



NEC3 Supply Contract (SC3)

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

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

for **Supply and delivery of High-Pressure Valves at
Medupi Power Station for a period of 60 months (5
years) on an as and when required (ADHOC)**

| Contents: | No of pages |
|---|------------------------|
| Part C1 Agreements & Contract Data | [•] |
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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>Purchaser</i> | [•] |
| C1.2b Contract Data provided by the <i>Supplier</i> | [•] |
| [to be inserted from Returnable Documents at award stage] | |
| C1.3 Proforma Guarantees | [•] |

C1.1 Form of Offer & Acceptance

Offer

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

Supply and delivery of High-Pressure Valves at Medupi Power Station for a period of 60 months (5 years) on an as and when required (ADHOC)

The tenderer, identified in the Offer signature block, has

| | |
|---------------|---|
| <i>either</i> | examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender. |
| <i>or</i> | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

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 *Supplier* 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.

| | | |
|--|--|-------|
| | The offered total of the Prices exclusive of VAT is | R [•] |
| | Value Added Tax @ 15% is | R [•] |
| | The offered total of the amount due inclusive of VAT is ¹ | R [•] |
| | (in words) [•] | |

This Offer may be accepted by the Purchaser 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 *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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: Goods Information including Supply Requirements |

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 Purchaser 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 Purchaser's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

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

Signature(s)

Name(s)

Capacity

**for the
Purchaser**

**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg,
2199**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

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

By the duly authorised representatives signing this Schedule of Deviations below, the Purchaser 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 Purchaser 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 Purchaser |
|-----------------------------|---|--|
| Signature | _____ | _____ |
| Name | _____ | _____ |
| Capacity | _____ | _____ |
| On behalf of | (Insert name and address of organisation) | Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199 |
| Name & signature of witness | _____ | _____ |
| Date | _____ | _____ |

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

| Clause | Statement | Data |
|----------|--|---|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for Options | |
| | | X1: Price adjustment for inflation X2 Changes in the law X7: Delay damages X17: Low performance damages Z: Additional conditions of contract |
| | of the NEC3 Supply Contract (April 2013) ² | (If the December 2009 edition is to be used delete April 2013 and replace by December 2013) |
| 10.1 | The <i>Purchaser</i> is (name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| | Tel No. | [•] |
| | Fax No. | [•] |
| 10.1 | The <i>Supply Manager</i> is (name): | Lebo Pebane |
| | Address | Medupi Power station |
| | Tel | 017 612 6663 |
| | Fax | N/A |
| | e-mail | pebanel@eskom.co.za |
| 11.2(13) | The <i>goods</i> are | High-Pressure Valves |
| 11.2(13) | The <i>services</i> are | Supply and delivery of High-Pressure Valves at Medupi Power Station for a period of 60 months (5 years) on an as and when required (ADHOC) |
| 11.2(14) | The following matters will be included in the Risk Register | Late delivery, Delivery of a wrong, Obsolete spares/ items |
| 11.2(15) | The Goods Information is in | Part 3: Scope of Work and all documents and drawings to which it makes reference. |

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

| | | | |
|----------|--|---|-----------------------------|
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | Annexure A to this Contract Data | |
| 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 | Two (2) weeks | |
| 2 | The <i>Supplier's</i> main responsibilities | Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 3 | Time | | |
| 30.1 | The <i>starting date</i> is. | TBC | |
| 30.1 | The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is: | <i>goods and services</i> | <i>delivery date</i> |
| | | 1 | As per purchase order |
| | | 2 | |
| | | 3 | |
| 30.2 | The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date. | As per agreed date on the purchase order | |
| 31.1 | The <i>Supplier</i> is to submit a first programme for acceptance within | One (1) week of the Contract Date. | |
| 32.2 | The <i>Supplier</i> submits revised programmes at intervals no longer than | Two (2) weeks. | |
| 4 | Testing and defects | | |
| 42 | The <i>defects date</i> is | Fifty-two (52) weeks after Delivery. | |
| 43.2 | The <i>defect correction period</i> is | To be agreed within 48 Hours, on the first working day from receipt of the Purchaser's written defects notification | |
| | except that the <i>defect correction period</i> for | [•] is [•] weeks | |
| | and the <i>defect correction period</i> for | [•] is [•] weeks | |
| 42.2 | The <i>defects access period</i> is | Five (5) days | |
| | except that the <i>defect access period</i> for | [•] is [•] | |
| | and the <i>defect access period</i> for | [•] is [•] | |
| 5 | Payment | | |
| 50.1 | The <i>assessment interval</i> is | between the twenty-five (25) days 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 | Eight to nine (8-9) weeks after valid invoice is accepted. | |

