



## NEC3 Professional Service Contract (PSC3)

**Between ESKOM HOLDINGS SOC LIMITED  
(Reg No. 2002/015527/06)**

**and**

**For Provision of Ground, surface and aquatic monitoring  
at Kusile Power Station on as and when required  
basis for the period of Three (03) Years.**

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<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>14</b>
<b>Part C2 Pricing Data</b>	<b>4</b>
<b>Part C3 Scope of Work</b>	<b>3</b>

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**CONTRACT No.**

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# C1.1 Form of Offer & Acceptance

## Offer

Provision of Ground, surface and aquatic monitoring at Kusile Power Station on as and when required basis for the period of Three (03) Years.

The tenderer, identified in the Offer signature block, has

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

The offered total of the Prices exclusive of VAT is	<b>R</b>

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

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

**For the tenderer:** \_\_\_\_\_

Name & signature of witness \_\_\_\_\_

Date

## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

**Bongumusa A. Mashazi**

Capacity

**General Manager**

**for the  
Employer**

**Eskom Holdings**

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

No.	Subject	Details
1		

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

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

**For the tenderer:**

**For the Employer**

Signature .....  Name .....  Capacity .....  On behalf of Name & signature of witness .....  Date .....	.....  .....  <b>Bonga A. Mashazi</b>  <b>General Manager</b>  .....  .....  .....
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## C1.2 PSC3 Contract Data

### Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option	<b>A: Priced contract with activity schedule</b>
	and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X1: Price adjustment for inflation</b>
		<b>X2: Changes in the law</b>
		<b>X7: Delay damages</b>
		<b>X10: Employer's Agent</b>
		<b>X20: Key Performance Indicators</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>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</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>+27 11 800 8111</b>
10.1	The <i>Project Manager</i> is (name):	<b>Lesiba Kgobe</b>
	Address	<b>Kusile Power Station R545 Kendal/Balmoral Rd Haartebeesfontein Farm Witbank</b>
	Tel	<b>+2713 699 7817</b>
	e-mail	<b><a href="mailto:KgobeLS@eskom.co.za">KgobeLS@eskom.co.za</a></b>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and [www.ecs.co.za](http://www.ecs.co.za)

11.2(9)	The services are	<b>Ground, surface and aquatic monitoring at Kusile Power Station</b>	
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>	
13.1	The <i>language of this contract</i> is	<b>English</b>	
13.3	The <i>period for reply</i> is	<b>One week</b>	
<b>2 The Parties' main responsibilities</b>			
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		1	All necessary areas that the service provider need to sample
<b>3 Time</b>			
31.2	The <i>starting date</i> is.		
11.2(3)	The <i>completion date</i> for the whole of the services is.	<b>36 Months</b>	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1	Weekly report 2 weeks after sampling
		2	Monthly report 1 month after
		3	Quarterly report 1 month after
		4	Annual report 2 months after
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>2 weeks of the Contract Date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>2 weeks.</b>	
<b>4 Quality</b>			
40.2	The quality policy statement and quality plan are provided within	<b>4 weeks of the Contract Date.</b>	
42.2			
<b>5 Payment</b>			
50.1	The <i>assessment interval</i> is	<b>25th day of each successive month.</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		<b>As per activities and pricelist</b>	
51.1	The period within which payments are made is	<b>Four weeks after invoice received.</b>	

51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>		
51.5	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest charged by [•] Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,</p> <p>and</p> <p>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 <i>mutatis mutandis</i> 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</p>		
6	<b>Compensation events</b>	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	<b>Rights to material</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.		
8	<b>Indemnity, insurance and liability</b>			
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are			
	<b>Event</b>	<b>Cover</b>	<b>Period following Completion of the whole of the <i>services</i> or earlier termination</b>	
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	See Notes to Consultants in Annexure A	

	death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	<b>Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.</b>	<b>See Notes to Consultants in Annexure A</b>
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims</b>	<b>As <i>Consultant</i> deems necessary</b>
81.1	The <i>Employer</i> provides the following insurances	<b>Refer to Annexure A for details of insurance provided by the <i>Employer</i>.</b>	
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<b>The total of the Prices</b>	
<b>9</b>	<b>Termination</b>	<b>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.</b>	
<b>10</b>	<b>Data for main Option clause</b>		
<b>A</b>	<b>Priced contract with activity schedule</b>		
21.3	The <i>Consultant</i> prepares forecasts of the total expenses at intervals of no longer than	<b>Two weeks.</b>	
<b>11</b>	<b>Data for Option W1</b>		
W1.1	The <i>Adjudicator</i> is	<b>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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>	
W1.2(3)	The <i>adjudicator nominating body</i> is:	<b>the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>).</b>	

