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NEC3 Term Service Contract (TSC3)

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| **Between** | **ESKOM HOLDINGS SOC Ltd** **(Reg No. 2002/015527/30)** |
| **and** | **[Insert at award stage]****(Reg No. \_\_\_\_\_\_\_\_\_\_\_ )** |
| **for** | **ANNUAL SERVICE, CALIBRATION, REPAIR AND SUPPLY OF SPARES FOR PAMAS SBSS PARTICLE COUNT ANALYSER FOR A PERIOD 5 YEARS.** |
|  |  |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** | **[●]** |
| **Part C2** | **Pricing Data** | **[●]** |
| **Part C3** | **Scope of Work** | **[●]** |
|  |  |  |
| **CONTRACT No.** | **[Insert at award stage]** |
|  |  |
|  |  |
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PART C1: AGREEMENTS & CONTRACT DATA

|  |  |  |
| --- | --- | --- |
| **Contents:** |  | **No of pages** |
| **C1.1** | **Form of Offer and Acceptance** **[to be inserted from Returnable Documents at award stage]** | **[●]** |
| **C1.2a** | **Contract Data provided by the *Employer*** | **[●]** |
| **C1.2b** | **Contract Data provided by the *Contractor*****[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:

**Annual service, calibration, repair, and supply of spares for PAMAS SBSS particle count analyser for a period of 5 years.**

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 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 Task Order** |
|  | Value Added Tax @ 15% is | **As per Task Order** |
|  | The offered total of the amount due inclusive of VAT is[[1]](#footnote-1) | **As per Task Order** |

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 | *(Insert name and address of organisation)* |  | Date |  |
| Tenderer’s CIDB registration number:  |  |

## Acceptance

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

The terms of the contract, are contained in:

Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part C2 Pricing Data

Part C3 Scope of Work: Service Information

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

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
| Signature(s) |  |  |  |
| Name(s) |  |  |  |
| Capacity |  |  |  |
| for the Employer | **Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199** |
| Name & signature of witness | *(Insert name and address of organisation)* |  | 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)* |  | *(Insert name and address of organisation)* |
| Name & signature of witness |  |  |  |
| Date |  |  |  |

