



NEC3 Term Service Contract (TSC3)

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

and
(Reg No.)

for **Supply and Service of SO3 Process Heater at Kriel Power Station for a period of five years**

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
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C1.2b Contract Data provided by the <i>Contractor</i>	
C1.3 Proforma Guarantees	

C1.1 Form of Offer & Acceptance

Offer

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

Supply and Service of SO3 Process Heater at Kriel Power Station for a period of five years

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

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

Options A	The offered total of the Prices exclusive of VAT is	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is1	R

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

Project Manager

For the tenderer:

Name &
signature of
witness

(Insert name and address of
organisation)

Date

Tenderer's CIDB registration number:

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

Procurement Manager

for the
Employer

Eskom Holdings SOC Limited

Kriel Power Station. P/Bag X5009, Kriel, 2271

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	N/A	N/A
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

Procurement Manager

On behalf of		Eskom Holdings SOC Limited Kriel Power Station . P/Bag X5009, Kriel, 2271
Name & signature of witness		
Date		

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	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X17: Low Performance damages
		X19: Task Order
		Z: Additional conditions of contract
		•
	of the NEC3 Term Service Contract (June 2005) ²	
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 M Raphasha
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	017 615 2307
	Fax No.	-
10.1	The <i>Service Manager</i> is (name):	K Ntsheroa

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

Address

Eskom Kriel Power station

Tel

017 615 2557

Fax

e-mail

Ntsherk@eskom.co.za

11.2(2)	The Affected Property is	Kriel Power Station
11.2(13)	The <i>service</i> is	Supply and Service of SO3 Process Heater at Kriel Power Station for a period of five years
11.2(14)	The following matters will be included in the Risk Register	People; Quality and SHEQ
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	1 day
2	The Contractor's main responsibilities	(If the optional statement for this section is not used, no data will be required for this section)
21.1	The <i>Contractor</i> submits a first plan for acceptance within	2 weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	5 years ending on
4	Testing and defects	Defects and Task orders
5	Payment	
50.1	The <i>assessment interval</i> is	Between the 25 day of each successive month.
50.5	The delay damages are	N/A
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	(i) zero percent above 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 (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate

quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6	Compensation events	(If the optional statement for this section is not used, no data will be required for this section)
	These are additional compensation events:	
7	Use of Equipment Plant and Materials	No data is required for this section of the <i>conditions of contract</i> .
8	Risks and insurance	
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/live/content.php?Item_ID=9248 (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/live/content.php?Item_ID=9248 (See Annexure A for basic guidance)
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer</i> ’s 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/live/content.php?Item_ID=9248
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:	the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
83.1	The minimum amount of cover for insurance in respect of loss of or	

	damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands)..
9	Termination	There is no Contract Data required for this section of the <i>conditions of contract</i>.
10	Data for main Option clause	
A	Priced contract with price list	
20.4	The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>service</i> at intervals no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	Either State the name of the person selected & complete the contact details below Or, state the person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him.
	Address	To be confirmed when a dispute arises
	Tel No.	To be confirmed when a dispute arises
	Fax No.	To be confirmed when a dispute arises
	e-mail	To be confirmed when a dispute arises
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See www.jointcivils.co.za)
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The

	The place where arbitration is to be held is The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	Association of Arbitrators (Southern Africa) or its successor body. South Africa the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.																					
12	Data for secondary Option clauses																						
X1	Price adjustment for inflation																						
X1.1	The <i>base date</i> for indices is The proportions used to calculate the Price Adjustment Factor are: This indices will apply on the contract, from year two to year three.	March 2019 <table> <tr> <td>proportion</td><td>linked to index for</td><td>Index prepared by</td></tr> <tr> <td>15%</td><td>Table L2</td><td>Seifsa</td></tr> <tr> <td>35%</td><td>Table C3</td><td>Seifsa</td></tr> <tr> <td>17.5%</td><td>Table E-EX</td><td>Seifsa (Roundbar, Squares and Vastap)</td></tr> <tr> <td>17.5%</td><td>Table M</td><td>Seifsa (Mildsteel and Plates)</td></tr> <tr> <td>15%</td><td>non-adjustable</td><td></td></tr> <tr> <td>100%</td><td></td><td></td></tr> </table>	proportion	linked to index for	Index prepared by	15%	Table L2	Seifsa	35%	Table C3	Seifsa	17.5%	Table E-EX	Seifsa (Roundbar, Squares and Vastap)	17.5%	Table M	Seifsa (Mildsteel and Plates)	15%	non-adjustable		100%		
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17.5%	Table M	Seifsa (Mildsteel and Plates)																					
15%	non-adjustable																						
100%																							
X2	Changes in the law	Maintenance must include changes in the law																					
X19	Task Order																						

