



## NEC3 Professional Services Contract (PSC3)

Contract between **Eskom Holdings SOC Ltd**  
(Reg No. 2002/015527/30)

and **[Insert at award stage]**  
(Reg No. \_\_\_\_\_)

for **Raw Water Metering Station Rehabilitation Design  
Project**

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**CONTRACT No. [Insert at award stage]**

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## 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 into a contract for the procurement of:

### Raw Water Metering Station Rehabilitation Design Project

The tenderer, identified in the Offer signature block, has

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

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

The offered total of the Prices exclusive of VAT is	<b>R</b>
Value Added Tax @ 14% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(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 *Consultant* in the *conditions of contract* identified in the Contract Data.

Signature(s)

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

Capacity \_\_\_\_\_

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

Name & signature of witness \_\_\_\_\_ (Insert name and address of organisation) \_\_\_\_\_ Date \_\_\_\_\_

## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

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

Capacity \_\_\_\_\_

for the  
Employer

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

*(Insert name and address of  
organisation)*

Date \_\_\_\_\_

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

## Schedule of Deviations

Note:

1. To be completed by the Employer prior to award of contract. 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:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Capacity \_\_\_\_\_

On behalf of *(Insert name and address of organisation)* \_\_\_\_\_ *(Insert name and address of organisation)* \_\_\_\_\_

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

Date \_\_\_\_\_

### For the Employer

## C1.2 PSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<b>A:</b> <b>Priced contract with activity schedule</b> <b>W1:</b> <b>Dispute resolution procedure</b>
		<b>X2:</b> <b>Changes in the law</b> <b>X7:</b> <b>Delay damages</b> <b>X9:</b> <b>Transfer of rights</b> <b>X10:</b> <b><i>Employer's Agent</i></b> <b>X11:</b> <b>Termination by the <i>Employer</i></b> <b>X18:</b> <b>Limitation of Liability</b> <b>Z:</b> <b><i>Additional conditions of contract</i></b>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>TBC</b>
	Fax No.	<b>TBC</b>
11.2(9)	The services are	<b>Raw Water Metering Station Rehabilitation Design at Majuba Power Station</b>
11.2(10)	The following matters will be included in the Risk Register	<b>1. Delays in Basic Assessment approval. 2. Delays in consultation process. 3. Unknown or unforeseen scope of work 4. All other relevant issues identified by the <i>Employer or Consultant</i>.</b>
11.2(11)	The Scope is in	<b>Part 3: Scope of Work</b>

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12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>Four (4) days</b>
13.6	The <i>period for retention</i> (of documents) is	<b>Ten (10) years following Completion or earlier termination.</b>

## **2 The Parties' main responsibilities**

25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		1 Raw water metering station (in operation)	Starting date
		2 Wetland area	Starting date
		3 Essential Services Plant for Isolating plant on PTW	Starting date, with 1-week prior notice.
		4 Employer's personnel and resources	Starting date with 1-week prior notice.

## **3 Time**

31.2	The <i>starting date</i> is.	<b>01 February 2025 or as soon as possible.</b>	
11.2(3)	The <i>completion date</i> for the whole of the services is.	<b>31 January 2027 (12 months contract duration).</b>	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1 Site survey	As per the Accepted Programme
		2 Consultation with legal authorities	As per the Accepted Programme
		3 Completion of Basic Assessment from DEFF	As per the Accepted Programme
		4 Submission of Concept design	As per the Accepted Programme
		5 Submission of Detailed design	As per the Accepted Programme
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>Three (3) weeks of the starting date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>Two (2) weeks.</b>	

#### 4 Quality

40.2	The quality policy statement and quality plan are provided within	<b>Six (6) weeks of the starting date.</b>
42.2	The <i>defects date</i> is	<b>Fifty-two (52) weeks after Completion of the whole of the services.</b>

#### 5 Payment

50.1	The <i>assessment interval</i> is	<b>between the twenty fifth (25) day of each successive month.</b>
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50.3	The expenses stated by the <i>Employer</i> are	Item	Amount
		Travelling per Km	[from Price List]
		Accommodation per Day	[from Price List]
		Living Out Allowance per Day	[from Price List]
		Project & Contract Management	[from Price List]
		Health & Safety Management per Month	[from Price List]
		Quality Management per Month	[from Price List]
		Environmental Management per Month	[from Price List]
51.1	The period within which payments are made is	<b>Thirty (30) days after receipt of a compliant invoice.</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>	

