



NEC3 Supply Contract (SC3)

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

and
(Reg No. _____)

for SUPPLY AND DELIVERY OF C&I POSITIONERS &
SWITCHES SPARES AT MEDUPI POWER STATION

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CONTRACT No. TBC

PART C1: AGREEMENTS & CONTRACT DATA

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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:

SUPPLY AND DELIVERY OF C&I POSITIONERS & SWITCHES SPARES AT MEDUPI POWER STATION

The tenderer, identified in the Offer signature block, has

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

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

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

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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*.

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**

General Manager
Medupi Generation Division
Eskom Holdings SOC Limited
Medupi Power Station
Private Bag x9003
LEPHALALE
Limpopo
0555

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

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

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

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

For the tenderer:

For the Purchaser

Signature _____

Name _____

Capacity _____

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

Name & signature of witness _____

Date _____

General Manager: Medupi

Generation Division

Eskom Holdings SOC Limited

Medupi Power Station

Private Bag x9003

LEPHALALE

Limpopo

0555

Manager: Contract

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		A: Priced contract with price list W1: Dispute resolution procedure X1: Price adjustment for inflation X3: Multiple currencies X2: Changes in the law X7: Delay damages X13: Performance Guarantee X17: Low performance damages X19: Task Order
		Z: Additional conditions of contract of the NEC3 Supply Contract (April 2013) ² (If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The <i>Purchaser</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	+27 11 800 8111/2000
	Fax No.	+27 11 800 2090
10.1	The <i>Supply Manager</i> is (name):	TBC
	Address	Medupi Power Station
	Tel	TBC
	Fax	
	e-mail	TBC

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

11.2(13)	The <i>goods and services</i> are	Supply and Delivery of C&I Positioners and Switches at Medupi Power Station
11.2(14)	The following matters will be included in the Risk Register	All additional risks will be proactively identified, registered and addressed during the risk reduction meeting that will take place as agreed between the parties
11.2(15)	The Goods Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
11.2(15)	The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	One (1) week. 24hrs for HS and critical production issues.
2	The Supplier's main responsibilities	Refer to core clause 2
3	Time	
30.1	The <i>starting date</i> is.	TBC
30.1	The service period is	36 months
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	The delivery date will be specified in each task order.
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.	As per agreed date on task order
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	One (1) week after contract placement and thereafter 48hrs after issue of each task order
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	Four (4) weeks; to be updated within 24hrs of becoming aware of any delays
4	Testing and defects	
42	The <i>defects date</i> is	Notified by the SM or Supplier as soon as the defect is found.
43.2	The <i>defect correction period</i> is	To be agreed within 48 hours from receipt of the purchaser's written defects notification
42.2	The <i>defects access period</i> is	Will be treated on a case-by-case basis
5	Payment	
50.1	The <i>assessment interval</i> is	between the 21 days of each successive month after submission of supporting documentation and issue of Service Manager interim payment certificate and assessment.

51.1 The *currency of this contract* is the **South African Rand**

51.2	The period within which payments are made is	30 calendar days after reception of a valid tax invoice/ 60 calendar days after reception of a valid tax invoice for contract value above 50 million rand
51.4	The <i>interest rate</i> 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
6	Compensation events	Employers CE approval process must be followed before execution of any instructions that increase the contract value. Retrospective approval will only apply to instructions arising out of an emergency.
7	Title	Refer to core clause 7
8	Risks, liabilities, indemnities and insurance	
80.1	These are additional <i>Purchaser's</i> risks	Only the risks listed under sub-clause 80.1 of the NEC3 TSC. All additional risks will be proactively identified, addressed and registered during the risk reduction meeting that will take place as agreed between the parties.
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> 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 <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to	(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and (2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date
88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	The total of the Prices other than for the additional excluded matters.
88.4	The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited
88.5	The <i>end of liability date</i> is	[1] year after Delivery of the whole of the <i>goods</i> and <i>services</i>.
9	Termination and dispute resolution	This contract will end as per the reasons stated in NEC TSC core clause 9, if the contract value is depleted or at the end of the contract whichever comes first. 30 days notice will be given to the

		Contractor.
94.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	1st Floor, Maisels Chamber, 4 Protea Place, Sandton
	Tel No.	011 320 0600
	Fax No.	011 320 0533
	e-mail	info@arbitration.co.za
94.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	arbitration
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
94.4(5)	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
	- if the arbitration procedure does not state who selects an arbitrator, is	