C1.2 TSC3 Contract Data

# Part one - Data provided by the *Employer*

|  |  |  |
| --- | --- | --- |
| **Clause** | Statement | Data |
|  | General |  |
|  | The *conditions of contract* are the core clauses and the clauses for main Option:  |  |
|  |  | **A: Priced contract with price list** |
|  | dispute resolution Option | **W1: Dispute resolution procedure** |
|  | and secondary Options |  |
|  |  | **X1: Price adjustment for inflation** |
|  |  | **X2 Changes in the law** |
|  |  | **X18: Limitation of liability** |
|  |  | **X19: Task Order** |
|  |  | Z: *Additional conditions of contract* |
|  | of the NEC3 Term Service Contract April 2013[[2]](#footnote-2) (TSC3) | If 2005 Edition is to be used delete “April 2013” and replace with “June 2005 with amendments June 2006”. Always delete this note before finalising this Data |
| 10.1 | The *Employer* is (name): | **Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa** |
|  | Address | **Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg** |
|  |  |  |
|  | Tel No. | **+27 17 799 3755** |
| 10.1 | The *Service Manager* is (name):  | **Sindi Mahlaba** |
|  | Address | **Majuba Power Station between****Volksrust and Amersfoort****Private Bag 9001****Volksrust****2470** |
|  | Tel | **017 799 3755** |
|  | e-mail | **sibiyain@eskom.co.za** |
| 11.2(2) | The Affected Property is | **Majuba Power Station** |
| 11.2(13) | The *service* is  | **Annual service, calibration, repair, and supply of spares for PAMAS SBSS particle count analyser for a period of 5 years** |
| 11.2(14) | The following matters will be included in the Risk Register | * **Matters notified as early warnings; and**
* **Decisions resulting from risk reduction meetings.**
 |
| 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 *law of the contract* is the law of  | **the Republic of South Africa** |
| 13.1 | The *language of this contract* is  | **English** |
| 13.3 | The *period for reply* is | **1 week** |
| 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 *Contractor* submits a first plan for acceptance within | **4 weeks of the Contract Date** |
| 3 | Time |  |
| 30.1 | The *starting date* is. | **TBC** |
| 30.1 | The *service period* is | **60 Months**  |
| 5 | Payment |  |
| 50.1 | The *assessment interval* is  | **between the 25th and 24th day of each successive month** |
| 51.1 | The *currency of this contract* is the  | **South African Rand** |
| 51.2 | The period within which payments are made is | **4 weeks.** |
| 51.4 | The *interest rate* is  | **the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands** |
| 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 *Employer*'s risks  | **1. Late invoicing** |
|  |  | **2. Injuries associated with working in the veld such as snake and insects’ bites.** |
|  |  |  |
| 83.1 | The *Employer* provides these insurances from the Insurance Table | **as stated for “Format TSC3” available on** *http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_* *From\_1\_April\_2014\_To\_31\_March\_2015.aspx* **(See Annexure A for basic guidance).**  |
|  | The *Employer* provides these additional insurances  | **as stated for “Format TSC3” available on** *http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_* *From\_1\_April\_2014\_To\_31\_March\_2015.aspx* **(See Annexure A for basic guidance)**  |
| 83.1 | The *Contractor* provides these additional insurances:  | **Whatever the *Contractor* deems necessary to protect his assets.**  |
|  | The minimum amount of cover for insurance against loss and damage caused by the *Contractor* to the *Employer*’s 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*  |
|  | The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of  | **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*  |
|  | The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer*’s property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor*’s Providing the Service for any one event is:  | **whatever the *Contractor* deems necessary, but to the minimum, as to what is required by Law**  |
|  | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* 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 *Contractor’s* 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 *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than  | **4 weeks.** |
| 11 | Data for Option W1 |  |
| W1.1 | The *Adjudicator*  | **The referring Party selects 2 (two) persons from the panel of NEC Adjudicators set up by the ICE-SA Division (or its successor body) of the South African Institution (see www.ice- sa.org.za) and whose availability he has confirmed to act as the Adjudicator. The other Party selects 1 (one) of the 2 (two) nominees to be the Adjudicator within 4 (four) days, failing which the person chosen by the first party will be the Adjudicator. The parties appoint the selected Adjudicator under the NEC3 Adjudicator’s Contract. 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 *Adjudicator nominating body* 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**](http://www.ice-sa.org.za) **) or its successor body.** |
| W1.4(2) | The *tribunal* is:  | **arbitration** |
| W1.4(5) | The *arbitration procedure* is  | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** |
|  | The place where arbitration is to be held is | **Johannesburg South Africa** |
|  | The person or organisation who will choose an arbitrator * if the Parties cannot agree a choice or
* if the arbitration procedure does not state who selects an arbitrator, is
 | **the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.** |
| 12 | Data for secondary Option clauses |  |
| **X1** | **Price adjustment for inflation** |  |
| X1.1 | The *base date* for indices is starting date of contract with 1 month prior | **[●].** |
|  | The proportions used to calculate the Price Adjustment Factor are: | **Proportion** | **linked to index for** | **Index prepared by** |
|  |  | **85%****15%** | **Labour****Non-adjustable** | **SEIFSA C3 All hourly paid employees** |
| **X2** | **Changes in the law** | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.** |
| **X13** | **Parent company guarantee** | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.** |
| **X18** | **Limitation of liability** |  |
| X18.1 | The *Contractor*’s liability to the *Employer* for indirect or consequential loss is limited to | **R0.0 (zero Rand)** |
| X18.2 | For any one event, the *Contractor*’s liability to the *Employer* for loss of or damage to the *Employer*’s 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/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_From\_1\_April\_2014\_To\_31\_March\_2015.aspx |
| X18.3 | The *Contractor*’s liability for Defects due to his design of an item of Equipment is limited to | **Not applicable** |
| 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  | **3 months after the end of the *service period*.** |
| **X19** | **Task Order** |  |
| X19.5 | The *Contractor* submits a Task Order programme to the *Service Manager* within  | **3 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 notcede, 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.  |
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| **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. |
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| **Z3** | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** |
| Z3.1 | Where a change in the *Contractor’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor*’s B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change. |
| Z3.2 | The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*. |
| Z3.3 | Where, as a result, the *Contractor’s* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor*’s obligation to Provide the Service. |
| Z3.4 | Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. |
|  |  |
| **Z4** | **Confidentiality** |
| Z4.1 | The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient. |
| Z4.2 | If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*. |
| Z4.3 | In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed. |
| Z4.4 | The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.  |
| Z4.5 | The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause. |
|  |  |
| **Z5** | **Waiver and estoppel: Add to core clause 12.3:** |
| Z5.1 | Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties*,* the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing. |
|  |  |
| **Z6** | **Health, safety and the environment: Add to core clause 27.4** |
| Z6.1 | The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:* accepts that the *Employer* may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Affected Property;
* warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
* undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing.
 |
| Z6.2 | The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing. |
|  |  |
| **Z7** | **Provision of a Tax Invoice and interest. Add to core clause 51** |
| Z7.1 | Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate. |
| Z7.2 | If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made. |
| Z7.3 | The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*’s VAT number 4740101508 on each invoice he submits for payment. |
|  |  |
| **Z8** | **Notifying compensation events** |
| Z8.1 | Delete from the last sentence in core clause 61.3, “unless the *Service Manager* should have notified the event to the *Contractor* but did not”. |
| Z8.2 | Add to core clause 62.3, “The *Service Manager's* reply which is an acceptance of a quotation for a compensation event may require the due authority of the *Employer*.” |
| Z8.3 | Add to core clause 62.5, “The *Service Manager* notifies the *Contractor* if the *Employer's* authority is required and includes in his notification any extension to the period within which he is required to reply to the *Contractor's* quotation. |
|  |  |
| **Z9** | ***Employer’s* limitation of liability** |
| Z9.1 | The *Employer’s* liability to the *Contractor* for the *Contractor’s* indirect or consequential loss is limited to R0.00 (zero Rand) |
| Z9.2 | The *Contractor*’s entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer*’s liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.  |
|  |  |
| **Z10** | **Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**  |
| Z10.1 |  or had a business rescue order granted against it. |
|  |  |
| **Z11** | **Ethics** |