51.4 The *interest rate* is

the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *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 Title

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, liabilities, indemnities and insurance

80.1 These are additional *Purchaser's* risks

Only the risks under sub-clause 80.1 of the NEC3 SC

88.1 The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to

R0.0 (zero Rand)

88.2 For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to

(1) for the *Purchaser's* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event and

(2) for all other existing *Purchaser's* property the applicable deductible as at contract date

88.3 The *Supplier's* liability for Defects due to his design which are not notified before the last defects date is limited to:

R[•]

[This is a commercial decision, but consider using the total of the Prices. Delete this note after inserting a Rand amount]

| | | |
|------|---|--|
| 88.4 | The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | R[•] [This is a commercial decision, but consider using at least the total of the Prices. Delete this note after inserting the Rand amount] |
| 88.5 | The <i>end of liability date</i> is | One (1) year after Delivery of the whole of the <i>goods</i> and <i>services</i> . |

9 Termination and dispute resolution

| | | |
|---------|---|--|
| 94.1 | The <i>Adjudicator</i> is | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA). |
| | Address | [•] |
| | Tel No. | [•] |
| | Fax No. | [•] |
| | e-mail | [•] |
| 94.2(3) | The <i>Adjudicator nominating body</i> is: | the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za) |
| 94.4(2) | The <i>tribunal</i> is: | arbitration |
| 94.4(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. |
| 94.4(5) | 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 of |
| | - if the arbitration procedure does not state who selects an arbitrator, is | the Association of Arbitrators (Southern Africa) or its successor body. |

10 Data for Option clauses

X1 Price adjustment for inflation

| | | | | |
|------|--|--|------------------------|-------------------|
| X1.1 | The <i>base date</i> for indices is | Rates are fixed and firm for first 12 months after first order placement date. There after CPA escalation will apply. Base date will be the month before the month which the enquiry closes. | | |
| | The proportions used to calculate the Price Adjustment Factor are: | proportion | linked to index for | Index prepared by |
| | | 60%. | Electrical Engineering | SEIFSA Table |
| | | 25%. | Transportation | SEIFSA Table |

| | | | |
|-------|--|---|--|
| | | 15% | non-adjustable |
| | | 100 | |
| X2 | Changes in the law | | |
| X2.1 | A change in the law of | [•] is a compensation event if it occurs after the Contract Date | |
| X7 | Delay damages | | |
| X7.1 | Delay damages for Delivery are | Delivery of | amount per day |
| No. | KPA | Employer's Requirement | Damages payable by Contractor |
| 1 | On time delivery to Medupi Power Station | All deliveries to be delivered as per agreed lead time of the contract working from the time the supplier acknowledge receipt of an official Eskom Order Number that start with 45 number | 5% of full purchase order cost for 10days of delay of purchase order up to maximum of 10% of total value. |
| 2 | On time delivery to Medupi Power Station | All deliveries to be delivered as per agreed lead time of the contract working from the time the supplier acknowledge receipt of an official Eskom Order Number that start with 45 number | Failure to deliver will lead to contract termination. And a contractor will not be considered to do business with Medupi Power Station for two (2) years after termination of a contract |
| | | | |
| X17 | Low performance damages | | |
| X17.1 | The amounts for low performance damages are: | amount | performance level |
| | | Contractor's full cost | for Premature failure and defects rectification |
| | | 5% of Purchase order value | for Defects between 32-45 days |
| | | 7.5% of Purchase order value | for Delays between 46-59 days |
| | | 10% of Purchase order value | for Delays between 60 days and more |
| Z | The additional conditions of contract are | | |
| | Z1 to Z15 always apply for Eskom | | |

Z1 Cession delegation and assignment

- Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 *Supplier* 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 *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

- Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier's* B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.
- Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.
- Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier's* obligation to Provide the Goods and Services.
- Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

- Z4.1 The *Supplier* 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 *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* 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 *Supplier* 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 *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
- Z4.5 The *Supplier* 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 *Supply 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 25.4

- Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Supplier*:

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with 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 supply and
- undertakes, in and about the execution of the supply, to comply 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 *Supplier's* direction and control, likewise observe and comply with the foregoing.

