



NEC3 Term Service Contract (TSC3)

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

and *****

for **Supply of Basic (Level 01), Advance (Level 02) and Final (Level 03) training of Fitters, Electricians and Instrument Mechanicians to Kendal Power Station as when needed.**

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

Supply of Basic (Level 01), Advance (Level 02) and Final (Level 03) training of Fitters, Electricians, and Instrument Mechanicians to Kendal Power Station aswhen needed.

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

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

| | | |
|-----------|--|--|
| Options A | The offered total of the Prices exclusive of VAT is | |
| | Sub total | |
| | Value Added Tax @ 15% is | |
| | The offered total of the amount due inclusive of VAT is ¹ | |
| | (in words) | |

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

N/A

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

for the
Employer

**Eskom Holdings SOC Ltd,
Megawatt Park,
Maxwell Drive,
Sunninghill, Johannesburg**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

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

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

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

For the tenderer:**For the Employer**

Signature

Name

Capacity

On behalf of *(Insert name and address of organisation)*Name &
signature
of witness

Date

**Eskom Holdings SOC Ltd,
Megawatt Park,
Maxwell Drive,
Sunninghill, Johannesburg**

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

| Clause | Statement | Data |
|--------|---|---|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: | |
| | | A: Priced contract with price list |
| | dispute resolution Option | W1: Dispute resolution procedure |
| | and secondary Options | X2 Changes in the law |
| | | X17: Low service damages |
| | | X18: Limitation of liability |
| | | X19: Task Order |
| | | X20: Key performance indicators |
| | | Z: Additional conditions of contract |
| | of the NEC3 Term Service Contract April 2013 ² (TSC3) | |
| 10.1 | The <i>Employer</i> is (name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| | Tel No. | TBA |
| | Fax No. | N/A |
| 10.1 | The <i>Service Manager</i> is (name): | |
| | Address | Kendal Power Station Private Bag X 7272 Witbank 1035 |

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

Tel

Fax

N/A

e-mail

| | | |
|----------|--|---|
| 11.2(2) | The Affected Property is | Kendal Power Station Private Bag X 7272 Witbank 1035 |
| 11.2(13) | The <i>service</i> is | Supply of Basic (Level 01), Advance (Level 02) and Final (Level 03) training of Fitters, Electricians, and Instrument Mechanicians to Kendal Power Station aswhen needed. |
| 11.2(14) | The following matters will be included in the Risk Register | 1. Late Invoicing |
| 11.2(15) | The Service Information is in | Part 3: Scope of Work and all documents |
| 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 | 2 weeks |
| 2 | The Contractor's main responsibilities | Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data |
| 21.1 | The <i>Contractor</i> submits a first plan for acceptance within | As stated on each Task Order, where applicable |
| 3 | Time | |
| 30.1 | The <i>starting date</i> is. | 01 July 2022 |
| 30.1 | The <i>service period</i> is | As when needed for 36 months |
| 4 | Testing and defects | The defects date is 52 weeks after Completion of the whole of the works The defect correction period is 2 weeks |
| 5 | Payment | |
| 50.1 | The <i>assessment interval</i> is | Monthly after service delivery |
| 51.1 | The <i>currency of this contract</i> is the | South African Rand |
| 51.2 | The period within which payments are made is | No later than Four (4) weeks |
| 51.4 | The <i>interest rate</i> is | the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) |

for amounts due in Rands

| | | |
|------|---|---|
| 6 | Compensation events | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data |
| 7 | Use of Equipment Plant and Materials | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data |
| 8 | Risks and insurance | |
| 80.1 | These are additional <i>Employer's</i> risks | There are no additional risks |
| 83.1 | The <i>Employer</i> provides these insurances from the Insurance Table | as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance). |
| 83.1 | The <i>Employer</i> provides these additional insurances | as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance) |
| 83.1 | The <i>Contractor</i> provides these additional insurances: | Not already cover by the Employer Annexure A |
| 83.1 | The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is | the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx |
| 83.1 | The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of | Not already cover by the Employer Annexure A |
| 83.1 | The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is: | Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>. |
| 83.1 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is: | As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands). |