10 Data for Option clauses

A	Priced contract with price list		
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	30 Calendar days	
X1	Price adjustment for inflation		Proposed CPA
X1.1	The <i>base date</i> for indices is	Rates are fixed and firm for first 12 months after first order placement date. There after CPA escalation will apply. Base date will be the month before the month which the enquiry closes.	
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for
		0.15	fixed
		0.05	Transport L-2(b)
		0.80	Material G-1
		1.00	

X2	Changes in the law			
X2.1	A change in the law of	The Republic of South Africa is compensation event if it occurs after Contract Date		
X3	Multiple currencies			
X3.1	The Purchaser will pay for these items in the currencies stated	Items	Other currency	Total maximum payment in the currency
		[•]		
		[•]		
		[•]		
X3.1	The exchange rates are those published in	Seven (7) days prior tender closing		
		The items will be paid in the other currency - to a foreign Bank account nominated by the Supplier - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the Purchaser before the Contract Date.		
		(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)		
X4	Parent company guarantee			
X4.1	The amount of the performance bond is	To be concluded during negotiations		
X7	Delay damages			
X7.1	Delay damages for Delivery are	1/14% per day of the outstanding portion to maximum of 10% of the order		
X13	Performance bond			
X13.1	The amount of the performance bond is	To be concluded during negotiations		

X17	Low performance damages	X17 table will be discussed during monthly contract meetings. Quarterly amendments can be made after agreement between the Parties.		
X17.1	The amounts for low performance damages are: X 17 Low Service Damages Table 2:			
	No.	KPA	<i>Employer's Requirement</i>	Damages payable by <i>Contractor</i>
	1	On time delivery to Medupi Power Station	All deliveries to be delivered as per agreed lead time of the contract working from the time the supplier acknowledge receipt of an official Eskom Order Number that start with 45 number	5% of the total purchase order if an order is delivered one week later, 7.5% of the total purchase order if an order is delivered two to three weeks later and 10% of the total purchase order delivered later than four weeks and all the deductions to be subtracted from the original invoice of the purchase order
	2	Equipment failure	All components failing before lapse of warranties and guarantees to be replaced within 31 days from the date it was officially reported to the supplier and the supplier to bear all the cost and risk of replacing the failed / damaged item	Period between 32 days to 45 days penalties of 5% will be charged from the total cost of the item, period between 46 days to 59 days penalties of 7.5% from the total cost of the item, 60 days and above 10% of the total cost of the item failed will be charged as penalties
	3	Marking of goods before delivery	Name of the Supplier, Purchase Order Number, Material Number, Part Number and Serial Number	6% of the total purchase
	4	Defect Remedial work	The Contractor shall be responsible and held liable for any defects arising from the supply and delivery of the spares.	Make good. Premature failures and defects will be rectified at the Contractor's cost
X18	Limitation of liability	NA		
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to	R0.0 (zero Rand)		
X18.2	For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to	the amount of the deductibles relevant to the event		
X18.3	The Contractor's liability for Defects due to his design of an item of Equipment is limited to	The greater of the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the Employer's insurance (other than the resulting physical damage to the Employer's property which is not excluded) plus the applicable deductibles		
X18.5	The end of liability date is	12 months after the end of the service period.		

Z	The <i>additional conditions of contract</i> are Z1 to Z15 always apply for Eskom

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

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

Z4 Confidentiality

- Z4.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.

- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
- Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Health, safety and the environment: Add to core clause 25.4

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

Without limitation the *Supplier*:

warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

- Z6.2 The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

- Z7.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with

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

Z8 Notifying compensation events

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

Z9 *Purchaser's* limitation of liability

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

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

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

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

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

Z12 Ethics

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

Affected Party	means, as the context requires, any party, irrespective of whether it is the <i>Supplier</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
Coercive Action	means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
Collusive Action	means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
Committing Party	means, as the context requires, the <i>Supplier</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent Action	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
Obstructive Action	means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an

investigation into allegations of Prohibited Action, and

Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z12.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Purchaser* can terminate the *Supplier's* obligation to Provide the Services for this reason.
- Z12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

Z13Insurance

Z 13.1 Replace core clause 84 with the following:

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

INSURANCE TABLE A

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

Z 13.2 Replace core clause 87 with the following:

**Insurance by
the *Purchaser***

87

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

INSURANCE TABLE B

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

Z14 Nuclear Liability

- Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.3 Subject to clause Z14.4 below, the *Purchaser* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.4 The *Purchaser* does not waive its rights provided for in section 30 (7) of Act 44 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

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

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

Standard means the *Purchaser's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z15.2 Upon written request by the *Supplier*, the *Purchaser* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Supplier* may perform Parallel Measurements and related control measures at the *Supplier's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Purchaser* manages asbestos and ACM according to the Standard.

Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z15.5 The *Supplier's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z15.6 The *Supplier* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations.

Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser's* expense, and conducted in line with South African legislation.

Annexure A: Supply Requirements

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

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2020³ as follows:

Group	Category	Term	Delivery Place
D	arrival	DAT, DAP, DDP	Medupi Power Station

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

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

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

A	The <i>Supplier's</i> obligations	B	The <i>Purchaser's</i> obligations
A1	Provision of goods in conformity with contract	B1	Payment of the price
A2	Licences, authorisations and formalities	B2	Contracts of marine insurance on an ex-works basis (as per clause 84.1 on Contract Data)
A3	Contracts of carriage and insurance	B3	No action required
A4	Delivery	B4	Taking delivery
A5	Transfer of risks	B5	Transfer of risks
A6	Division of costs	B6	Division of costs
A7	Notice to the buyer	B7	Notice to the seller
A8	Proof of delivery, transport document or equivalent electronic message	B8	Proof of delivery, transport document or equivalent electronic message
A9	Checking - packing - marking	B9	Inspection of goods
A10	Other obligations	B10	Other obligations

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

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

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

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	TBC confirmed during negotiations	
2. The requirements for transport are	TBC during negotiations	
3. The delivery place is	Medupi Power Station, Workshop & Stores Building	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	
	Checking packing and marking before dispatch	
	Contracting for transport	
	Pay costs of transport	
	Arrange access to delivery place	
	Loading the <i>goods</i>	
	Unloading the <i>goods</i>	
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 <i>goods</i>	
	Delivery Note	
	Test results and maintenance manuals	
For international procurement	Licences, authorisations and other formalities associated with export of the <i>goods</i>	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	

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

C1.2 Contract Data

1. Part two - Data provided by the *Supplier*

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

2. Clause	3. Statement	4. Data
10.1	The <i>Supplier</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The Goods Information for the <i>Supplier's</i> design is in:	
11.2(11)	The tendered total of the Prices is The following matters will be included in the Risk Register	R (in words)
11.2(12)	The plan identified in the Contract Data is contained in: The key people are: 1 Name: Job: Contractors Representative Responsibilities: Qualifications: Experience: 2 Name: Job: Service Manager Responsibilities: Qualifications: Experience: CV's (and further key person's data including CVs) are in .	

11.2(14)	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	All additional risks will be proactively identified, registered and addressed during the risk reduction meeting that will take place as agreed between the parties.
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21.1 The plan identified in the Contract Data is contained in:

25.2	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:		
30.1	<i>goods and services</i>		
	1	<i>delivery date</i>	
	2		
	3		
	The programme identified in the Contract Data is contained in:		
31.1			
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

63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is	%
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63.2	The <i>percentage for subcontracting</i> added to the Defined Cost is	%
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Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The <i>price schedule</i> – <i>Refer to enclosed excel unpriced BOQ and proposed CPA table</i>	

[illegible]

The total of the Prices

--

Refer to enclosed annexure C2.2 excel unpriced BOQ and CPA table.

C2.1 Pricing assumptions: Option A

6. How goods and services are priced and assessed for payment

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

Identified and defined terms	11	
	11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.
		(12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract.
Assessing the amount due	50.2	The amount due is
		the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed,
		where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate,
		plus other amounts to be paid to the <i>Supplier</i> , less amounts to be paid by or retained from the <i>Supplier</i> .
		Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.

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

7. 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.

8. 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.

8.1. Format of the *price schedule*

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

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

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

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

C2.2 the *price schedule*

Refer to enclosed annexure C2.2 excel NEC price.