- Z6.2 The *Supplier*, in and about the execution of the supply, 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 *Supplier'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 *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* 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 *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Supplier* (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 *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

- Z8.1 Delete from the last sentence in core clause 61.3 the words, "unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption".

Z9 Purchaser's limitation of liability

- Z9.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Supplier's* entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser's* liability under the indemnity is limited.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the amount due for the *Supplier's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z12 Ethics

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

| | |
|---------------------------|--|
| Affected Party | means, as the context requires, any party, irrespective of whether it is the <i>Supplier</i> 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 <i>Supplier</i> , 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. |

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* 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 *Purchaser* can terminate the *Supplier's* obligation to Provide the Services for this reason.

Z12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

Z13Insurance

Z 13.1 Replace core clause 84 with the following:

- | | | |
|------------------------|-------------|---|
| Insurance cover | 84 | |
| | 84.1 | When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force. |
| | 84.2 | The <i>Supplier</i> provides the insurances stated in the Insurance Table A for events which are at the <i>Supplier's</i> risk from the <i>starting date</i> until the last <i>defects date</i> or a termination certificate has been issued. |

INSURANCE TABLE A

| Insurance against | Minimum amount of cover or minimum limit of indemnity |
|---|---|
| Loss of or damage to the <i>goods</i> , plant and materials | The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance. |
| Liability for loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i>) caused by activity in connection with this contract | <u>Loss of or damage to property</u> <u>Purchaser's property</u> The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance. <u>Other property</u> The replacement cost <u>Death of or bodily injury</u> The amount required by the applicable law. |
| Liability for death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law |

Z 13.2 Replace core clause 87 with the following:**Insurance by the *Purchaser***

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B**INSURANCE TABLE B**

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

| | |
|--------------------------------------|-----------------------------------|
| Nuclear Material Damage Terrorism | Per the insurance policy document |
|--------------------------------------|-----------------------------------|

Z14 Nuclear Liability

- Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* 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 *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.3 Subject to clause Z14.4 below, the *Purchaser* 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 *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.4 The *Purchaser* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

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

| | |
|------------------------------|--|
| AAIA | means approved asbestos inspection authority. |
| ACM | means asbestos containing materials. |
| AL | means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL. |
| Ambient Air | means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet. |
| Compliance Monitoring | means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| OEL | means occupational exposure limit. |
| Parallel Measurements | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results. |

| | |
|--------------------|--|
| Safe Levels | means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| Standard | means the <i>Purchaser's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles. |
| SANAS | means the South African National Accreditation System. |
| TWA | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA. |

- Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z15.2 Upon written request by the *Supplier*, the *Purchaser* 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 *Supplier* may perform Parallel Measurements and related control measures at the *Supplier's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z15.3 The *Purchaser* manages asbestos and ACM according to the Standard.
- Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z15.5 The *Supplier's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Supplier* 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.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser's* expense, and conducted in line with South African legislation.

Annexure A: Supply Requirements

[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide

whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]

The Supply Requirements for this contract are based on the use of INCOTERMS:

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010³ as follows:

[Select the group and then term within the group which applies and state the applicable delivery place. Delete all the other groups and this note]

| Group | Category | Term | Delivery Place |
|-------|----------------------|--------------------|----------------|
| E | departure | EXW | |
| F | main carriage unpaid | FCA, FAS, FOB | |
| C | main carriage paid | CFR, CIF, CPT, CIP | |
| D | arrival | DAT, DAP, DDP | |

The Parties obligations described in Incoterms for the category and term selected are now incorporated into this contract as part of the Supply Requirements and hence the Goods Information.

The obligations of seller and buyer for the selected Incoterm determine each Party's costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Supplier* to *Purchaser*.