| | | | | |
|---------|---|---|--|-------------------|
| 9 | Termination | This Contract will be terminated when the National Contract is concluded from Head Office | | |
| 10 | Data for main Option clause | | | |
| A | Priced contract with price list | | | |
| 20.5 | The Contractor prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than | | 4 weeks. | |
| 11 | Data for Option W1 | | | |
| W1.1 | The Adjudicator | | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA). | |
| W1.2(3) | The Adjudicator nominating body is: | | the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body. | |
| W1.4(2) | The tribunal is: | | Arbitration | |
| W1.4(5) | The arbitration procedure is | | the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body. | |
| | The place where arbitration is to be held is | | South Africa | |
| | The person or organisation who will choose an arbitrator | | the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body. | |
| | A. if the Parties cannot agree a choice or | | | |
| | B. if the arbitration procedure does not state who selects an arbitrator, is | | | |
| 12 | Data for secondary Option clauses | | | |
| X1 | Price Adjustment for inflation | | | |
| X1.1 | The base date for indices is starting date of contract with 1 month prior | | | |
| | The proportion used to calculate Price Adjustment factor are: | | Proportion | linked to index |
| | | | 70% | Labour |
| | | | 15% | Training Material |
| | | | 5% | Transport |
| | | | 10% | Other |

| | | |
|------------|--|--|
| X2 | Changes in the law | There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data. |
| X17 | Low service damages | |
| X17.1 | The <i>service level table</i> is in | Appendix A |
| X18 | Limitation of liability | |
| X18.1 | The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to | R0.0 (zero Rand) |
| X18.2 | For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to | the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx |
| X18.3 | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to | The greater of <ul style="list-style-type: none"> • the total of the Prices at the Contract Date and <ul style="list-style-type: none"> • the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx |
| X18.4 | The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | 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. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property, • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right. |

| | | |
|------------|--|--|
| X18.5 | The <i>end of liability date</i> is | 12 months after the end of the <i>service period</i>. |
| X19 | Task Order | |
| X19.5 | The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within | 2 days of receiving the Task Order |
| X20.1 | The <i>incentive schedule</i> for Key Performance Indicators is in | No incentive on this contract |
| X20.2 | A report of performance against each Key Performance Indicator is provided at intervals of | Monthly (Appendix B) |
| Z | The <i>additional conditions of contract</i> are | Z1 to Z11 always apply. |

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Service.
- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may

constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* 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 *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Health, safety and the environment: Add to core clause 27.4

- Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
 - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
 - undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

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 *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

- Z8.1 Delete the last paragraph of core clause 61.3 and replace with:

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

Z9 Employer's limitation of liability

- Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

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 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 *Contractor* 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 *Contractor*, 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.
- Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Service for this reason.
- Z 11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.
- Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Annexure A: Insurance provided by the Employer

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

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

From_1_April_2021_To_31_March_2023.aspx

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)³ in order to understand the implications of this Data which the tenderer is required to complete.

The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.

Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

| Clause | Statement | Data |
|----------|---|--------|
| 10.1 | The <i>Contractor</i> is (Name): Address Tel No. Fax No. | |
| 11.2(8) | The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is | % % |
| 11.2(14) | The following matters will be included in the Risk Register | |
| 11.2(15) | The Service Information for the <i>Contractor's</i> plan is in: | |
| 21.1 | The plan identified in the Contract Data is contained in: | |
| 24.1 | The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: | |

³ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or www.ecs.co.za

Qualifications:

Experience:

CV's (and further key person's data including CVs) are in _____.

| | | |
|----------|---|------------|
| A | Priced contract with price list | |
| 11.2(12) | The <i>price list</i> is in _____ | |
| 11.2(19) | The tendered total of the Prices is _____ | Rate Based |

PART 2: PRICING DATA

TSC3 Option A

| Document reference | Title | No of pages |
|--------------------|-------------------------------|-------------|
| | This cover page | [1] |
| C2.1 | Pricing assumptions: Option A | [2] |
| C2.2 | The <i>price list</i> | [6] |

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

| | | |
|-------------------------------------|------|--|
| Identified and defined terms | 11 | |
| | 11.2 | (12) The Price List is the <i>price list</i> unless later changed in accordance with this contract. |
| | | (17) The Price for Services Provided to Date is the total of |
| | | <ol style="list-style-type: none">1. the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and2. where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate. |
| | | (19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

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

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

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

Format of the *price list*

This is a rate based contract; the Tenderer Rate should include all the costs as per the Service Information. cost for collection, dismantle, assess, repairs, rewind, overhaul, assemble, paint, test and delivery are to be included in tendered prices.