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

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

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

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

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

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

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

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

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

Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 11.2 The *Employer* may terminate the *Contractor*’s obligation to Provide the Service 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 Service for this reason.

Z 11.3 If the *Employer* terminates the *Contractor*’s obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.

Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

|  |  |
| --- | --- |
| **Z12** | **Communications** |
| Z12.1 | Add to the end of the first sentence in core Clause 13.1:“excluding communication by a communications protocol allowing the interchange of short text messages between mobile telephone.” |

C1.2 Contract Data

# Part two - Data provided by the *Contractor*

**Notes to a tendering contractor:**

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)[[3]](#footnote-3) in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Where a form field like this [     ] appears, data is required to be inserted relevant to the option selected. Click on the form field ***once*** and type in the data. Otherwise complete by hand and in ink.

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

|  |  |  |
| --- | --- | --- |
| Clause | Statement | Data |
| 10.1 | The *Contractor* is (Name): |  |
|  | Address |  |
|  | Tel No. |  |
|  | Fax No. |  |
| 11.2(8) | The *direct fee percentage* is**Note: *direct fee percentage* is applied to the Defined Cost of other work** | **%** |
|  | The *subcontracted fee percentage* is**Note: *subcontracted fee percentage* is applied to the Defined Cost of subcontracted work** | **%** |
| 11.2(14) | The following matters will be included in the Risk Register**Note: The listing of risks on the Risk Register does not have the effect of fixing either of the parties with any particular risk.** |  |
| 11.2(15) | The Service Information for the *Contractor*’s plan is in: |  |
| 21.1 | The plan identified in the Contract Data is contained in: |  |
| 24.1 | The key people are:**Please insert the name, job, responsibilities, qualifications and experience of its key people. Provide for additional key persons if necessary****Note: Ensure that the key people listed have direct involvement with the contract (not CEO, MD, ED’s of company or parent company unless the individual has an active role in the contract)** |  |
|  | 1 Name: |  |
|  |  Job: |  |
|  |  Responsibilities: |  |
|  |  Qualifications: |  |
|  |  Experience: |  |
|  | 2 Name: |  |
|  |  Job |  |
|  |  Responsibilities: |  |
|  |  Qualifications: |  |
|  |  Experience: |  |
|  |  |  |
|  |  | **CV's (and further key person's data including CVs) are in** **.** |
| **A** | **Priced contract with price list** |  |
| 11.2(12) | The *price list* is in**Note: The *price list* is used for payment purposes****Please insert a reference to the list of activities prepared by the Tenderer which he expects to carry out in Providing the Services indicating a lump sum for each activity which requires such.** |  |
| 11.2(19) | The tendered total of the Prices is | **R** |

Part 2: Pricing Data

**TSC3 Option A**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions: Option A | 2 |
| C2.2 | The *price list*  | **[●]** |

