NEC3 Supply Contract (SC3)

|  |  |
| --- | --- |
| **Between** | **ESKOM ROTEK INDUSTRIES SOC Ltd (Reg No. 1990/006897/30)** |
| **and** | **TBC** |  |
|  | **To Rebuild Transmissions to OEM specifications for ERI – BMS Yellow Plant on an as and when required basis for a period of 3 years** |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** |  **2** |
| **Part C2** | **Pricing Data** |  **15** |
| **Part C3** | **Scope of Work** |  **2** |
| **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]** | **3** |
| **C1.2a** | **Contract Data provided by the *Purchaser*** | **6** |
| **C1.2b** | **Contract Data provided by the *Supplier*** | **19** |
|  |  |  |

C1.1 Form of Offer & Acceptance

#### Offer

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

**To Rebuild Transmissions to OEM specifications for ERI – BMS Yellow Plant on as and when required basis for a period of 3 years**

The tenderer, identified in the Offer signature block, has

|  |  |
| --- | --- |
| *either* | 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. |
| *or* | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

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

|  |  |  |
| --- | --- | --- |
|  | The offered total of the Prices exclusive of VAT is |  |
|  | Value Added Tax @ 15% is |  |
|  | The offered total of the amount due inclusive of VAT is1 |  |
|  | (in words) **TBC** |

This Offer may be accepted by the Purchaser by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Supplier* in the *conditions of contract* identified in the Contract Data.

|  |  |
| --- | --- |
| Signature(s) |  |
| Name(s)  |  |
| Capacity |  |
| **For the tenderer: TBC** |  |
|  |
| Name & signature of witness | Date |

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

#### Acceptance

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

The terms of the contract, are contained in:

Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance) Part C2 Pricing Data

Part C3 Scope of Work: Goods Information including Supply Requirements

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

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
| Signature(s) |  |  |  |
| Name(s) |  |  |  |
| Capacity |  |  |  |
| **for the Purchaser** | **Eskom Rotek Industries SOC Limited** |  |  |
|  |
| Name & signature of witness |  |  | Date  |

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

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

Note:

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

|  |  |  |
| --- | --- | --- |
| No. | Subject | Details |
| 1 | **N/A** | **N/A** |

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

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **For the tenderer:** |  | **For the Purchaser** |
| Signature |  |  |  |
| Name |  |  |  |
| Capacity |  |  |  |
| On behalf of | **TBC** |  | **Eskom Rotek Industries SOC Limited**  |  |
| Name & signature of witness |  |  |   |
| Date |  |   |   |

C1.2 SC3 Contract Data

**Part one - Data provided by the *Purchaser***

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

|  |  |  |
| --- | --- | --- |
| **Clause** | **Statement** | **Data** |
| 1 | **General** |  |
|  | The *conditions of contract* are the core clauses and the clauses for Options |  |
|  |  |  |
|  |  | **E****W1****X2** | **Costs reimbursable** **Dispute resolution procedure****Changes in the law** |
|  |  | **X7** **X16** | **Delay damages****Retention**  |
|  |  | **X17****X18****X19****X20** | **Low performance damages****Limitation of liability****Task Order****Key performance indicators** |
|  |  | **Z:** | ***Additional conditions of contract*** |
|  | of the NEC3 Supply Contract (April 2013) 2 | (If the December 2009 edition is to be used delete April 2013 and replace by December 2013) |
| 10.1 | The *Purchaser* is (name): | **Sifiso Mthethwa****Eskom Rotek Industries SOC Ltd****(Reg no: 1990/006897/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa** |
|  | Address | **Roshland Office Park Lower Germiston Road Rosherville** |
|  | Tel No. | **+27 79 496 5128** |
|  | Fax No. | **MthethPS@eskom.co.za** |
| 10.1 | The *Supply Manager* is (name): |  |
|  | Address |  |
|  | Tel |  **+27** **+27**  |

2 Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, [www.ecs.co.za.](http://www.ecs.co.za/)

Fax **N/A**

e-mail

11.2(13) The *goods* are T**o rebuild Transmissions to OEM specifications for ERI – BMS Yellow Plant**

 11.2(13) The *services* are

**The services required are for provision on an as and when required basis to repair and rebuild of Earthmoving Transmissions with genuine OEM parts to OEM standards for a period of 36 months**

11.2(14) The following matters will be included in

the Risk Register **Any other matter posing a risk to the contract will be discussed amongst the Parties and agreed upon before inserted on the Risk Register.**

11.2(15) The Goods Information is in **Part 3: Scope of Work and all documents**

11.2(15) The Supply Requirements as part of the Goods Information is in

##### Annexure A to this Contract Data

12.2 The *law of the contract* is the law of **the Republic of South Africa**

13.1 The *language of this contract* is **English**

13.3 The *period for reply* is **2 Days**

 **SHEQ related communication – Immediately**

1. **The *Supplier’s* main responsibilities**

#### Time

##### Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.