The total of the Prices

PART 3: SCOPE OF WORK

Document reference	Title: Supply and Delivery of C&I Positioner and Switches Spares at Medupi Power Station	No of pages
	This cover page	1
C3.1	<i>Purchaser's</i> Goods Information	9
C3.2	<i>Supplier's</i> Goods Information	1
	Total number of pages	11

C3.1: *PURCHASER'S* GOODS INFORMATION

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2.3 Other requirements of the <i>Supplier's</i> design	5
2.4 Use of <i>Supplier's</i> design	5
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2.6 Factory acceptance testing (FAT)	5
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1 Overview and purpose of the *goods and services*

The reliability and availability of the Positioners and Switches used on C&I related equipment in general is a concern for us due to the unplanned downtime and regular planned outages at Medupi Power Station. It has contributed too many production risks on the plant and the return to service deadlines of Units after execution works of planned outages.

Initiatives to improve the reliability and availability of the Positioners and Switches used on C&I related equipment amongst others includes, placing a Positioners and Switches used on C&I related equipment supply and delivery contract to ensure continuous plant availability, sustainability and improvement.

2 Specification and description of the *goods*

This document covers the requirements for the supply and delivery of the positioners and switches used on C&I related equipment at Medupi Power Station for a period of 3 years in accordance to SOW document number 241-20221077.

3 *Purchaser's* design

NA

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

As per SOW (241-20221077) requirements

5 Other requirements of the *Supplier's* design

As per SOW (241-20221077) requirements

6 Use of *Supplier's* design

As per SOW (241-20221077) requirements

7 Manufacture & fabrication

As per SOW (241-20221077) requirements

8 Factory acceptance testing (FAT)

As per SOW (241-20221077) requirements

9 Other tests and inspections and commissioning in place of use

As per SOW (241-20221077) requirements

10 Operating manuals and maintenance schedules

All items shall be delivered with a complete installation guide/manual which shall be neatly packaged with the item, protected such that it be usable and damage free after being stored for an extended period out of the elements. This manual shall clearly indicate all requirements for complete installation

11 Supply Requirements

As per SOW (241-20221077) requirements.

12 Specification of the Service to be Provided

12.1 Work to be Performed by the Supplier

The following are the *Purchasers'* requirement:

- The *Supplier* will ensure that the correct spare is supplied and will replace or be liable for damage at his/her cost if the incorrect or defective spare/s is supplied. The costs may include, but not limited to, *production loss*, repairs and/or plant downtime as a result of a defective or incorrect spare.
- The *Employer's* (i.e. Eskom Holdings SOC) acceptance of delivered spare/s does not absolve the

Supplier's of the liability to supply the correct and/or defect free spare.

- The *Supplier* may, at the *Employer's* discretion, be given access to the plant to verify the information of the installed spare.
- The spare must be exactly the same (i.e. same Part Number) as specified on this works information and the part number will also be used to perform quality control checks. *Notwithstanding the stipulated condition that the Supplier is responsible for verifying the correctness of the spares information provided by the Employer in relation to the existing installed spare. This may include the Supplier consulting the original supplier of the spare to ensure correctness of information provided by the Employer.*
- The *Employer* may at his/her discretion make the *Employer's* Engineer or employees or *Others* available to the *Supplier* for the purpose of soliciting additional information or verifying information as the need arises.
- The *Supplier* will supply any additional information such as brochure, general arrangement drawing, certificates, detailed specification, etc.
- The *Supplier* provides the *Employer* with additional spares information and verifies information required in the attached data capturing forms (DCF) at least three months after order placement or conclusion of the contract or (where lead time is less than three months) a week before delivery of respective spare.
- The *Supplier* shall supply preservation and storage procedure/s, where applicable.
- The Spares Procurement Limit over 3 (Year) Period, indicated by the *Employer* in the attached table as one of the subheadings, is the maximum number the *Employer* may require the *Supplier* to supply over the contract period. However the *Supplier* may only supply the quantity as specified by the *Employer* in the individual order instruction and does not imply that the *Supplier* is entitled to supply the total number indicated in the Spares Procurement Limit over 3 (Year) Period.
- If deemed necessary, the *Employer* may subject the *Supplier* to a quality assurance assessment at the *Supplier's* or *sub-Supplier's* premises as part of the technical evaluation or before the contract placement or at any time during the contract period.
- Where the spare requires testing, the *Supplier* will inform the *Employer* to invite or make available the *Employer's* System Engineer to witness the tests.
- Should the *Employer* be dissatisfied with all or certain aspects relating to a specific spare tests (including but not limited to suspected inferior quality or non-compliance) the *Supplier* will make good, rectify the faults or supply a new spare at his/her cost.
- Complete price breakdown must be supplied with the quotation and must include the cost of transport to Medupi Power Station. However, the *Employer* reserves the right to use the *Employer's* own transport.
- Spares will be opened for inspection, counted and quality control check at the *Employer's* stores.
- The *Employer* has provided the Bill of Material table and copies of individual spares DCF's in order to assist the *Supplier* to meet the requirements of the Work to be performed by the *Supplier*.
- The *Employer* may make clarification sessions available to either prospective *Supplier/s* in order to further assist the prospective *Supplier's* to meet the requirements of the Work to be performed by the *Supplier*.
- *The Employer reserves the right to exclude the supply of some spares items included in the contract with the Supplier, should the Employer become aware that the National Supply Contract exists or is placed by the Employer with Others in respect to those specific spares items.*

