



## NEC3 Term Service Contract (TSC3)

Between **ESKOM HOLDINGS SOC LIMITED**

(Reg No. 2002/015527/30)

and

for **Coating of cables in cable spreading areas under LV rooms from U1-6**

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**CONTRACT No.** \_\_\_\_\_

**Documentation prepared by:**

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## **PART C1:      AGREEMENTS & CONTRACT DATA**

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### **Contents:**

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**C1.2b** Contract Data provided by the *Contractor*

# 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:

### Coating of cables in cable spreading areas under LV rooms from U1-6

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.

|          |  |  |
|----------|--|--|
| Option A | The offered total of the Prices exclusive of VAT is                  |  |
|          | Value Added Tax @ 15% is   |  |
|          | The offered total of the amount due inclusive of VAT is <sup>1</sup> |  |
|          |  |  |

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 \_\_\_\_\_

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

For the  
tenderer:

(Insert name and address of organisation)

Name &  
signature of  
witness

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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the  
Employer**

ESKOM HOLDINGS SOC LIMITED (REG NO:2002/015527/30) A JURISTIC PERSON INCORPORATED IN TERMS OF THE COMPANY LAWS OF THE REPUBLIC OF SOUTH AFRICA, WITH ITS REGISTERED OFFICE AT MEGAWATT PARK, MAXWELL DRIVE, SANDTON  
**LETHABO POWER STATION**

Name &

(Insert name and address of organisation)

signature of  
witness

Date

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

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

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)*Name &  
signature  
of witness

Date

ESKOM HOLDINGS SOC LIMITED (REG  
NO:2002/015527/30) A JURISTIC PERSON  
INCORPORATED IN TERMS OF THE COMPANY  
LAWS OF THE REPUBLIC OF SOUTH AFRICA,  
WITH ITS REGISTERED OFFICE AT MEGAWATT  
PARK, MAXWELL DRIVE, SANDTON  
**LETHABO POWER STATION**

*(Insert name and address of organisation)*

## C1.2 TSC3 Contract Data

### Part one - Data provided by the *Employer*

| Clause | Statement   | Data  |
|--------|---|---|
| 1      | <b>General</b>  |   |
|        | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: |   |
|        |   | <p><b>The Main Options</b></p> <p><b>A Priced contract with price list</b></p> <p><b>Secondary Options</b></p> <p><b>X2 – Changes in the law</b></p> <p><b>X19 – Task Order</b></p> |
|        | dispute resolution Option   | <b>W1: Dispute resolution procedure</b>   |
|        |   |   |
|        |   | <b>Z: Additional conditions of contract</b>   |
|        | of the NEC3 Term Service Contract (June 2005) <sup>2</sup>                              |   |
| 10.1   | The <i>Employer</i> is (name):  | <b>Eskom Holdings Limited (reg no: 2002/015527/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa</b>                                 |
|        | Address   | <b>Registered office at Lethabo Power Station, Private Bag X415, VEREENIGING</b>  |
| 10.1   | The <i>Service Manager</i> is (name):   |   |
|        | Address   | <b>Lethabo Power Station</b>  |
|        | Tel   |   |

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

Fax

e-mail

|          |  |   |
|----------|--|---|
| 11.2(13) | The <i>service</i> is  | <b>Coating of cables in cable spreading areas under LV rooms from U1-6</b>  |
| 11.2(15) | The Service Information is in                                    | <b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>  |
| 12.2     | The <i>law of the contract</i> is the law of                     | <b>the Republic of South Africa</b>   |
| 13.1     | The <i>language of this contract</i> is                          | <b>English</b>  |
| 13.3     | The <i>period for reply</i> is                                   | <b>24 Hour's</b>  |
| <b>2</b> | <b>The Contractor's main responsibilities</b>                    | <b>Supply and Replacement of Unit 3 high frequency transformer stolen earth cables</b>  |
| 21.1     | The <i>Contractor</i> submits a first plan for acceptance within | <b>1 week of the Contract Date</b>  |
| <b>3</b> | <b>Time</b>  |   |
| 30.1     | The <i>starting date</i> is.                                     |   |
| 30.1     | The <i>service period</i> is                                     | <b>21 days</b>  |
| <b>4</b> | <b>Testing and defects</b>                                       | <b>One week after completion of task – correction period</b>  |
| <b>5</b> | <b>Payment</b>   |   |
| 50.1     | The <i>assessment interval</i> is                                | <b>After completion of each task order.</b>   |
| 51.1     | The <i>currency of this contract</i> is the                      | <b>South African Rand</b>   |
| 51.2     | The period within which payments are made is                     | <b>30 days from the date of the receipt of the invoice.</b>   |
| 51.4     | The <i>interest rate</i> is                                      | <p>(i) zero percent above 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 (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) The LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates</p> |



|      |   |  |
|------|---|--|
|      |   | Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.  |
| 6    | <b>Compensation events</b>  | (If the optional statement for this section is not used, no data will be required for this section)  |
| 7    | <b>Use of Equipment Plant and Materials</b>   | <b>Supply of Electricity, Water, Compressed air Scaffolding and Telecommunications.</b>  |
| 8    | <b>Risks and insurance</b>  |  |
| 83.1 | The <i>Employer</i> provides these insurances from the Insurance Table  | as stated for “Format TSC3” available on <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance)                                     |
| 83.1 | The <i>Employer</i> provides these additional insurances  | as stated for “Format TSC3” available on <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance))                                    |
| 83.1 | The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is  | the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> |
| 83.1 | The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:  | the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a>   |
| 83.1 | The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is: | Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .   |
| 83.1 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:  | As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands)..  |