* 1. The *starting date* is. 01 June 2023, earlier or later date
	2. End date 31 June 2026
	3. The service period is 36 Months

|  |  |  |  |
| --- | --- | --- | --- |
| 30.1 | The *delivery date* of the *goods* and*service*s is: | ***goods and services*** | ***delivery date*** |
|  | **1** |  **As per task order** | **Within 48 hours following the issuing of task order** |
|  |  |  |  |
|  |  |  |  |
| 30.2 | The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date. | **[no data required]** |  |
| 31.1 | The *Supplier* is to submit a first program for acceptance within | **2 weeks within acceptance – (On as and when required basis)** |  |

|  |  |  |
| --- | --- | --- |
| 32.2 | The *Supplier* submits revised programs at intervals no longer than | **1 (One) Week**  |
| 4 | **Testing and defects** | **A** **supplier will be required to produce and submit a report stating the testing and defects** |

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| --- | --- | --- |
| 42 | The *defects date* is |  **12 months after the delivery of the spare item.**  |
| 43.2 | The *defect correction period* is | **Within 48 hours after notifying of such defect** |
|  | except that the *defect correction period* for | **N/A** |
|  | and the *defect correction period* for | **N/A** |
| 42.2 | The *defects access period* is | **Immediate** |
|  | except that the *defect access period* for |  **N/A** |
|  | and the *defect access period* for |  **N/A** |
| 5 | **Payment** |  |
| 50.1 | The *assessment interval* is | **On the 25th day of each successive month** |
| 51.1 | The *currency of this contract* is the | **South African Rand** |
| 51.2 | The period within which payments are made is |  |
|  | **As per Eskom’s Standard Payment period.** |
| 51.4 | The *interest rate* is | **the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and****(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.** |
| 6 | **Compensation events** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** |
| 7 | **Title** | **To Rebuild Transmissions to OEM specifications for ERI – BMS Yellow Plant** |

|  |  |  |
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| 8 | **Risks, liabilities, indemnities and insurance** |  |
| 80.1 | These are additional *Purchaser’s* risks | **Supply of incorrect parts (wrong specification)** |
|  |  |  |
|  |  |  |
| 84.1 | The *Purchaser* provides these insurances from the Insurance Table | **See notes about *Purchaser* provided insurance in Annexure B to this Contract Data** |
|  | 1. Insurance against | **Loss of or damage to the *goods*, plant and materials.** |
|  | Cover / indemnity is | **Overseas shipment / transit insurance (only) to cover events at the *Supplier*’s risk (if any) after the *goods* have left the *Supplier*’s overseas premises. See notes in Annexure B****If this contract includes the supervision of installation, testing, commissioning or building work at the *Purchaser*’s premises, the *Purchaser* also provides cover for physical loss of or damage to the *Purchaser*’s surrounding property including any temporary work required to complete the Delivery.** |
|  | The deductibles are | **See notes in data for clause 88.2 below and Annexure B** |
| 84.1 | The *Supplier* provides these additional insurances | **Should allow for forward cover i.e. the rates provided will be deemed as an all-inclusive costs from procurement to delivery at ERI premises** |
| 84.2 | The minimum amount of cover for loss of or damage to any plant and materials provided by the *Purchaser* is: | **10% of the contract value** |
| 84.2 | The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract for any one event is: | **whatever the *Supplier* deems necessary in addition to that provided by the *Purchaser* for any one event with cross liability so that the insurance applies to the Parties separately.****However if the *Supplier* is exposed to damage to the *Purchaser*’s property the cover limit amount is not less than**  **R15 million (fifteen million Rand) for exposure to Generation Division property;**  **R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and;**  **R1 million (one million Rand) for exposure to Distribution Division and all other *Purchaser*’s property****for any one occurrence or series of occurrences arising out of one event but** |

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| --- | --- | --- |
|  |  | **unlimited during the period of insurance.** |
| 84.2 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Supplier* 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 *Contractor’s* 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 Rand).** |
| 88.1 | The *Supplier’s* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to |  |
|  | **R0.0 (zero Rand)** |
| 88.2 | For any one event, the *Supplier’s* liability to the *Purchaser* for loss of or damage to the *Purchaser’s* property is limited to | **(1) for the *Purchaser’s* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event described in the “Format A” / “Format B” / “Format Dx” insurance policy available on** [***http://www.eskom.co.za/Tenders/InsurancePoli***](http://www.eskom.co.za/Tenders/InsurancePoli) ***ciesProcedures/Pages/EIMS\_Policies\_ From\_1\_April\_2014\_To\_31\_March\_2015.aspx*** |
|  |  | **And** |
|  |  | **(2) for all other existing *Purchaser’s* property the highest applicable deductible (first amount payable) namely:**  **R15 million (fifteen million Rand) for Generation Division property;**  **R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;**  **R1 million (one million Rand) for Distribution Division and all other *Purchaser*’s property** |
|  |  | **See notes in Annexure B** |
| 88.3 | The *Supplier’s* liability for Defects due to hisdesign which are not notified before the last*defects date* is limited to: | **OEM should provide Purchaser with their owned equipment at no costs if ERI equipment is not returned within a period of more than 30 days from the original plan which was agreed upon by the supplier and purchaser.** |
|  |  |  |
| 88.4 | The *Supplier’s* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | **10% of the price payable for such part item which is subject to a claim, this limitation applies to claims arising from negligence and any indemnity and any or all excluded matters. Negligence will be 100% liable.** |
|  |  |  |
| **9** | **Termination and dispute resolution** |  |
| 94.1 | The *Adjudicator* is | **the person selected from the ICE-SA Division** |

