



NEC3 Professional Services Contract (PSC3)

**Contract between Eskom Holdings SOC Ltd
(Reg No. 2002/015527/30)**

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

**for Kendal Power Station Continuous Ash Disposal
Facility (ADF) Project Scope of Work for Wetland
Specialist**

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ENQUIRY No. MPKEN10318PS

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

Kendal Power Station Continuous Ash Disposal Facility (ADF) Project Scope of Work for Wetland Specialist

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 *Consultant* 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	Not Applicable – Cost reimbursable
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This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Consultant* 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

Acceptance

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

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: The Scope

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(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

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

For the tenderer:

For the Employer

Signature

.....

Name

.....

Capacity

.....

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

(Insert name and address of organisation)

Name & signature of witness

.....

Date

.....

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. The PSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row.
3. Where the symbol "[●]" is used data is required to be inserted relevant to the clause and statement which requires it.]

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		G: Term contract
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X7: Delay damages
		X9: Transfer of rights
		X10 <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (April 2013) ¹	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and www.ecs.co.za

	Tel No.	[•]
	Fax No.	[•]
11.2(9)	The <i>services</i> are	To source the Wetland Specialist services required to monitor compliance to the Water Use License and Wetland Management and Rehabilitation Plan during and after completion of construction and rehabilitation phase of the Ash Disposal Facility Project.
11.2(10)	The following matters will be included in the Risk Register	<p>Labour unrest COVID- 19 (lockdown regulations) Disease Outbreak No access to site due to adverse weather conditions Community unrest or demonstrations Not meeting the scheduled timelines by the appointed consultants Inclement Weather (rain, wind, snow, hailstorm, heatwave) Labour strike Normal construction hazards working with machinery Electrocution Hazardous gas Power supply interruptions or failure Fire and smoke Flooding from aquifer Flooding from surface source Snakes Steep, rocky, unstable and slippery ground Unforeseen geological conditions. Unacceptable water inflows. Poorer rock quality than anticipated. Unstable rock wedges Normal construction hazards for reinforced concrete works</p>
11.2(11)	The Scope is in	Part 3: Scope of Work
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	1 (One) week and immediately for Health and Safety related matters
13.6	The <i>period for retention</i> is	The <i>Consultant</i> retain all the documentation related to this Contract for the period of 7 (Seven) years following Completion of the whole of the <i>services</i> or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1	<p>Kendal Power Station</p> <p>Dates to be discussed and agreed upon</p>

		2	Kendal Power Station Ash Dam	Dates to be discussed and agreed upon
		3	Information and people relevant to Provide Services	As and when required
3	Time			
31.2	The <i>starting date</i> is.		01 August 2022	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.		30 June 2024	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:		Condition to be met	key date
		1	Not Applicable	Not Applicable
4	Quality			
40.2	The quality policy statement and quality plan are provided within		Within 14 days of the Contract Date	
42.2	The <i>defects date</i> is		24 (twenty four) weeks after Completion of the whole of the <i>services</i>.	
5	Payment			
50.1	The <i>assessment interval</i> is		between the 25th day of each successive month.	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount	
		KM	Eskom Rate	
51.1	The period within which payments are made is		4 (Four) weeks once a valid Tax invoice is received	
51.2	The <i>currency of this contract</i> is the		South African Rand	
51.5	The <i>interest rate</i> is		the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due.	
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	Rights to material		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	Indemnity, insurance and liability		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.	