|           |  |   |
|-----------|--|---|
| <b>9</b>  | <b>Termination</b>   | <p>Poor performance of work will lead to terminate contract.</p> <p>Performance Criteria will be measured as Follows:</p> <ul style="list-style-type: none"> <li>• Check sheets will be used</li> <li>• Number and Repetition of NCR</li> <li>• NEC Term Service termination clauses will be used.</li> </ul> |
| <b>10</b> | <b>Data for main Option clause</b>   |   |
| <b>A</b>  | <b>Priced contract with price list</b>   |   |
| 20.5      | The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than | <b>1 week after works is complete.</b>  |
| <b>11</b> | <b>Data for Option W1</b>  |   |
| W1.1      | The <i>Adjudicator</i> is (Name)   | The person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him.   |
| W1.2(3)   | The <i>Adjudicator nominating body</i> is:   | The Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See <a href="http://www.jointcivils.co.za">www.jointcivils.co.za</a> )  |
| W1.4(2)   | The <i>tribunal</i> is:  | Arbitration   |
| W1.4(5)   | The <i>arbitration procedure</i> is  | The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.  |
|           | The place where arbitration is to be held is   | South Africa  |
|           | The person or organisation who will choose an arbitrator   | The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.   |
|           | - if the Parties cannot agree a choice or  |   |
|           | - if the arbitration procedure does not state who selects an arbitrator, is  |   |
| <b>12</b> | <b>Data for secondary Option clauses</b>   |   |
| <b>X2</b> | <b>Changes in the law</b>  | No data is required for this Option   |

|            |  |  |
|------------|--|--|
| <b>X17</b> | <b>Low service damages</b>   |  |
| X17.1      | The <i>service level table</i> is in   | <ul style="list-style-type: none"> <li>▪ Late delivery of Spares with more than one day - 2% on the payment invoice.</li> <li>▪ 2 days delay on completion of project - 5% on the payment invoice.</li> <li>▪ Late delivery of Hired on hired equipment more than 2 days - 2% on payment invoice.</li> </ul>   |
| <b>X18</b> | <b>Limitation of liability</b>   |  |
| X18.1      | The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to  | <b>R0.0 (zero Rand)</b>  |
| X18.2      | For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to                                  | the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a>   |
| X18.3      | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to  | <p>The greater of</p> <ul style="list-style-type: none"> <li>• the total of the Prices at the Contract Date and</li> <li>• the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a></li> </ul>   |
| X18.4      | The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | <p>The total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> <li>• Defects due to his design, plan and specification,</li> <li>• Defects due to manufacture and fabrication outside the Affected Property,</li> <li>• loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• Infringement of an intellectual property right.</li> </ul> |
| X18.5      | The <i>end of liability date</i> is  | <b>End of the <i>service period</i>.</b>   |

## **Z1 Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry.

## **Z2 Joint ventures**

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

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

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

## **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer*

or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

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

## **Z5 Confidentiality**

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

## **Z6 Waiver and estoppel: Add to core clause 12.3:**

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

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

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
  - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and

- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z7.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

- Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z9 Notifying compensation events**

- Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Service Manager* should have notified the event to the *Contractor* but did not".

**Z10 *Employer's* limitation of liability**

- Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

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

- Z11.1 or had a judicial management order granted against it.

## Z12: Supplier Development and Localization

### Section 1: Pre-qualification Criteria

| Failure to meet Pre-qualification at tender stage will lead to disqualification   |  |     |    |                          |                                     |  |  |
|---|--|-----|----|--------------------------|-------------------------------------|--|--|
| <p><b>1.1 Minimum BBBEE status level of contributor?</b></p> <p>If Yes, what is the BBBEE status and/or level required</p>  | <table border="1"> <thead> <tr> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td colspan="2"></td> </tr> </tbody> </table> | YES | NO | <input type="checkbox"/> | <input checked="" type="checkbox"/> |  |  |
| YES   | NO   |     |    |                          |                                     |  |  |
| <input type="checkbox"/>  | <input checked="" type="checkbox"/>  |     |    |                          |                                     |  |  |
|   |  |     |    |                          |                                     |  |  |
| <p><b>1.2 Is there BBBEE category targeted for this enquiry?</b></p> <p>If Yes, BBBEE category</p>  | <table border="1"> <thead> <tr> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td colspan="2"></td> </tr> </tbody> </table> | YES | NO | <input type="checkbox"/> | <input checked="" type="checkbox"/> |  |  |
| YES   | NO   |     |    |                          |                                     |  |  |
| <input type="checkbox"/>  | <input checked="" type="checkbox"/>  |     |    |                          |                                     |  |  |
|   |  |     |    |                          |                                     |  |  |
| <p>Tender Returnable if the above elements are requirements;</p> <ul style="list-style-type: none"> <li>Valid original or certified copy of sworn affidavit in the case of EME's must be submitted (affidavit must be completed fully), or</li> <li>Valid Copy B-BBEE Certificate issued by CIPC for EME's. OR</li> <li>Valid original or certified copy of the B-BBEE certificate / sworn affidavit in the case of QSE's must be submitted, or</li> <li>Valid original or certified copy of the B-BBEE certificate issued by SANAS Accredited Verification Agency for Generic Entities must be submitted, or</li> <li>For JV's only valid original or certified copy, B-BBEE Certificate issued by a SANAS Accredited Verification Agency will be accepted and the certificate should be in the name of the JV.</li> </ul> |  |     |    |                          |                                     |  |  |
| <p><b>1.3 Minimum subcontracting requirement for this?</b></p> <p>If Yes, what is the minimum percentage?</p>   | <table border="1"> <thead> <tr> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td colspan="2"></td> </tr> </tbody> </table> | YES | NO | <input type="checkbox"/> | <input checked="" type="checkbox"/> |  |  |
| YES   | NO   |     |    |                          |                                     |  |  |
| <input type="checkbox"/>  | <input checked="" type="checkbox"/>  |     |    |                          |                                     |  |  |
|   |  |     |    |                          |                                     |  |  |
| <p>Tender Returnable if the above element is a requirement.</p> <ul style="list-style-type: none"> <li>Letter of intent or any other <u>requested document</u> indicating commitment and the percentage required must be submitted as a tender returnable.</li> <li>Sub-contracting can only be concluded with the following entities: <ul style="list-style-type: none"> <li>an EME or QSE which is at least 51% owned by black people;</li> </ul> </li> </ul>   |  |     |    |                          |                                     |  |  |

- an EME or QSE which is at least 51% owned by black people who are youth;
- an EME or QSE which is at least 51% owned by black people who are women;
- an EME or QSE which is at least 51% owned by black people with disabilities;
- an EME or QSE which is 51% owned by black people living in rural or underdeveloped area or townships;
- a cooperative which is at least 51% owned by black people;
- a EME or QSE which is at least 51% owned by black people who are military veterans

## Section 2: Mandatory Requirement for contract award

**The following requirements are mandatory compliance for contract award and submissions can be clarified during evaluations or negotiated before contract awarded**

### 2.1 Local Content Designation

a) Is this Commodity or part of it a Designated Sector?

| YES                      | NO                                  |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Please indicate below Designated Components:

| Commodity      | Components | Local Content Threshold |
|----------------|------------|-------------------------|
| Not applicable |            |                         |

**NOTE 1:** SBD 6.2 Declaration Form and Annex C (Local Content Declaration-Summary Schedule) is therefore **mandatory** and must be a tender returnable. Forms must be completed in full and signed.