For each of the thirteen terms, Incoterms set out obligations of the seller (the *Supplier*) in ten paragraphs identified as A1 to A10 and the corresponding obligations of the buyer (the *Purchaser*) in paragraphs B1 to B10. These obligations cover the following subjects:

| A | The <i>Supplier's</i> obligations | B | The <i>Purchaser's</i> obligations |
|-----|--|-----|--|
| A1 | Provision of goods in conformity with contract | B1 | Payment of the price |
| A2 | Licences, authorisations and formalities | B2 | Licences, authorisations and formalities |
| A3 | Contracts of carriage and insurance | B3 | Contracts of carriage and insurance |
| A4 | Delivery | B4 | Taking delivery |
| A5 | Transfer of risks | B5 | Transfer of risks |
| A6 | Division of costs | B6 | Division of costs |
| A7 | Notice to the buyer | B7 | Notice to the seller |
| A8 | Proof of delivery, transport document or equivalent electronic message | B8 | Proof of delivery, transport document or equivalent electronic message |
| A9 | Checking - packing - marking | B9 | Inspection of goods |
| A10 | Other obligations | B10 | Other obligations |

[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]

All other information NOT pertinent to the above is given in the balance of the Goods Information

³ International Chamber of Commerce, Incoterms 2010, Paris, January 2011

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

| | | |
|---|--|----------------------------|
| 1. The requirements for the supply are | [State the constraints on how the <i>Supplier</i> manufactures, prototypes, tests and stores the <i>goods</i> including order and timing] | |
| 2. The requirements for transport are | [State the extent to which the <i>Supplier</i> transports the <i>goods</i> and the mode of transport] | |
| 3. The delivery place is | [State the location where the <i>goods</i> are to be placed by the <i>Supplier</i> , such as whether it is a dispatch department at the <i>Supplier's</i> premises, the <i>Purchaser</i> is to collect or other location the <i>Purchaser</i> may require. If the delivery place for the <i>services</i> is different to the <i>goods</i> state it here] | |
| 4. Actions of the Parties during supply | Action | Party which does it |
| | Giving notice of Delivery | Supplier |
| | Checking packing and marking before dispatch | Supplier |
| | Contracting for transport | Supplier |
| | Pay costs of transport | Supplier |
| | Arrange access to delivery place | Purchaser |
| | Loading the <i>goods</i> | Supplier |
| | Unloading the <i>goods</i> | Purchaser |
| For international procurement | Undertake export requirements | |
| | Undertake import requirements | |
| 5. Information to be provided by the <i>Supplier</i> | Title of document | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the <i>goods</i> | |
| | Delivery Note | |
| | Test results and maintenance manuals | |
| For international procurement | Licences, authorisations and other formalities associated with export of the <i>goods</i> | |
| | Air Waybill or Bill of Lading with associated landing, delivery and forwarding order | |
| | The Bill of Entry endorsed by the importation authority | |
| | Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay | |
| | Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable | |
| | Specify other import documents required by authorised officials. | |

All other information NOT pertinent to the above is given in the balance of the Goods Information

C1.2 Contract Data

Part two - Data provided by the *Supplier*

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

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (SC3)⁴ and the relevant parts of its Guidance Notes (SC3-GN)⁵ in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

| Clause | Statement | Data | | | | | | | | | | | | |
|----------|--|--|--|---------------------------|----------------------|---|-----|-----|---|-----|-----|---|-----|-----|
| 10.1 | The <i>Supplier</i> is (Name): Address Tel No. Fax No. | | | | | | | | | | | | | |
| 11.2(8) | The Goods Information for the <i>Supplier's</i> design is in: | | | | | | | | | | | | | |
| 11.2(11) | The tendered total of the Prices is | R , (in words) | | | | | | | | | | | | |
| 11.2(12) | The <i>price schedule</i> is in: | | | | | | | | | | | | | |
| 11.2(14) | The following matters will be included in the Risk Register | | | | | | | | | | | | | |
| 25.2 | The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are | | | | | | | | | | | | | |
| 30.1 | The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is: | <table> <tr> <th></th><th><i>goods and services</i></th><th><i>delivery date</i></th></tr> <tr> <td>1</td><td>[•]</td><td>[•]</td></tr> <tr> <td>2</td><td>[•]</td><td>[•]</td></tr> <tr> <td>3</td><td>[•]</td><td>[•]</td></tr> </table> | | <i>goods and services</i> | <i>delivery date</i> | 1 | [•] | [•] | 2 | [•] | [•] | 3 | [•] | [•] |
| | <i>goods and services</i> | <i>delivery date</i> | | | | | | | | | | | | |
| 1 | [•] | [•] | | | | | | | | | | | | |
| 2 | [•] | [•] | | | | | | | | | | | | |
| 3 | [•] | [•] | | | | | | | | | | | | |
| 31.1 | The programme identified in the Contract Data is contained in: | | | | | | | | | | | | | |