82.1	The <i>Consultant's</i> total liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices
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	
G	Term contract	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	4 (Four) weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).
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	Johannesburg South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.1	The index is	CPI.
	The staff rates are {state whether "Fixed at the Contract Date and are not variable with changes in salary paid to individuals" or "Variable with changes in salary paid to individuals"}	Rates are fixed for the period of 1(one) year thereafter CPI escalation will apply
X2	Changes in the law	

X2.1	The law of the project is	The law of South Africa.
X7	Delay damages	
X7.1	Delay damages for late submission of monthly and Quarterly reports are	Delay damages for late Completion of the whole of the services are
X9	Transfer of rights	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is Name: Address The authority of the <i>Employer's Agent</i> is	Kendal Power Station Kendal Road Ogies 2230 To carry out all the actions of the <i>Employer</i> in this contract as per the delegation of authority
X11	Termination by the <i>Employer</i>	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (Zero Rand)
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	The total of the Prices
X18.3	The <i>end of liability date</i> is	five years after Completion of the whole of the services/task order.
Z	The <i>Additional conditions of contract</i> are	Z1 to Z14 always apply.

Z1 Cession delegation and assignment

- Z1.1 The *Consultant* 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 *Consultant* 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 *Consultant* 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 *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.
- Z2.3 The *Consultant* 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 *Consultant* in writing.

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* 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 those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z4 Confidentiality

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

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, 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 Provision of a Tax Invoice. Add to core clause 51

- Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z7 Notifying compensation events

- Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

Z8 Employer's limitation of liability

- Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z9.1 or had a business rescue order granted against it.

Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)

- Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

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 *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant'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 *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant'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 *Consultant's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* 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 *Consultant's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Consultant'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 *Consultant* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

- Z12.1 Replace core clause 81 with the following:
- 81.1 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.
- 81.2 The *Consultant* 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	For the period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Commercial and business to determine. [Delete this note after inserting]	Commercial and business to determine [Delete this note after inserting]
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<u>Loss of or damage to property:</u> The replacement cost where not covered by the <i>Employer's</i> insurance	Commercial and business to determine [Delete this note after inserting]

	<p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><u>Bodily injury to or death of a person:</u></p> <p>The amount required by the applicable law.</p>	
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	

81.3 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 *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* 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 *Consultant* or any other person, or the presence of the *Consultant* or

that person or any property of the *Consultant* 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 44 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 *Consultant* 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 *Consultant*, 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 *Consultant* may perform Parallel Measurements and related control measures at the *Consultant'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 *Consultant'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 *Consultant* 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

Part two - Data provided by the Consultant

[Instructions to the tendering consultant: (delete these notes in the final draft of a contract)]

1. The tendering consultant is advised to read both the NEC3 Professional Services Contract, April 2013 and the relevant parts of its Guidance Notes (PSC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 158 & 159 of the PSC3 April 2013 Guidance Notes.
2. The number of the clause in the PSC3 which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Whenever a cell is shaded in the left hand column it denotes this data is optional in PSC3 and would be required in relation to the option selected. The *Employer* should already have made the selection and deleted the rows not required.

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

Clause	Statement	Data	
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.		
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:		
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .	
11.2(3)	The <i>completion date</i> for the whole of the services is		
11.2(10)	The following matters will be included in the Risk Register		
11.2(13)	The <i>staff rates</i> are:	name/designation	rate
	Either complete here or cross refer to a schedule in Part C2.2		

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

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to 1 2 3	access date
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

PART 2: PRICING DATA

Document reference	Title	No of pages
C2.1	Pricing assumptions : Option G	2
C2.2	<i>Staff rates, expenses and the task schedule.</i>	3

C2.1 Pricing assumptions: Option G

1. How work is priced and assessed for payment

From Option G: Term contract

Identified and defined terms	11 11.2	(17) The Price for Services Provided to Date is, for each Task, the total of the Time Charge for work which has been completed on time based items on the Task Schedule and a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item.
		(20) The Prices are the Time Charge for items described as time based on the Task Schedule and the lump sum price in the Task Schedule for each other item.

From the Core Clauses:

Identified and defined terms	11.2	(13) The Time Charge is the sum of the products of each of the <i>staff rates</i> multiplied by the total staff time appropriate to that rate properly spent on work in this contract.
------------------------------	------	--

and

Assessing the amount due	50.3	The amount due is the Price for Services Provided to Date, the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i> . Any tax which the law requires the <i>Employer</i> to pay to the <i>Consultant</i> is included in the amount due.
--------------------------	------	---

In effect Option G is a cost reimbursable form of contract with work ordered by the *Employer* on a Task by Task basis using the Task Schedule to compile the cost of carrying out a Task.

