



NEC3 Term Service Contract (TSC3)

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

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

for **Supply and Delivery of Laboratory, Testing
Equipment Fabric Filters Air Permeability Meter**

Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work	[•]

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	[•]
C1.2b Contract Data provided by the <i>Contractor</i>	[•]
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	[•]

C1.1 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:

Supply and Delivery of Laboratory, Testing Equipment Fabric Filters Air Permeability Meter

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

Options A	The offered total of the Prices exclusive of VAT is	R [●]
	Sub total	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 Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s) _____

Capacity _____

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(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 *Employer* prior to contract award

Note:

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

No.	Subject	Details
1	None	N/A

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)

Eskom Holdings SOC Limited

(Insert name and address of organisation)

Name &
signature
of witness

Date

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
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
	Tel No.	
	Fax No.	
10.1	The <i>Service Manager</i> is (name):	
	Address	
	Tel	
	Fax	
	e-mail	
11.2(2)	The Affected Property is	Eskom Research Testing and Development Lower Germiston Road, Rosherville, Germiston
11.2(13)	The <i>service</i> is	Supply and Delivery of Laboratory, Testing Equipment Fabric Filters Air Permeability Meter

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

11.2(14)	The following matters will be included in the Risk Register	Supply and Delivery of Laboratory, Testing Equipment Fabric Filters Air Permeability Meter
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	Two weeks
2	The Contractor's main responsibilities	
21.1	The <i>Contractor</i> submits a first plan for acceptance within	[*] of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	Once off purchase
4	Testing and defects	
42.1	Correcting Defects.	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
42.2	The Defect date is	4 weeks after completion
5	Payment	
50.1	The <i>assessment interval</i> is	n/a
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	Thirty(30)days after receipt of an undisputed tax invoice
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and
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 the Contract data
7	Use of Equipment Plant and Materials	
		There is no reference to Contract Data in this section of the core clauses and terms in Italics used in this section are identified elsewhere in the Contract data
8	Risks and insurance	

80.1	These are additional <i>Employer's</i> risks	1.Claims,proceedings,compensation and costs payable due to: <ul style="list-style-type: none"> Any Act or omission by the employer or by any person employed by or contracted to him except the Supplier Any breach of contract by the employer
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for "Format TSC3" available on
83.1	The <i>Employer</i> provides these additional insurances	as stated for "Format TSC3" available on
83.1	The <i>Contractor</i> provides these additional insurances:	Not Applicable
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
83.1	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> :	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).
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 the Contract data
10	Data for main Option clause	
A	Priced contract with price list	
11	Data for Option W1	

W1.1	The <i>Adjudicator</i>	The person selected from the Eskom Panel of Adjudicators listed in Annexure B of this Contract Data by the party intending to refer a dispute to him.
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civil Division of the South African Institution of Civil Engineering
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	
	- if the arbitration procedure does not state who selects an arbitrator, is	The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.1	The <i>base date</i> for indices is	n/a
	The proportions used to calculate the Price Adjustment Factor are:	Prices will be fixed for 90 days
X2	Changes in the law	
	No Data is required for this Option	
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of <ul style="list-style-type: none"> the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>The total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property, • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • Infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	[*] months after the end of the <i>service period</i> .
X20	Key Performance Indicators(not used when Option X12 applies)	
X20.1	The <i>Incentive Schedule</i> for Key Performance Indicator is in	Annexure[*]to this Contract Data
X20.2	A report of performance againsteach Key Performance Indicator is provided at intervals of	[*]months
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

been given to the *Contractor* in writing.

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

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

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information

which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

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

Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.

Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to

comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1

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

Z10 *Employer's* limitation of liability

Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

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

Z11.1 or had a business rescue order granted against it.

Z12 Supplier Development and Localization

Annexure A: Insurance provided by the Employer

These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the service provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
6. Further information and full details of all Eskom provided policies and procedures may be obtained from:

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_
From_1_April_2014_To_31_March_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

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

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

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 andrewbaird@ecsconsult.co.za
Christopher BINNINGTON	Gauteng	+27 11 888-6141 cdb@bca.co.za
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: Leighton.Itholeng@eskom.co.za

C1.2 Contract Data

Part two - Data provided by the Contractor

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	N/A N/A
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
CV's (and further key person's data including CVs) are in _____.		
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	
11.2(19)	The tendered total of the Prices is	R

PART 2: PRICING DATA

TSC3 Option A

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

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

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

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

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

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

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

Format of the *price list*

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

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

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

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

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

C2.2 the *price list*

Service/product	Quantity per year	Price per Unit
Supply of air permeability meter and accessories for complete operation of the instrument.		
Installation, commissioning, and training of staff.		

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

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the *service*

Executive overview

Supply and Delivery of Laboratory, Testing Equipment Fabric Filters Air Permeability Meter

1.2 *Employer's requirements for the service*

- Supply of air permeability meter and accessories for complete operation of the instrument.
- Installation, commissioning, and training of staff.
- Regular service and calibration of the instrument.