W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	The place where arbitration is to be held is	<b>South Africa</b>
	The person or organisation who will choose an arbitrator	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
	<ul style="list-style-type: none"> <li>if the Parties cannot agree a choice or</li> <li>if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price adjustment for inflation</b>	
X1.1	The index is	
	The staff rates are {state whether “Fixed at the Contract Date and are not variable with changes in salary paid to individuals” or “Variable with changes in salary paid to individuals”}	<b>In the Activity Schedule</b>
<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	<b>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</b>
<b>X7</b>	<b>Delay damages</b>	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	<b>[•] 0.2% per day Delay damages for the whole of the services is 0.2% of the daily rate, per week, per delay.</b>
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 also applies)</b>	
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>3 months</b>
<b>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>	
		<b>Z1 to Z12 always apply.</b>

**Z1 Cession delegation and assignment**

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

Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its

present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

## **Z2 Joint ventures**

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

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

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

## **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* 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 *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

Z4.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

## **Z5 Confidentiality**

Z5.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.

Z5.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

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

Z7.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

## **Z8 Notifying compensation events**

Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

## **Z9 Employer's limitation of liability**

Z9.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

**Z10 Termination: Add to core clause 90.1, 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 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z11.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z11.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92

## **Annexure A: Notes to Consultants**

*This is guidance to Consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract and the Employer carries no liability for it. The Consultant must obtain its own advice.*

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of "project" or "contract" value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A "project" is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A "contract" is a single contract not linked to or being part of a "project".

2. There are three main "formats" of cover and deductible structure; Format A, Format B and Format Dx.

**Format A** is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

**Format B** is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

**Format Dx** applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

**Format A generally applies to Transmission Division** projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

**[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)**

4. The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers some time after Completion of the whole of the *services*. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

## C1.2 Contract Data

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

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

Clause	Statement	Data	
10.1	The <i>Consultant</i> is (Name): Address Tel No. Email Address		
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience:		
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is		
11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> <li>• Labour unrest</li> <li>• Weather conditions</li> <li>• Non-performance as per SOW</li> <li>• Availability and reliability of supplier</li> <li>• Unforeseen scope</li> <li>• Non-compliance to Kusile SHE specification to the required service, Eskom life-saving rules, safety requirements, regulations and other applicable requirements</li> <li>• Non-compliance to contract terms and conditions</li> </ul>	
11.2(13)	The <i>staff rates</i> are:  Either complete here or cross refer to a schedule in Part C2.2	name/designation	rate
		Refer to activity Schedule	
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date

		<b>1</b>	<b>All necessary areas that the service provider needs to gain access to in order to take samples</b>
31.1	The programme identified in the Contract Data is	<b>As per attached scope of work</b>	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>item</b>	<b>amount</b>
		<b>As per Activity Schedule</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(18)	The tendered total of the Prices is	<b>R.00</b>	
		<b>(in words), excluding VAT</b>	

**Part 2: Pricing Data**  
**PSC3 Option A**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>activity schedule</i>	2

## C2.1 Pricing assumptions: Option A

### **How work is priced and assessed for payment**

Option A is a lump sum form of contract where the work to be done is broken down into well defined activities each listed in the *activity schedule* and priced by the tendering consultant as a lump sum. (See clause 11.2(18)).

Only completed activities which are without Defects are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date. (See clause 11.2(15)).

The *activity schedule* may change after the Contract Date as a result of compensation events. (See clause 11.2(14)).

### **Function of the Activity Schedule**

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

### **Link to the programme**

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

### **Preparing the activity schedule**

Generally it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant*:

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

### **Expenses**

*Expenses* are not included in the *activity schedule* items and are assessed separately at each assessment date, unless an additional condition of contract (Z clause) is included which requires that expenses be included within activity Prices and not paid separately.

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

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

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

**Staff rates**

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

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

- rates for named staff,
- rates for categories of staff or
- rates related to salaries paid to staff.

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

## C2.2 the *activity schedule*

PRICE LIST: Surface, Groundwater an Aquatic Monitoring Scope Of Work					
Item	Description	Unit	Rate	Total	Over 36 Months
<b>Section 1 Resources</b>					
1.1	Project Director	Hrs			
1.2	Specialist x 2	Hrs			
1.3	Junior x 1	Hrs			
1.4	Assistant x 1	Hrs			
<b>Section 2 Distributors</b>					
1.5	Travelling	Km			
1.6	Laboratory Testing	Sum			
1.7	Weekly Reports (156)	No			
1.8	Monthly (36)	No			
1.9	Quarterly ( 12)	No			
1.1	Annual reports (3)	No			
1.11	Surface and Groundwater sampling ( Weekly, Monthly, quarterly and annually)	No			
1.12	Geochemical Modelling (2 in three years)	No			
1.13	Geohydrological Model ( Annual)	No			
1.14	Soil Sampling (2 x per year)	No			
1.15	Purging of boreholes ( Annually)	No			
1.16	Bi-annual sampling of hydrocarbon ( 2 x per year)	No			
1.17	Boi-monitoring analyses 4 x per year	No			
1.18	Toxicity testing ( 4 x per year)	No			