C2.1 Pricing assumptions: Option A

# How work is priced and assessed for payment

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

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 1111.2 | (12) The Price List is the *price list* unless later changed in accordance with this contract. |
|  |  | (17) The Price for Services Provided to Date is the total of * the Price for each lump sum item in the Price List which the *Contractor* has completed and
* where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.
 |
|  |  | (19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |

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

# Function of the Price List

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

# Link to the *Contractor*’s plan

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

# Preparing the *price list*

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

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

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

## Format of the *price list*

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

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

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

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

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

C2.2 the *price list*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item nr** | **Description** | **Unit**  | **Qty** | **Rate** | **Price** |
| 1 | Annual Service and Calibration | Yearly | 5 |  |  |
| 2 | Annual Service and Calibration | Yearly | 5 |  |  |
| 3 | Consumables (Syringe Plunger) | Yearly | 5 |  |  |

|  |  |
| --- | --- |
| The total of the Prices |  |

Part 3: Scope of Work

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
|  | This cover page | 1 |
| C3.1 | *Employer*’s Service Information |  |
| C3.2 | *Contractor*’s Service Information(insert at award stage or delete if not applicable) |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  | Total number of pages |  |

C3.1: Employer’s service Information

**Part 3: Scope of Work 24**

**C3.1: Employer’s service Information 24**

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# Description of the *service*

## Executive overview

Provision of annual service, calibration to ISO 11171, repairs as and when required and supply of original spares and consumables for the PAMAS SBSS, serial no 320-1072.

## *Employer*’s requirements for the *service*

The *Contractor* performs the following as part of the *service*:

* Conducts service and calibration yearly. The *Contractor* should provide the calibration certificate that is traceable.
* Replaces instrument spares to be changed during servicing and calibration of the instrument period (yearly). The *Contractor* shall provide the job card or service report of the work done.
* Conducts repairs as and when required. The *Contractor* shall provide the job card or service report of the work done.
* Provides original spares and consumables on an as and when required basis. Spares that are used frequently should be on shelf to avoid delays in repairs.

## Interpretation and terminology

### 1.3.1 Abbreviations

The following abbreviations are used in this Service Information:

|  |  |
| --- | --- |
| **Abbreviation** | **Meaning given to the abbreviation** |
| **BBBEE** | Broad Based Black Economic Empowerment |
| **CSM** | Chemical Services Manager |
| **ISO** | International Standard Organisation |
| **OEM** | Original Equipment Manufacturer  |
| **PO** | Purchase order |
| **SOW** | Scope of Work |

### 1.3.2. Terminology

Below are some descriptions and clarifications of terms used by the *Employer* in this document.

| **Term** | **Definition** |
| --- | --- |
| **Requirement** | A condition or capability needed by a user to solve a problem or achieve an objective. |
| **Scope of Supply:** | The sum of the products, services, and results to be provided as a project. |
| **Shall, Should, May:** | “Shall” is used to denote a requirement, “Should” a recommendation and “May” to denote permission in *Employer’s* Service Information and relevant specifications. |
| **Include:** | If ”include” is followed by other, specific, words it will not be construed as limiting the meaning of the general words preceding it, save where the word “similar” precedes the word “include”. |
| **Including:** | If “Including” is followed by other, specific, words will not be construed as limiting the meaning of the general words preceding it, save where the word “similar” precedes the word “including”. |

# Management strategy and start up.

## *Contractors* plan for the service

## Description of the Service

* The *Contractor* shall conduct service, calibration to ISO 11171, repairs, and supply of original spares of PAMAS SBSS Particle count analyser serial no 320-1072. All documentation needed as mentioned in **1.2** shall be provided to the *Employer*.
* The service and calibration are to be conducted at the Majuba premises, oil laboratory SSB.
* In cases whereby the *Contractor* needs to repair the analyser in their premises, they should indicate to the *Employer* and provide a DEMO where possible if the analyser will be offsite for more than four weeks.
* The *Contractor* shall be available for the repairs within 3 days starting from a day when a call out was initiated.
* Only service Technicians or Engineers that were trained by the OEM shall be allowed to conduct maintenance, calibration, and repairs on the PAMAS SBSS. Proof will be required.

Note that the contract will be an NEC, hence it is important for the Supplier to familiarise themselves with the NEC requirements.