The air permeability meter will be used for testing of dusty bag filter samples. There are over 100 dusty fabric samples that will be tested per week. Some of the samples will be highly impregnated with dust and the instrument must be able to capture lowest values in the samples.

Air permeability meter must meet the following **minimum** requirements :

Measuring Range: ≤ 3 l/min to ≥ 8000 l/min

Measuring Accuracy: $\pm 3\%$

Test Pressures: 20 to 1000 Pa

Test Area: 5 cm^2

Units of Measurements: ml/cm²/s, m³/m²/min, ml/s, l/min, l/m²/s, l/dm²/min, cm³/cm²/s, CFM

Eskom will only supply electrical connection points (220 V or 360 V at 50 Hz). The Supplier is responsible for all other accessories to conduct a full installation, commissioning and full operation of the machine. Therefore, the supplier need to verify the typical use of the equipment, enclosure location and length of the hoses and cabling required.

It is recommended that the supplier request the samples of used fabric filter materials from RT&D textile laboratory prior to submitting a tender, in order to ensure that the instrument is suitable for testing of the used fabric filter materials.

1.3 Interpretation and terminology

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

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the Abbreviation
SANS	South African National Standards
SHEQ	Safety, Health, Environmental and Quality
OBL	Outside Battery Limits
DMF	Dimethylformamide
NaoH	Sodium Hydroxide

2 Management strategy and start up.

2.1 The Contractor's plan for the service – to be completed by contractor

In the TSC3 the Contractor's plan is his "design" for performing the service throughout the service period. Section 2 of the conditions of contract describes what the Contractor is to show in his plan both in the core clauses and some additional requirements in each of the main Options.

The extent of the Contractor's plan will depend on whether the Contractor is required to develop a plan in accordance with the Employer's broad outline of the service or whether the Employer has provided a plan for the Contractor to follow. Read the TSC3 Guidance Notes pages 21 and 22 for more information on the Contractor's plan.

Use this section to describe any particulars which must be taken into account by the Contractor in developing his plan as required by clause 21.2. For example information about the order and timing or method of carrying out particular items of work.

List technical reporting and scheduling requirements which are to be incorporated into the Contractor's plan.

2.2 Management meetings

Meetings of a general nature may be convened and chaired by the Contract Manager as follows:

The conditions of contract (e.g. Clause 16.2) and other sections of the Service Information (e.g. safety risk management) may require 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 size and complexity of the service, it is probably beneficial for the Service Manager to hold a weekly 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 planning 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 *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>Employer, Contractor and _____</i>

--	--	--	--

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

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

2.3 Contractor's management, supervision and key people

State any additional constraining requirements on Contractor's supervision and key people that are not already stated in other sections such as for Health and Safety. This section could be used to solicit an organogramme from the Contractor showing his people and their lines of authority / communication. This would be essential if the Contractor is a Joint Venture.

2.4 Provison of bonds and guarantees

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

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

2.5 Documentation control

Documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. 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.

2.6 Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

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

The Contractor shall address the tax invoice to

_____ and include on each invoice the following information: _____

The Contractor includes the following information on each tax invoice:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

- The words Tax Invoice
- Invoice Number
- Date of Invoice
- Purchase Order number (45#)

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

2.7 Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses, such as the use of standard forms. Not the same thing as documentation control

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

If Option C or E applies first read clause 52.2 and then state whether the Contractor is required to keep any other records..Included any other constraints which may be required in regard to format and filling of the records, and whether access for the Service Manager shall be provided in hard copy or electronically

Could delete if Option A applies unless the Employer requires some form of control over the Contractor's record keeping for the purpose of compensation event management.

2.9 Insurance provided by the *Employer*

First read TSC3 Core Clause 86.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the Contractor may have, as well as to whom the information required by Marine Insurance (if any) may be addressed.

2.10 Training workshops and technology transfer

Describe type and frequency of any on job training workshops, as well as any obligation for technology transfer being included as part of the service or at the end of the service period.

2.11 Design and supply of Equipment

On some complex services (e. g. nuclear) it could be in the Parties best interests that some details of the design of Equipment are shared with the Service Manager, not necessarily for his acceptance but as an assurance that the Equipment will be able to allow the Contractor to Provide the Service efficiently and without delay. For example specialised handling Equipment for a particular maintenance operation. Clause 23.1 is always available to the Service Manager if this paragraph is not used.

Also the Employer may wish to exercise constraints or include witness and hold points during manufacture, assembly or delivery of such Equipment. Include these constraints here.

Draft in such a way that there is no doubt that the liability for such design supply and use of the Equipment remains with the Contractor.

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

2.1.1 Equipment

The Employer may wish to use some of the Equipment used by the Contractor after the end of the service period. Clause 70.2 requires that details of such requirement be stated in the Service Information. Complete here or if not applicable retain the heading and state 'None'..

2.1.2 Information and other things

Clause 70.2 requires that information and other things which the Contractor is to provide at the end of the service period be stated in the Service Information.