Expenses are calculated separately and added to the amount due for the services provided.

2. Staff rates and expenses

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes before entering *staff rates* into Contract Data, or in section C2.2 which follows.

This is because *staff rates* can be established in one of three ways:

rates for named staff,
rates for categories of staff, or

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13 and 14 of the PSC3 Guidance Notes.

Expenses associated with employing a staff member in Providing the Services can be listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*.

As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 15 of the PSC3 Guidance Notes.

3. The function of the Task Schedule

The Task Schedule may include items of work to be paid for on a rate (Time Charge) or on a lump sum price for the item. Any work ordered during the term of the contract – i. e. before the Completion Date – for which there is no priced item in the Task Schedule is priced using the compensation event procedure and the resulting Price is added into the Price List.

The *task schedule* is prepared by the *Employer* for the *Consultant* to price, or may be prepared jointly with the *Consultant*. It is typically priced in two parts as items of work to be carried out on a time basis and lump sum prices for other items of work. The task schedule must be as complete as possible and fully representative of all the work and *services* which the *Employer* may require the *Consultant* to carry out. The only unknown is when the work is to be carried out; the Task Order will be used to instruct when work to be done.

C2.2 Staff rates, expenses & the task schedule

This section can be used when the *staff rates* and *expenses* are considerable in number and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

State whether the *staff rates* and *expenses* exclude or include VAT.

1. The *staff rates* are:

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT

2. The *expenses* are:

No.	Expense item	Amount / rate excluding VAT

3. The task schedule

Item	Activity Description	Unit	Monthly	Quantity	Rate	Amount
1	Compilation of the Compensation strategy to compensate for the loss of wetland habitat as per the project Environmental Management Programme (EMPr) and presentation to authorities if there is an alternative that is not found within the property or within the current catchment. This compensation strategy should cover an economic evaluation of the residual impact to determine a fiscal compensation option.	Once	1			
2	Consolidate a compensation strategy alternatives in and out of the catchment through discussions with DWS, MTPA and relevant NGO's operating in Mpumalanga (BirdLife South Africa, Endangered Wildlife Trust and Conservation Outcomes). This may include the completion of an economic evaluation for a fiscal compensation option if no alternative is found on the Kendal property.	Once	1			
3	Engagements with multiple Stakeholders (e.g. national and provincial authorities and NGO's (DWS, DFFE, MTPA, BirdLife South Africa, Conservation Outcomes and Endangered Wildlife Trust).	hours	1			
4	Compile Desktop studies info should any additional studies be required by the authorities	hours	23			
5	Visit wetland crossings during and after construction. This could also be repeated during and after rehabilitation measures have been implemented to assess the success of rehabilitation and erosion control measures.	hours	23			
6	Carry out monthly compliance inspections.	hours	23			

7	Monitor compliance to the Wetland Management and Rehabilitation Plan and Water Use License conditions pertaining to the impacts on wetlands and provide specialist advice for corrective actions and compile monthly compliance inspection reports, which must be submitted to the Provincial Head.	hours	23			
8	Review and comment on method statements sent you to by the Client in relation to wetland activities it they see the need.	hours	23			
9	Provide inputs if requested on the project masterplan prior submission to the Provincial Head for approval.	hours	23			
10	Attendance of bi-Weekly, weekly and/or ad-hoc meetings with the core team	hours	23			
11	Provide training as and when required to the project personnel for a better understanding of the wetlands.	hours	6			
12	Present to the Environmental Monitoring Committee (EMC) stakeholders through a power point presentation for all the monitoring undertaken and be responsible for responses to authorities.	hours	1			
13	Address any comments received from authorities related to the wetland conditions/ requirements of the WUL and Wetland Management and Rehabilitation Plan.	hours	1			
Preliminaries and Generals						
14	Health and Safety (Incl. medicals and inductions)	yearly	1			
15	Travelling (Site Visits)	km	23			
16	Disbursements	number	23			