12.2 Specification of the Spares

12.1.1 Spares Identification

- a) Appendix A lists all the spares to be procured under this works information. This list corresponds to the provided electronic copy of the DCF's that contain more information about the required spares. Each spare is identifiable by means of a KKS number (as is used in the Power Station), part description, OEM and/or **OEM part number**.

12.1.2 Replacement Parts Upgraded/modified

- b) Where equipment or spares, including the whole assembly, have been upgraded / modified the *Supplier* shall indicate this to the *Employer* as part of the tender. The *Employer* shall be made aware immediately

where the upgrade/modification to the component is only identified subsequent to the tender being issued. The detailed compatibility to the existing component shall be indicated.

- c) If the components to be supplied will be obsolete, or envisaged to be obsolete, in the 3 years subsequent to tender being issued, the *Supplier* shall indicate this to the *Employer* and indicate viable alternatives thereof.

12.2 Packaging

- a) All supplied spares shall be packaged in such a manner that they will be transported and stored without damage. This includes preventing damage due to moisture ingress, dust and foreign objects.
- b) Different spare types shall be packaged separately such that each spare type can be stored separately. Packaging shall be such that the spare can be identified without opening the packaging. Packaging shall be of material that will not be damaged, to an extent possible, by harsh weather conditions during transportation. If that is not possible, then the packaging shall be protected against such conditions.
- c) Where possible, packaging to be such that procured spares can be positively identified through the packaging. Where this is not possible, the packaging to be such that it allows opening and closing of packaging and still maintain the packaging integrity thereafter.
- d) Delivery packaging to have the following details:
- e) Order number
- f) Physical address of Medupi Power Station and the *Supplier*
- g) Contact details of the *Supplier*
- h) Delivery note number

12.3 Acceptance of Spares and DCF

- No incorrect, damaged or faulty spares will be accepted.
- All the spares will be inspected before payment could be processed.
- Where applicable; test certificates, material certificate, manuals, data sheet and signature shall be provided as required.
- The Supplier must provide references of the companies that they have supplied similar spares to, and include the respective supply order/contract value, the contact name, physical address and telephone number.
- DCF's information must match the spares supplied.

The supplier shall comply with the specification of Works Information 241-20221077, procurement process and other Eskom regulations and supply spares within prescribed time.

13 Constraints on how the *Supplier* Provides the Goods

14 Programming constraints

Delivery times will be stated on the official Task Order.

15 Work to be done by the Delivery Date

- A clarification meeting to be held 3 weeks subsequent to the issuing of the enquiry to confirm the scope of the Works and to confirm spares identification. All questions can be forwarded to the Employer during this meeting. Where more than one Supplier is available, all responses from the Employer will be forwarded to all Suppliers, regardless of which Supplier required the clarification.
- All required spares to be delivered to the Employer 4 weeks from the day the purchase order is placed by the Employer or on the mutually agreed date. The Employer may request, in writing, that the spare be

expedited quicker if its delivery in 4 weeks may lead to a delay that may result in undesirable consequences (loss of production, loss of revenue and/or safety to personnel or environment) to the Employer.