2.13 Management of work done by Task Order

Only use this heading if Option X19 applies to this contract.

In some cases all work may be done in terms of Task Orders in which case it may be logical to move this section closer to the start of this part 2 of the Service Information. In some cases only parts of the service may require to be handled by Task Order, for example a major repair which has become necessary during a continuous maintenance service contract.

Please read Option X19 before drafting requirements here as much of the procedure for the administration of Task Orders is already provided in X19, for example X19.2 specifies what a task Order should include

A Task Order format could be provided in an Annexure to this Service Information.

Many considerations can apply to Task Orders, such as availability of resources, arrangements for emergency work, Task Order reporting (work carried out and service results), assessment of additional Prices for service not included in the Price List etc.

Clause X19.6 requires information which should be included on a Task Order programme. Further requirements for Task Orders include things to be provided by the Employer under a Task Order and the conditions under which the Employer or Others are to work.

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

The Service Provider shall comply with the health and safety requirements contained in the Mine Health and Safety Act No 29 of 1996. The Contractor must submit a SHE file in accordance with Eskom requirements.

3.2 Environmental constraints and management

The service provider must provide proof of the following

- Registration with Provincial and Local Government as a waste treatment facility
- Compliance with ISO 14001:2004 (Certified)
- Compliance with the requirements of SANS for Transportation of hazardous waste
- Registration with SAWIC
- Proof of registration with the Hazardous landfill site
- Method statement
- Aspect and Impact register as per the scope of work

3.3 Quality assurance requirements

- The contractor must be ISO 14001:2004 compliant
- The contractor must comply to Eskom Supplier Quality Requirement as per QM58 Specification
- The contractor will allow Eskom to audit the disposal process prior to concluding the contract and

when requested during the contract, and Eskom reserves the right to cancel the contract based on their findings.

- The supplier will be responsible to supply Eskom with a disposal certificate and report for each load disposed of, as well as the tonnage disposed of when requested

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed

- People used must be qualified to perform the respective tasks
- Drivers will comply with the Road Traffic Act No 93 of 1996
- The driver must be trained and certified on transportation of hazardous waste

4.2 Subcontracting

4.2.1 Preferred subcontractors

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

4.2.2 Subcontract documentation.

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

4.2.3 Limitations on subcontracting

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

4.2.4 Attendance on subcontractors

State requirements for attendance on Subcontractors, if any

4.3 Plant and Materials

4.3.1 Specifications

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

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

The service provider is to submit a list of equipment and method statement for Eskom review and approval prior to performing work. All equipment will be inspected and approved by Eskom employees as before work can commence.

4.3.2 Correction of defects

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

4.3.3 Contractor's procurement of Plant and Materials

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

4.3.4 Tests and inspections before delivery

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

4.3.5 Plant & Materials provided "free issue" by the *Employer*

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

5 Working on the Affected Property

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

- Access to the Eskom site is restricted and all work will be performed under the supervision of Eskom staff.
- All vehicles and personnel are subject to being searched when entering and exiting the Eskom property.
- The Eskom regulations stipulates that the alcohol test reading must be zero before an employee will be allowed on site.
- Contractors tools and equipment are subject to Eskom inspection, testing and authorisation before being deemed suitable for operations.
- All equipment entering site must be declared and inspected by security
- Contractor's staff will require access permits, supplied by the Employer to enter the site.
- Access permits will only be supplied after all contractor staff performing work have completing the safety, environmental and security induction courses.
- The cost and duration for the initial entry, exit and annual medicals are deemed to be covered in the rates subject to the provisions of clause 60 of the Conditions of Contract.
- Compliance with Life-saving rules

5.2 People restrictions, hours of work, conduct and records

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

5.3 Health and safety facilities on the Affected Property

Health and safety facilities will be communicated to the Contractor during the induction of the Contractor's staff members. The contractor must supply all personnel with the required PPE to perform site work as per the scope.

5.4 Environmental controls, fauna & flora

The contractor is to stay on the designated road

The Contractor must report any spillages on site immediately to the Contract Manager. Control of the spillage and remediation of the affected area must be managed by the contractor.

5.5 Cooperating with and obtaining acceptance of Others

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

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

5.6 Records of Contractor's Equipment

All equipment entering and leaving site must be declared and inspected by security. Contractors tools and equipment are subject to Eskom inspection, testing and authorisation before being deemed suitable for operations.

5.7 Equipment provided by the Employer

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

5.8 Site services and facilities

5.8.1 Provided by the *Employer*

The Contractor will use the existing facilities (Toilets, etc) during the full period of his Site work

5.8.2 Provided by the Contractor

N/A

5.9 Control of noise, dust, water and waste

State requiremts,if any

5.10 Hook ups to existing works

State any constraints

5.11 Tests and inspections

5.11.1 Description of tests and inspections

N/A

5.11.2 Materials facilities and samples for tests and inspections

N/A

List of drawings

N/A