X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within 7 days of receiving the Task Order
Z	The <i>additional conditions of contract</i> are Z1 to Z11 always apply.
Z1	Cession delegation and assignment
	Z1.1 The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i>. Z1.2 Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> 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 and the Electricity Distribution Industry.
Z2	Joint ventures
	Z2.1 If the <i>Contractor</i> 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 <i>Employer</i> for the performance of this contract. Z2.2 Unless already notified to the <i>Employer</i>, the persons or organisations notify the <i>Service Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf. Z2.3 The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.
Z3	Change of Broad Based Black Economic Empowerment (B-BBEE) status
	Z3.1 Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change. Z3.2 The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Service Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Service Manager</i>. Z3.3 Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works. Z3.4 Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.
Z4	Ethics
	Z4.1 Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i>, which constitutes or could be construed either directly or indirectly as an illegal or

corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).

- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

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

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

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

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

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

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

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by

the Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

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

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

accepts that the *Employer* may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Affected Property;

warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and

undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

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

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

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

Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1 Delete from the last sentence in core clause 61.3, “unless the *Service Manager* should

have notified the event to the *Contractor* but did not”.

Z10 *Employer’s limitation of liability*

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

Z10.2 The *Contractor’s* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer’s* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

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

Z11.1 or had a judicial management order granted against it.

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. Details of the insurance itself are available from the internet web link given below.

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

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

http://www.eskom.co.za/live/content.php?Item_ID=9248

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

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

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

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031)

(Fax :+27 (0)86 668 0419) E-mail: Leighton.Itholeng@eskom.co.za

Annexure C: Table of low service damages (X17)

- Low Service Damage Description	- Value of Low Service Damages	- Limit of Low Service Damage
- Delays in delivery	- - 1 % of Task Order per day	- - Limited to 10% of the Task Order value
- Rework due to poor workmanship.	- - 2 % of Task Order per day	- - Limited to 10% of the Task Order value

C1.2 Contract Data

Part two - Data provided by the Contractor

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	100% 0%
11.2(14)	The following matters will be included in the Risk Register	SHEQ
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	C3 Scope of Work
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	

A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	Part 2, C2.2
11.2(19)	The tendered total of the Prices is	excl. VAT

Part 2: Pricing Data

TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i> (Excluding Spares price List)	1

C2.1 Pricing assumptions: Option A

The conditions of contract

For the preventative and corrective maintenance and continuous operating and monitoring of all heating, ventilation and air conditioning (HVAC) systems (including filter maintenance and pressurizing fans) at Kriel Power Station

How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (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 the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and 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*

It will be assumed that the tendering contractor has read Pages 14, 15 and 73 of the TSC3 Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he considers necessary. Whichever party provides the items in the *price list* the total of the Prices is assumed to be fully inclusive of everything necessary to provide the Service as described at the time of entering into this contract.

1 As the *Contractor* has an obligation to correct Defects (core clause 42.1) and there is no compensation event for this unless the Defect was due to an *Employer's* risk, the lump sum Prices and rates must also include for the correction of Defects.

2 If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost to the *Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the service for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Contractor* in the *price list* 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.