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| **(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**](http://www.ice-sa.org.za/)**). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).** |
|  | Address | **Will be appointed when a dispute arises and other details to be advised in the event of a dispute.** |
|  | Tel No. | **N/A** |  |  |
|  | Fax No. | **N/A** |  |  |
|  | e-mail | **N/A** |  |  |
| 94.2(3) | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See** [**www.ice-sa.org.za**](http://www.ice-sa.org.za/)**)** |
| 94.4(2) | The *tribunal* is: | **arbitration** |  |
| 94.4(5) | The *arbitration procedure* is | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** |
| 94.4(5) | The place where arbitration is to be held is | **Johannesburg, 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.** |
| **10** | **Data for Option clauses** |  |  |  |
| **A****20.5****11****W1.1**W1.2(3)W1.4(2)W1.4(5)**12****X2** | **Priced contract with price list**The *Contractor* prepares forecasts ofthe final total of the Prices for thewhole of the *service* at intervals no **4 weeks**longer thanData for Option W1The *Adjudicator* **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**](http://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).**The *Adjudicator nominating body* is: **the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see** [**www.ice-sa.org.za**](http://www.ice-sa.org.za) **) or its successor body.**An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises.The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.The *tribunal* is: **Arbitration**The *arbitration procedure* 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 **Johannesburg, South Africa** held is The person or organisation who willchoose an arbitrator* if the Parties cannot agree a **the Chairman for the time being or his**

choice or **nominee of the Association of Arbitrators*** if the arbitration procedure does **(Southern Africa) or its successor body.**

not state who selects an arbitrator, is**Data for secondary Option clauses****Changes in the law** |
| X2.1 | A change in the law of **South Africa is a compensation event if it**  |
|  |  **occurs after the Contract Date.** |
| **X7**

|  |  |  |
| --- | --- | --- |
| X7.1 Delay damages for Delivery are | **Delivery of** | **amount** **per day** |
| Delivery to Rosherville  |  **calculated at daily rate of 1% capped at 10% of the contract value**  |

 | **Delay Damages** |
|  |  |
| **X16** | **Retention**  | **10% of each assessment or task capped at 10% of the contract value. 50% of the 10% will be released at the end of contract and remaining 50% will be released at the end of defect liability period** |
| **X17.1****X18**X18.1X18.2X18.3X18.4X18.5X18.6X18.7 | **Low performance damages****Limitation of liability**The Supplier’s liability to the Purchaser for the Purchaser’s indirect or consequential loss is limited to: For any one event, the liability of the Supplier’s to the Purchaser for loss of or damage to the Purchaser’s property is limited to: The Supplier’s liability to the Purchaser for Defects due to his design which are not listed on the Defects Certificate is limited to:The Supplier’s total liability to the Purchaser for all matters arising under or in connection with this contract, other than the excluded matters, is limited to:The *Supplier’s* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to:**OEM should provide Purchaser with their owned equipment at no costs if ERI equipment is not returned within a period of more than 30 days from the original plan which was agreed upon by the supplier and purchaser.**For any one event, the *Supplier’s* liability to the *Purchaser* for loss of or damage to the *Purchaser’s* property is limited to**And** **(2) for all other existing Purchaser’s property the highest applicable deductible (first amount payable) namely:****R15million (fifteen million Rand) for Generation Division property;****. R7.5 million (seven million five hundered thousand Rand) for Transmission Division property and:****. R1 million (one million Rand) for Distribution Divission and all other Purchaser’s property**The *end of liability date* is**12 months after delivery of the spare part items** | **Refer to Table X17.1 below****R0.0 (zero Rand)**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* **Full value of the defective part(s)** **Full value of the defective part(s)** |
| **X20** | **Key Performance Indicators** | **Will be determined and agreed at contract award.** |
| **Z** | **The *additional conditions of contract*****are** | **Z1 to Z12 always apply for Eskom** |

