



NEC3 Term Service Contract (TSC3)

Between Eskom Holdings SOC Ltd
(Reg No. 2002/015527/30)

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

for SUPPLY OF DEGRIT SUMP, DRY DUST AND SWITCH
TUNNEL RESOURCES AT KUSILE POWER STATION
PERIOD OF THREE (3) 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]

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 <i>Employer</i>	[•]
C1.2b Contract Data provided by the <i>Contractor</i>	[•]
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	[•]

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> 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
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		X20: Key performance indicators
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ¹ (TSC3)	
10.1	The <i>Employer</i> is (name):	ESKOM HOLDINGS Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	[•]
	Fax No.	[•]
10.1	The <i>Service Manager</i> is (name):	[• Emily Mphuthi]
	Address	[• Kusile Power Station]
	Tel	[• 013 680 3319]
	E-mail address:	[• mphuthne@eskom.co.za]

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

11.2(2)	The Affected Property is	[●Kusile Power Station]
11.2(13)	The <i>service</i> is	[● Provision of Degrit Sump Resources to Kusile Power Station for the period of 36 month]
11.2(14)	The following matters will be included in the Risk Register	[●]
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	[●3 days]
2	The Contractor's main responsibilities	Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	[● 1 week from Kick off meeting date]
3	Time	
30.1	The <i>starting date</i> is.	[●]
30.1	The <i>service period</i> is	[●]
4	Testing and defects	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
5	Payment	
50.1	The <i>assessment interval</i> is	between the [●] day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	[●] weeks.
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal</p>

then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* 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	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
7	Use of Equipment Plant and Materials	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	1. [●] 2. [●] 3. [●]
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i>	<p>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</p> <p>Address [●]</p> <p>Tel No. [●]</p> <p>Fax No. [●]</p> <p>e-mail [●]</p>

W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	[•] South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.

12 Data for secondary Option clauses

X1	Price adjustment for inflation																									
X1.1	The <i>base date</i> for indices is	[•].																								
	The proportions used to calculate the Price Adjustment Factor are:	<table> <tr> <th>proportion</th><th>linked to index for</th><th>Index prepared by</th></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>[•]</td><td>non-adjustable</td><td></td></tr> <tr> <td>1.00</td><td></td><td></td></tr> </table>	proportion	linked to index for	Index prepared by	0.	[•]	[•]	0.	[•]	[•]	0.	[•]	[•]	0.	[•]	[•]	0.	[•]	[•]	[•]	non-adjustable		1.00		
proportion	linked to index for	Index prepared by																								
0.	[•]	[•]																								
0.	[•]	[•]																								
0.	[•]	[•]																								
0.	[•]	[•]																								
0.	[•]	[•]																								
[•]	non-adjustable																									
1.00																										
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.																								
X17	Low service damages																									
X17.1	The <i>service level table</i> is in	[•]																								
X18	Limitation of liability																									
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)																								
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event																								

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"> the total of the Prices at the Contract Date and 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
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"> 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 <i>Employer's</i> property, Plant and Materials), death of or injury to a person and infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	[•12] months after the end of the <i>service period</i>.
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	[•2] days of receiving the Task Order
Z	The <i>additional conditions of contract</i> are	Z1 to Z14 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service*

Manager within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.

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

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

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

Z4 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 4710303126 on each invoice he submits for payment.

Z8 Notifying compensation events

- Z8.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

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.

Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.

Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z11.4 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 Insurance

Z 12.1 Replace core clause 83 with the following:

Insurance cover 83

- 83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for 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	<u>Loss of or damage to property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by the applicable law.
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 12.2 Replace core clause 86 with the following:

Insurance by the Employer 86

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

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum limit of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z14.3 The *Employer* manages asbestos and ACM according to the Standard.

Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air

monitoring conducted in order to declare the area safe.

- Z14.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	% %
11.2(14)	The following matters will be included in the Risk Register	
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 people are: 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 <i>price list</i> is in	
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 <i>price list</i>	[•]

C2.1 Pricing assumptions: Option A

1. 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	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of <ul style="list-style-type: none"> the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and 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.
		(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.

2. 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.

3. 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).

4. 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.