C2.2 the *price list*

| Item nr | Number of trainees | Description | Unit | Expected Quantity | Rate per Hour | Price |
|---------|--------------------|----------------------------------|------|-------------------|---------------|----------|
| | | Basic (Level 01) YEAR 1 | | | | |
| Each | 5 | Fitter | HRS | 480 | R | R |
| Each | 5 | Electrician | HRS | 480 | R | R |
| Each | 5 | Instrument Mechanics | HRS | 480 | R | R |
| | | Advance (Level 02) YEAR 2 | | | | |
| Each | 5 | 5 x Fitter | HRS | 480 | R | R |
| Each | 5 | 5 x Electrician | HRS | 480 | R | R |
| Each | 5 | 5 x Instrument Mechanics | HRS | 480 | R | R |
| | | Final (Level 03) YEAR 3 | | | | |
| Each | 5 | 5 x Fitter | HRS | 480 | R | R |
| Each | 5 | 5 x Electrician | HRS | 480 | R | R |
| Each | 5 | 5 x Instrument Mechanics | HRS | 480 | R | R |
| | | | | | | |
| Each | | 15 Toolboxes | | | | |
| Each | | 10 Multi-meter (Fluke 177) | | | | |
| | | Total (Excluding VAT) | | | | R |

| Document reference | Title | No of pages |
|--------------------|--|-------------|
| C3.1 | This cover page <i>Employer's Service Information</i> | [1] [13] |
| | Total number of pages | |

C3.1: EMPLOYER'S SERVICE INFORMATION

Description of the service

Executive overview

The purpose of this document is to provide scope for:

Support with providing a strategy or a detailed project plan to successfully roll out Maintenance Basis Standardisation (MBS) reliability management enhancement strategy by activating maintenance strategies according to Manage Strategies and Manage Work (MS/MW) process guidelines within maintenance department at Kendal Power Station, and to ensure that the phase 1 of the plan is successfully implemented by 30 Nov 2022, then phase 2 by end of contract duration, and according to scope below:

PHASE 1 SOW

Basic

Advance

Final

Tools

Certificates

MS/MW Tab 7 Scope-

MS/MW Tab 8 Scope - Schedule Training Plans as per your Training Year Calender

1. Employer's requirements for the service

1. Description of the *works*

1.1 Scope of Work for provide training for learner artisans

On the plant identified in Appendix A and Appendix B and to the extent determined by the Eskom *Service Manager* or his delegate and the *Contractor*, the *Contractor* shall:

NOTE: FOR THE APPENDIX MENTIONED ABOVE, PLEASE REFER TO THE SIGNED SOW

Definitions

The following abbreviations are used in this Service Information:

| Abbreviation | Description |
|--------------|--|
| ISO | International Organisation for Standardisation |
| OHS | Occupational Health & Safety |
| PSR | Plant Safety Regulations |
| RTDs | Resistance Temperature Detection sensors |
| SHEQ | Safety, Health, Environmental & Quality |
| SOW | Scope Of Work |
| MS/MW | Manage Strategies and Manage Work |
| FLOC | Functional Location |
| FTC | FLOC Task combinations |
| CMMS | Computerised Maintenance Management System |
| MBSA | Maintenance Basis Standardisation Association |
| BOM | Bill of Material |

2. Drawing

N/A

3. Specifications

| Title | Date revision | or | Tick if available | publicly |
|--|---------------|----|-------------------|----------|
| General Specifications: | | | | |
| QM 58 - Supplier Contract Quality Requirement Specification | | | | |
| GGR 0992 - Plant Safety Regulations | | | | |
| ISO 9001 - Quality Management Systems | | | | |
| ISO 14001 - Environmental Management Systems | | | | |
| | | | | |
| Technical specifications: | | | | |
| Refer to the Signed SOW | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|--|--|--|
| | | |
| | | |

2. The Contractor's plan for the service

The Contractor and his sub-Contractor must possess the tools and equipment to fulfil the requirements of services supplied as listed in Appendix A & Appendix B.

The Contractor must supply the consumables, if applicable, to satisfy the requirements for components listed in Appendix A & Appendix B. These consumables should always be available.

The Contractor and his sub-Contractor are required to have suitable premises with the required tools, cranes and equipment to be able to conduct the scope of work. Eskom reserves the right to inspect the workshop premises to make sure that it is suitable and is kept up to standard.

3. Management meetings

Meetings will be held monthly (or weekly if necessary) between the *Service Manager* and the *Contractor* (and any other co-opted members). The *Contractor* is represented at each meeting by the appropriate member (nominated by the *Contractor* in writing) of his staff. The venue for these meetings is as determined by the *Service Manager* at the inaugural meeting. The *Service Manager* will write the minutes of the meetings.

Meetings of a specialist nature may be convened as specified elsewhere in this Works Information or if not so specified by *Service Manager* and at times and locations to suit the Parties, the nature and the progress of the works.