##### Z1 Cession delegation and assignment

Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*

Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

##### Z2 Joint ventures

Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly

|  |  |
| --- | --- |
|  | and severally liable to the *Purchaser* for the performance of this contract. |
| Z2.2 | Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf. |
| Z2.3 | The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing. |
| **Z3** | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** |
| Z3.1 | Where a change in the *Supplier’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier*’s B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change. |
| Z3.2 | The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*. |
| Z3.3 | Where, as a result, the *Supplier’s* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier*’s obligation to Provide the Goods and Services. |
| Z3.4 | Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. |
| **Z4** | **Ethics** |
| Z4.1 | Any offer, payment, consideration, or benefit of any kind made by the *Supplier*, 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 *Supplier*’s obligation to Provide the Goods and Services or taking any other action as appropriate against the *Supplier* (including civil or criminal action). |
| Z4.2 | The *Purchaser* may terminate the *Supplier*’s obligation to Provide the Goods and Services if the *Supplier* (or any member of the *Supplier* where the *Supplier* 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 *Purchaser* or other people or organisations and including in circumstances where the *Supplier* or any such member is removed from the an approved vendor data base of the *Purchaser* 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 P3 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 *Supplier* does not disclose or make any information arising from or in connection with this |
|  |  | contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient. |
| Z5.2 | If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*. |
| Z5.3 | In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed. |
| Z5.4 | The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*. |
| Z5.5 | The *Supplier* 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 *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing. |
| **Z7** | **Health, safety and the environment: Add to core clause 25.4** |
| Z7.1 | The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.Without limitation the *Supplier*:* warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and
* undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier’s* direction and control, likewise observe and comply with the foregoing.
 |
| Z7.2 | The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier’s* direction and control, likewise observe and comply with the foregoing. |
| **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 *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate. |
| Z8.2 | If the Supplier does not provide a tax invoice in the form and by the time required by this contract, the time by when the Purchaser is to make a payment in the next payment period, without attracting interest in time to the delayed submission of the correct tax invoice. Interest due by the Purchaser in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made. |
| Z8.3Z8.4 | The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Purchaser*’s VAT number 4330196330 on each invoice he submits for payment.The Contractor is further required to submit to the Project/Service Manager a valid Tax Clearance certificate from SARS every 12Ðmonths or as and when required from Contract award |
| **Z9** | **Notifying compensation events** |
| Z9.1 | Delete from the last sentence in core clause 61.3 the words, “unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption”. |
| **Z10** | ***Purchaser’s* limitation of liability** |
| Z10.1 | The *Purchaser’s* liability to the *Supplier* for the *Supplier’s* indirect or consequential loss is limited to R0.00 (zero Rand) |
| Z10.2 | The *Supplier*’s entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the*Purchaser*’s liability under the indemnity is limited. |
| **Z11** | **Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":** |
| Z11.1Z11.2Z11.3Z11.4 | or had a business rescue order granted against it.Notwithstanding the Delay damages, failure for the Contractor to deliver the spares within 5 days after receipt of task order/conclusion of contract then ERI may terminate the contract.Should the Contractor be unable to repair/replace the part(s) within the 5 days as stipulated in the Low Services Damage Table below, The Employer may exercise its right to terminate the contract without notice.The contract amount is depleted before the term of the contract is completed. **LOW SERVICES DAMAGE TABLE X17.1**

|  |  |
| --- | --- |
| **DELIVERY OF PARTS**  | **DELIVERY OF PARTS AS PER TASK ORDER** |
| Task Order to rebuild transmissions to OEM specifications | Supplier to supply part(s) within 48 hrs  |
| Failure to supply | First NCR issued for failure to supply within 24 hrs (24 +24) |
| Failure to supply for 2nd time | Second NCR issued on 3rd day for failure to supply within 48 hrs (24+24+24) |
| Failure to supply for 3rd time | Second NCR issued on 3rd day for failure to supply within 48 hrs (24+24+24+24) |
|  | After the 3rd NCR the termination process will be effected  |
| **PART(S) DEFECTS** | **RETURN TO SERVICE** |
| Part defect | 48 hours to repair the part, failure to repair: |
|  | Supplier to replace the part(s) with the same capacity within 24 hrs |
| Failure to replace/Repair | Delay damages penalty = part rate X 10% daily for 5 days. Should the Contractor be unable to repair/replace the part(s) within the 5 days, The Employer may exercise its right to terminate the contract without notice. |

 |
| **Z12** | **Addition to secondary Option X7 Delay damages (if applicable in this contract)** |
| Z12.1 | If the amount due for the *Supplier*’s payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier*’s obligation to Providethe Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table. |