⁴ Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

⁵ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or www.ecs.co.za

63.2

The *percentage for overheads and profit*
added to the Defined Cost is

%

PART 2: PRICING DATA

NEC3 Supply Contract

| Document reference | Title | No of pages |
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| C2.1 | Pricing assumptions | 2 |
| C2.2 | The <i>price schedule</i> | [•] |

C2.1 Pricing assumptions

How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

| | | |
|-------------------------------------|------|---|
| Identified and defined terms | 11 | |
| | 11.2 | (11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate. |
| | | (12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract. |
| Assessing the amount due | 50.2 | The amount due is |
| | | <ul style="list-style-type: none"> the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed, where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, plus other amounts to be paid to the <i>Supplier</i>, less amounts to be paid by or retained from the <i>Supplier</i>. |
| | | Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due. |

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *services* which can be priced as lump sums or as expected quantities of *goods* and *services* multiplied by a rate, or a mix of both.

Function of the Price Schedule

Clause 53.1 states: "Information in the Price Schedule is not Goods Information". This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, "The *Supplier* Provides the Goods and Services in accordance with the Goods Information". Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*;
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier's* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;

- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

Format of the *price schedule*

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

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

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

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *services* are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

C2.2 the *price schedule*

| Material nr | Description | Unit | Quantity | Rate |
|-------------|--|------|----------|------|
| 618822 | VALVE, GLOBE: VALVE SIZE: 20 MM; DESIGN PRESSURE: PN640; DESIGN TEMPERATURE: 295 DEG C; FACE TO FACE LENGTH: 137 MM; OPERATED: MANUAL; CONNECTION: BUTT WELD; BODY MATERIAL: 13CRMO4-5; TRIM: SEAT STELLITED; SOFTGOODS: STEM PACKING GRAPHITE; APPLICATION: HP HEATER VENT VALVES; TYPE: FLOW; SYSTEM. DESIGN PRESSURE:335 BAR | each | 140 | |
| 656083 | VALVE, GLOBE: VALVE SIZE: DN 40; DESIGN PRESSURE: PN640; DESIGN TEMPERATURE: 295 DEG C; FACE TO FACE LENGTH: 192 MM; OPERATED: MANUAL; CONNECTION: BUTT WELD; BODY MATERIAL: 13CRMO4-5; TRIM: SEAT STELLITED; SOFTGOODS: PACKING GRAPHITE; APPLICATION: HP VALVES; SYSTEM DESIGN PRESSURE: 335 BAR | each | 360 | |
| 671081 | VALVE, GATE: VALVE SIZE: DN20; TYPE: FORGED STL; DESIGN PRESSURE: PN640; DESIGN TEMPERATURE: 294 DEG C; CONNECTION: BUTT WELD; FACE TO FACE LENGTH: 137 MM; BODY MATERIAL: 13CRM04- 5; TRIM: SEAT STELLITED; OPERATED: MANUAL; SYSTEM DESIGN PRESSURE: 335 BAR | each | 24 | |
| 656149 | VALVE, GATE: VALVE SIZE: DN 40; TYPE: GATE; DESIGN PRESSURE: PN 640; DESIGN TEMPERATURE: 207 DEG C; CONNECTION: BUTT WELD; FACE TO FACE LENGTH: 192; BODY MATERIAL: 15NICUMONB5; TRIM: BONNET 15NICUMONB5; OPERATED: MANUAL; SUPPL P/N: 20131033; HP VALVES: FORGED STEEL GATE VALVE | each | 44 | |
| 656072 | VALVE, GLOBE: VALVE SIZE: DN 15; DESIGN PRESSURE: PN640; DESIGN TEMPERATURE: 295 DEG C; FACE TO FACE LENGTH: 132 MM; OPERATED: MANUAL; CONNECTION: BW; BODY MATERIAL: 13CRM04-5; TRIM: SEAT STELLITED GR6; SOFTGOODS: STEM PACKING GRAPHITE; APPLICATION: HP SYSTEM; SYSTEM DESIGN PRESSURE: 335 BAR | each | 576 | |
| 676972 | VALVE, GATE: VALVE SIZE: DN40; TYPE: PARALLEL SLIDE; DESIGN PRESSURE: PN400; DESIGN TEMPERATURE: 295 DEG C; CONNECTION: BUTT WELD; FACE TO FACE LENGTH: 203 MM; BODY MATERIAL: 15NICUMONB5; TRIM: SEAT STELLITED; OPERATED: MANUAL; APPLICATION: HP VALVES; REFERENCE NO: 20131033; BONNET. 15NICUMONB5; DISC AND SEAT RING 13CR + HF; SYSTEM DESIGN PRESSURE: 335 BAR | each | 96 | |