51.5 The *interest rate* is the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due, and 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

<b>6</b>	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>7</b>	<b>Rights to material</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>8</b>	<b>Indemnity, insurance and liability</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices
<b>9</b>	<b>Termination</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>	
21.3	The <i>Consultant</i> prepares forecasts of the total expenses at intervals of no longer than	<b>Four (4) weeks.</b>

## 11 Data for Option W1

W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is  The place where arbitration is to be held is  The person or organisation who will choose an arbitrator <ul style="list-style-type: none"><li>• if the Parties cannot agree a choice or</li><li>• if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li></ul>	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.  <b>Location to be confirmed within South Africa.</b>  <b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>

## 12 Data for secondary Option clauses

X2	<b>Changes in the law</b>	
X2.1	The law of the project is	<b>South African law.</b>
X7	<b>Delay damages</b>	
X7.1	Delay damages for late Completion of the whole of the services are	<b>R7 500.00 per day up to the limit of R750 000.00.</b>
X9	<b>Transfer of rights</b>	<b>There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.</b>
X10	<b>The <i>Employer's Agent</i></b>	
X10.1	The <i>Employer's Agent</i> is  Name:  Address	<b>TBC</b>  <b>Majuba Power Station Privat Bag X9001 Volksrust 2470</b>
	The authority of the <i>Employer's Agent</i> is	<b>All actions by the <i>Employer</i> in managing this contract.</b>
X11	<b>Termination by the <i>Employer</i></b>	<b>There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.</b>

<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.00 (Zero Rand)</b>
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	<b>The total of the Prices</b>
X18.3	The <i>end of liability date</i> is	<b>five (5) years after Completion of the whole of the services.</b>
<b>Z</b>	<b>The Additional conditions of contract are</b>	
	<b>Z1 to Z14 always apply.</b>	

**Z1 Cession delegation and assignment**

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

**Z2 Joint ventures**

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

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

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

**Z4      Confidentiality**

- Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer*'s project services or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

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

- Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*'s VAT number 4740101508 on each invoice he submits for payment.

**Z7      Notifying compensation events**

- Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

**Z8      Employer's limitation of liability**

- Z8.1 The *Employer*'s liability to the *Consultant* for the *Consultant*'s indirect or consequential loss is limited to R0.00 (zero Rand)

**Z9      Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

- Z9.1 or had a business rescue order granted against it.

**Z10      Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**

- Z10.1 If the *Consultant*'s payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant*'s obligation to Provide the Services.
- Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the services in addition to the amounts due in terms of core clause 92.1.

**Z11      Ethics**

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

<b>Affected Party</b>	means, as the context requires, any party, irrespective of whether it is the <i>Consultant</i> or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,
<b>Coercive Action</b>	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,
<b>Collusive Action</b>	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,
<b>Committing Party</b>	means, as the context requires, the <i>Consultant</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,
<b>Corrupt Action</b>	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,
<b>Fraudulent Action</b>	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,
<b>Obstructive Action</b>	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
<b>Prohibited Action</b>	means any one or more of a Coercive Action, Collusive Action, Corrupt Action, Fraudulent Action or Obstructive Action.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Consultant*'s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* 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 *Consultant*'s obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Consultant*'s obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 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 *Consultant* ensures that the Committing Party co-operates fully with an investigation.

**Z12 Insurance**

Z12.1 Replace core clause 81 with the following:

81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

<b>Insurance against</b>	<b>Minimum amount of cover</b>	<b>For the period following Completion of the whole of the services or earlier termination</b>
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the services	Whatever the <i>Consultant</i> deems necessary.	One (1) year
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<p><b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b> The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p>	One (1) year
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law.	Whatever the <i>Consultant</i> deems necessary.

81.3 The *Employer* provides the insurances stated in the Insurance Table B.

**INSURANCE TABLE B**

<b>Insurance against or name of policy</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
Assets All Risk	Per the insurance policy document
Contract Services insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document

Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

### **Z13 Nuclear Liability**

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

### **Z14 Asbestos**

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

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

<b>Safe Levels</b>	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>Standard</b>	means the <i>Employer's Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.</i>
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
Z14.1	The <i>Employer</i> ensures that the Ambient Air in the area where the <i>Consultant</i> will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
Z14.2	Upon written request by the <i>Consultant</i> , the <i>Employer</i> certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The <i>Consultant</i> may perform Parallel Measurements and related control measures at the <i>Consultant's</i> expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
Z14.3	The <i>Employer</i> manages asbestos and ACM according to the Standard.
Z14.4	In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
Z14.5	The <i>Consultant's</i> personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
Z14.6	The <i>Consultant</i> continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
Z14.7	Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos Consultant, instructed by the <i>Employer</i> at the <i>Employer's</i> expense, and conducted in line with South African legislation.