* 1. **Management meetings**

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Title and purpose** | **Approximate time & interval** | **Location** | **Attendance by:** |
| Assessment on Service as per program (for payment purposes and for planning and progress feedback)  | As and when required | Majuba Power Station or MS Teams | *Employer &* *Contractor* |

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. If the meeting was conducted on MS Teams, the meeting shall be recorded, and the recording shall be used as minutes of 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.

## *Contractor*’s management, supervision, and key people

The *Contractor* is allowed to use its own Organizational Structure and to provide its own Job profiles for providing the service to Majuba Power Station.

The *Contractor* must use service Technicians or service Engineers that have been trained by the OEM. Proof of competency to be provided.

|  |  |  |  |
| --- | --- | --- | --- |
| **Skill** | **Quantity** | **Competency** | **Experience** |
| Service Technician/Engineer | ONE | Training provided by OEM on PAMAS SBSS (Repairs, troubleshooting, maintenance, calibration) | 2 years or more |
| Service Technician/Engineer | ONE | ISO 11171 Requirements: hydraulic fluid power – calibration of automatic particle counters for liquids | 2 years or more |

* 1. **Provision of bonds and guarantees**

Not applicable

* 1. **Documentation control**

General correspondence shall be in writing via e-mail.

Correspondence that relates to contractual conditions shall be written formally on a letter had of the organisation and addressed to the relevant person via e mail. Correspondence shall be done by the *Employer* to the *Contractor* unless formal delegation has been made.

## Invoicing and payment

The *Contractor* ensures that the requirement in terms of Section 20(4)(C) of the Value Added Tax Act, no 89 of 1991 (as amended by the Revenue Laws Amendment Act 45 of 2003), that the VAT registration number of the recipient of the tax invoice, appears on the said tax invoice in order for the invoice to fully comply with the requirements of a valid invoice for VAT purposes as contained in the said Section 20(4)(C), is adhered to. The *Employer* requires adherence by the *Contractor* to this requirement, applicable from 1 June 2004. No payment will be made on tax invoices not fully meeting the requirement.

The *Contractor* delivers an original Tax Invoice to the *Employer’s* Financial Accounting group. The payment period will start from the date and time at which the invoice and all relevant documentation were received at this office.

* The *Employer’s* VAT Registration Number is: 4740101508
* Particulars included on the *Contractor*’*s* Tax Invoice
* The name and address of the *Contractor*
* The date of the invoice
* An invoice number
* VAT registration number (*Contractor* and *Employer’s*)
* Reference to Contract and/or Task instruction number
* A descriptive title of the service covered by the Invoice and/or the Contract’s assessment number
* A copy of the Assessment Certificate/Signed Task instruction

All invoices are to be addressed as follows:

Eskom Holdings SOC Limited - Majuba Power Station

Private Bag 9001

Volksrust
REPUBLIC OF SOUTH AFRICA

2470

Attention: Financial Accounting

or

Eskom Holdings SOC Limited - Majuba Power Station

Private Bag 9001

Volksrust
REPUBLIC OF SOUTH AFRICA

2470

Attention: Financial Accounting

The *Contractor* attaches the below original Tax invoice to the *Employer* for assessment.

* 1. **Contract change management**

Not applicable

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

Not applicable

* 1. **Insurance provided by the *Employer***

Not applicable

* 1. **Training workshops and technology transfer**

Not applicable

* 1. **Design and supply of Equipment**

Not applicable

* 1. **Things provided at the end of the *service period* for the *Employer*’s use**

Instrument spares and consumables

# Management of Work Done by Task Order

This *service* is managed by the issuance of Task Orders by the *Service Manager*. The *Contractor* performs the instructed *services* against the rate-based task orders, using the rates in the Prices.

## The *Employer’s* SAP task order system

* A SAP task order, together with an instruction from the *Employer* to perform a Task, is the *Employer’s* notice to the *Contractor* to carry out a Task.
* The *Contractor* does not perform any work without a SAP task order accompanying the *Employer’s* instruction to perform a Task.
* The *Contractor* performing work without a SAP task order is done at the risk of non-payment by the *Employer*.
* The *Employer* may not issue a SAP task order for *services* to end after the *completion date* of the Contract.

To enable payment by the *Employer’s* representative, the *Contractor* should submit the job card if it is a repair and a service report and calibration certificate when the annual service was conducted*.*

The *Employers* representative and the *Contractor* should sign the on-the-job card and service reports after the service is completed. Payment shall not be made when the work was not completed, did not meet the expectations and the documents are not submitted or signed by both parties.