If the quantity of materials and/or products cannot be wholly sourced in South Africa, **the DTI**, in consultation with the procuring entity, will grant exemption on a case-by-case basis.

**Bidder should request and obtain written exemption from the Department of Trade and Industry (DTI).** Such exemption applications should be submitted and approvals should be obtained prior to the closure of the bid(s) concerned.

**The DTI** in consultation with the procuring organ of state and the local industry will consider the exemption application on a case-by-case basis. Bidder should refer to national treasury Designated Sector Instruction Number 12 of 2016/2017 Paragraph 4.2.

## Section 3: Mandatory Compliance for Contract Award .....continue

**The following requirements are mandatory compliance for contract award and submissions can be clarified during evaluations or negotiated before contract is**



**awarded****3.1 CIDB Skills Development****a) Is there CIDB compulsory training?**

If Yes, what is the% of the Construction Skills Development Goal % (CSDG)

| YES                      | NO                                  |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|                          |                                     |

If the answer above is Yes, it will then be mandatory for the supplier to match Eskom's targets

| Criteria        | Eskom Target | Tenderer Commitment |
|-----------------|--------------|---------------------|
| CSDG Percentage | N/A          |                     |
| Description     | N/A          |                     |

**3.2 BBBEE Compliance****Is there minimum BBBEE level targeted?**

If Yes, what is the BBBEE status targeted for this transaction (contractor/s will be required to submit plans to achieve the target level if not met at contract award)

| YES                      | NO                                  |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|                          |                                     |

**3.3 Subcontracting Requirements****Is there a requirement for subcontracting?**

If Yes, what is the targeted subcontracting percentage (ED requirements can be fulfilled through subcontracting)

| YES                      | NO                                  |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|                          |                                     |

**Section 3: Mandatory Compliance for Contract Award ... continue**

**The following requirements are mandatory compliance for contract award and submissions can be clarified during evaluations or negotiated before contract is awarded**

**SDLI undertakings**

***Note: The undertakings shall be sourced from previously disadvantaged Communities around Sedibeng and Fezile Dabi District Municipalities.***

**3.4 Enterprise Development**

|   |                                     |                          |
|---|-------------------------------------|--------------------------|
|   | <b>YES</b>                          | <b>NO</b>                |
| Are there specific ED requirements that are not achievable through Sub-contracting? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If Yes, the main contractor is required propose development in the following areas or against the following Eskom's targets:

| Eskom's Target   | Tenderer Proposal |
|--|-------------------|
| <p>The bidder to identify and incubate a Small Measured Entity from the above mentioned District Municipalities. Assistance could be in the form of <b>business support/ equipment/finance.</b></p> <p>In addition, they will expected to draft an ED proposal within eight weeks of contract award stage. ED agreement must be signed with the beneficiary and sent to Eskom for review and acceptance. Progress will be monitored throughout the duration of the contract.</p> |                   |

A detailed ED plan that shows impact to the beneficiary should be submitted to the employer for approval prior to contract award. The ED implementation plan should include the following:

- ☐ Clear objective;
- ☐ Priority interventions
- ☐ Key performance indicators; and
- ☐ A concise implementation plan with clearly articulated milestones

## Annexure A: Insurance provided by the Employer

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. Details of the insurance itself are available from the internet web link given below.*

- Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
- The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
- The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the service provided in terms of this contract.

4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 “the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide”. Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom’s Marine Policies Procedures found at internet website given below.
6. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

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

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

| Name                   | Location  | Contact details (phone & e mail)  |
|------------------------|-----------|---|
| Nigel ANDREWS          | Gauteng   | +27 11 836-6760<br>nigela@quoin.net   |
| Andrew BAIRD           | Gauteng   | +27 11 803 3008<br><a href="mailto:andrewbaird@ecsconsult.co.za">andrewbaird@ecsconsult.co.za</a> |
| Christopher BINNINGTON | Gauteng   | +27 11 888-6141<br><a href="mailto:cdb@bca.co.za">cdb@bca.co.za</a>                               |
| Peter HIGGINS          | UK        | +44 1293 873 868<br>peterhiggins@pdconsult.co.uk  |
| Bruce LEECH            | Gauteng   | +27 11 290 4000<br>leech@counsel.co.za  |
| Nigel NILEN            | Gauteng   | +27 11 465 3601;<br>nilences@global.co.za   |
| Robert St. LEGER       | Cape Town | +27 21 794 7488<br><a href="mailto:bobst@iafrica.com">bobst@iafrica.com</a>                       |
| Peter THURLOW          | Gauteng   | +27 11 787 6226<br><a href="mailto:info@thurlowassoc.com">info@thurlowassoc.com</a>               |

Information about the Panel and appointment of the selected *Adjudicator* is in \_\_\_\_\_

## C1.2 Contract Data

### Part two - Data provided by the Contractor

| Clause   | Statement  | Data  |
|----------|--|---|
| 10.1     | The <i>Contractor</i> is (Name):<br>Address<br>Tel No.<br>Fax No.  |   |
| 11.2(8)  | The <i>direct fee percentage</i> is<br>The <i>subcontracted fee percentage</i> is  | %<br>%  |
| 11.2(14) | The following matters will be included in the Risk Register  | <b>Delay in services to be rendered<br/>Unavailability of personnel to perform work.<br/>Substandard work</b> |
| 11.2(15) | The Service Information for the <i>Contractor's</i> plan is in:  |   |
| 21.1     | The plan identified in the Contract Data is contained in:  |   |
| 24.1     | The key persons are:<br>1 Name:<br>Job:<br>Responsibilities:<br>Qualifications:<br>Experience:<br>2 Name:<br>Job:<br>Responsibilities:<br>Qualifications:<br>Experience: | <b>CV's (and further key person's data including CVs) are in.</b>   |
| <b>A</b> | <b>Priced contract with price list</b>   |   |
| 11.2(12) | The <i>price list</i> is in  | <b>Pricing data C2.2 page 22</b>  |

11.2(19)

The tendered total of the Prices is

PART 2: PRICING DATA

TSC3 Option A

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

## C2.1 Pricing assumptions: Option A

### The *conditions of contract*

#### How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (TSC3) core clauses and Option A states:

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

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

#### Function of the Price List

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

#### Link to the *Contractor's* plan

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

#### Preparing the *price list*

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

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

2 If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost to the

*Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Contractor* in the *price list* are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk.