The *Contractor* reports the overall progress to the *Service Manager* when notified. As a minimum requirement the following is addressed:

- *Contractor's* current activities progress and planned finish dates.
- *Contractor's* planned start and finish dates for the works.
- *Contractor's* and *Service Manager's* programme agenda compared for problematic differences.
- The progress of any other relevant activities.
- To discuss any technical or commercial issues related to the works.
- To discuss any interfacing requirements related to the works.

4. Project Documentation Control

Communication and Correspondence

All correspondence must include:

- *Employer* contract number.
- Contract description.
- Correspondence subject matter.

Where appropriate the correspondence includes the *Project Manager's* reference.

All communications from the *Contractor* are numbered sequentially with a prefix as advised by the *Service Manager*. The *Service Manager* responds in similar manner to a maximum of two address formats provided in writing by the *Contractor*. The prefix is decided upon at the inaugural meeting.

5. Contractor's management, supervision and key people

All Contractors personnel will be subject to access control conditions as per Eskom requirements. All workers on site must comply with Eskom's health and safety standards. Workers will not be allowed to be transported on the back of vans or bakkies. Workers must be restricted to the area of activity near the construction and not allowed to wonder about.

6. Invoicing and payment

In terms of core clause 50 the *Contractor* assesses the amount due and applies to the *Employer* for payment. The *Contractor* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

- Contract number and/or Order number
- The word "TAX INVOICE" in a prominent place (preferably at the top of the page)
- An individual serial number (tax invoice number)
- Name, address and VAT registration number of the Contracting Party *
- Name, address and VAT registration number of Eskom Holdings SOC Limited *
- (Eskom Holdings SOC Ltd, Kendal Power Station - VAT No 4740101508)
- Date of issue of Tax Invoice
- A full and proper description of goods delivered and/or service/s rendered
- Quantity or volume of goods or services supplied *
- Where the supply is subject to VAT at the standard rate, the following in Rand:
 - - The value, VAT amount and consideration OR
 - - The total consideration with a statement that VAT is included @ 15% OR
 - - The total consideration and the amount of VAT charged
- Address where service was rendered
- Value and VAT amount
- Task Order number
- Discounts
- These two requirements do not apply where the consideration (VAT inclusive amount) is less than R3 000,00.
- Scanned tax invoices sent by e-mail are not acceptable to Eskom Holdings SOC Limited- only original tax invoices are considered for payment.
- **Address where invoices are to be forwarded**
- invoiceseskomlocal@eskom.co.za

7. Records of Defined Cost to be kept by the Contractor

Where rates are not part of the pricing activity, the *Contractor* will be required to provide a minimum of three quotations.

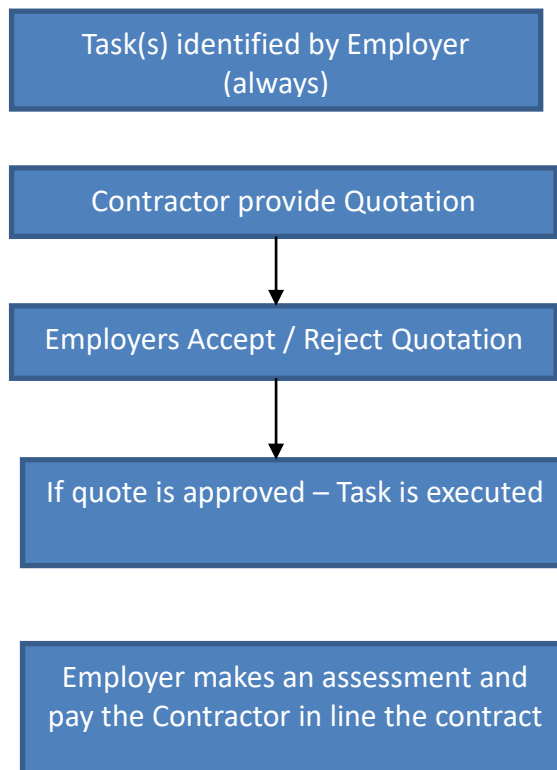
8. Insurance provided by the Employer


As per Annexure B (Part C1 – Agreements and Contract Data), for 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.aspx

9. Management of work done by Task Order

All the work under this contract is Task Order driven. The Contractor does not commence works without a Task Order. Below is Task Order Flow:



| | | | |
|--|------------------------|-------------------|---------------|
| Task Order Template  | Task Order Form | Unique Identifier | 240-129611735 |
| | | Revision | 1 |
| | | Document Type | Form |
| | | Date | |
| | | Authorisation | |
| | | Revision Date | |

Task Order NO – XXX

Task Order form for use when work within the *service* is instructed to be carried out within a stated time period of time on a Task by Task basis

CRM No *service*
...