1. **Health and safety, the environment and quality assurance**

## Health and safety risk management

The *Contractor shall* comply with the health and safety requirements (7 Annexure C 3 OHS Tender Evaluation Low Risk, Annexure A Supplier Risk Category 240-77433139 and 240-73418055 MANUFACTURE OR LOW RISK SERVICES) and all these document will form part of the tender documents

## Environmental constraints and management

The Supplier shall comply with the environmental criteria and constraints [Environmental Management Requirements for Contractors and Suppliers ENV/GEN/SPEC/01.

## Quality assurance requirements

*Contractor* to provide service report and calibration for the service that has been conducted on the instrument, the certificate conducted should be traceable. The *Contractor* to also submit the job card for the repairs conducted on the instrument.

The *Contractor* must use the original spares when conducting the service.

The *Contractor* must use personnel trained by the OEM.

* 1. **Key Performance Indicator Table**

|  |  |  |
| --- | --- | --- |
| KPA Description | Performance Measure/ Indicator | Target |
| Training records of Technicians, trained by OEM **(PAMAS SBSS PARTICLE COUNT)** | Proof of competency to be provided to the *Employer*  | 100% |
| Availability of original spares | Inventory list to be provided to the *Employer* | 100% |
| Training on ISO 11171 requirements | Proof of competency to be provided to the *Employer* | 100% |
| Not less than 2 years relevant experience | Proof to be provided to the *Employer* | 100% |

* 1. **Criteria for user Specification**

Where criteria for user specification is not met, the job was not completed, did not meet the expectations and specifications, payment shall not be made to the *Contractor*. Timelines to resolve the problem shall be agreed upon by the *Employer* and the *Contractor* and records shall be kept.

In situations whereby the criteria for user specification is not met because of normal situations, **Service Level Table for Low Service Damages** will be applied.

Service Level Table for Low Services Damages

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Description** | ***Employer*’s Requirement** | **Damages payable by *Contractor*** |
| 1 | Spares unavailability | Spares that are used frequently should be readily available on shelf and provided as and when required. | 5% of the total purchase order if the spare is delivered one week later, 7.5% of the total purchase order if the spare is delivered two to three weeks later and 10% of the total purchase order if a spare is delivered later than four weeks and all the deductions to be subtracted from the original invoice of the purchase order. |
| 2 | Call out for repairs | *Contractor* must report to Majuba within 3 days after being called out for repairs. | 5% of the total purchase order shall be deducted if the *Contractor* is unable to send the Technician within 5 days. |
| 3 | Provision of a Demo instrument | Where practicable, the *Contractor* should provide DEMO. | 5% of the total purchase order shall be deducted if the *Contractor* is unable to send the DEMO when an instrument takes more than 4 weeks to be repaired. |

* 1. **Service Level Table**

The following table depicts the level of performance required of the *Contractor*. Should the *Contractor* be unable to meet these requirements, Low Service Damages will be claimed from the *Contractor*.

The total Low Service Damages will be limited to 10% per month per order based on as and when required service.

**Service Level Table for Low Service Damages**

1. **Procurement**
	* 1. **Minimum requirement of people employed**

|  |  |  |  |
| --- | --- | --- | --- |
| **Skill** | **Quantity** | **Competency** | **Experience** |
| Service Technician/Engineer | ONE | Training provided by OEM on PAMAS SBSS (Repairs, troubleshooting, maintenance, calibration) | 2 years or more |
| Service Technician/Engineer | ONE | ISO 11171 Requirements: hydraulic fluid power – calibration of automatic particle counters for liquids | 2 years or more |

### BBBEE and preferencing scheme

### The *Employer* as an organ of state is governed by the Preferential Procurement Regulations 2011 which stated that all contracts for Goods or Services are procured in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

The following preference point systems will be applicable to all tenders

The use of the 90/10 system (90 (price) and 10 (BBBEE) preference point system for procurement greater than R1 M.

A two stage of tender evaluation will apply

* First stage

The use of functionality (technical evaluation) as a gatekeeper. Only *Contractors* who meet the functionality threshold will be further evaluated.

Where applicable a financial evaluation will be conducted by the *Employer* to further evaluate the financial viability of the *Contractor*.

Financial analysis will be conducted on all responsive and compliant tenders prior to the price and preference scoring.

* Tenders which do not meet the *Employer’s* financial requirements will not be evaluated further.