5 The Contractor does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

### **Format of the *price list***

(From page 73 of the TSC3 Guidance Notes)

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

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

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

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



## C2.2 the *price list*

| RESOURCES AND COSTS                                       |   |                       |               |           |              |                             |
|---|---|-----------------------|---------------|-----------|--------------|-----------------------------|
| Resources   |   | Hourly Rate           |               |           | Hrs          | Total                       |
| Qty   | Type  | Time                  |               | Rate      |              |                             |
| 1   | Site Supervisor                             | Normal                | 07H00 - 17H00 |           | 200          |                             |
| 6   | Semi-Skilled                                | Normal                | 07H00 - 17H00 |           | 200          |                             |
| 1   | Safety Officer                              | Normal                | 07H00 - 17H00 |           | 200          |                             |
|   |   |                       |               |           |              |                             |
|   |   |                       |               |           |              | <b>Total</b>                |
| TRAVELLING  |   |                       |               |           |              |                             |
| Description   |   | Specification         | Rate/km       | Qty in Km | Total        |                             |
| Mini bus  |   | As per Eskom standard |               | 1500      |              |                             |
| D-Cab bakkie  |   | As per Eskom standard |               | 1500      |              |                             |
|   |   |                       |               |           |              | <b>Total</b>                |
| BILL OF MATERIAL FOR CABLE SPREADING AREA FIRE PROTECTION |   |                       |               |           |              |                             |
| No.   | Task description                            | Quantity/M2           |               | Rate      | Total Amount |                             |
|   | <b>Ps and Gs</b>                            | <b>Per Unit</b>       | <b>Total</b>  |           |              |                             |
| 1   | Site establishment                          |                       | 1             |           |              |                             |
| 2   | Health and Safety                           |                       | 1             |           |              |                             |
| 3   | Site De-establishment                       |                       | 1             |           |              |                             |
| <b>CLEANING</b>   |   |                       |               |           |              | <b>Total</b>                |
| 4   | Cleaning of existing cable spreading area 1 | 1                     | 6             |           |              |                             |
| <b>CABLE COATING</b>                                      |   |                       |               |           |              | <b>Total</b>                |
| 5   | Penetration seals                           | 80                    | 480           |           |              |                             |
| 6   | Cable coating                               | 1296,48               | 7730,292      |           |              |                             |
|   |   |                       |               |           |              | <b>Total</b>                |
|   |   |                       |               |           |              | <b>Total Contract Value</b> |

## C3: Scope of Work

### DETAILED DESCRIPTION OF SCOPE OF WORK

#### Scope of work

Apply an approved fire-resistant coating to all the cables in the cable spreading areas under the LV rooms.

Apply an approved fire-resistant cable penetration sealant in the cable spreading areas under the LV rooms where utilities pass through walls, roof or floor.

There are six cable spreading areas (One per unit) where this scope needs to be executed, with an area of 36.5 x 11.1 m (404.1 m<sup>2</sup> per unit) and a height of 1.8 m.

The Scope of Work is as follows, per unit:

Clean cable spreading area

Seal all cable penetrations

Prepare cables for fire resistant coating

Apply fire-resistant coating as per OEM instructions

Data book to be provided electronically and hard copy. Data book to include all material certificates, signed off QCPs and proposed maintenance strategy for the penetration sealant and cable coatings used.

Fire-Resistant Cable Coating Specification:

Rated for at least two hours protection against hydrocarbon fires

Should be of intumescent type

Should meet the IEC 60332-3-22 Category A standard for reduced spread of flame

Must be FM or UL approved

Must be non-toxic, odourless, solvent free and free of fibres and asbestos

Should have no derating effects on cables

Should remain flexible when dry

Fire-Resistant Cable Penetration Sealant Specification:

Can be either silicone based for smaller openings, or expanding foam for larger openings

Rated for at least two hours protection against hydrocarbon fires

Must be FM or UL approved

Should have no derating effects on cables

Should adhere to concrete, drywall and masonry

Should be suitable for cables (single or bundled), trays, conduits and pipes (metal and plastic)

Reference documents

240-54937450 Fire Protection & Life Safety Design Standard

240-56737448 Fire Detection & Life Safety Design Standard

240-56356411 Fire Barrier Seals for Electrical Cable Installations at Power Plants

0.63/108 Units 1-6 Auxiliary Bay LV Switchgear Room

0.63/216 Turbine House Aux Bay Cross Section

LBE 22004PC Lethabo Waste Management Procedure

GGR 0992 Eskom Plant Safety Regulations  
OHSAct Occupational Health and Safety Act of 1993  
IEC 60332-3-22 Category a Standard for reduced spread of flame

## Technical Evaluation Criteria

| c     | Technical Criteria   | Weight | Score   |
|-------|--|--------|---|
| 1     | <b>Understanding of the SOW and Methodology</b><br>Detailed method statement with project timeline.  | 30     | <ul style="list-style-type: none"> <li>5 points will be deducted for every activity not mentioned and if timeline is not included</li> </ul>              |
| 2     | <b>Company Experience (List of similar projects done)</b><br>Proof of 3 years relevant experience related to passive fire protection                                     | 30     | <ul style="list-style-type: none"> <li>3 references required</li> <li>5 points will be deducted for references that are not relevant or listed</li> </ul> |
| 3     | <b>Quality Control Plans</b><br>Detailed quality control plan (QCP) which will ensure work quality (material certificates, to what procedure/standard) and not progress. | 30     | <ul style="list-style-type: none"> <li>10 points will be deducted if QCP is just a list of activities that will be carried out</li> </ul>                 |
| 4     | <b>Safety</b><br>ISO 9001  | 10     | <ul style="list-style-type: none"> <li>10 points will be awarded for certification, otherwise 0</li> </ul>  |
| Total |  | 100    |   |
|       | Scope above 80 is acceptable   |        |   |

### 1. ATTEND TO EQUIPMENT CARE AND PERSONAL SAFETY

- 1.1 Adhere to safety requirements
- 1.2 Use the correct personal protective equipment to perform tasks.
- 1.3 Report all unsafe conditions in the work area to the supervisor.
- 1.4 Clean all equipment and work area daily, after usage.
- 1.4.1 Inspect all lifting equipment/tools of any defects prior to use and report any faults to the supervisor.
- 1.5 Adhere to Eskom's lifesaving rules.