4.1. 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 NO	DESCRIPTION	UNIT	NO. OFF	QTY	RATE	AMOUNT
ITEM 1						
PRELIMINARIES AND GENERAL						
1.0	Establishment of Facilities on the Site (<i>Delivery of Containers to Site</i>)	Once Off	1	1		
1.2	De-establishment of Facilities on the Site (<i>Removal of Containers from Site</i>)	Once Off	1	1		
1.3	Entry Medicals	Once Off	3	17		
1.4	Exit Medicals	Once Off	1	17		
1.5	PPE (Once Off)	Once Off	3	17		
1.6	Security / Police Clearance certification	Once Off	3	17		
1.7	Safety File	Once Off	1	1		
1.8	Site Office Container (1 No): 12m x 3m (1 Off)	Once Off	1	1		
1.9	Site Bakkie Single Cab (4 x 2) (2 No for 36 months)	Monthly	36	2		
Sub-total Item 1 (Preliminaires and General) carried to Summary						
ITEM 2						
SITE RESOURCES						
NORMAL TIME						
<u>Normal working hours are working hours that fall within the following periods:</u>						
<u>Mondays - Fridays: 07:00 - 16:00</u>						
2.1.1	Project Leader (Min. 1 Years of Power Station Experience) (1 Off)	Hour	1	6 016		
2.1.2	Site Supervisor (Min. 1 Years of Power Station Experience) (5 Off in Total in 5 teams of 1 Off Per Team)	Hour	1	6 016		
2.1.3	Safety Officer (Grade 12 with Safety National Diploma or NQF Level 5 Safety Certificate with Min. 3 Years of Experience) (1 Off)	Hour	1	6 016		
2.1.4	Operator (NQF Level 4 or Abet 4 or Grade 12 Maths and Science or N3 Maths and Science with Min. 2 Years Learner Plant Operator experience) (10 Off in Total in 5 teams of 2 Off Per Team)	Hour	2	6 016		
Subtotal Item 2.1 Normal Time						
NORMAL OVERTIME (WEEKDAYS)						
<u>Normal overtime working hours are working hours that fall within the following periods:</u>						
<u>Mondays - Fridays: 16:00 - 06:59</u>						
2.2.1	Project Leader (Min. 1 Years of Power Station Experience) (1 Off)	Hour	1	2 256		
2.2.2	Site Supervisor (Min. 1 Years of Power Station Experience) (5 Off in Total in 5 teams of 1 Off Per Team)	Hour	1	11 280		
2.2.3	Safety Officer (Grade 12 with Safety National Diploma or NQF Level 5 Safety Certificate with Min. 3 Years of Experience) (1 Off)	Hour	1	2 256		
2.2.4	Operator (NQF Level 4 or Abet 4 or Grade 12 Maths and Science or N3 Maths and Science with Min. 2 Years Learner Plant Operator experience) (10 Off in Total in 5 teams of 2 Off Per Team)	Hour	2	11 280		
Subtotal Item 2.2 Normal Overtime (Weekdays)						
NORMAL OVERTIME (SATURDAYS)						
<u>Normal overtime working hours are working hours that fall within the following periods:</u>						
<u>Saturdays: 00:00 - 23:59</u>						
2.3.1	Project Leader (Min. 1 Years of Power Station Experience) (1 Off)	Hour	1	948		
2.3.2	Site Supervisor (Min. 1 Years of Power Station Experience) (5 Off in Total in 5 teams of 1 Off Per Team)	Hour	1	1 896		
2.3.3	Safety Officer (Grade 12 with Safety National Diploma or NQF Level 5 Safety Certificate with Min. 3 Years of Experience) (1 Off)	Hour	1	948		
2.3.4	Operator (NQF Level 4 or Abet 4 or Grade 12 Maths and Science or N3 Maths and Science with Min. 2 Years Learner Plant Operator experience) (10 Off in Total in 5 teams of 2 Off Per Team)	Hour	2	1 896		
Subtotal Item 2.3 Normal Overtime (Saturdays)						
OVER TIME: SUNDAYS & PUBLIC HOLIDAYS						
<u>Overtime: Sundays and Public Holidays working hours are working hours that fall within the following periods:</u>						
<u>Sundays: 00:00 - 23:59</u>						
<u>Public Holidays: 00:00 - 23:59</u>						
2.4.1	Project Leader (Min. 1 Years of Power Station Experience) (1 Off)	Hour	1	1 176		
2.4.2	Site Supervisor (Min. 1 Years of Power Station Experience) (5 Off in Total in 5 teams of 1 Off Per Team)	Hour	1	2 352		
2.4.3	Safety Officer (Grade 12 with Safety National Diploma or NQF Level 5 Safety Certificate with Min. 3 Years of Experience) (1 Off)	Hour	1	1 176		
2.4.4	Operator (NQF Level 4 or Abet 4 or Grade 12 Maths and Science or N3 Maths and Science with Min. 2 Years Learner Plant Operator experience) (10 Off in Total in 5 teams of 2 Off Per Team)	Hour	2	2 352		
Subtotal Item 2.3 Sundays and Public Holidays Overtime						
Sub-Total Item 2 (Site Resources) Carried to Final Summary						
SUMMARY						
ITEM 1	PRELIMINARIES AND GENERAL					