5 The *Contractor* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

Format of the *price list*

(From page 73 of the TSC3 Guidance Notes)

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

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

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

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

C2.2 the *price list***PRICE LIST**

Supply & Service of SO3 Process Heater at Kriel Power Station for a period of five years						
	Description	Stock	Unit	Qty	Rate	Amount
1	SO3 Heater	53821	Each	15		
2	System Maintenance		No	30		
3	Safety File & Medicals		Yearly	3		
	TOTAL					-

Part 3: Scope of Work

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

C3.1: Employer's service Information

OPERATIONAL NEED IDENTIFIED

3.1.1 KPS SO₃ PH contract requirements

1. SO₃ PH spares supply
2. SO₃ PH maintenance support

3.1.2 SO₃ Process Heater Overview

Liquid Sulphur is stored in a storage tank at a temperature of 150 °C. The liquid Sulphur is delivered to the Sulphur burners by means of a dosing pump that pumps the Sulphur via steam jacketed pipes to the Sulphur burner.

Combination air is supplied by a fan through an electric heater, where the Sulphur is mixed with excess air and burnt to form Sulphur dioxide (SO₂). The SO₂ is transferred to a converter where it is oxidized by a catalyst (vanadium pentoxide) to form Sulphur trioxide (SO₃).

The SO₃ gas is fed into a distribution manifold from where it is injected into the flue gasses in the ducting before the electrostatic precipitators, to increase the degree of dust separation. The generator load signal ensures that the SO₃ injection rate remains constant.

The air required for combustion in the burner is supplied by a fan. The flow rate is 2 083 m³/h. The operating pressure may vary with the gas pressure in the flue gas ducts

After starting the fan, the air heater is switched on automatically. The air is heated by an electrical air heater upstream of the burner, the air heater power consumption being controlled in dependence of the Sulphur rate and the air heater outlet temperature.

At a maximum Sulphur throughput of 134 kg/h, the air heater still operates at about 5 % of its power consumption to prevent corrosion in the air heater. At lower Sulphur throughput rates, the air heater is controlled accordingly up to a power consumption of 427 kW.

The temperatures of the heating elements are controlled. If one of these temperatures exceeds the maximum set value, the complete heater is cut off. The heater is so controlled that the gas at the burner outlet has a constant temperature of approximately 440 °C. The heater is interlocked with the main fan. The burner outlet temperature is at least 440 °C and the burner temperature measured in the refractory lining must not exceed 550 °C.

3.2 SO₃ PROCESS HEATER SUPPLY SCOPE OF WORK

The supplier shall be required to supply the following spares and activities for the KPS SO ₃ PH: #	Description	Stock	Quantity
1	SO ₃ Heater	053821	15
2	System Maintenance	N/A	1 per week

1. Quality assurance and control requirements

- 3.3.1 The contractor complies with the employer's quality requirements as specified in standard BIA/QA/STD01
- 3.3.2 Kriel power station has quality assurance and control procedures in place. The contractor liaises with the quality control department to become familiar with the quality documents and procedures used on-site and to recommend changes for improvement, whenever possible.

4 Additional conditions

- i. This contract and all information associated with its management is confidential and may not be divulged beyond the provisions stated within the contract. Should the Contractor violate this condition, the Contract Service Manager may terminate this contract forthwith and nullifying any outstanding or further claims by the Contractor.
- ii. Neither the Contractor nor the key persons may have any interest, pecuniary, material or otherwise in any work arising from, impacting, or influencing the Contractor's ability to impartially fulfil the Scope of this contract, be it of a service or supply nature. The Contractor and the key persons are to declare any interest, pecuniary, material or otherwise, in any tender, offer or quotation to the Project Manager for any other work, supply or service, to the Employer's Agent at the time when such tender, offer or quotation is submitted. The Contract Service Manager interpretation of a situation shall apply where there is a conflict.

5 Defects Correction Period

Due to the different nature of defects, and the different risks associated with trips, the defect correction period as specified in the Contract Data varies per defect, as indicated by the *Contract Service Manager*.

- Priority 1 – 24 hours – All modifications which may affect the operation of Kriel Power Station.
- Priority 2 – 2 days – Investigations and feasibility studies.
- Priority 3 – 1 week – Repairs.

Provision of bonds and guarantees

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

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

Insurance provided by the *Employer*

Refer to the insurance part of the contract

Management of work done by Task Order

All work is performed in accordance with the Task Order provided.

Health and safety, the environment and quality assurance

Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *service* and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATSOEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

The Divisional Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in Annexure _____ to this Service Information.