### Annexure A: Supply Requirements

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

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

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

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

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

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

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

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

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

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

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

#### The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

|  |  |
| --- | --- |
| **1. The requirements for the supply are** | The Service provider is responsible for:* + 1. Collection and return of the transmission from ERI workshop at Rosherville JHB.
		2. The transmission overhaul is to be undertaken at the supplier’s facility and not a 3rd party’s facility unless approved by an ERI representative prior to commencement of the work.
		3. The supplier will strip the component down, clean and lay bare all parts for inspection by an ERI representative, if so requested.
		4. The supplier will supply ERI with a quote for the rebuilding of the transmission with new OEM parts and labour with travel included. Where parts are sourced from a supplier other than the OEM or agent this should be indicated on the quote.
		5. No work will commence without ERI approval by an Area Manager or more senior representative on email.
		6. In carrying out the overhaul the supplier will record all specifications of parts that are deemed reusable against the manufacturer’s specifications. These parts should be clearly marked in the quote as reusable.
		7. The supplier will supply all specialised tools, equipment and requisite software for the rebuild.
		8. ERI reserves the right to inspect the works at any stage of the rebuild process for as many times as deemed necessary.
		9. On completion of the rebuild the transmission will be Dynamometer tested to confirm that the transmission performs to the original OEM parameters. Load testing duration will be no less than four continuous hours in duration and will preferably be run at load.
		10. Supply load test results which need to be recorded and included in the final report. It is preferable that the load test results are system produced.
		11. Issue a technical report detailing the cause of failure, rebuild overview with key specifications against OEM parameters and load test data. Photographic evidence must support failure text.
 |
| **2. The requirements for transport are** | * 1. Collection and return of the transmission from ERI workshop at Rosherville JHB.
 |
| **3. The delivery place is** | Supplier should deliver goods to ERI – BMS Engineering Plant* 1. Collection and return of the transmission to ERI workshop at Rosherville JHB.
 |
| **4. Actions of the Parties during supply** | **Action** | **Party which does it** |
|  | Giving notice of Delivery | Supplier |
|  | Checking dispatch | packing | and | marking | before | Supplier |
|  | Contracting for transport | Supplier |
|  | Pay costs of transport | Supplier |
|  | Arrange access to delivery place | Supplier |
|  | Loading the *goods* | Supplier |
|  | Unloading the *goods* | ERI and Supplier |
| **For international procurement** | Undertake export requirements |  |
|  | Undertake import requirements |  |
| **5. Information to be provided by the*****Supplier*** | **Title of document** |
|  | Packing lists for cases and their contents |
|  | Copy of invoice for the *goods* |
|  | Delivery Note |
|  | Test results and maintenance manuals |
| **For international procurement** | Licences, authorisations and other formalities associated with export of the *goods* |
|  | Air Waybill or Bill of Lading with associated landing, delivery and forwarding order |
|  | The Bill of Entry endorsed by the importation authority |
|  | Customs work sheets, showing tax, duties and surcharges which the law of the country into which the *goods* are being imported requires the importer to pay |
|  | Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable |
|  | Specify other import documents required by authorised officials. |

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

### Annexure B: Insurance provided by the *Purchaser*

*These notes are provided as guidance to tendering suppliers and the Supplier about the insurance provided by the Purchaser. These notes are not part of this contract. The Supplier must obtain its own advice.*

##### Transit insurance of *goods* originating from outside the borders of the Republic of South Africa

For the purpose of supply contracts, the only insurance provided by Eskom (the *Purchaser*) is transit shipment cover, commonly known as Marine Insurance for air, sea, rail and road freight (including local land arrangements) for conveyance of *goods* originating outside RSA. Please consult the website stated below to ascertain whether Format A, Format B or Format Dx is applicable to this contract and then the

* Marine Insurance Policy wording;
* Eskom Shipment Policies and Procedures – note a pre-shipment survey form has to be completed under certain circumstances;
* Marine Claims Handling Procedures – for important shipment actions and claims forms in event of damages to cargo freight via sea, barge, air, road or rail.

For EXW (Ex Works collections) this is of no concern to the *Supplier* but for any other Supply Requirement (such as CIF, DDU, or DDP) the *Supplier* need not provide such insurance even if the INCOTERM requires it and tendering suppliers should ‘discount’ their prices when tendering to allow for this provision by the *Purchaser* (Eskom).

***Supplier*’s liability for damage to the *Purchaser*’s property**

Whilst this is a liability the *Supplier* carries and should cover (if he is required to deliver the *goods* to the *Purchaser*’s premises) his liability is limited to the amount of cover provided to the *Purchaser* within his assets policy. This amount varies depending on the Division within Eskom to which the *Supplier* is making the delivery. For any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance the *Supplier*’s liability would be:

* R15million for Generation Division projects,
* R7.5million for Transmission Division projects or
* R1.0million for Distribution Division projects

##### All other insurance

As required by clause 84, the *Supplier* provides all other insurance for his risks. The *Supplier* should give further consideration to providing for these additional insurance concepts [for amounts and periods of insurance the *Supplier* deems fit and necessary].

Professional Indemnity: The insurance provided shall indemnify the *Supplier* (and/or his professional consultant) for those sums which the *Supplier* or his consultant shall become legally liable to pay as damages arising from any claim first made against the *Supplier* / consultant and reported to their insurers during the Period of Insurance, directly arising out of any negligent act, error or omission committed or alleged to have been committed by the *Supplier* / consultant in the conduct of **professional services** (for example, design) in connection with this contract.

Products Liability: A special General Liability extension for liability arising out of the *Supplier’s* **defective**:

* + production and manufacturing process (workmanship or material), or
	+ product design, or
	+ warnings, instructions, usage and maintenance manuals and specifications.