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i>	11
C3.2	<i>Consultant's Scope</i>	
	Total number of pages	

C3.1: EMPLOYER'S SCOPE

Introduction

Eskom Kendal Power Station was issued with the Water Use License (License no.: 04/B20E/ABCEGI/3888) dated 08 August 2015. In accordance with appendix IV condition 5.10 of the license a wetland specialist must be appointed for the construction and rehabilitation phases of the Kendal continuous Ash Disposal Facility (ADF) project.

Supporting Clauses

Scope

To outline the environmental service required for the Kendal Ash Disposal Facility (ADF) project.

Purpose

To source the Wetland Specialist services required to monitor compliance to the Water Use License and Wetland Management and Rehabilitation Plan during and after completion of construction and rehabilitation phase of the Ash Disposal Facility Project.

Effective date

The document will be effective from the date of authorisation.

Normative/Informative References

(a) Normative

- [1] Kendal Continuous Ash Disposal Facility Integrated Environmental Authorisation - DEA Reference: 14/12/16/3/3/3/63
- [2] Kendal Continuous Ash Disposal Amended Environmental Management Programme
- [3] Kendal Continuous Ash Disposal Integrated Water Use Licence - DWS Reference: 04/B20E/ABCEGI/3888
- [4] Kendal Continuous Ash Disposal Facility – Specialist Study Report
- [5] Kendal Continuous Ash Disposal Facility – Wetland Management and Rehabilitation Plan

(b) Informative

N/A

Definitions

Abbreviation	Description
ADF	Ash Disposal Facility
DFFE	Department of Forestry, Fisheries and the Environment
DWS	Department of Water and Sanitation
EMPr	Environmental Management Programme
IEA	Integrated Environmental Authorization
WUL	Water Use Licence
PM	Project Manager
SHE	Safety, Health and Environment

Roles and Responsibilities

The deliverables which the *Consultant* is responsible for is not limited to the following:

- I. Providing adequate resources including provision of equipment for required *works*.
- II. Managing cost and a scheduled time frame of work.
- III. Ensuring that the scope is carried out in full.
- IV. Providing regular feedback on the status of the *works*.
- V. Ensuring that prior to any fieldwork, all parties working on site have familiarized themselves with the Employers safety requirements and the Occupational Health and Safety (OSH) Regulations Act (85 of 1993).
- VI. Providing professional service to the Kendal ADF project.
- VII. Attendance of bi-Weekly, weekly and/or ad-hoc meetings with the core team.
- VIII. Weekly and monthly reports.
- IX. All work shall be conducted in accordance with the requirements of the Occupational Health and Safety Act (Act 85 of 1993) as amended.
- X. Continuously present the findings to Eskom project team for review, challenge, recommendations, and approval.
- XI. Ensure that the work is to be done with no impact on the station's performance.
- XII. Provide envisaged program/schedules for the above phase of the scope of work.
- XIII. The appointed Consultant shall undertake the project work with Eskom's employees to assist in transferring of skills.

Process for Monitoring

The *Consultant* submits inspection and audit compliance reports and shall exercise strict and adequate quality control during all phases of the work.

Scope of Work

The *Consultants* scope of work entails and is not limited to the following:

- Compilation of the Compensation strategy to compensate for the loss of wetland habitat as per the project Environmental Management Programme (EMPr) and presentation to authorities if there is an alternative that is not found within the property or within the current catchment. This compensation strategy should cover an economic evaluation of the residual impact to determine a fiscal compensation option.
- If no alternative is found within the Kendal property, consolidate a compensation strategy alternatives in and out of the catchment through discussions with DWS, MTPA and relevant NGO's operating in Mpumalanga (BirdLife South Africa, Endangered Wildlife Trust and Conservation Outcomes). This may include the completion of an economic evaluation for a fiscal compensation option if no alternative is found on the Kendal property.
- Engagements with multiple Stakeholders (e.g. national and provincial authorities and NGO's (DWS, DFFE, MTPA, BirdLife South Africa, Conservation Outcomes and Endangered Wildlife Trust).
- Compile Desktop studies info should any additional studies be required by the authorities.
- Visit wetland crossings during and after construction. This could also be repeated during and after rehabilitation measures have been implemented to assess the success of rehabilitation and erosion control measures.
- Carry out monthly compliance inspections.
- Monitor compliance to the Wetland Management and Rehabilitation Plan and Water Use License conditions pertaining to the impacts on wetlands and provide specialist advice for corrective actions and compile monthly compliance inspection reports, which must be submitted to the Provincial Head.
- Review and comment on method statements sent you to by the Client in relation to wetland activities it they see the need.
- Provide inputs if requested on the project masterplan prior submission to the Provincial Head for approval.
- If required, attendance of bi-Weekly, weekly and/or ad-hoc meetings with the core team.
- Provide training as and when required to the project personnel for a better understanding of the wetlands.
- Present to the Environmental Monitoring Committee (EMC) stakeholders through a power point presentation for all the monitoring undertaken and be responsible for responses to authorities.

- Address any comments received from authorities related to the wetland conditions/ requirements of the WUL and Wetland Management and Rehabilitation Plan.

Timeframe

The contract duration for this service is for twenty-three (23) months.

Acceptance

This document has been seen and accepted by:

Name	Designation
Vusi Mlandu	Site Project Manager
Denvor Fielies	NEC Contracts Manager
Marike Landman	Safety, Health and Environmental Manager
Tsholofelo Sehebeng	Senior Advisor Projects

Revisions

Date	Rev.	Compiler	Remarks
March 2020	1	D Nkosi	Develop the scope of work regarding the sourcing of environmental services.
March 2022	2	D Sereme	To update the Wetland Specialist scope of work.

Development Team

The following people were involved in the development of this document:

- Mbekezeli Ndaba
- Delisiwe Sereme
- Petro Hendriks
- Kishaylin Chetty

Acknowledgements

N/A

List of Appendices

Appendix 1 – Integrated Environmental Authorization

Appendix 2 – Amended Environmental Management Programme

Appendix 3 – Water Use Licence

Appendix 4 – Kendal Continuous ADF Specialist Study Reports

Appendix 5 – Kendal Continuous ADF Masterplan

Appendix 6 - Kendal Continuous ADF Wetland Management and Rehabilitation Plan

Constraints on how the *Consultant* Provides the Services.

Management meetings

The *conditions of contract* (e.g. Clause 15.2) and other sections of this Scope may require that a meeting 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 size and complexity of the *services*, it is probably beneficial for the *Employer's Agent* to hold a weekly risk register meeting (Clause 15.2). This could be used to discuss compensation events, subconsulting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming and activities of a technical nature 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 discussed at such meetings. 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 *Employer's Agent* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly	determined by the <i>Employer's Agent</i>	<i>Employer's Agent, Consultant , and Others as determined by the Employer's Agent</i>
Overall contract progress and feedback (from contract date to execution commencement)	Monthly	determined by the <i>Employer's Agent</i>	<i>Employer's Agent, Consultant , and Others as determined by the Employer's Agent</i>
Kick-off Meeting	Once-off	GCD Boardroom	<i>Employer's Agent, Consultant, and Others as determined by the Employer</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Scope or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *services*. Records of these meetings shall be submitted to the *Employer's Agent* 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.

Consultant's key persons

State any additional constraining requirements on *Consultant's key persons* over and above those already stated in clause 22.1 or in the Contract Data. Such as need to notify contact details, leave and mentoring requirements where applicable. This section could be used to solicit an organogramme from the *Consultant* showing his people and their lines of authority / communication. This would be essential if the *Consultant* is a Joint Venture.