PART 3: SCOPE OF WORK

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| C3.2 | <i>Supplier's</i> Goods Information | |
| | Total number of pages | |

C3.1: *PURCHASER'S* GOODS INFORMATION

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1 Overview and purpose of the *goods and services*

Medupi Power Station needs supply and delivery contract for High pressure and High temperature drain and vent valves on an as and when required basis

2 Specification and description of the *goods*

The scope is to supply and delivery of estimated quantities of high pressure, high temperature valves to Medupi Power Station for a period of five (5) years on an as and when required basis. The valves to be supplied are specified on Document "240-141834272 Medupi Power Station HP Valves Spares Scope of Work."

2.1 *Purchaser's design*

Refer to sow

2.2 Procedure for submission and acceptance of *Supplier's design*

Material certificate to be provided when delivering the valves detailing the manufacturing process and pressure testing certificates

2.3 Other requirements of the *Supplier's design*

Refer to SOW

2.4 Use of *Supplier's design*

Refer to SOW

2.5 Manufacture & fabrication

The Valves manufacturing Design standard is ASME B16.34 and ASME B16.25

2.6 Factory acceptance testing (FAT)

Material certificate of all the valves to be provided when delivering the valves detailing the manufacturing process and pressure testing certificates

2.7 Other tests and inspections and commissioning in place of use

Refer to SOW

2.8 Operating manuals and maintenance schedules

Operating manual and maintenance schedules to be submitted with the valves upon delivery.

3 Supply Requirements

Each item to be packaged correctly, to have proper labelling and must show that it complies with the design codes and standards. Material certificate to be provided when delivering the valves detailing the manufacturing process and pressure testing certificates.

The Supply Requirements for this contract are in an Annexure to the Contract Data provided by the *Purchaser*.

4 Specification of the services to be provided

The scope is the supply and delivery of estimated quantities of high pressure, high temperature valves to Medupi Power Station for a period of five (5) years on an as and when required basis:

4.1. Feedwater and HP heating Auxiliaries Spares Scope of Work

4.1.1. Supply and Delivery

The *Contractor* shall be responsible to supply and deliver spares Medupi's Feedwater and HP Heating. A list of the items is shown below.

It is important to note that the quantities are an estimate and can vary depending on breakdown and Medupi stockholding requirements for a 5 year period.

It should further be noted that because these are only estimated quantities based on the current experience and information, Medupi is under no obligation to procure the total estimated quantities and task order for specific spares will only be placed as and when they are required.

The items on the list are consisting of high moving stock and critical spares which include spares in the following areas:

- (a) Feedwater
- (b) HP Heating

The suppliers to provide quotes for deliveries of the following:

- Less than 1 ton.
- Between 1 and 8 ton.
- More than 8 ton.

4.1.2. The following are the Supplier's requirements:

a) The Supplier will ensure that the correct spare is supplied and will replace or be liable for damage at his/her cost if the incorrect or defective spare/s is supplied.

b) The *Employer's* (i.e. Eskom Holdings SOC) acceptance of delivered spare/s does not absolve the Supplier of the liability to supply the correct and/or defect free spare.

c) The Supplier may, at the *Employer's* discretion, be given access to the plant to verify the information of the installed spare.

d) The spare must be to the exact same specification as installed in the plant and specified on this works information. Notwithstanding the stipulated condition that the Supplier is responsible for verifying the correctness of the spares information provided by the *Employer* in relation to the existing installed spare. This may include the Supplier consulting the original supplier of the spare to ensure correctness of information provided by the Employer.

e) The *Employer* may at his/her discretion make the Employer's Engineer or employees or others available to the Supplier for the purpose of soliciting additional information or verifying information as the need arises.

f) The Supplier will supply any additional information such as brochure, general arrangement drawing, certificates, detailed specification, etc.

g) The Supplier provides the *Employer* with additional spares information and verifies information required in the attached data capturing forms (DCF) at least three months after conclusion of Medupi Power Station HP Valves Spares Supply Scope of Work.