Second stage.

*Contractors* will be further evaluated in terms of their price and B-BBEE status level of contribution using the 90/10 preference point system:

|  |  |
| --- | --- |
| 90% | Price; and |
| 10% | B-BBEE Status Level of Contribution |

An approach involving cross functional teams will be taken during the evaluation of tenders to ensure that the best interests of the *Employer* are assured.

Local Production and Content in terms of Regulation 9 of the Preferential Procurement Regulations

The Services is not covered under a designated sector.

* **Company Health and Safety**

The company must provide a Health and Safety plan by tender closing.

* **Functionality (Technical Evaluation)**

A weighted score-card approach is used to evaluate the technical compliance of the tenders against the specifications. The contractor will need to have a weighted score of 80% or more to qualify technically.

## Subcontracting

The *Contractor* should inform the *Employer* when they have to subcontract services. The sub-contracted *Contractor* should comply fully to the SOW conditions.

## Plant and Materials

### Specifications

Tools, equipment, and vehicles are inspected prior to the commencements of, as well as during the duration of the contract.

# Working on the Affected Property

The *Contractor* adheres to the *Employer’s* procedure. Fitness for duty requirements for vendors and *Contractors* who are required to perform work inside the owner-controlled areas of Majuba Power Station. This document is not applicable to visitors.

## *Employer*’s site entry and security control, permits, and site regulations

## As per Point 2.3 *Contractor*’s management, supervision and key people

## People restrictions, hours of work, conduct and records

All work will be performed during normal working hours, i.e. Monday to Thursday from 07h30 to 16h45, with a lunch break of 30 minutes, and Fridays from 07h30 to 12h30, with no lunch break. Additional hours may be required if emergencies occur (instrument breakdown after hours). This requirement should be catered for. It will be the responsibility of the *Contractor* to ensure that his employees are on time for work.

## Health and safety facilities on the Affected Property

### Emergency mustering, accountability, and evacuation

Due to the nature of the Site, it is a requirement to have full accountability of employees at all times. It is therefore required that the *Contractor* has and maintains a current status and accountability list of all his personnel on *site*. The accountability list shall be handed to the *Employer* each time a change occurs.

The *Contractor* will ensure that his *site* supervisor takes full responsibility of this requirement and that he and his employees are fully conversant with the mustering requirements as detailed in procedure 250-158605346 that can be obtained from the documentation group on *site*.

### Health and safety on Site

Refer to SHE Specification for *Contractors* (which is available on request from the *Employer*).

Prior to work starting on the Site, the *Contractor* delivers his health, safety and environmental plan as required, in terms the Constructions Regulations promulgated under the of Occupational Health and Safety Act 85 of 1993, to the *Employer* for his acceptance. The *Contractor* does not proceed with any work on the *site*, until the plan has been accepted."

### Occupational Health and Safety Act (OH&SA#85 of 1993)

* The Act is the governing law for all work and is complied with at all times.
* *Employee* protective clothing as specified in the Act for all work, except work in the radiological controlled zone, is provided and is kept in good order by the *Contractor*. Protective clothing for work in the controlled zone is prescribed and is supplied by the *Employer*.
* The *Contractor* completes the Construction Regulations Checklist as per Appendix 3 within 4 weeks of the *starting date*.

### Medical aid facility

First aid facilities are available on site.

Casualty facilities are available at hospitals within a 80km radius.

## Environmental controls, fauna & flora

The *Contractor* ensures that all plant and materials, *services* and *work* supplied in terms of this contract conform to all applicable environmental legislation and to the *Employer’s* environmental specifications. Personnel and plant shall not enter property beyond the road reserve boundary irrespective of whether or not the boundary is fenced.

The *Contractor* shall take every precaution to avoid damage to vegetation within the area that falls outside the designated work areas. Any damage caused is to be repaired at the *Contractor’s* expense.

Storage and stockpiling of materials within the road reserve will not be permitted without the written consent of the *Environmental Officer*.

## Laws and regulations to be complied with

Specific laws to be complied with:

The *Contractor* at his own expense the Protection of Information Act 84 of 1982 and in general with all laws, regulations, bye-laws and requirements of local and other authorities which may be applicable to the *Works* and as amended or replaced.