For any further explanation of insurance requirements tendering suppliers are advised to consult their brokers or insurers who may in turn contact Eskom Insurance Management Services per contact details provided on the following website:

[*http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_*](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_)

*From\_1\_April\_2014\_To\_31\_March\_2015.aspx*

C1.2 Contract Data

### Part two - Data provided by the *Supplier*

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

|  |  |  |
| --- | --- | --- |
| **Clause** | **Statement** | **Data** |
| 10.1 | The *Supplier* is (Name): TBA |  |  |  |  |
|  | Address |  |  |  |  |
|  | Tel No. |  |  |  |  |
|  | Fax No. |  |  |  |  |
| 11.2(8) | The *direct fee percentage* is: **%**The *subcontracted fee percentage:* **%** |
| 11.2(11) | The tendered total of the Prices is  |  |  |  |
| 11.2(12) | The *price schedule* is in: | **The document called ‘Price Schedule’ in Part 2 of this contract.** |  |  |
| 11.2(14) | The following matters will be included in the Risk Register | Any other matter posing a risk to the contract will be discussed amongst the parties and agreed upon before inserted on the Risk Register |  |  |
| 24.1 | The key people are:Name:Job:Responsibilities:Qualifications:Experience:Email:Contract number: |  |  |  |
| 25.2 | The Purchaser and the Supplier provide services and other things as stated in Part 3 of the Scope of Work. |
| 30.1 | The *delivery date* of the *goods* and*service*s is: |  ***goods and services*** | ***delivery date*** |  |
|  | **1** | Items listed and described in the BoQ and Price Schedule in C2.2 |  **Within 48 hours following receipt of Task Order** |

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

5 Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or [www.ecs.co.za](http://www.ecs.co.za/)

|  |  |  |
| --- | --- | --- |
| 31.1 | The programme identified in the Contract Data is contained in: |  |
| 63.2 | The *percentage for overheads and profit*added to the Defined Cost is |  |
|  | **Deemed to be included** |

# PART 2: PRICING DATA

#### NEC3 Supply Contract

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions |  **2** |
| C2.2 | The *price schedule* | **2** |

C2.1 Pricing assumptions

**How *goods* and *service*s are priced and assessed for payment**

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

|  |  |  |
| --- | --- | --- |
| **Identified and** | 11 |  |
| **defined terms** | 11.2 | (11) The Prices are the amounts stated in the price column of the Price |
|  |  | Schedule. Where a quantity is stated for an item in the Price Schedule, the |
|  |  | Price is calculated by multiplying the quantity by the rate. |
|  |  | (12) The Price Schedule is the *price schedule* unless later changed in accordance with this contract. |
| **Assessing the amount due** | 50.2 | The amount due is |
|  |  | * the Price for each lump sum item in the Price Schedule which the *Supplier*

has completed,* where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate,
* plus other amounts to be paid to the *Supplier*,
* less amounts to be paid by or retained from the *Supplier*.
 |
|  |  | Any tax which the law requires the *Purchaser* to pay to the *Supplier* is included in the amount due. |

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

**Function of the Price Schedule**

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

**Preparing the *price schedule***

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

It will be assumed that the tendering supplier has

* + Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
	+ Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no

compensation event for this unless the Defect is due to a *Supplier’s* risk;

* + Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
	+ Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
	+ Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

**Format of the *price schedule***

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

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

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

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

C2.2 the *price schedule*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Make** | **Plant Type** | **Model** | **QTY** | **Transmission** **Make** | **Minimum Overhaul Price with Mandatory parts** | **Maximum Price All Parts Replaced New** |
| BELL | ADT  | B30D | 10 | ZF |   |   |
| BELL | MG | 770D | 2 | John Deere |   |   |
| BELL |   | 670G | 4 | John Deere |   |   |
| CAT | ADT | 730 | 1 | Caterpillar |   |   |
| CAT |   | 730C | 6 | Caterpillar |   |   |
| CAT |   | 730C2 | 1 | Caterpillar |   |   |
| CAT | BD | D8R | 15 | Caterpillar |   |   |
| CAT | FEL  | 966H | 3 | Caterpillar |   |   |
| CAT | MG  | 140H | 10 | Caterpillar |   |   |
| CAT | TLB | 422E | 2 | Caterpillar |   |   |
| VOLVO | TLB | SDLG | 2 | Volvo |   |   |
| KOMATSU | MG | GD675-5 | 9 | Komatsu |  |  |
| KOMATSU | ADT | HM300 | 1 | Komatsu |   |   |
| KOMATSU | BD | D155AX-6 | 4 | Komatsu |   |   |
| KOMATSU |   | D155AX-5 | 1 | Komatsu |   |   |
| HITACHI | FEL  | ZW310 | 5 | ZF |   |   |
| HYUNDAI | FEL | HL770-9s | 5 | ZF |   |   |

# PART 3: SCOPE OF WORK

**OBJECTIVES:**

The objectives are to:

* Rebuild Transmissions to OEM specifications for ERI – BMS Yellow Plant.