Documentation control and retention

Identification and communication

Document Identification

Documentation requirements covers various engineering stages, from the design stage through fabrication, installation, testing, commissioning and most importantly operating, maintenance and training stages of the project.

The *Consultant* is responsible for the compilation and the supply of the documentation during the various project stages and to provide the documentation programme linked to the milestone dates. Completion dates for documentation and drawings are scheduled to meet the milestone dates in accordance with the agreed Vendor Document Submission Schedule (VDSS) agreed by both parties.

Documents Submission

All documents and records are submitted according to Technical Document and Record Management Work Instruction (240-76992014), Reporting and Data Requirements Specification for Contractors (240-83561037) and all other Engineering standards referenced in this works information. The *Employer* ensures that the *Consultant* is provided with the latest revisions of all these documents. All documents used within the project follows the same standard of layout, style and formatting as described in the documents mentioned above.

The *Employer* provides the *Consultant* with a mailbox address to be used for all contractual documentation/correspondence to and from the *Consultant*.

The *Employer* sets up a workflow system in the Eskom Documentation Management System (EDMS) for documentation transmittal to and from the *Consultant*. The *Consultant* is given access rights to the Eskom EDMS for all documentation to be submitted and reviewed. Where a document cannot be attachment due to size, the document is zipped or hand delivered on an electronic mass storage device (preferably USB) to the *Employer's Agent*. The *Consultant* submits final documents, excluding drawings as electronic in pdf format on an electronic mass storage device (preferably USB) and hard copies are delivered to the *Employer's Agent* with a transmittal note.

Any uncertainty regarding all specified documents is clarified with the *Employer*. The *Consultant* complies with all minimum document metadata as specified in Technical Documentation Classification and Designation Standard (<https://hyperwave.eskom.co.za/240-54179170>).

The *Consultant* submits the Master Document List (MDL) to the *Employer* on a monthly basis for tracking purposes irrespective of whether there are updates or not. The MDL must include list of drawings and documents submitted including their revisions and drawing register following the format supplied by the *Employer* must be on a separate tab.

All documentation are submitted in accordance with the matrix and communication plan, and with a transmittal containing the following fields as a minimum:

- Name of the Package
- Name of *Consultant*
- Transmittal Number
- *Consultant* Details
- Date of Submission
- Description of Document

- Document Number
- Document revision
- Document type
- Document media type
- Number of copies
- Purpose of submission
- Document plant breakdown structure PBS (e.g. AKZ/KKS)
- Signed by and date
- Documentation Review and Turn-around

For review purpose, all documentation is submitted, by the *Consultant*, in native electronic format as prescribed in the Engineering Drawing Standard – Common Requirements (240-86973501). The *Consultant* is given access to Eskom electronic document management system portal collaboration system for submission of all documentation to be reviewed. Final documentation is submitted in both electronic and hard copies to the Project Documentation Centre. The *Consultant* submits two (2) hard copies and one (1) electronic copy (USB). The *Consultant* maintains Master Document List (MDL) of all documents submitted and submits monthly to the *Employer*.

The *Employer* has a minimum 14 calendar days to review, consolidate and send back review comments for documentation submitted by the *Consultant*. The *Consultant* also has a minimum 14 calendar days to respond and/rectify as per the comments by the *Employer*.

Retention of documents

The *Consultant* retains copies of all documents prepared for this contract for the period of 7 (seven) years from the completion of the whole of the services. Documents should be in a format specified by the *Employer's Agent*.

Records and forecasting of expenses

Forecasted Rate of Invoicing (FRI) should be send monthly, based on the programme for outstanding work to be performed.

Invoicing and payment

Clause 50.2 states invoices submitted by the *Consultant* include the details stated in the Scope to show how the amount due has been assessed. Also state what must be shown on the Invoice. The following text is suggested.