Environmental constraints and management

Kriel Power Station is ISO 14001 complaint , All spillage (oil, grease, diesel, chemical etc.) are prevented at all times and where accidents occurred in line with any spillages, immediate remedial actions are taken to clean-up the affected land using the appropriate spill-cleaning chemical/absorbents. All spillage must be reported and the contractor must have the emergency plan for accidental spills.

All chemical containers must be in a bund area No chemical container should be placed on the ground). Report all chemical spillage and chemical change and update the MSD. Include the emergency plan for accidental spills.

All activities listed in the National Environmental Act 107 of 1998, Regulation 544 and 545, must have Authorisation before commencement of work. The contractor shall comply with all applicable legal and other requirements. The polluter pays principle will be applied. The contractor manager

shall ensure compliance with Eskom Kriel Environmental procedures to ensure the prevention of pollution (OMOP 4090). The last payment will be processed based on the status of the last housekeeping check sheet (Annexure G: OMOP 4018) of designated area. EMS file based on ISO14001 will be required.

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure

Quality assurance requirements

The contractor ISO 9001:2000 registration certificate of compliance must be supplied with tender. If the contractor is not registered, contractor will supply with his tender document with their quality policy.

All chemicals supplied to Kriel Power Station Ash water system must be accompanied by a Certificate of Analysis and MSDS. List of hazardous chemicals to be used with MSD eg herbicides. Valid ISO 9001:2008 certificate OR objective evidence of a Quality Management System which is ISO 9001:2008 compliant. Completed assessment Annexure A of OMOP 4402. Adhering to quality requirements as per the QM58 procedure.

Procurement

There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information MUST include any such procedures to be able to administer Disallowed Cost.

People

Minimum requirement of people employed

Specify any constraints relating to people employed to Provide the Service; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations. Minimum of people should be as per the price list with their certificates and training requirements.

BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

SD&L – SUPPLIER DEVELOPMENT AND LOCALISATION

TABLE 1: SUPPLIER DEVELOPMENT AND LOCALISATION COMPLIANCE MATRIX FOR SUPPLIERS AND CONTRACTORS				
Criteria	Weight (%)	Total Target (%)	Proposed Target (%)	Total Overall Weighted Score
Local Content to South Africa	100.00%	100.00%	100.00%	100.00%
Total Score	100.00%			
Total Supplier Development and Localisation Score				100.00%

Subcontracting

Preferred subcontractors

TSC3 does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or suppliers the *Contractor* is required to enter into subcontracts with. This is

usually only required where specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

Subcontract documentation, and assessment of subcontract tenders

N/A

Limitations on subcontracting

N/A

Attendance on subcontractors

N/A

Plant and Materials

Specifications

As stated in the scope of work.

Correction of defects

As stated in the scope of work.

Contractor's procurement of Plant and Materials

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

Tests and inspections before delivery

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

Plant & Materials provided "free issue" by the Employer

As stated in the scope of work

Working on the Affected Property

As per scope of work.

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

The contractor shall liaise with Kriel Power Station's Security staff in order to obtain temporary permits for his staff and vehicle.

Personnel and vehicle entering and leaving the site are subject to routine searches and substance abuse testing.

The contractor will have to obtain a gate permit from the Employers Representative, before materials and equipment can be removed from the site. The gate permit gives and itemize list of materials and equipment to be removed from site.

People restrictions, hours of work, conduct and records

Contractor to start work on Mondays to Thursdays at 7:00 to 16:15
Fridays 7:00 to 12:00.

Health and safety facilities on the Affected Property

As stated in the scope of work.

Environmental controls, fauna & flora

As stated in the scope of work.

Cooperating with and obtaining acceptance of Others

As stated in the scope of work.

Records of *Contractor's* Equipment

As per scope of work

Equipment provided by the *Employer*

N/A

Site services and facilities

Provided by the *Employer*

Ablution Facilities, Offices and Equipment Room.

Provided by the *Contractor*

N/A.

Control of noise, dust, water and waste

As per scope of work

Hook ups to existing works

N/A

Tests and inspections

Description of tests and inspections

Describe the tests and inspections to be carried out by the *Contractor* and the *Service Manager* and others [40.1].

Materials facilities and samples for tests and inspections

State what materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.