**Section 1: Description of the works**

**1.1 BACKGROUND**

Eskom Rotek Industries (ERI) Bulk Material Services (BMS) division provide amongst other services mobile (yellow) plant equipment for bulk materials handling (ash and coal) to ERI BMS division in various power stations across the country mainly fossil power station. The fossil power stations are concentrated in Mpumalanga, Limpopo and Free State. The mobile plant equipment is used to build and maintain coal stockyard, ash dams and dumps. In order to provide high standard of service a well maintained and reliable mobile fleet is essential.

ERI has invested in diverse makes and types of mobile plant equipment. The mobile plant comprises of Articulated Dump Trucks (ADTs), Motor Graders (MGs), Bulldozers (BDs), Front End Loaders (FELs), Excavators (EXs), Tractor Loader Backhoes (TLBs), Smooth Drum Rollers (SDRs), Tipper Trucks (TPs) and Water Tankers (WTs) i.e., brands such as Komatsu, Caterpillar, Doosan, Volvo, Man, Iveco, Nissan, Mercedes Benz, Hitachi, Bell and JCB.

**1.2. BOUNDARY DEFINITIONS**

The following represents boundaries within which operational activities are taking place:

 1.2.1. Bulk Material Handling – Mobile Plant department

**Section 2: Scope**

The Service provider is responsible for:

* 1. Collection and return of the transmission from ERI workshop at Rosherville JHB.
	2. The transmission overhaul is to be undertaken at the supplier’s facility and not a 3rd party’s facility unless approved by an ERI representative prior to commencement of the work.
	3. The supplier will strip the component down, clean and lay bare all parts for inspection by an ERI representative, if so requested.
	4. The supplier will supply ERI with a quote for the rebuilding of the transmission with new OEM parts and labour with travel included. Where parts are sourced from a supplier other than the OEM or agent this should be indicated on the quote.
	5. No work will commence without ERI approval by an Area Manager or more senior representative on email.
	6. In carrying out the overhaul the supplier will record all specifications of parts that are deemed reusable against the manufacturer’s specifications. These parts should be clearly marked in the quote as reusable.
	7. The supplier will supply all specialised tools, equipment and requisite software for the rebuild.
	8. ERI reserves the right to inspect the works at any stage of the rebuild process for as many times as deemed necessary.
	9. On completion of the rebuild the transmission will be Dynamometer tested to confirm that the transmission performs to the original OEM parameters. Load testing duration will be no less than four continuous hours in duration and will preferably be run at load.
	10. Supply load test results which need to be recorded and included in the final report. It is preferable that the load test results are system produced.
	11. Issue a technical report detailing the cause of failure, rebuild overview with key specifications against OEM parameters and load test data. Photographic evidence must support failure text.
1. **MANDATORY PARTS REPLACEMENT**

The service provider shall replace the following parts with **new and genuine OEM parts** regardless of the condition of the existing parts

a) All friction and steel plates

b) All springs

c) All valve bank solenoids

d) All bearings, bushes, seals, gaskets, O rings, cast iron shaft seal rings

e) Planetary bearings and thrust washers

f) Transmission pump rebuild / replacement

g) Transmission filters

1. **ALL OTHER PARTS**
	* 1. All other parts will on inspection, be either replaced, repaired or rebuilt to OEM standards or if still within OEM standards be reused.
		2. The transmission cooler if supplied will be thoroughly cleaned and pressure tested at temperature.
		3. Supplier will be required to provide OEM part numbers and proof of delivery from the OEM.

1. **TRANSMISSION REPAIR REPORT**

Information obtained whilst repairing the machine shall be recorded by the Contractor. A copy shall be returned to the Purchaser's Technical Planning Department. Records of repairs shall be kept for at least 2 years whereupon it will be sent to ERI should the Contractor decide not to keep the records any longer.

**Payment shall not be made for the repair if these reports are not submitted**.

**Test to be conducted:**

* 1. Dyno test transmission for a minimum period of four hours

**The Dyno test report must include:**

* 1. OEM pressure specifications versus test pressures

**The Dyno test report must be submitted on delivery.**

**Other reports:**

* 1. Transmission defect report must be submitted
	2. List of all spares used during repairs
1. **COMMISSIONING**

* + 1. After installation ERI shall notify the service provider when the transmission is ready for commissioning and startup.
		2. The service provider will within 24 hours have a representative present to approve the startup and installation.
		3. The installation could be anywhere within a 350 Km radius of Johannesburg or in Johannesburg itself. There will be no charge for commissioning.
		4. In the event that the service provider is unable to attend commissioning then he is entitled to ask for photographic evidence of various key points of the installation. Once supplied he will authorize by Email that ERI are able to continue with startup on their behalf and in their absence. Such an event as described herein will not negate any warranty responsibility of the service provider.
1. **WARRANTY**
	* 1. The service provider will warrant the full scope of the repair including OEM parts, labour and travel fora period of 2500 hours or twelve months, whichever comes first.
		2. Should the transmission be problematic within the warranty period then the provider undertakes to have a technician on the jobsite within 24 hours to establish whether the problem is warranty related or not. There will be no charge for warranty call-outs.
		3. In the event of warranty work being carried out by the service provider there will be no pro – rata contribution from ERI. All costs to reinstate the transmission to OEM specs will be for the provider’s account.