The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

[List them]

The *Consultant* shall address the tax invoice to Eskom Holding SOC Limited
Kendal Power Station
Group Capital Division
Private Bag X7272
Emalahleni
1035

And include on it the following information:
Name and address of the *Consultant* and the *Employer's Agent*;

The contract number and title;
Consultant's VAT registration number;
The *Employer's* VAT registration number 4740101508;
Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

Invoice should be send to the following address and Finance team on site should be copied:
InvoicesgrpcapitalOTH@eskom.co.za

Quality management

System requirements

Clause 40.1 requires that the Consultant operate a quality management system as stated in the Scope. The Consultant to comply with Supplier Quality Management Specification 240- 105658000

Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. The *Consultant* is to submit: Proof of registration with professional body, Quality Method statement based on the scope; Quality policy; Quality Objectives; information for defined roles, responsibilities and authorities; Documented information for Control of Externally Provided Processes and Form A

Transfer of rights if Option X 9 applies

There are no exceptions to the content of option X9

Management of work done by Task Order

Please read Option G before drafting requirements here as much of the procedure for the use of Task Orders is already provided in Option G. For example clause 55.1 specifies what a Task Order should include.

A Task Order includes

- a detailed description of the work in the Task,
- a priced list of items of work in the Task in which items taken from the Task Schedule are identified,
- the starting and completion dates for the Task,
- the amount of delay damages for late completion of the Task and
- the total of the Prices for the Task.

The Employer consults the Consultant about the contents of a Task Order before he issues it.

Health and safety

General

In carrying out its obligations to the *Employer* in terms of this contract, which obligations include, amongst others, providing the *works*; using Plant, Materials and Equipment; and whilst at the site for any reason, the *Consultant* is the "*Employer*" in terms of the Occupational Health and Safety Act, No. 85 of 1993, in respect of its activities and in relation to its employees, agents, Subcontractor/s and mandatories.

The *Consultant* does not consider itself under the supervision or management of the *Employer* with regard to compliance with the Safety Health and Environmental requirements.

Furthermore, the *Consultant* does not consider himself to be a subordinate or under the supervision of the *Employer's Agent* in respect of these matters.

The *Consultant* is responsible for the supervision of its employees, agents, Subcontractors and mandatories and takes full responsibility and accountability for ensuring that they are competent, aware of the Safety Health and Environmental requirements, whilst executing the *works* in accordance with the Safety Health and Environmental requirements.

The *Consultant* ensures compliance with, amongst others:

- a) The provisions of the Occupational Health and Safety Act, No. 85 of 1993 and all applicable Regulations (as amended), binding in terms thereof;
- b) The latest versions of standards, procedures, specifications, rules, systems of work and Requirements of the *Employer*, copies of which will be provided to the *Consultant* on request.
- c) The provisions of the National Environmental Management Act (as amended) and all regulations in force from time to time in terms of that Act, including Record of Decisions/ Environmental Authorisation.

The documentation referred to is collectively referred to as the Safety Health and Environmental requirements and forms a part of the contract Works Information.

The *Consultant* ensures that its employees, agents, Subcontractors and mandatories comply with the provisions of the Occupational Health and Safety Act, No. 85 of 1993, and all applicable regulations binding in terms thereof as well as the *Employer's* Safety Health and Environmental Specification whilst making use of plant, materials and equipment and whilst at the Site for any reason whatsoever.

The *Consultant* shall ensure that such a person is contactable 24 hours a day, and is registered with a registered professional council approved by the Principal Director of the Department of Labour, as per the requirements of the latest Construction Regulations, inclusive of all exemptions and amendments pertaining thereto.

The *Consultant* hereby indemnifies the *Employer* and holds the *Employer* harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expenses that may be made against the *Employer* and/or suffered or incurred by the *Employer* (as the case may be) as a result of, any failure of the *Consultant*, its employees, agents, Subcontractors and mandatories to comply with their obligations, and/or the failure of the *Employer* to procure the compliance by the *Consultant*, its employees, agents, Subcontractors and/or mandatories with their responsibilities and/or obligations in terms of or arising from the Occupational Health and Safety Act, No. 85 of 1993.