### 2. WORKING TIMES

The contractor will Work from 08:00 -16:30, time will be aligned with Lethabo working time (Temporary clock card machine will be used to control time).

#### 1. Work to be performed by the Contractor

- 11.1 The works are

- |      |   |  |
|------|---|--|
| 11.2 | The following matters will be included in the Risk Register | <b>Coating of cables in cable spreading areas under LV rooms from U1-6</b> |
| 11.3 | The <i>boundaries of the site</i> are                       | <b>Lethabo Power station</b>   |

## C4: Site Information

### 1.1 HEALTH AND SAFETY REQUIREMENTS

The *Contractor* and his sub-*Contractors* ensure at all times compliance with safety regulations imposed by any Act of Parliament, ordinance or any regulation or by-law of any local or statutory authority.

- 1.1.1 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information.
- 1.1.2 In carrying out its obligations to the *Employer* in terms of this contract; in providing the Works; in using Plant, Materials and Equipment; and while at the Site for any reason, the *Contractor* complies and procures and ensures the compliance by its employees, agents, Subcontractors and mandatories with:
- the provisions of the Occupational Health and Safety Act 85 of 1993 (as amended) and all regulations in force from time to time in terms of that Act (“the OHSA”); and
  - the Eskom “Health, Safety and Environmental specifications for Contractors” document attached to the Works Information (as amended from time to time) and such other Eskom Safety Regulations as are applicable to the Works and are provided in writing to the *Contractor* (collectively “the Eskom Regulations”). The Eskom Regulations may be amended from time to time by the *Employer* and all amendments will be provided in writing to the Contractor. The *Contractor* complies with the provisions of the latest written version of the Eskom Regulations with which it has been provided; and
  - the health and safety plan prepared by the *Contractor* in accordance with the SHEQ Requirements

(The OHSA and the Eskom Regulations are collectively referred to as the “SHEQ Requirements”).

- 1.1.3 The *Contractor*, at all times, considers itself to be the “*Employer*” for the purposes of the OHSA and shall not consider itself under the supervision or management of the *Employer* with regard to compliance with the SHEQ Requirements, the *Contractor* shall furthermore not consider itself to be a subordinate or under the supervision of the *Employer* in respect of these matters. The *Contractor* is at all times responsible for the supervision of its employees, agents, Subcontractors and mandatories and takes full responsibility and accountability for ensuring they are competent, aware of the SHEQ Requirements and execute the Works in accordance with the SHEQ Requirements.
- 1.1.4 The *Contractor* acknowledges that it is fully aware of the requirements of all the above and undertakes to employ only people who have been duly authorized in terms thereof and who have received sufficient training to ensure that they can comply therewith.
- 1.1.5 The *Contractor* ensures that all statutory appointments and appointments required by any Eskom Regulations are made and that all appointees fully understand their responsibilities and are trained and competent to execute their duties. The *Contractor* supervises the execution of their duties by all such appointees.

- 1.1.6 The *Contractor* shall appoint a person who will liaise with the Eskom Safety Officer responsible for the premises relevant to this contract. The person so appointed shall, on request:
- supply the Eskom Safety Officer with copies of minutes of all Health And Safety Committee meetings, whenever he is required to do so;
  - supply the Eskom Safety Officer with copies of all appointments in respect of employees employed on this contract, in terms of the Act and Regulations and shall advise the Eskom Safety Officer of any changes thereto.
- 1.1.7 The *Employer*, or any person appointed by the *Employer*, may, at any stage during the duration of this contract:
- conduct health and safety audits regarding all aspects of compliance with the SHEQ Requirements, at any off-site place of work, or the site establishment of the *Contractor*;
  - refuse any employee, *Subcontractor* or agent of the *Contractor* access to the premises if such person has been found to commit an unsafe act or any unsafe working practice or is found not to be qualified or authorised in terms of the SHEQ Requirements;
  - issue the *Contractor* with a stop order should the *Employer* become aware of any unsafe working procedure or condition or any non-compliance with any provision of the SHEQ Requirements.
- 1.1.8 The *Contractor* immediately reports any disabling injury as well as any threat to health or safety of which it becomes aware at the Works or on the Site to the Employer's Representative.
- 1.1.9 The *Contractor* undertakes not to do, or not to allow anything to be done which will contravene any of the provisions of the Act, Regulations or Safety and Operating Procedures.
- 1.1.10 The *Contractor* appoints a person, qualified in accordance with the SHEQ Requirements, as the liaison with the Eskom Safety Officer for all matters related to health and safety, this person shall be reachable 24 hours a day.
- 1.1.11 The *Contractor* confirms that it has been provided with sufficient written information regarding the health and safety arrangements and procedures applicable to the Works to ensure compliance by it and all employees, agents, *Subcontractors* or mandatories with the SHEQ Requirements while providing the Works in terms of this contract. As such, the *Contractor* confirms that this contract and the relevant Eskom Regulations referred to in this contract constitute written arrangements and procedures between the *Contractor* and the *Employer* regarding health and safety for the purposes of section 37(2) of the OHSA.
- 1.1.12 The *Contractor* agrees that the *Employer* is relieved of any and all of its responsibilities and liabilities in terms of Section 37(1) of OHSA in respect of any acts or omissions of the *Contractor*, and the *Contractor's* employees, agents or *Sub-Contractors*, to the extent permitted by the OHSA.
- 1.1.13 The *Contractor* hereby indemnifies the *Employer* and holds the *Employer* harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expense that may be made against the *Employer* and/or suffered or incurred by the *Employer* (as the case may be) as a result of, any failure of the *Contractor*, its employees, agents, *Subcontractors* and/or mandatories to comply with their obligations in terms of clause 16, and/or the failure of the *Employer* to procure the compliance by the *Contractor*, its employees, agents, *Subcontractors* and/or mandatories with their responsibilities and/or obligations in terms of or arising from the OHSA.
- 1.1.14 In carrying out his obligation as the mandatory to the Employer for this contract in terms of the National Environmental Management Act No.107 of 1998, the Contractor ensures that he complies with the Act when Providing the Services or using plant, materials or equipment.
- 1.2 Permit to Work System
- NO work shall be carried out without a "PERMIT TO WORK"
  - The Contractor's Responsible Person must satisfy himself that all sources of possible danger are isolated. Details of the Permit to Work system can be found in the Plant Safety Regulations for Lethabo Power Station, Eskom OPR 3305.