1. **QUALITY**
	* 1. Work shall be carried out in accordance with the relevant OEM approved specifications. Quality checks/ QCPs shall be compiled by the provider based on the scope of work approved prior to work being executed and submitted upon completion. Hold and Witness points must be agreed to by the provider and ERI representatives upon compilation of QCP and these shall not be by-passed under any circumstances without consent of an authorized ERI person.
		2. The successful service provider will be ISO 9001 accredited.
2. **INSURANCE**
	* 1. The service provider should have Professional Indemnity (PI) or other insurance to the value of one million rand to cover the cost of a claim against themselves in the event of a transmission loss by ERI, through poor workmanship**.**

**2.2 PURPOSE**

To rebuild Transmission to OEM specifications for ERI – BMS Yellow Plant

**2.3 APPLICABILITY**

This document shall apply to the site with attached addendums.

This document shall be effective from the authorisation date.

**2.4 NORMATIVE/INFORMATIVE REFERENCES**

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs and additional site specific ones.

**2.4.1 NORMATIVE**

ISO 9001 Quality Management Systems

OSHAS 1800 Safety Management Systems

Occupational Health and Safety Act and Regulations (85 of 1993)

240-62196227\_Eskom Life Saving Rules

32-95\_Environmental, Occupational Health and safety Incident Management Procedure

**2.4.2 INFORMATIVE**

Criminal Procedures Act 51 of 1977

 National Road Traffic Act 93 of 1996

 Labour Relations Act 66 of 1995

 Basic Conditions of Employment Act 75 of 1997

**2.5 DEFINITIONS**

|  |  |
| --- | --- |
| Description | Definition |
| Appointed Contractor | Means a contractor appointed by the principal contractor. |
| Baseline Risk Assessment | (32-520) baseline operational risks refer to the health and safety risks associated with all standard processes and routine activities in the business |
| Contractor (includes appointed contractor) | means an employer as defined in section 1 of the Act who performs contract work and includes principal contractors |
| Competent Person | (OHS Act) means any person having knowledge, training, experience, and qualifications, specific to work or task being performed, provided that, where appropriate, qualifications and training are registered in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995). |
| Danger/Dangerous | Means a condition/substance that constitutes a risk of personal injury, impairment of health, or death |
| Employee | (OHS Act) means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives remuneration or who works under the direction or supervision of an employer or any other person. |
| Employer | (OHS Act) means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him/her, but excludes TES (ex. labour broker) as defined in section 1(1) of the Labour Relations Act. |
| Lifesaving Rules | (240-62196227) a rule that, if not adhered to, has the potential to cause serious harm to people. |
| Permit To Work | Means the printed form containing sections entitled application, permits to work, suspension, suspension revocation, clearance and revocation, and used for the authorisation of all work to be carried out in terms of these regulations. |
| Plant | Means structure, machinery, low voltage electrical equipment or equipment which does not fall within the scope of the Operating Regulations for High-voltage Systems, and excludes, mobile, portable lifting equipment, domestic circuits, appliances and tools. |
| Responsible Person | Means a person who has been authorised in terms of these regulations to be responsible for ensuring that the work is covered by a permit to work can be carried out and executed taking health and safety precautions into account and within the terms of 36-681\_Generation Plant Safety Regulation |
| Safe/Safely/Safety | Means a condition not posing any danger, an activity that can be carried out without danger, or protection against danger. |
| Shall and Should | The word “shall” is to be understood as mandatory and “should” as recommended. |
| Skilled Person | Means a person who has been trained, has adequate knowledge for the task at hand and declared competent in writing. |
| Supervision/Supervise | Means to oversee the actions of a person(s) to such an extent as to prevent any dangerous act, as far as reasonably practicable. Such a supervisor must be trained in risk assessment techniques and be able to understand the dangers / hazards associated with the task and who has the authority to ensure that precautionary measures taken are implemented. |
| Visitor | Any person visiting a workplace with the knowledge of, or under the supervision of, an employer. |

contract.

Accepted by (or to the satisfaction of) the Project accepted by the Project Manager or

Manager, Engineer or the Architect the Employer

a duty, procedure, decision or action of the an action of the Project Manager or Engineer or the Architect and or the Employer depending on the Superintendent, Eskom's Representative, Site context. Clause 14 of the Core Employer or Clerk of Works Clauses determine what the actions

of each are. Either may delegate in terms of Clause 14.2

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (‘Agreement’) is entered into between the Purchaser and the Supplier.

WHEREAS, the Purchaser and the Supplier (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the ‘Subject Information’) may include but not be limited to the parties’ inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the ‘Receiving Party’) from the other party (the ‘Proprietor’) and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor’s request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject

Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.

1. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
2. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
3. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
4. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
5. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
6. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
7. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term ‘definitive agreement’; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.