At the *site* the *Contractor* is at all relevant times under the authority of the *Employer’s* Land Portfolio Manager for the purpose of giving effect to the provisions of the above clause hereof. Notwithstanding the afore said, this does not in any way relieve the *Contractor* of his obligation to comply with the relevant legislation, should the *Employer’s* Land Portfolio Manager fail to act in any specific manner which makes him or the *Employer* liable in any way whatsoever.

The *Contractor* at its own expense complies with the Basic Conditions of Employment Act No. 75 of 1997. The *Contractor* indemnifies the *Employer* against any claims, proceedings, compensation and cost arising from the *Contractor* transgression of the Act.

The *Contractor* complies with all relevant labour legislation and applies to the Ministerial Determination for working hours, and obtains approval prior to the commencement of any work on *site*. The *Contractor* submits the approval to the *Employer* for acceptance.

## Cooperating with and obtaining acceptance of Others

Each Party is responsible for all dealings with government and local authorities relating to its role in terms of the contract and obtains and maintains at its own expense such permits, licences, and authorisations as may be required in this regard.

The *Contractor* maintains at all times a harmonious relationship with and co-operates with the *Employer* and or their employees who may be involved.

## Records of *Contractor*’s Equipment

All equipment and tools are subject to a security screening allowed on the Site. All equipment and tools are listed and specified before brought on Site. This list serves as evidence for removal permits upon Completion of the *works*. Vehicles are only allowed on Site if justification is provided to the *Employer* that such a vehicle is essential to Provide the Services.

## Equipment provided by the *Employer*

Not applicable

Site services and facilities

### Provided by the *Employer*

* Power
* Water
* Sanitation
* Medical Centre
* Kitchen facilities excluding food

### Provided by the *Contractor*

* *Contractor* provides its own transport.
* *Contractor* provides everything necessary for Providing the Service (tools, etc.)

## Control of noise, dust, water, and waste

The *Contractor* shall execute the *works* in a manner that ensures dust and noise control measures and waste is disposed safely.

## Hook ups to existing works

Not applicable

## Tests and inspections

Not applicable

# List of drawings

## Drawings issued by the *Employer*

Not applicable

* 1. **Activities to be performed before the *Contractor’s* arrival at the Affected Property**

## Fraudulent Documents

The *Contractor’s* employees that have presented fraudulent documentation are permanently denied access to the *Employer’s* Affected Property.

## 2.16.2. False Declarations

The *Contractor’s* employees that have made false declarations are permanently denied access to the *Employer’s* Affected Property.

## Communications

All communication is addressed to the *Service Manager*. All communication makes reference to:

* the contract number issued by the *Employer* i.e. 4600…….;
* the title of the contract;
* the specific SC3 clause under which the communication is issued; and
* an unique letter reference number

## Correspondence Numbers

The unique reference numbers to be used for written correspondence between the *Employer* and *Contractor* and vice versa is:

* from the *Employer* to the *Contractor*: 46600….. P/S 0xxx; and
* from the *Contractor* to the *Employer*: 46600…. S/P 0xxx with 466002… referring to the contract number and the next sequential letter (channel) number.

All documents transmitted to the *Employer* for review/acceptance/record/information are transmitted under cover of a document transmittal note with a completed and signed transmittal cover sheet. The title of each letter clearly summarises the purpose of the letter. All communications is faxed / hand delivered to the Employer and followed up with a confirmation e-mail. When these letters are submitted by means of e-mail, the title of the letter is reflected in the subject line and only one letter is submitted per e-mail.

## Contract change management

The *Consultant* provides quotations for compensation events detailing the following items as a minimum:

* Introduction;
* Executive summary;
* Contractual basis of compensation event;
* Details of the compensation event;
* Assessment of compensation event;
* Conclusion;
* Accepted programme showing impact of delay or proving basis of compensation event; and
* Appendices.

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

In order to substantiate the Defined Cost of compensation events, the *Employer* requires the *Contractor* to keep records of amounts paid by him for people employed by the *Contractor*, Plant and Materials, work subcontracted by the *Contractor* and Equipment. [See clause 11.2(5) and 63.2]. The records must be kept in both electronic and hard copy, and must be issued to the *Employer* at the earliest possible time.

## Equipment

The *Contractor* is required to supply all tools, spares and consumables to provide the Service. All tools and vehicles must comply with the *Employers* safety standards.

## Things provided at the end of the *service period* for the *Employer*’s use

### Equipment

None

### Information and other things

None

## Management of work done by Task Order

# As per Point 2.13

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*. [↑](#footnote-ref-1)
2. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-2)
3. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-3)