## C1.2 Contract Data

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

#### Instructions to the tendering consultant:

1. The tendering consultant is advised to read both the NEC3 Professional Services Contract, April 2013 and the relevant parts of its Guidance Notes (PSC3-GN)<sup>2</sup> in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 158 & 159 of the PSC3 April 2013 Guidance Notes.
2. The number of the clause in the PSC3 which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Whenever a cell is shaded in the left hand column it denotes this data is optional in PSC3 and would be required in relation to the option selected. The *Employer* should already have made the selection and deleted the rows not required.

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

Clause	Statement	Data
10.1	<p>The <i>Consultant</i> is (Name): Address Tel No. Fax No.</p>	
22.1	<p>The <i>key people</i> are:</p> <p>1 Name: Job: Responsibilities: Qualifications: Experience:</p> <p>2 Name: Job Responsibilities: Qualifications: Experience:</p> <p>3 Name:</p>	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or [www.ecs.co.za](http://www.ecs.co.za)

	<p>Job</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p>	<p><b>CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .</b></p>	
11.2(3)	The <i>completion date</i> for the whole of the services is		
11.2(10)	The following matters will be included in the Risk Register		
11.2(13)	<p>The <i>staff rates</i> are:</p> <p><b>Either complete here or cross refer to a schedule in Part C2.2</b></p>	<b>name/designation</b>	<b>rate</b>
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b> 1 2 3 4 5	<b>access date</b>
31.1	The programme identified in the Contract Data is		
50.3	The expenses stated by the <i>Consultant</i> are	<b>item</b>	<b>amount</b>
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	<b>R</b>	<b>(in figures)</b>
			<b>(in words), excluding VAT</b>

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

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This page	1
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>activity schedule</i>	4

## C2.1 Pricing assumptions: Option A

### 1. How work is priced and assessed for payment

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

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

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

### 2. Function of the Activity Schedule

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

### 3. Link to the programme

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

### 4. Preparing the activity schedule

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

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

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

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

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

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

## **5. Expenses**

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

*Expenses* associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the activity schedule prices or *staff rates*.

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

However, under this contract, *expenses* are fixed for the duration of twelve months.

## **6. Staff rates**

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

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

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

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

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

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

However, under this contract, priced items in the Activity Schedule are fixed for the duration of twelve months.

## C2.2 the activity schedule

The *Consultant* prepares a detailed *activity schedule* based on the *Employer's activity schedule* below and completes the Programme Reference in accordance with the MS Projects programme prepared and submitted with the tender:

Item No.	Programme Reference	Activity description	Price (excl. VAT)
1.		<b><u>AUTHORITY CONSULTATION</u></b>	
1.1.		Correspondence with Authorities	
1.2.		Compile Application Forms	
1.3.		Submission of Application	
1.4.		Other (here or a new sheet)	
2.		<b><u>BASIC ASSESSMENT</u></b>	
2.1.		GIS Mapping	
2.2.		Site Survey	
2.3.		Biodiversity assessment	
2.4.		Wetland assessment	
2.5.		Compile Environmental Management Programme	
2.6.		Report writing	
2.7.		Make Draft BAR available for public comment	
2.8.		Make Draft BAR available for client comment	
2.9.		Incorporate client comments	
2.10.		Finalisation of report with comments included	
2.11.		Submission of final BAR to MDEDET	
2.12.		Other (here or a new sheet)	
3.		<b><u>PUBLIC PARTICIPATION PROCESS</u></b>	
3.1.		Site survey	
3.2.		Prepare background information document (BID) & associated documents	
3.3.		Distribute notification of PPP to I&APs	
3.4.		Public participation administration	
3.5.		Notice board design and placement at property	
3.6.		Written notice to all parties as per 41(b) of the EIA regs	
3.7.		Compile I&AP database	
3.8.		Database management	
3.9.		Consultation with I&APs & LOS	