ITEM 2	SITE RESOURCES					
	Final Summary Total					

The total of the Prices

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SERVICE INFORMATION

Contents

Part 3: Scope of Work.....	1
C3.1: Employer's service Information.....	2
1 Description of the service.....	4
1.1 Executive overview.....	4
1.2 <i>Employer's</i> requirements for the <i>service</i>	4
1.3 Interpretation and terminology.....	5
2 Management strategy and start up.....	6
2.1 The <i>Contractor's</i> plan for the <i>service</i>	6
2.2 Management meetings	6
2.3 <i>Contractor's</i> management, supervision and key people.....	6
2.4 Provision of bonds and guarantees	7
2.5 Documentation control.....	7
2.6 Invoicing and payment.....	7
2.7 Contract change management.....	7
2.8 Records of Defined Cost to be kept by the <i>Contractor</i>	7
2.9 Insurance provided by the <i>Employer</i>	8
2.10 Training workshops and technology transfer	8
2.11 Design and supply of Equipment.....	8
2.12 Things provided at the end of the <i>service period</i> for the <i>Employer's</i> use.....	8
2.12.1 Equipment	8
2.12.2 Information and other things.....	8
2.13 Management of work done by Task Order.....	8
3 Health and safety, the environment and quality assurance	9
3.1 Health and safety risk management.....	9
3.2 Environmental constraints and management.....	9
3.3 Quality assurance requirements.....	9
4 Procurement	11
4.1 People.....	11
4.1.1 Minimum requirements of people employed	11
4.1.2 BBBEE and preferencing scheme	11
4.1.3 Accelerated Shared Growth Initiative – South Africa (ASGI-SA).....	11
4.2 Subcontracting	11
4.2.1 Preferred subcontractors.....	11

4.2.2	Subcontract documentation, and assessment of subcontract tenders	11
4.2.3	Limitations on subcontracting	12
4.2.4	Attendance on subcontractors	12
4.3	Plant and Materials	12
4.3.1	Specifications.....	12
4.3.2	Correction of defects	12
4.3.3	<i>Contractor's</i> procurement of Plant and Materials	12
4.3.4	Tests and inspections before delivery.....	12
4.3.5	Plant & Materials provided "free issue" by the <i>Employer</i>	13
4.3.6	Cataloguing requirements	13
5	Working on the Affected Property	14
5.1	<i>Employer's</i> site entry and security control, permits, and site regulations	14
5.2	People restrictions, hours of work, conduct and records	14
5.3	Health and safety facilities on the Affected Property	14
5.4	Environmental controls, fauna & flora.....	14
5.5	Cooperating with and obtaining acceptance of Others.....	14
5.6	Records of <i>Contractor's</i> Equipment.....	15
5.7	Equipment provided by the <i>Employer</i>	15
5.8	Site services and facilities	15
5.8.1	Provided by the <i>Employer</i>	15
5.8.2	Provided by the <i>Contractor</i>	15
5.9	Control of noise, dust, water and waste.....	15
5.10	Hook ups to existing works	15
5.11	Tests and inspections	15
5.11.1	Description of tests and inspections	15
5.11.2	Materials facilities and samples for tests and inspections.....	15
6	List of drawings	16
6.1	Drawings issued by the <i>Employer</i>	16

1 Description of the service

1.1 Executive overview

Kusile Power Station, situated in the Nkangala district of Mpumalanga province, is a coal fired power station generating 800MW with six (6) units. It operates a super critical boiler and technology of Pulse jet Fabric Filter Plant (PJFFP) as well as the Wet Flue Gas Desulphurisation (WFGD) Plant. Reliable and sustainable supply of electricity to the grid is a priority.