- Supplier to quote the Eskom official Purchase Order in all delivery notes and invoices
- Goods must be well packaged and safely transported
- Eskom to acknowledge receipt of goods by stamping and signing the delivery note of the supplier upon delivery, rejected items to be communicated after the official quality inspection is done on site by the end-user of the product rejected goods must be collected and the correct goods supplied within 14 days.
- Only goods as specified will be accepted. Any goods which do not meet the specifications will be rejected
- Where equipment or spares, including the whole assembly, have been upgraded/modified the Supplier shall indicate this to the Employer as part of the tender

16 Marking the goods

- All supplied spares shall be packaged in such a manner that they will be transported and stored without damage. This includes preventing damage due to moisture ingress, dust and foreign objects.
- Different spare types shall be packaged separately such that each spare type can be stored separately. Packaging shall be such that the spare can be identified without opening the packaging. Packaging shall be of material that will not be damaged, to an extent possible, by harsh weather conditions during transportation. If that is not possible, then the packaging shall be protected against such conditions.
- Where possible, packaging to be such that procured spares can be positively identified through the packaging. Where this is not possible, the packaging to be such that it allows opening and closing of packaging and still maintain the packaging integrity thereafter.
- Delivery packaging to have the following details:
 - Order number
 - Physical address of Medupi Power Station and the *Supplier*
 - Contact details of the *Supplier*
- Where equipment or spares, including the whole assembly, have been upgraded/modified the Supplier shall indicate this to the Employer as part of the tender Delivery note number

17 Constraints at the delivery place and place of use

Supplier must follow Eskom Life Saving Rules when delivering goods to Medupi Power Station

1. **Open, Isolate, test , earth, bond and insulate before touching:**
 - No person may work on any electrical network unless he has been trained and authorised as competent for the task to be done
2. **Hook up at heights**
3. **Buckle up:**
 - No person may drive any vehicle on Eskom business and/or on Eskom premises unless the driver and all passengers are wearing seat belts
4. **Be Sober:**
 - No person is allowed to work under the influence of drugs and/or alcohol - updated site drug and substance abuse policy to apply.
5. **Ensure you have permit to work:**
 - When an authorization limitation exists, no person shall work without the required permit to work

Medupi Power Station Delivery Times to be indicated on each task order.

18 Cooperating with Others

Refer to NEC SC Core clause 2 sub-clause 25.1, in the event of any requirement to co-operate with Others.

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

As per SOW (241-20221077) requirements

20 Management meetings

Title and purpose	Approximate time & interval	Location	Attendance by:
Monthly Contractual meeting, Overall Contract progress, assessments, Contract risk discussion and feedback	Monthly	Medupi Power Station	Service Manager Contractor representative(s)
Contract kick off meeting	Once off before commencement of the contract	Medupi Power Station or MS Teams	Service Manager, Employer Technical representative(s),

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

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

21 Documentation control

Documentation control procedure 200-64539 to be utilized during the contract.

All goods being delivered to Medupi Main Stores must have the following:

- Unique delivery note number per delivery
- Delivery note – must have unique number, date of delivery, items that were delivered (material number, material short description, serial number and quantity delivered)
- Delivery note must come in duplicates so that one copy is kept at Main Stores and other goes with the supplier for invoicing purposes and as a proof of delivery
- Both copies of delivery notes to be stamped with receiving stamp of Medupi Power Station and must have the signature of the receiver as well as the receiving personnel full names

22 Health and safety risk management

- Compliance to the SHE Specification issued as per scope of work.
- The contractor shall be required to sign a 37 (2) agreement with the project/contract manager in order to legally accept responsibility and accountability for occupational health and safety of the contractor work-force.
- The contractor SHEQ file shall include as a minimum, a coherent SHE Plan, safe work instructions, certificates of medical fitness, baseline risk assessment as per issued scope of work, valid letter of good standing and proof of employee competencies

23 Environmental constraints and management

- Conformance to requirements of ISO 14001: 2004, EMP, Environmental Legal and other requirements as well as pollution prevention. Compliance to the SHE Specification issued as per scope of work.

24 Quality

- The spares to be provided shall conform to the following quality assurance requirements:
 - Eskom QM-58 Specification (Supplier Contract Quality Requirements Specification)- 240-105658000, Category 3 criteria and all applicable technical specifications, drawings and contractual requirements.
 - Latest ISO 9001 - Quality Management System Requirements.
 - All applicable technical specifications, drawings, and contractual requirements.
- The following X17 Service Level table depicts the level of performance required of the *Supplier*. Should the *Supplier* be unable to meet these requirements, Low Service Damages will be claimed

from the *Supplier*. The total Low Service Damages will be limited to 10% per month per order based on as and when required supply. The *Employer* uses KPI's to determine the successful performance of the plant area. The *Contractor* is required to timeously provide quality spares in order to meet these targets. The KPI's are Subject to change on a quarterly basis.