3.10.	Prepare and place advertisements for newspapers (EIA process)	
3.11.	Arrange venues for meetings	
3.12.	Prepare for meetings (invites etc)	
3.13.	Attend and facilitate all meetings	
3.14.	Prepare and place advertisements for newspapers	
3.15.	Drafting, reviewing, compile & distribute draft minutes of all meetings	
3.16.	Compile issues & responses report and address comments	
3.17.	Notifying I&APs of final BAR submitted to Authority	
3.18.	Other (here or a new sheet)	
<b>4.</b>	<b><u>CONCEPT DESIGN</u></b>	
4.1.	Site survey	
4.2.	Hydrology assessment	
4.3.	Concept review & finalisation	
4.4.	Other (here or a new sheet)	
<b>5.</b>	<b><u>DETAILED DESIGN</u></b>	
5.1.	Detailed design and presentation thereof to DEA/DWS	
5.2.	A report on the design plus drawings thereof and associated infrastructure	
5.3.	A construction bill of quantities	
5.4.	Advice concerning appropriate stages of construction	
5.5.	Other (here or a new sheet)	
	<b>Total of the Prices: R</b>	

This section can be used for *staff rates* and *expenses* and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

The *staff rates* and *expenses* exclude VAT.

**The *staff rates* are:**

No.	Resource	Hourly Rate MON-FRI – W/H	Hourly Rate MON-FRI – A/H	Hourly Rate SAT – W/H	Hourly Rate SAT – A/H	Hourly Rate SUN & Public Holidays
1.	Project & Contract Manager					
2.	Environmental Consultant/Specialist					
3.	Environmental Assessment Practitioners					
4.	Professional Engineer – ECSA registered [State disciplines]					
5.	Engineer – not ECSA registered [State disciplines]					
6.	Semi-Skilled / Technical Assistant					
7.	Draughtsman					
8.	Planner					
9.	Safety Officer/Professional with SAMTRAC					
10.	Quality Co-ordinator					
11.	General Labourer / Cleaner					
12.	Office Administrator / Secretary/ Clerk					
13.	Driver					
14.	Other					
15.	Other					

NB. Examples of categories for *staff rates* are listed above however, the *Consultant* indicates all the applicable ones stated and adds other resources of relevance. These rates are used for compensation events and are the same rates used for the time-based calculations for Providing the Services within the Activity Schedule.

**The expenses are:**

No.	Expense	Amount/ Rate	Unit	Planned Contract Quantity	Planned Total Cost of Expense
1.	Travelling				
2.	Accommodations				
3.	Living Out Allowance				
4.	Project & Contract Management: Manage all interactions with the <i>Employer</i> and accountable for contract and project management and execution.		Month	12	
5.	Health and Safety management: All requirements to provide the <i>services</i> including PPE, safety file preparation, legal appointments, file updates, monthly audits, entry and exit medicals, police clearance and all documentation.		Month	12	
6.	Quality Management: All requirements to provide the <i>services</i> including appointments and documentation.		Month	12	
7.	Environmental Management: All requirements to provide the <i>services</i> including legal appointments and requirements to provide the <i>services</i> including documentation.		Month	12	
8.	Other				

NB. Examples of the expected *expenses* are listed above however, the *Consultant* adds any other *expenses* in the table.

## Part 3: Scope of Work

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i>	19
C3.2	<i>Consultant's Scope</i>  [to be inserted from Returnable Documents at award stage]	[0]
	Total number of pages	19

## C3.1: *Employer's scope*

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## 1. Description of the services

### 1.1 Executive overview

Majuba Power Station intends to rehabilitate the heavily eroded area at the discharge point of its raw water pipeline, which currently discharges into a wetland and subsequently flows to the Raw Water Reservoir. The erosion caused by the discharge has become a significant concern, requiring the development of a detailed conceptual design for a civil structure that will effectively mitigate the erosion and prevent further damage at the discharge point. The design solution should be aimed to address erosion issue, ensure the long-term stability, and the protection of the wetland area.

The services should cover the civil engineering designs and the environmental requirements for environmental assessment for the Raw water metering station. All maintenance plans should align with the Civil Maintenance Execution Strategy and comply with the Environmental Legislations.

The following requirements are included on the scope of work.