One of the key areas identified areas to improve the station performance is the requirement for operating personnel for the Degrit Sump that will be available to support daily operations.

1.2 Employer's requirements for the service

The Employer requires the Contractor to supply the competent resources to perform the scope of work for Kusile Power Station for the duration of 36 Months.

The Contractor is responsible for management and administration of the onsite resources to comply with all the Employer's requirements for the duration of the contract.

The Employer runs 24 hours 7 days a week operation and has a combination of shift work with respective operating hours and weekly operations that run from 07h00 – 16h15.

Overtime time – The Contractor is required to make provision for overtime for the identified resources and shall ensure compliance to all labour related regulations to comply with the Employer's requirements.

Scope of Work Requirements

The contractor shall be responsible for the supply of Degrit Sump, Dry dust and Switchgear tunnels Resources: The scope of work is:

1.1.1 Conduct plant checks by:

- a) Using Operating check sheets to ensure that plant is available.
- b) Ensuring the correct level of the sumps is maintained.
- c) Conducting air, ash and water leaks on the Pulsing Jet Fabric Filter Plant on the zero-meter level.
- d) Conducting checks and report defects on the fire hydrants, hose reels, etc. around the degrit sump, PJFF and boiler zero-meter level
- e) Switchgear room cable tunnel pumps and pipe works inspection

1.1.2 Perform Operating activities by

- a) Operating the sluice gates to the degrit sumps.
- b) Communicating with the BOP control room on status of the pumps.
- c) Working together with the BOP controller in executing the PM for the changeover of degrit- sump pumps.
- d) Lowering/ elevating the pumps as required.
- e) Physically inspecting the condition of the pumps.
- f) Monitoring and operation of diesel pumps as and when required.

1.1.3 Ensure plant cleanliness by:

- a) Remove debris from the sump using appropriate tools.
- b) Agitate the slurry in the sump with the HP machine when required.
- c) Maintain good housekeeping practises.
- d) Clearing slurry from the trenches and drains leading to the degrit sump.

1.1.4 Assist with and adherence to the safety requirements by:

- a) Ensuring that correct tools are used.
- b) Reporting any operational defects.
- c) Adhering to the relevant operating work instructions.

1.1.5 Perform any other related excursions as determined by the Employer.

1.3 Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Service Information easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
OBL	Outside battery limits

2 Management strategy and start up.

2.1 The *Contractor's* plan for the service

The *Contractor* is to provide a proposed plan on how the resources will be allocated, their reporting structure and how they will be integrated into the daily operations.

The report must be submitted to the *Services Manager* at the agreed date to at the Contract Kick off meeting. A technical systems report is to be generated by the *Contractor* monthly and shared with the Service Manager to be distributed to the identified Employer management team.

2.2 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Project Kick off meeting	5 days after Contract Award	Kusile Power Station	Employer, Contractor and Others
SHEQ Requirements Clarification Meeting	5 Days after Kick off meeting	Kusile Power Station	Employer, Contractor and Others
Execution Progress Meeting	Bi-Weekly	Kusile Power Station	Employer, Contractor and Others
Overall Contract progress and feedback	Monthly	Kusile Power Station	Employer and Contractor
Risk register and compensation events	Monthly	Kusile Power station	Employer, Contractor and Others
Other	As and when required	Kusile Power Station	<i>Employer, Contractor and ____</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *service*. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

2.3 *Contractor's* management, supervision and key people

The Contractor submits an organogram as part of the tender deliverables clearly depicting his/her people and their line of authority/communications.

The Contractor re-submits an organogram as part of their contract file at the date agreed at the Contract Kick off meeting.

The Contractor appoints personnel to fulfil all legal requirements in writing in line with the OHS Act 85 of 1993, Factories Regulations.

2.4 Provision of bonds and guarantees

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

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

2.5 Documentation control

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from TSC3 who issues what to whom.

2.6 Invoicing and payment

Document shall be identified with an alpha numeric which indicates sources, recipient, communication, numbers etc.