- A Master Permit to Work is used on declared major outages, details can be found in local procedure LBA 00085. Permit changes are made during the dead time, if it is required by the Contractor that a certain supply be made available or plant tested than this can be applied for at the Outage Management Meeting at least 1 day in advance.
- Plant with a prohibitive sign attached may only be operated by appointed Eskom personnel. Any Contractor employee found tampering with such plant will be permanently removed from Site.

### 1.3 Safety Induction Course

- All the employees of the Contractor must attend a safety induction course before they will be allowed to work on the Site. It is the responsibility of the Contractor to ensure that all employees have attended the safety induction.
- A list of employees requiring safety induction must be submitted at least 2 days in advance of arrival on site with the date and time of arrival so that the safety induction can be arranged.

#### 1.3.1 IBI Awareness Techniques

- "To prevent incidents and ensure continuous improvement of Lethabo Power Stations business performance in all areas affecting safety, reliability and production, it is expected of all CONTRACTORS service personnel. This is to ensure familiarisation and use of error-prevention tools/techniques inclusive of, Pre and Post-job briefs, Risk Assessments, Self-checks (STAR principle), Job observations, Effective communications e.g. 3-way, Questioning attitude, Procedural adherence, Hand overs and other related topics.

#### 1.3.2 Transportation of passengers: open LDV's:

No Eskom employee or Contractor would be allowed to transport passengers on the back of open light delivery vehicles (LDV's).

It is a legal requirement to provide safe transportation of Contractor employees – therefore the following will be enforced:

- All passengers must be transported in a closed vehicle with proper and adequate seating, fitted with safety belt for the number of passengers to be transported. NO passengers may be transported on the back of a light delivery vehicle (LDV) whether open or closed.
- Tools and equipment must be properly secured.
- Only authorised drivers may transport passengers.
- Proof must be submitted on request in terms of valid roadworthiness of the vehicle/s.
- The above must apply to on site and off site transportation of passengers.

#### 1.3.3 Eskom Life saving Rules:

Five Cardinal Rules have been developed that will apply to all Eskom employees, agents, consultants and contractors.

- Rule 1: Open, Isolate, Test, Earth, Bond, And/or Insulate before touch - that is any Plant operating above 1 000 V.
- Rule 2: Hook up at heights - no person may work at height where there is a risk of falling.
- Rule 3: Buckle up – no person may drive any vehicle on Eskom business and/or on Eskom premises: unless the driver and all passengers are wearing seat belts.
- Rule 4: Be sober (no person is allowed to work under the influence of drugs and Alcohol.
- Rule 5: Use a permit to work – where an authorization limitations exists, no person shall work without the required permit to work.

- The *Contractor* adheres to all local procedures. A list of local procedures are available on request from the *Employer*

#### **1.4 INCIDENTS / ACCIDENTS**

- Incidents and accidents must be reported and investigated as detailed in LBA 00030. All incidents must also be reported to the *Employer* within 24 hours.
- First aid must be made available either by the *Contractor* or use can be made of the Lethabo medical centre at a fee. The availability of the *Contractor's* own first aid does not relieve the *Contractor* of his obligation to report and investigate the incident in accordance with Lethabo Procedure.

#### **1.5 FIRE PREVENTION**

- Fire prevention and protection requirements to which *Contractors* must comply are detailed in LBA 00030.

#### **1.6 PROTECTIVE EQUIPMENT AND CLOTHING**

- The *Contractor* supplies his own personal protective equipment necessary to carry out the *works* and the *Contractor* shall ensure that all overalls for his staff have clearly identifying **company LOGO's**.
- The *Contractor* is also responsible to inspect and maintain such equipment as required in terms of the OHS Act and local procedures.

#### **1.7 INSPECTION OF EQUIPMENT**

- The *Contractor's* equipment is inspected by an authorised Eskom employee on arrival at the site.
- The following documentation is required to accompany the equipment where applicable: copies of all test certificates and maintenance records.
- Lifting equipment and electrical equipment must be marked with a unique number, code or colour code for identification. If the equipment is found to be in an unsatisfactory condition or if insufficient maintenance has been carried out on the equipment then it will not be approved for use on Site. A list of all lifting equipment and electrical equipment must be submitted to the *Employer* at least 2 days prior to the occupation date. This list must indicate the unique number and description of the equipment.
- Training of operators must comply with the Works Information and statutory requirements.

#### **1.8 DOCUMENTATION**

The *Contractor* is responsible to have the following documentation available on site in accordance with LBA 00030:

- A copy of the OHS Act.
- Copies of all site accident report forms as required by the OHS Act.
- Copies of minutes of health and safety meetings held on site.
- Copies of inspection reports produced by the accident prevention officer.

#### **1.9 ENVIRONMENTAL POLICY AND WASTE HANDLING**

Lethabo Environmental Policy LBPS010 must be adhered to.

##### **1.9.1 DISPOSAL OF WASTE**

Waste shall be removed promptly to the designated disposal area. No stockpiling will be permitted.

- Domestic waste to the white waste bins
- Production waste in the marked bins i.e. coal and ash only
- Paper and cans to their respective recycling bins
- Contact Civil Engineering for the disposal of building rubble
- Scrap metal, Wood & Rubber, Redundant Valves, Pipes, and Equipment etc. to be placed in the marked bins in the new Salvage Yard. Solvents and cloths used to the Cleaning Bay.

## **Services and other things provided by the *Employer***

### **Electrical Equipment / Appliances, Lighting and Power**

- Any electrical equipment or appliances used by the *Contractor* must comply with all relevant safety regulations and requirements as detailed in LBA 00030, and be maintained in safe and proper working condition.
- The *Employer* has the right to stop the *Contractor's* use of any electrical equipment or appliance, which in the *Employer's* opinion does not conform to the foregoing.
- The *Contractor* provides at his own expense any temporary local lighting, and ensures that it is in accordance with the requirements of the Factories Inspector.
- The *Contractor* provides at his own expense, all temporary wiring and cabling to route power from the point of supply to the various points where it is required, maintain same and remove on completion.