- Authority Consultations
- Basic Assessment
- Public Participation Process
- Concept and Detail Designs

### 1.2 Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
BA	Basic Assessment
BAR	Basic Assessment Report
BOQ	Bill of Quantities
CPA	Contract Price Adjustment
CV	Curriculum Vitae
DEA	Department of Environmental Affairs
DEFF	Department of Environmental, Forestry and Fisheries
DWS	Department of Water and Sanitation
ECSA	Engineering Council of South Africa
EMPr	Environmental Management Programme
GIS	Geographic Information System
GNR	Government Notice Regulations (SA Government Gazette)
I&AP	Interested and Affected Parties
LOS	Level of Service
MDEDET	Mpumalanga Department of Economic Development, Environment and Tourism
NC	Non-Conformance
NEMA	National Environmental Management Act 107 of 1998

NEMPA	National Environmental Management: Protected Areas Act 57 of 2003
NWA	National Water Act 36 of 1998
PPP	Public Participation Process
PTW	Permit To Work
QIM	Quality Issue Management
QS	Quantity Surveyor
RWMS	Raw Water Metering Station
SACPCMP	South African Council for Project and Construction Management Professionals
SACNASP	South African Council for Natural Scientific Professionals
SHEQ	Safety, Health, Environment and Quality
SOW	Scope Of Work
TEC	Technical Evaluation Criteria
WULA	Water Use Licence

## 2. Specification and description of the services

The Scope of Work (SoW) for the Raw water metering station is:

The *Consultant* draws up a detailed, multidisciplinary engineering design for the temporary structures required to execute the main remedial services. This design is approved by Eskom Civil Engineering and presented as part of the Basic Assessment (BA) process to Department of Environmental, Forestry and Fisheries (DEFF) and Water Use Licence Application (WULA) Process to the Department of Water and Sanitation. Temporary structures may include the following:

- Barricading for the area where services are to be executed.
- Diversion of raw water pipe (not exceeding 1000m in length) and measures to secure the temporary pipe.
- Measures must have as little impact on the area as possible.
- Flow dispersion is required at the temporary outlet.
- These measures may trigger additional listed activities as the area may form or be part of a wetland.

### 2.1. Civil Engineering Scope of Work

- Design report for the concept - the design objectives and constraints that guided the development of the concept and detailed designs.
- Multidisciplinary detailed engineering design report - concept design options that were considered, including alternative approaches and their advantages and disadvantages. Present the detailed design solutions that address the identified erosion issues and achieve the project objectives.
- Hydraulic analysis conducted - the water flow characteristics and identification of potential erosion risks. Present the methodology used, data collected, and the implications for the design.
- Materials and construction methods - specify the materials to be used in the construction of the proposed structure and outline the recommended construction methods. Include information on the durability, availability, and cost-effectiveness of the chosen materials.

- Bill of Quantities (BOQ) - provide a detailed cost estimate for the implementation of the design, including material costs, labour, equipment, permits, and any other associated expenses.
- Project schedule - develop a realistic MS Projects schedule/program that outlines the key milestones, activities, and timelines for the design and construction phases.
- Maintenance and monitoring plan - outline a plan for the ongoing maintenance and monitoring of the rehabilitated outlet structure. Include details on inspection frequency, maintenance tasks, and responsibilities.

## 2.2. Environmental Scope of Work

Majuba Power Station intends to rehabilitate the heavily eroded area at the discharge point of its raw water pipeline, which currently discharges into a wetland and overflows to the Raw Water Reservoir. As part of the rehabilitation process, the raw water pipeline needs to be temporarily diverted.

Since the entire area is situated within a wetland, a Basic Assessment is required to comply with Listing Notice 1 GNR (893) and Listing Notice 3 (GNR895). Additionally, the project triggers Section 21(c) and (i) of the National Water Act. However, it is important to note that the Water Use Licence Application is not included in the scope of this project.

The listed activities are listed below:

### **Listing Notice 1 GNR 893:**

**9:** The development of infrastructure exceeding 1 000 metres in length for the bulk transportation of water or storm water-

- (i) with an internal diameter of 0,36 metres or more; or
- (ii) with a peak throughput of 120 litres per second or more;

### **12 (ii) (a):**

infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs within a watercourse;

**27:** The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for-

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.

### **Listing notice 3 GNR 895:**

#### **14: The development of-**

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres: or
- (ii) infrastructure or structures with a physical footprint of 10 square metres or more, where such development occurs within a watercourse.