Immediately reports any occupational or other injuries, near miss events, property damage, environmental related incidents as well as any potential threat to the health and safety of individuals at the *works* or on the site, as soon as he becomes aware thereof, to the *Employer's Agent*;

Complies with the *Employer's* Environmental, Occupational Health & Safety Incident Management

Procedure - 32-95, relating to the reporting and investigation of incidents. The classification of incidents contained in such document are considered final and must be applied by the *Consultant* relating to any incidents/ injuries relating to its employees, agents, *Consultants*, Subcontractors and mandatories whilst on Site;

The *Consultant* will ensure that a valid Letter of Good Standing is handed in to the SHE Department.

The *Consultant* will ensure that a valid medical certificate is handed in at the time of inductions.

Working on the *Employer's* property

Access to the site is controlled and it is governed by the terms and conditions lay down by Kendal Power Station security officials. The proposed site will be shown to the *Consultant* during the site meeting or clarification meeting by the *Employer*.

The *Consultant* liaises with the GCD SHE Practitioner/Officers for SHE Induction prior work to commence. During Safety Induction, site access permits with a copy of the medical and a certified ID copy/passport (not older than three months) should be handed to the GCD SHE Practitioner/Officer for approval.

The *Consultant* will take the signed site access documents to security reception official in order to finalize their site access.

The *Consultant ensures* that all its employees carry their site access forms with them all the time

The *Consultant* is subjected to alcohol testing on a daily basis.

The *Consultant* submits his application for vehicle permit to the *Employer's Agent*. The personnel and vehicles entering and leaving the site are subjected to routine searches. The *Employer's Agent* will liaise with Concor Lubocon JV for an access sticker to enter the ADF Project.

The *Consultant* obtains a "Gate Removal Permit" from the *Employer's Agent* before materials and equipment can be removed from site. The "Gate Removal permit" gives itemised list of materials and equipment to be removed from site.

The *Consultant* ensures that a tool list is available on the day of arrival and that all tools are captured on the tool list. The tool list will be handed over to the Reception Security official that will stamp the tool list. The tool list will be kept safe and will be used when tools needs to be remove from site. This message should be handed over to any Subcontractor that will be working on Kendal Power.

People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply at Kendal Power Station. The *Consultant* keeps records of his people on Site, including those of his Subcontractors which the *Employer's Agent* or *Supervisor* have access to at any time. These records may be required when assessing compensation events. Signed timesheets to be submitted with the invoices to the relevant *Employer's Agent* on a monthly basis.

Cooperating with and Obtaining Acceptance of Others

Other *Contractors* are working in the same area as the work of this contract. In this regard, the *Consultant* co-ordinates his work with the *Employer's Agent* to maintain harmonious working conditions on Site.

During the progress of the *works* the *Consultant* provides access to others who also execute work in the same area, on an as and when required basis.

The *Consultant* makes his own assessment of the problems and difficulties which may be encountered for providing access to and interfacing with Others (this includes access difficulties experienced during construction or commissioning phase).

Publicity and Progress Photographs

The taking of photographs at Kendal Power Station including the Project *works* is restricted and subject to the approval by the *Employer's Agent*.

For the purpose of the Progress Reporting Requirements, the *Employer's Agent* may prohibit the taking of such photographs and/or require that all such photographs be taken by an official *Employer* photographer. In the latter event, the *Consultant* is required to make arrangements directly with the photographer for the taking of the photographs required by the *Consultant* for the purpose of the Progress Reporting Requirements.

Things provided by the *Employer*

Equipment provided by the *Employer*

No Equipment will be supplied by the *Employer*; however, the *Employer* does reserve the right to negotiate with the *Consultant* that different equipment be used of another origin for whatever purpose that may become apparent at the time.

The *Consultant* supplies all equipment including cranes, scaffolding and other earthmoving equipment for the construction of the *works* and site establishment.

List of drawings

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
12810	Rev P09	Kendal Continuous Ash Disposal Facility Masterplan