1.19	Inspect the functioning of storm water infrastructure and associated turbidity impact 8 (eight) times per year	No			
<b>Section 3 Adhoc Services</b>					
1.2	Progress meeting with client 4 X per year	Each			
1.21	EMC Meeting and presentation 4 x per year	Each			
1.22	Maintenance of monitoring network which includes replacing of destroyed and lost monitoring points. 9 boreholes per 3 years	Each			
<b>Section 3 SHEQ Requirements</b>					
1.23	Safety file (1)	Sum			
1.24	Medicals and Induction (3)	Each			
1.25	PPE ( once per year)	Each			
<b>TOTAL EXCL VAT</b>					<b>R</b>

**Part 3: Scope of Work**

Kusile Power Station: Surface, Groundwater and Aquatic Monitoring Scope of Work: 240 - 129306525

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

## C3.1: EMPLOYER'S SCOPE

### Routine Monitoring of Surface, Groundwater and Aquatic environment

- Carry out specific surface and groundwater sample analysis in accordance with monitoring plan requirements. This monitoring should be undertaken weekly, monthly, quarterly and annually at specified points.
- Collect and record specific groundwater information in accordance with the monitoring plan requirements showing dates, location and time of monitoring
- Biannual sampling of hydrocarbons in all monitoring points
- Quarterly bio-monitoring be carried and analysis should on 18 monitoring points located upstream and downstream of the Kusile Power Station in order to monitor the effects on the aquatic ecosystem.
- Quarterly toxicity testing must be conducted on the three monitoring points boreholes and surface sites associated with waste water streams from the ash dump, coal stockyard and pollution control dam.
- Inspect the functioning of stormwater infrastructure and associated turbidity impact eight 8 times a year.
- Soil sampling at once a year or as and when required upstream and downstream of Kusile Power Station footprint (39 monitoring points)
- Geochemical modelling based on latest disposal and stockpiling
- Purging of boreholes using potable pumps once a year.

### Data Capturing

- Keep and update the electronic surface and groundwater database after every monitoring run.
- Provide data interpretation and trend analyses
- Contamination levels are to be measured and flagged against site specific water quality standards and DWS targets ranges

### Reporting

The reports must include:

- Weekly reports which include compliance status of water quality, water quality maps and identify appropriate mitigation measures should the aquifer be found vulnerable to pollution.
- Monthly reports which include compliance status of water quality, water quality maps and identify appropriate mitigation measures should the aquifer be found vulnerable to pollution.
- Quarterly reports which show trends and recommended action plans, integrated aquatic monitoring findings, reviewed constituents and standards and recommended mitigation measures.
- Annual reports which include time dependant analysis of water quality trends, water quality status and recommended mitigation measures and give solutions should water quality be impacted by Kusile Power Station
- Any other reports as per the requirements e.g. geochemical modelling, Geohydrological model etc.
- Two hard copies and one soft copy should be submitted to the client

### Adhoc Services

The adhoc services will include but not limited to:

- Review of existing monitoring methodology and amendment if necessary. The contractor shall drill boreholes when required by the employer
- Stakeholder notification in cases where water quality objectives/targets are exceeded.
- Undertaking water monitoring immediately after rainfall and/or on an as and when required basis.
- Maintenance of monitoring network which includes replacing of destroyed and lost monitoring points.
- Adhoc Environmental Monitoring Committee meeting attendance (4 times per annum)
- Conduct risk analysis and pollution source investigations should the need arises, this is related to upstream mining activities, agricultural impacts on water resources around and within the Kusile Complex
- Meeting with the client to provide progress and presentation to management where necessary.
- Prepare presentation on surface, ground and aquatic water quality and present it to the EMC quarterly meetings.
- In cases where abnormalities are found from the monitoring reports, the contractor is expected to undertake full investigation on root cause and provide a way forward.
- Recommended and motivate for follow-up monitoring where necessary.
- Advice or make recommendations on future monitoring requirements.
- Training to be done on an as and when required basis to Kusile Power Station personnel for a better understanding of the total monitoring system ensuring capacity to proactively minimise any environmental issues that could arise from any of the Kusile Power Station activities.