## **19. Water**

- The *Contractor* provides at his own cost, all connection fittings, pipe-work, temporary plumbing, and pumps necessary to lead the water from the point of supply to the various points where it is required, maintain same and remove on completion.
- Such fittings must be compatible with the *Employer's* fittings so that galvanic corrosion of pipe-work is prevented.
- Water wastage due to un-maintained pipe work or fittings provided by the *Contractor* will be calculated and will be for the cost of the *Contractor*.

## **20. Compressed Air**

- The *Contractor* provides at his own cost, all connection fittings and pipe-work necessary to lead the compressed air from the point of supply to the various points where it is required, maintain same and remove on completion.  
Such fittings must be compatible with the *Employer's* fittings so that galvanic corrosion of pipe-work is prevented.
- Compressed air wastage due to un-maintained pipe work or fittings provided by the *Contractor* will be calculated and will be for the cost of the *Contractor*.

## **21. Ventilation**



- The *Contractor* is responsible for adequate ventilation of the works.

## **22. Roads and Vehicles**

- All vehicles used on site, by the *Contractor* will be road worthy and fitted with fire extinguishers as required.
- All road signs and traffic laws / regulations on site will be adhered to. Employees of the *Contractor* failing to comply will be removed from site and denied any further access.

## **23. Security**

- The *Contractor* is responsible for all security on *site*, viz. fencing off, night watch and access control in order to secure all plant, materials and the *works* itself. All these measures must be in accordance with any relevant regulations and standards and subject to the *Employer's* approval.
- It is also the *Contractors* responsibility to ensure the security of all completed portions of the *works* prior to Completion.

## **24. Accommodation of Employees**

- The *Contractor* is responsible for the provision of accommodation or meals of his own personnel, and the cost thereof to be included in his *Price*.
- The *Contractor* is responsible for the provision of transportation for all Personnel to site, from site and on Site. The cost thereof to be indicated in the Price List.

## **25. Offices, Workshops and Stores**

- The *Contractor* shall provide, erect and maintain for his own use, any additional office accommodation and stores he requires, together with drainage, lighting, heating, and hot and cold-water services as required.
- The *Contractor's* site establishment price includes all treatment of the site that he considers necessary for his entire operation throughout his period of occupation and under all weather conditions.
- The *Contractor* also includes for all security and access arrangements that he considers necessary.

## **26. Sanitary Facilities**

- The *Contractor* shall provide service, maintain and remove on completion any additional facilities required and allow for it in his *Price*.
- The *Contractor's* employees who work with asbestos are not allowed to use the *Employer's* ablution or messing facilities at the workplace during and after stripping of lagging materials, for fibres that may be attached to workers clothing, or to any other article.

## **27. Contract change management**

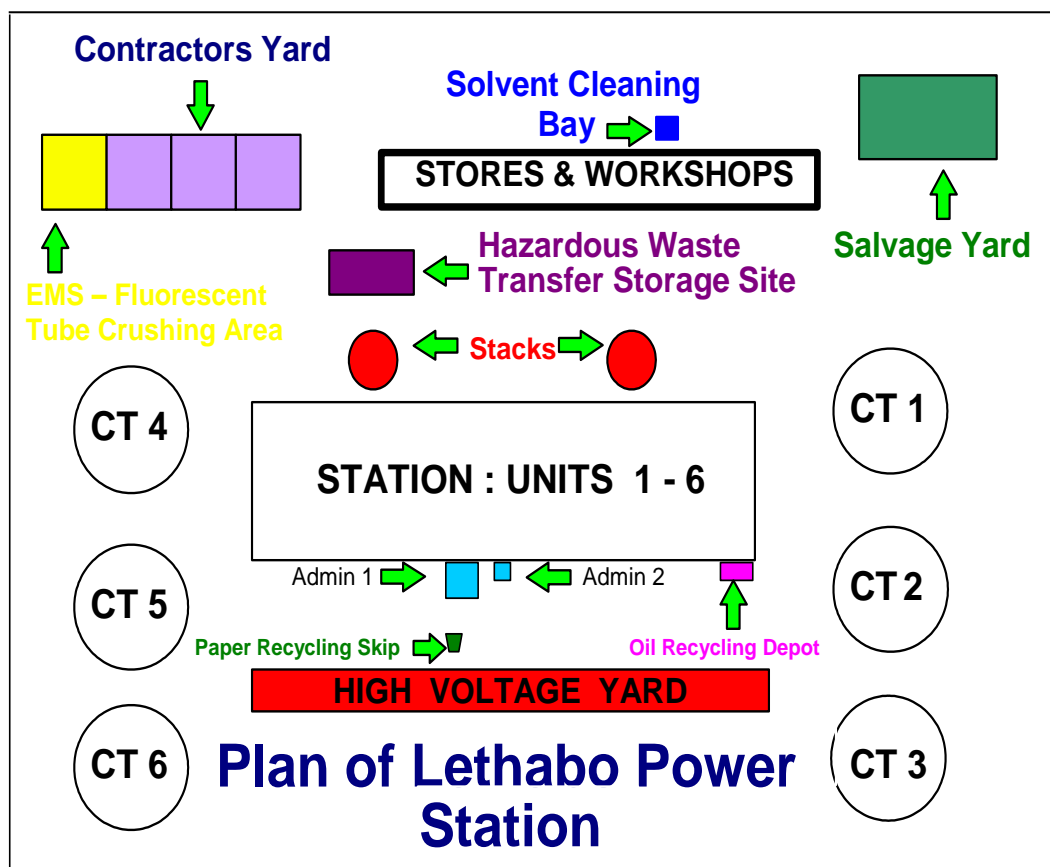
- In an event of compensation event, the *Contractor* shall completed event register and submitted it to the *Employer*.
- The *Contractor* shall request this form from the *Employer*.

## **28. Training workshops and technology transfer**

- The *Contractor* shall provide training for both Maintenance and Protective Services personnel at dates as agreed upon by the *Contractor* and the *Employer*.