X 17 Low Service Damages Table 2:

No.	KPA	Employer's Requirement	Damages payable by Contractor
1	On time delivery to Medupi Power Station	All deliveries to be delivered as per agreed lead time of the contract working from the time the supplier acknowledge receipt of an official Eskom Order Number that start with 45 number	5% of the total purchase order if an order is delivered one week later, 7.5% of the total purchase order if an order is delivered two to three weeks later and 10% of the total purchase order delivered later than four weeks and all the deductions to be subtracted from the original invoice of the purchase order
2	Equipment failure	All components failing before lapse of warranties and guarantees to be replaced within 31 days from the date it was officially reported to the supplier and the supplier to bear all the cost and risk of replacing the failed / damaged item	Period between 32 days to 45 days penalties of 5% will be charged from the total cost of the item, period between 46 days to 59 days penalties of 7.5% from the total cost of the item, 60 days and above 10% of the total cost of the item failed will be charged as penalties
3	Marking of goods before delivery	Name of the Supplier, Purchase Order Number, Material Number, Part Number and Serial Number	6% of the total purchase
4	Defect Remedial work	The Contractor shall be responsible and held liable for any defects arising from the supply and delivery of the spares.	Make good. Premature failures and defects will be rectified at the Contactor's cost
5	Service level of the Contractor	Customer Survey done by the supplier to be submitted to Purchaser	4 times per year from start of the contract

25 Invoicing and payment

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

Invoices can be submitted using emails to invoiceseskomlocal@eskom.co.za

- Ensure that the Eskom order number is clearly indicated on your invoice together with the line number on the order you are billing for.
- All Electronic invoices must be sent in PDF format only.
- Each PDF file should contain one invoice; or one debit note; or one credit note only as Eskom's SAP system does not support more than one PDF being linked into workflow at a time.
- Your E-mail may contain more than one PDF file (e.g. 2 invoices on 2 separate PDF files in one e-mail)

- For Foreign invoices, suppliers will still be required to physically deliver hard copies of original documents to the respective documentation management centers even though you have e-mailed those invoices
- A PDF file that was created directly from a system meets the definition of original document and is allowed (including saving documents from excel to PDF, word to PDF etc.)
- An Invoice that was printed and then scanned to PDF by the Vendor is not acceptable as this is not an original tax invoice by SARS definition but a copy.
- The following wording needs to appear on the invoice: "Your invoice is encrypted in order to comply with SARS requirements that invoices and statements sent electronically are tamperproof."
- If there is Cost Price Adjustment (CPA) on your invoice we recommend that you issue a separate invoice for CPA so that if there are any issues on the CPA the rest of the invoice can be paid while resolving the CPA issues.
- You do not require a goods receipt (GR) number to submit your invoices. When the GR number is received you can then send the GR number to the FSS contact center at FSS@eskom.co.za or 011 800 5060.
- All queries and follow up on invoice payments should be made by contacting the FSS Contact Centre: **Tel: 011 800 5060**

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

Name and address of the *Supplier* and the *Supply Manager*;

The contract number and title;

Supplier's VAT registration number;

The *Purchaser's* VAT registration number.

Description of *goods* and *services* provided for each item invoiced based on the Price Schedule;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

(add other as required)

26 Insurance provided by the *Purchaser*

Refer to Employers insurance table under section 83 of C1 2a Data by the *Purchaser*

27 Contract change management

Refer to NEC SC Core clause 6, in the event any change to the Contract needs to be managed

28 Provision of bonds and guarantees

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

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

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

- a) No incorrect, damaged or faulty spares will be accepted.
- b) All the spares will be inspected before payment could be processed.
- c) Data capturing forms information must be supplied and must meet an acceptable level.
- d) Where applicable; test certificates, material certificate, manuals, data sheet and signature shall be provided as required.

30 Procurement

31 Subcontracting

32 BBBEE and preferencing scheme

The company shall maintain or improve upon their current B-BBEE Contribution level for the duration of the contract. The supplier will be required to submit a new B-BBEE certificate within 3 months, should ownership of the company change during the life of the contract.