All contractual communication shall be in the form of a properly compiled NEC TSC 3 forms or letters on a company letter head or forms attached to an email, and not as a message in the email itself.

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

The *Contractor* shall address the tax invoice to

_____ and include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4710303126;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

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

2.7 Contract change management

All changes to the Contract, such as Contract management changes or Compensation events shall be communicated through standard BEC TSC 3 forms.

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

Not Applicable

2.9 Insurance provided by the *Employer*

As stated in the Contract Data.

2.10 Training workshops and technology transfer

The Contractor shall provide on job training for technology and skills to the *Employers* personnel for the service duration of the contract.

2.11 Design and supply of Equipment

Not Applicable.

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

2.12.1 Equipment

None

2.12.2 Information and other things

Clause 70.2 The Contractor is to provide all technical reports and Occupational Health and Safety documents, as well as Quality reports, developed during the contract period.

2.13 Management of work done by Task Order

The Employer to issue a monthly Task Order for acceptance by the *Contractor* prior to any service in the month.

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

The Supplier shall comply with the Kusile power station's Safety, Health, Environment and Quality policies. The contractor and/or supplier shall have a documented and implemented management system that are in line with Kusile Power Station SHEQ management systems e.g., environmental policy, operational procedures relating to their activities, aspects/impacts register etc.

b) The contractor and/or supplier shall prepare an environmental management plan relating to their activities that will be carried out. The environmental management plan shall be based on, amongst others, Eskom Kusile Power Station's OEMP and any other applicable environmental legislation. The environmental management plan must include all the aspects and impacts relating to the activity and address the principle of continual improvement.

c) The contractor and or supplier employees shall be inducted on the environmental requirements as per these documents.

d) The contractor and/or supplier shall comply with all Eskom Kusile Power Station environmental requirements such as policies, standards, and procedures.

e) The contractor shall appoint trained and competent personnel in writing, who will have the responsibilities of implementing all environmental requirements on a specific contract.

f) Method statements shall be submitted for approval by the Eskom Kusile Power Station Senior Environmental Advisor, prior to commencement of and activity. Non-conformance and incident reporting and investigations shall be done by the contractor, such reports must include but not limited to the following information:

☐ The cause of the non-conformance/incident

☐ The proposed actions to correct and prevent recurrence.

g) Eskom Kusile Power Station shall issue non-conformances where there are deviations from Eskom Kusile Power Station Procedures and any other environmental requirements.

h) The contractor and or supplier shall allocate funds for the implementation of environmental requirements.

i) Contractor shall comply with environmental requirements as per 237-555-ENV-SP Kusile Environmental Management Requirements for contractors and Supplier Specification.

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

3.2 Environmental constraints and management

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

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

3.3 Quality assurance requirements

Specify minimum requirements for the *Contractor's* Quality Plan and Work Procedures or provide the *Employer's* Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the Affected Property. Indicate how the *Contractor's* QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.

4 Procurement

There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information MUST include any such procedures to be able to administer Disallowed Cost.

4.1 People

4.1.1 Minimum requirements of people employed

Specify any constraints relating to people employed to Provide the Service; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

4.1.2 BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

4.1.3 Accelerated Shared Growth Initiative – South Africa (ASGI-SA)

If the ASGI-SA requirements are to be included in this contract specify constraints which *Contractor* must comply with after contract award in regard to any ASGI-SA requirements. The ASGI-SA Compliance Schedule completed in the returnable tender schedules is reproduced here. If ASGI-SA does not apply, delete this paragraph.

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the *Contractor's* ASGI-SA Compliance Schedule stated below

[Insert the agreed ASGI-SA Compliance Schedule here]

The *Contractor* shall keep accurate records and provide the *Service Manager* with reports on the *Contractor's* actual delivery against the above stated ASGI-SA criteria. [Elaborate on access to and format of records and frequency of submission etc.]

