.

Start-up procedures required to put the *works* into operation

In order to put the works into operation the Project Manager may require the Contractor to either do this for him or be in attendance whilst he does it, depending on who is the responsible person.

Take over procedures

Take-over is after or at the same time as Completion. The Contractor is to arrange an inspection before completion of the installation to inspect and identify any outstanding or any defects. The Project Manager may require the Contractor to provide assistance, on an as and when required basis.

Access given by the Employer for correction of Defects

The Project Manager arranges for the Employer to allow the Contractor access to and use of a part of the works which he has taken over if they are needed for correcting a Defect. In this case the defect correction period begins when the necessary access and use have been provided.

Performance tests after Completion

The Contractor to demonstrate that the works can operate as guaranteed by the Contractor (in Contractor's Works Information) or specified by the Employer either here or elsewhere in this Works Information.

Training and technology transfer

The Employer requires the Contractor to provide training in the use and maintenance of the works or any associated transfer of technology from him to the Employer.

Operational maintenance after Completion

The Employer may require the Contractor before the defects date to perform certain duties after Completion and take over which relate to maintenance of the works.

Plant and Materials standards and workmanship

Detailed specification and user requirements are on the attached document with unique Identifier: **Unique Identifier 240 - D X - G P - 016T - EPC: FUNCTIONAL SPECIFICATION FOR A SOLAR PHOTOVOLTAIC AND BATTERY ENERGY STORAGE: ESKOM GAUTENG CLUSTER, CUSTOMER NETWORK CENTERS**

Investigation, survey and Site clearance

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

8. Building works

Refer to Standards and Codes below:

Detailed specification and user requirements are on the attached document with unique Identifier: 240-171000566 - User Requirement Specification for Residential Solar Photovoltaic (PV) And Battery Energy Storage Systems (BESS).

Unique Identifier: 240-171000418 - Major Equipment Requirements for Distribution Solar PV AND BESS: SSEG And Microgrids.

Civil engineering and structural works

Refer to section 6.2 of the works information.

Electrical & mechanical engineering works

Refer to section 6.2 of the works information.

Process control and IT works

Refer to section 6.2 of the works information.

C3.2 *CONTRACTOR'S WORKS INFORMATION*

This section of the Works Information will always be contract specific depending on the nature of the *works*.

It is most likely to be required for design and construct contracts where the tendering contractor will have proposed specifications and schedules for items of Plant and Materials and workmanship, which once accepted by the *Employer* prior to award of contract now become obligations of the *Contractor* per core clause 20.1.

Typical sub headings could be

- a) *Contractor's* design
- b) Plant and Materials specifications and schedules
- c) Other

This section could also be compiled as a separate file.

PART 4: SITE INFORMATION

| Document reference | Title | No of pages |
|--------------------|-------------------------------------|-------------|
| C4 | This cover page Site Information | 1 |
| | Total number of pages | |

PART 4: SITE INFORMATION

Core clause 11.2(16) states

“Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

Project Specific and will be determined in the project Specific Scope

EMPLOYER'S NAME

CONTRACT NUMBER _____

Design, Supply, Install and Refurbish Solar Photovoltaic and Battery Energy Storage System in Gauteng Cluster As needed - Microgrid Storage Containers (Batteries)

Annexure A Insurance document**To whom it may concern**

This letter serves to confirm the insurance cover as follows:

Insurer : ESCAP SOC Ltd

Insured : Eskom Holdings SOC Ltd

Additional Insureds : Entities dictated by financial or operational interest of the Insured, each for their respective rights and interest

All contractors undertaking work for or on behalf of the Named Insured but only in respect of the execution of any contract(s) (the "Contracts") between the contractor and Named Insured (it being understood that where the Named Insured undertakes the work they shall be deemed to be the "Contractor" provided that their rights hereunder shall not exceed the rights of any independent contractor working on behalf of the Named Insured) (hereinafter called the "Contractor").

All subcontractors employed by the Contractor and all other subcontractors (whether nominated or otherwise engaged but only in respect of the fulfilment of the contract(s)) (hereinafter called the "Subcontractor") for their respective rights and interests.

Any reference to Insured in this Policy shall apply to the Named Insured and where applicable the Additional Insured listed above. Cover in respect of contractors and subcontractors shall only be provided to the extent that the Named Insured undertakes in the contracts with the

Additional Insured between the Named Insured and Contractor and/or Subcontractor to provide the

ESCAP SOC Ltd

Maxwell Drive Megawatt Park Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 6804 Fax +27 11 800 4737 www.eskom.co.za

Escap SOC Ltd Reg No 1993/003340/30

Insurance coverage found in this policy (hereinafter called the "Insurance Cover") for such parties

Policy name : Annual Construction All Risks

Period of insurance : 01 April 2025 – 31 March 2026

Policy limit : **Section I - Contract Works:**

Actual contract works project value of up to **R 1 billion and 60 months at inception**, thereafter unlimited in value and project time up to completion.

Section II - Contract Works Public Liability:

R25 million, any occurrence or series of occurrences arising out of one event

Policy coverage : Direct physical loss of or damage to any part of the Works and property insured including while in transit or at storage, including third party liability.

Policy deductibles : As per table below

| Deductible | Division / Coverage |
|---|---|
| Section I – Contract Works | |
| R 500,000 | Physical Damage to Property |
| R10 000 000 | Transmission – Theft and Vandalism |
| R 5,000,000 | Distribution - Theft & Vandalism |
| R1 000 000 | Eskom Rotek Industries – Theft and Vandalism |
| R 50,000 | Debris Removal |
| R 50,000 | Debris Removal (No Damage) |
| R 25,000 | Borrowing of plant for commission purposes |
| R 1,000 | Documentation |
| Section II – Contractors' Public Liability | |
| R 50,000 | Damage resulting from Fire and Spread of Fire |
| R 20,000 | All other losses |

Escap SOC Ltd Reg No 1993/003340/30

Note:

Cover is only limited to projects declared for the insurance period stipulated above and as verified and finalised by the Insurer.

Should you have any queries, please contact the Insurer at MmutleM@eskom.co.za

Yours sincerely



Moreti Tumelo Mphahlele
Escap SOC Ltd – Underwriting
Date: 01 April 2025

EMPLOYER'S NAME

CONTRACT NUMBER _____

Design, Supply, Install and Refurbish Solar Photovoltaic and Battery Energy Storage System in Gauteng Cluster As needed - Microgrid Storage Containers (Batteries)