5 Constraints on how the Supplier Provides the Goods

5.1 Programming constraints

Refer to the SOW

5.2 Work to be done by the Delivery Date

- a) All required spares to be delivered to the *Employer* 4 weeks from the day the purchase order is placed by the *Employer*. The *Employer* may request, in writing, that a spare be expedited quicker if its delivery in 4 weeks may lead to a delay that may result in undesirable consequences (loss of production, loss of revenue and/or safety to personnel or environment) to the *Employer*.
- b) The information for spares to be provided will either be in electronic format and/or hard copy. Information provided to be documented in such a manner that the information for each spare will be easily identifiable.
- c) All spares provided by the Supplier will be subject to a quality control process before acceptance. Only once the spares have passed the Quality control checks and are booked into the system can payment be processed.

5.3 Marking the goods

Goods to be marked by their KKS description and the type of valve it is the same as how it will be marked on the name plate. The size, operating pressure, operating temperature, KKS labelling and drawing code as well as the valve code.

5.4 Constraints at the delivery place and place of use

- a) The *supplier* must comply with Eskom regulations delivering goods to Medupi Power Station.
 - **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.
 - **Be Sober** : The person making a delivery to Medupi power station should not be under the influence of alcohol or drugs.
- b) The spares and components will be supplied to the “goods received” section of the Medupi main store where it will be received by the material management section. The spares will be delivered with all the required documents and certificates.
- c) Medupi Stores Working Times: Monday — Thursdays: 07h00 — 16h00
Fridays: 07H00 — 12h00
- d) Supplier to quote the Eskom official purchase order in all delivery notes and invoices.
- e) Goods must be well packaged and safely transported.
- f) Eskom to acknowledge receipt of goods by stamping and signing the delivery note of the supplier upon delivery, rejected items to be communicated after the official quality inspection is done on site by the end-user of the product.
- g) Rejected goods must be collected and the correct goods supplied within 14 days.

5.5 Cooperating with Others

Although not a direct requirement of the *conditions of contract* if the *Purchaser* is aware of the *Supplier's* need to co-operate with Others (for example where the supply is to one of the *Purchaser's* contractor's on a project or design of the *goods* needs to be discussed with Others) details could be given here.

5.6 Services & other things to be provided by the *Purchaser* or *Supplier*

Clause 23.2 requires that the Goods Information state what services and other things are to be provided by the Parties, each to the other as part of the supply process. This has nothing to do with the *services* identified in the Contract Data. It would include temporary services and things needed to facilitate the supply, such as cranes provided by the *Purchaser* for offloading of the *goods*.

5.7 Management meetings

The *conditions of contract* (e.g. Clause 16.2) require and other sections of the Goods Information (e.g. safety risk management) may require (mandate) that a meeting shall be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the complexity of the *goods*, it is probably beneficial for the *Supply Manager* to hold a regular risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming, engineering and design management, may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters raised at such meetings.

The right to hold specialist meetings should be stated generically and in such a way that ambiguity with other parts of the Goods Information is avoided.

The following text could be used as a model for this section:

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: |
|--|-----------------------------|----------|---------------------------------------|
| Risk register and compensation events | Weekly on _____ at _____ | | |
| Overall contract progress and feedback | Monthly on _____ at _____ | | <i>Purchaser, Supplier, and _____</i> |
| | | | |
| | | | |

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

5.8 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 SC who issues what to whom.

5.9 Health and safety risk management

5.9.1 The Supplier shall comply with the following requirements governing health and safety in Eskom and South Africa:

- Basic Conditions of Employment Act No 75 of 1997.
- Occupational Health and Safety Act and Regulations No 85 of 1993.
- National Road Traffic Act 93 of 1996.

- d) 32-37 Eskom Substance Abuse Procedure.
- e) 240-62196227 Life- Saving Rules.
- f) 32-727 SHEQ Policy
- g) 240-62946386 Vehicle and Driver Safety Management Procedure
- h) 32-520 Risk Assessment procedure
- i) COIDA Act

5.9.2 Vehicle Safety Management

The Service Provider must comply to the following requirements when planning the route to Medupi Power Station for delivery:

- a) It is the responsibility of the driver to ensure:
 - Their passengers wear seat belts whilst the vehicle is in motion.
 - Comply with all traffic road rules, safety, direction, and speed signs.
 - Ensure that vehicle loads are properly secured prior to moving off.
 - Ensure that vehicles are not overloaded.
- b) Service Providers are required to conduct the route risk assessment prior to travelling/driving.
- c) No drivers or operators may text, talk on cell phones or two-way radios whilst driving.
- d) All drivers shall have a valid medical fitness certificate.
- e) The First aid box with valid contents and fire extinguishers must be included in the vehicle, be services annually and inspected monthly. Drivers must be trained on how to use the First aid box and fire extinguishers.
- f) Two triangles must be included in the vehicle and the emergency number be displayed at the back of the vehicle.
- g) Each Project site that is enclosed by demarcation will have system/ process to manage vehicle access to site.
- h) Contractor must maintain their vehicles in a roadworthy condition and a vehicle license must be valid at all times and this is applicable to yellow plant.
- i) Drivers of light vehicles must avoid stopping or parking in the vicinity of machines. At least 30 (thirty) meters must be left clear between such a vehicle and such a machine.
- j) Contractor vehicles can be subject to inspections by the Client/Agent's representative. Vehicles which are not roadworthy will not be permitted to be used on site.
- k) Drivers/operators shall be responsible for the travel-worthiness of all loads conveyed by them. Precautions shall be taken to secure all loads properly. Loads projecting from vehicles shall be securely loaded and in daytime a red flag and during darkness a red light or red reflective material shall be attached to the extreme end of such projecting materials.

5.10 Environmental constraints and management

The Supplier shall comply with all applicable environmental laws, permits, regulations and rules, guidelines and Environmental procedures for Eskom.

Supply to ensure that waste receptacles are provided where required. Waste disposal shall be a responsibility of the client.

5.11 Quality

Specify minimum requirements for the *Supplier's* Quality Plan and Work Procedures if required and not already covered in the specifications for the *goods*. State whether ISO compliance is a condition and if so which ISO standard shall apply.

5.12 Invoicing and payment

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

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager*;
- The contract number and title;
- *Supplier's* VAT registration number;
- The *Purchaser's* VAT registration number.
- Description of *goods* and *services* provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

5.13 Insurance provided by the *Purchaser*

| Name and Surname | Contact Details | e-mail address |
|-------------------------------|-----------------|-----------------------------------|
| Mr Wiseman Khoza | +27 11 800 6268 | Wiseman.khoza@eskom.co.za |
| MR Krishan Chaithoo | +27 11 800 4455 | ChaithK@eskom.co.za |
| Ms Thembi Mabanga | +27 11 800 6509 | thembi.mabanga@eskom.co.za |
| Ms Mamosidi Katane- Mathibela | +27 11 800 6380 | KataneE@eskom.co.za |
| Mr Velaphi Mabaso | +27 11 800 3836 | Velaphi.mabaso@eskom.co.za |
| Ms Beverley Jemaine-Cain | +27 11 800 3331 | Beverley.jemaine-cain@eskom.co.za |

5.14 Contract change management

In case of compensation event either party will notify the other. Then the NEC 3 SC compensation event process will be followed. No work to be done until Purchaser provide permission. Including Z Clause 8.1

5.15 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 *Supplier* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

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

5.16 Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier*

The *Contractor* is required to keep record and submit proof of all the actuals, to be verified at the completion of the Payment Certificate and assessment, should the *Service Manager* request to do so.

6 Procurement

6.1 Subcontracting

6.1.1 Preferred subcontractors

SC does not make use of nominated subcontracting, but the *Purchaser* may list which subcontractors or sub-suppliers the *Supplier* is required to enter into subcontracts with (if any). This is usually only required where plant and materials need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards for the *goods*.

6.1.2 Limitations on subcontracting

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

6.1.3 Spares and consumables

Refer to the SOW

6.1.4 Other requirements related to procurement

Other requirements such as ASGISA or socio political enhancements the *Supplier* is to provide as part of Providing the Goods and Services (if any) could be included here.

6.1.5 Cataloguing requirements by the *Supplier*

Yes. Cataloguing for all valves is done.

7 List of drawings

7.1 Drawings issued by the *Purchaser*

Refer to SOW

C3.2 *SUPPLIER'S* GOODS INFORMATION

This section of the Goods Information will always be contract specific depending on the nature of the *goods* and *services*.

It is most likely to be required for supply contracts where the tendering supplier will have proposed specifications and schedules for the *goods* and *services*, which once accepted by the *Purchaser* prior to award of contract now become obligations of the *Supplier* per core clause 20.1.

This section could also be compiled as a separate file.