The *Contractor's* failure to comply with his ASGI-SA obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

4.2 Subcontracting

4.2.1 Preferred subcontractors

TSC3 does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or suppliers the *Contractor* is required to enter into subcontracts with. This is usually only required where specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

4.2.2 Subcontract documentation, and assessment of subcontract tenders

Specify any constraints on how the *Contractor* is to prepare subcontract documentation, whether use of the NEC system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

4.2.3 Limitations on subcontracting

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

4.2.4 Attendance on subcontractors

State requirements for attendance on Subcontractors, if any

4.3 Plant and Materials

4.3.1 Specifications

Plant and Materials are defined as items intended to be included in the Affected Property. This will refer to replacement of worn or defective parts, routine replacement as part of regular preventative maintenance and supply of spare parts. Quality is usually designed in or specified in the technical specifications. However to cover circumstances where quality may not be prescribed, this sub-paragraph could also be used to state an overarching default requirement – fitness for purpose etc.

Either specify here or provide a list of the applicable specifications and attach them as Annexure or state where they can be obtained from.

4.3.2 Correction of defects

State any constraints when dealing with defective Plant and Materials such as how repairs are carried out - can the item be fixed up or must it be replaced by a new one.

4.3.3 *Contractor's* procurement of Plant and Materials

Specify any constraints on how the *Contractor* is to order, codify, expedite, freight, import, transport to the Affected Property and any other requirements for delivery and storage before installation. The *Employer* may require warranties from suppliers to be in favour of the *Employer* and not just to the *Contractor*. The *Employer* may also need schedules of vendor data for his own use after the end of the *service period*.

4.3.4 Tests and inspections before delivery

Core Clause 41.1 makes reference to the Service Information stating which Plant and Materials are to be inspected and tested before delivery. Specify any requirements particularly if such tests and inspections are to be carried out by agents of the *Employer* overseas.

4.3.5 Plant & Materials provided “free issue” by the *Employer*

List any Plant and Materials which are to be provided by the *Employer*.

State arrangements for collection by *Contractor* or delivery by others on behalf of the *Employer*, off loading, inspection, storage, care custody and control, return of unused Plant and Materials, etc. Always include a statement to the effect that ‘all other Plant and Materials are to be provided by the *Contractor*’.

4.3.6 Cataloguing requirements by the *Contractor*

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the *Contractor* (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

5 Working on the Affected Property

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

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering contractors need to allow for in their prices, and the *Contractor* has to comply with. State these or similar requirements here.

In addition to the above there may be other restrictions once on the site, plus rules relating to roads, walkways and the provision of barricades

5.2 People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors. State that the *Service Manager* shall have access to them at any time. These records may be needed when assessing compensation events.

5.3 Health and safety facilities on the Affected Property

Section 3 deals with contractual H & S requirements in addition to those of the OHSA Act. This section allows the *Employer* to state what measures are to be taken on the Affected Property by describing where First Aid facilities provided by the *Employer* are located and any other emergency arrangements. Do not use if already addressed in 2.3.

5.4 Environmental controls, fauna & flora

This sub-paragraph may not be required in a service contract or if these matters are dealt with in the general environmental requirements referred to in section 3 above.

5.5 Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the Affected Property. See clause 11.2(9) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

5.6 Records of *Contractor's* Equipment

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Affected Property.

5.7 Equipment provided by the *Employer*

Provide details of equipment (e.g. overhead cranes) made available for use by the employer and set out conditions relating thereto.

5.8 Site services and facilities

5.8.1 Provided by the *Employer*

This is a mandatory cross reference form clause 25.2 in TSC3. State what the *Employer* will provide in the way of power, water, waste disposal, telecomms, ablutions, fire protection and lighting (etc) on the Affected Property. Give hook up locations and any constraints on how the hook up is to be done. Always conclude by stating that the *Contractor* shall provide everything else necessary for Providing the Service.

5.8.2 Provided by the *Contractor*

Describe what the *Contractor* is to provide in the way of accommodation, laboratories, storage, vehicles and office equipment for the *Service Manager* and any restrictions or minimum requirements concerning the *Contractor's* own facilities. Also state what happens to these facilities upon completion of the contract.

5.9 Control of noise, dust, water and waste

State requirements, if any.

5.10 Hook ups to existing works

State any constraints

5.11 Tests and inspections

5.11.1 Description of tests and inspections

Describe the tests and inspections to be carried out by the *Contractor* and the *Service Manager* and others [40.1].

5.11.2 Materials facilities and samples for tests and inspections

State what materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.

6 List of drawings

6.1 Drawings issued by the Employer

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

Drawing number	Revision	Title