To
.....

.....
(Contractor)

I propose to instruct you to carry out the following task

Description
.....

Starting date
.....

Completion date
.....

Delay damages per week
.....

Please submit your price and programme proposals below.

Signed Date
.....

(for Employer)

C. Total of Prices for items of work on the
Price List (details attached)
.....

D. Total of Prices for items of work not on the
Price List (details attached)

| | |
|---|------------|
| | |
| E. Total of Prices (A +B) | |
| _____ | _____ |
| The programme for the Task is [ref] (attached) | |
| Signed | Date |
| (for Contractor) | |
| I accept the above price and programme and instruct you to carry out the Task | |
| Signed | Date |
| (for Employer) | |
| | |
| | |

Management of work done by Task Order

1. Task Orders are issued whenever a need arise or in accordance with the outage plan.
2. The Task Order includes the scope of work for the specific outage.
3. A Task Order is the instruction to commence work. No work shall commence until a Task Order is issued and has been finalised, accepted and signed by both the *Employer* and *Contractor*.
4. All work will be issued on a Task Order system.
5. The Work Order, Purchase Requisition and Purchase Order will be created via the SAP PM system.
6. Task Orders are issued for all activities.
7. Assessment of work will be conducted in accordance with the contract.

10. Health and safety risk management

The *Contractor* shall comply with the health and safety requirements of this project.

11.Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in SHE specification (As applicable).

12. Contractor's management, supervision and key people

Minimum requirements of people employed

The *Contractor* shall ensure that all its people are qualified to carry out the scope of work. The *Contractor* shall provide the Employer with a detailed organogram of all staff and management on the contract. This must be revised quarterly and must reflect any changes to the staff and management structure. The *Employer* reserves the right to audit and verify the structure. The *Contractor* shall have full time appointed person to manage this contract.

13. BBEE

The *Contractor* shall maintain the Required B-BBEE Recognition Level for the duration of the Agreement. The *Contractor* shall provide Eskom with a valid Verification Certificate and such other information as Eskom may reasonably request, in respect of which the Contractor claims maintenance for the duration of the Agreement of the Required B-BBEE Recognition Level. For the purpose of this clause “verification Certificate” means a verification certificate and the accompanying documentary proof confirming the B-BBEE Status of a particular entity as issued by an accredited verification agency.

14. Subcontracting

Prior to appointment of a sub-contractor, the Contractor shall submit to Eskom all detail of the contractor, including B-BBEE details, for verification. Subcontractors must meet the statutory requirements related to their field of expertise and comply with the required regulatory accreditations.

15. Limitations on subcontracting

The Contractor shall sub-contract 30% of the whole of the services to the local to site companies but shall, subject to Eskom’s consent (which consent shall only be valid if given in writing and signed by the Eskom Representative), be entitled to sub-contract selected parts of its obligations in terms of this Agreement to any other person/s, provided that such sub-contracting shall not relieve the Contractor of its obligations and the Contractor shall remain liable for all and any acts or omissions of such person/s as though they were acts or omissions of the Contractor.

The Contractor shall not be entitled to cede, delegate, assign or otherwise transfer any of its rights and/or obligations without the prior written consent of Eskom, which consent shall not be unreasonably withheld.

APPENDIX A - X17: Low Service Damages

| Low Service Damage Description | Value of Low Service Damages | Limit of Low Service Damage |
|---|--|--|
| Service delays not finishing as per agreed upon project plan submitted and approved by the <i>Service Manager</i> | 0.25% per total value of the Task Order(s) per day | Limited to 10% of the total value of the Task Order(s) |
| Submission of QCP documents as per agreed upon Contract Document Submittal Schedule in this service agreement | 0.25% per total value of the Task Order(s) per day | Limited to 10% of the total value of the Task Order(s) |
| Using Personnel which are not Qualified/ experienced as per the contract conditions | 0.25% per total value of the Task Order(s) per day | Limited to 10% of the total value of the Task Order(s) |

APPENDIX B - X20.2: Key performance indicators

The KPI's will be used to determine the successful performance of the scope. The Contractor is required to perform in order to meet these targets. The KPI's are to be agreed to between parties and are subject to change on an annual basis, based on the need.

- Quality of repair or refurbishment. No re-work.
- Reliability of the repaired or refurbished component.
- First committed delivery date on the Purchase Order receipt is applicable
- Non-compliance to the agreed to Scope of Work, hold points and Quality Control Plans
- Refurbishment turnaround time, from order to delivery 14 working days