The Contractor is expected to submit a valid B-BBEE Verification Certificate from a SANAS accredited Verification Agency each year. Failure to submit such a Certificate may be regarded as the breach of the contract by the Employer

33 Accelerated Shared Growth Initiative – South Africa (ASGI-SA) /SDL & I/CSI

The Contractor complies with and fulfils the Contractor's obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the Contractor's SD&L Compliance Schedule.

The Contractor must commit a certain percentage of contract value on CSI to be finalized during negotiations. The CSI initiatives will be discussed during the kick-off meeting. The Contractor will submit its SDL & I and or CSI implementation plan within 60 days of the kick-off meeting.

34 Local Content and Production

Tenderers must complete, sign and submit SBD6.2 and Annexure C to declare local content and production.

Tenderers will also be encouraged to utilise local and local to site resources. In this regard all Suppliers are reminded of the requirement to comply with provisions of the National Land Transportation Act which requires adherence to Worker Transportation Permits (WTP) for transportation of Workers to and from a local place of residence to a construction site. Medupi Contractors are advised to utilize the local taxi association members with roadworthy vehicles for transportation of local Workers for the duration of the contract. The WTP is obtainable at the district Department of Transport (Waterberg, Modimolle).

35 Skills Development (not weighted criteria)

Eskom intends to improve Skills Development by ensuring that technical support is directed towards enhancing supply capacity and capability within the industry or sector of operation. By doing this the capacity and competitiveness of the local supply base will be increased and the goals of shared growth, employment creation, poverty reduction and skills development will be achieved. The supplier will be required to train at least ten (10) learners per annum, details of skills to be confirmed during negotiation.

The Contractor shall keep accurate records and provide the Service Manager with reports on the Contractor's actual delivery against the above stated SD&L criteria.

The Contractor's failure to comply with his SD&L obligations constitutes substantial failure on the part of the Contractor to comply with his obligations under this contract

36 Retention

- a. Eskom shall be permitted to retain 2.5% (two and half percent) of the invoices (excluding VAT) as security for the fulfilment by the tenderers of their SD&L obligations.
- b. Once Eskom has verified that tenderers have fulfilled their SD & L obligations, the 2.5% retained shall be approved for reimbursement by Eskom to suppliers within 90 (ninety) days of verification by Eskom.

37 Reporting

- c. The tenderers shall on a monthly /quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SD& L obligations described above.
- d. Eskom shall review the quarterly reports submitted by the tenderers within 60 (sixty) days of receipt of the reports and notify the tenderers in writing if their SD&L obligations have not been met.
- e. Upon notification by Eskom that the tenderers have not met their SD&L obligations, the tenderers shall be required to implement corrective measures to meet those SD&L obligations before the commencement of the following quarter, failing which retention clauses shall be invoked.
- f. Every contract shall be accompanied by the SD&L implementation schedule which must be completed by the tenderers and returned to SD&L representative for acceptance before contract award. This will be used as a reference document for monitoring, measuring and reporting on the tenderer's progress in delivering on their stated SD&L commitments.

38 Subcontracting

39 Preferred subcontractors

30% subcontracting of the Contract amount to one or more suppliers from the townships and/or rural areas, on the following categories of suppliers:

- an EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;

40 Subcontract documentation, and assessment of subcontract tenders

- Subcontracting agreement (signed by both parties) with subcontractor company registration documents (CK, CSD, B-BBEE certificate or sworn affidavit).
- Copies of sub-contracting contracts (agreements) or copies of letters from the tenderer to the sub-contractors, stating the intent to sub-contract. Both documents should be signed by the Tenderer and the Sub-contractor(s) earmarked.

41 Limitations on subcontracting

- 30% of the scope of work will be subcontracted to the above subcontractor.

42 Spares and consumables

NA

43 Other requirements related to procurement.

NA

44 Cataloguing requirements by the *Supplier*

The Works Information document specifies the required spares, information required for cataloguing, quantities of spares to be supplied by the *supplier* OEM and conditions for acceptance.

45 List of drawings/Spares

45.1 Spares List issued by the *Purchaser*

This is the list of spares issued by the *Purchaser* at or before the Contract Date and which apply to this contract.

- As per SOW (241-20221077) requirements

Drawing number	Revision	Title

C3.2 *SUPPLIER'S* GOODS INFORMATION