## STANDARDS APPLICABLE TO CONTRACT

| DOCUMENT NO. | REV. | TITLE  | Applicable<br>Yes/No |
|--------------|------|--|----------------------|
| LBA 00030    | 2    | Safety with which contractors are to conform at Lethabo Power Station  | Y                    |
| LBA 00040    | 0    | Lethabo Environmental Procedure  | Y                    |
| LBA 00049    | 0    | Procedure for Commissioning of New/Modified Plant                      | N                    |
| LBA 00054    | 1    | Hazardous waste storage and removal procedure                          | Y                    |
| LBA 00067    | 0    | Health, Safety and Environmental Specification for Contractors         | Y                    |
| LBA 00085    | 1    | Master Permit to Work for declared major outages                       | Y                    |
| LBA 00108    | 0    | Contractor's site administration                                       | N                    |
| LBT 00015    | 0    | New or Modifications to Electrical Plant Requirements                  | N                    |
| LBT 00017    | 0    | Limited Access Register Procedure                                      | Y                    |
| GGR0992      |      | Plant Safety Regulations for Lethabo Power Station                     | Y                    |
| LBA0060      |      | Change Management Procedure  | N                    |
| ESKASAAU7    | 0    | Quality Requirements for the Procurement of Assets, Goods and Services | Y                    |
| LBA00135     | 0    | Control & Prevention of asbestos exposure at Lethabo                   | N                    |
| PS053        | 1    | Intellectual Property  | N                    |
| LBA00172     |      | The use and control of solvents and degreasers                         | Y                    |



## HAZARDOUS WASTE DISPOSAL AND HANDLING

- Hazardous / toxic waste includes all waste which contains elements or compounds listed as hazardous substances in terms of the Hazardous Substances Act No. 15 of 1973.
- Any *Contractor* who produces hazardous waste on site will be responsible for the safe removal of such waste to a registered Class I site by a waste removal and disposal body.
- The *Contractor* is required to produce a certificate of safe disposal in accordance with LBA 00054.
- The *Contractor* must ensure that persons handling hazardous waste have undergone suitable training and are acquainted with cleaning methods in case of a spillage.
- The *Contractor* is also responsible for the safe removal of their hazardous waste to Lethabo's Hazardous Waste Store. Other requirements for hazardous waste are detailed in LBA 00030.
- In order to ensure effective hazardous waste management, a copy of the *Contractors'* hazardous waste inventory must be supplied to the *Employer* at least 2 days prior to the occupation date.

### 1.9.2 ABBREVIATED LIST OF HAZARDOUS MATERIALS

|                            |   |                              |
|----------------------------|---|------------------------------|
| Acids and alkalis          | Hydrocarbons                            | Pesticides & insecticides    |
| Antimony and its compounds | Inorganic cyanides                      | Pharmaceuticals              |
| Arsenic compounds          | Inorganic compounds containing halogens | Phosphorus and its compounds |
| Asbestos                   | Inorganic compounds containing sulphur  | Selenium and its compounds   |

|                                 |                           |                               |
|---------------------------------|---------------------------|-------------------------------|
| Barium compounds                | Laboratory chemicals      | Silver compounds              |
| Beryllium compounds             | Lead compounds            | Tarry & petroleum products    |
| Biocides & phytopharmaceuticals | Medical wastes            | Tellurium and its compounds   |
| Boron compounds                 | Mercury compounds         | Thallium and its compounds    |
| Cadmium and its compounds       | Nickel and its compounds  | Vanadium compounds            |
| Chromium compounds              | Organic halogen compounds | Zinc compounds                |
| Copper compounds                | Paints and paint sludges  | Waste with flash point < 60°C |
| Heterocyclic organic compounds  | Peroxides, chlorates      |                               |

### 1.10 PLANT & MATERIALS

- The *Employer* may at his own discretion, supply any Plant and Materials as may be required by the *Contractor* to Provide the Works.
- The *Contractor* is to notify the *Employer* in writing, 48 hrs in advance, of such Plant and Materials required.

### 1.11 Access to and Departure from the Site

- The Site is at Lethabo Power Station situated  $\pm$  18 km South of Vereeniging on the Viljoensdrift - Deneysville Road, Free State. Access to the site will be via the main security gate only. The *Employer* informs the *Contractor* of the access procedures, and it should be expected that such procedures may change depending on the prevailing security situation.
- The *Contractor* allows in his price and program for delays at the security gate.
- The *Employer* reserves the right for its Security personnel to search persons or vehicles entering or leaving the premises. This includes, but is not limited to briefcases and toolboxes.

### 1.12 Temporary Gate Permits

- The *Contractor* provides the *Employer* with the personal details of their staff at least two days prior to the occupation date. All names and details to be submitted to the *Employer* who arranges for all gate permits.

### 1.13 Equipment or Material Access and Removal

#### 1.13.1 Access

- The *Contractor* ensures that all equipment and materials brought through the security gate is signed in at the main security gate on an OV18 form.

#### 1.13.2 Removal

- The *Contractor* is not allowed to remove any equipment or materials from site without producing the relevant OV18 forms or the equipment lists.
  - If the equipment or material is to be removed the same day, on which they were brought on to site, then the OV18 form will need to be produced at the gate when leaving the site.

- If the equipment or material is removed after this time then a Non Returnable Gate Release will be provided by the *Employer's Representative*, on receipt of the original OV18, with which the *Contractor* brought the equipment on site.

## **1.14 Site or Area Establishment and Evacuation**

### **1.14.1 Application for Site Establishment:**

- The *Contractor* is entitled to apply for a site on the relevant form as detailed in LBA 00030. This application must be submitted with the tender documents.
- Sites are allocated according to availability, the period for which the *Contractor* is going to be on site, or if special circumstances warrant the allocation of a site. Documentation to support this application can be submitted
- The location of the site or area is indicated during the site or area take-over inspection.

### **1.14.2 Site Establishment:**

- The *Contractor* does not occupy any site or area other than that allocated to him.
- The *Contractor* does not occupy the site or area prior to the take-over inspection.
- The *Contractor* maintains the site or area provided to him to the satisfaction of the *Employer*.
- The *Employer* subjects the *Contractor's* site or area to periodic inspection.

### **1.14.3 Site Evacuation:**

- The *Contractor* advises the *Employer* in writing, five (5) days in advance of evacuation in accordance with LBA 00030. Immediately prior to evacuation the necessary take-over inspection must take place.