#### **f. Mpumalanga**

##### **i. Outside urban areas:**

- (dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority.
- (hh) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve, where such areas comprise indigenous vegetation.

The following deliverables may be required to conduct the BA:

- GIS Mapping
- Site Visit
- Individual specialist assessments and reports:
  - Biodiversity

- Wetland
- Social impact
- Heritage
- Soils and agricultural potential
- Air quality assessment
- Palaeontology
- Waste management plan
- Public Participation Process
  - Site visit
  - Notifications to PPP and I&AP's
  - Notice board design and placement in relevant areas.
  - Written notice to all I&AP's
  - I&AP's Database compilation and management
  - Consultation with I&AP's
  - Project Advertisements in local newspapers
  - Compilation of PPP Report
  - Notification to I&AP of Final BAR Submission
- Compilation of an Environmental Management Programme (EMPr)
- Report writing
- Make the draft Basic Assessment Report (BAR) available to public and client for comment.
- Incorporation of comments
- Finalisation and submission of BAR to the authorities.
- Any GIS Data gathered as shape files.
- Receipt of the Environmental Authorisation (EA)

### **2.3. General Requirements**

- The activity might trigger additional Listed Activities not listed in this document. Therefore, all potential listed activities of the activity in terms of the National Environmental Management Act, 107 of 1998 and National Water Act, 36 of 1998 are to be identified by the *Consultant*.
- All specialist and other reports are to be submitted to the *Employer* for review and approval before sharing with any other parties.
- A detailed schedule shall be provided to the *Employer* for approval before commencement. The schedule shall include detailed timeframes for each milestone in the BA process.
- The BA should not exceed a timeframe of ten (10) months.
- Monthly progress reports indicating current progress with regards to each process are submitted to the *Employer*.
- A scope clarification/site meeting is held upon commencement of the project.
- Any person doing work at MPS provides a certificate of fitness and proof of police clearance to attend a safety induction.
- The *Consultant* and all their employees adhere to all health, safety, environmental and quality legal and Eskom requirements.
- Refer to Section Technical Evaluation Criteria (TEC) for minimum qualifications.
- A tender breakdown for each phase of the BA is required.

### **2.4. Receivables**

- All reports refer to section [2.3.2] of the SOW.
- The *Consultant* complies with all the latest standards.

### **2.5. Deliverables**

The deliverables for Raw Water metering station rehabilitation are as follows:

- BA Report for the process undertaken.
- Individual specialist reports for the process undertaken.
- Environmental Authorisation.
- Concept and detail designs
- Environmental Management Programme (EMPr).
- Any GIS Data gathered as shape files.
- Construction Bill of quantities documents in electronic and printable formats
- Detailed reports outlining the methodology and assumptions.
- Project timelines
- Refer to section 2.1 and 2.2 for more details.

## 2.6. Design Tools

Relevant Software.

## 2.7. Enquiry/Tender Returnables

The tenderer submits the following as a minimum in the tender submission:

- High level proposal for the entire services clearly demonstrating compliance with the full scope of work herein.
- Relevant experience of similar projects. List of at least five (5) verifiable relevant references must be provided (5 years relevant experience in civil design work). References to include contact numbers of client, description of involvement in the project and the cost of the project as a minimum.
- Curricula Vitae (CVs) of the professional team: Engineer(s) and technician(s) with ECSA professional registrations.
- Detailed programme and Activity Schedule.
- Environmental Assessment Practitioners must have a relevant qualification with five (5) years' experience and be registered with the Environmental Assessment Practitioners Association of South Africa. All specialists must be registered with SACNASP (South African Council for Natural Scientific Professionals) as applicable or any other relevant field. Qualifications, CV's (including employment history) and proof of professional registration is submitted.

# 3. Constraints on how the *Consultant* Provides the Services.

## 3.1. Management meetings

Regular meetings of a general/special nature may be convened and chaired by the *Employer's Agent* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Contract kick-off	Within three (3) weeks of the <i>start date</i> .	Majuba Power Station, In person.	<i>Employer's Agent, Consultant, specialists and support staff.</i>
Contract progress and feedback	Monthly	Majuba Power Station, In person / MS Teams	<i>Employer's Agent, Consultant, specialists and support staff.</i>

Early Warning, Risk Register and Compensation Events	Two-weekly, or as and when required	Majuba Power Station / MS Teams	<i>Employer's Agent, Consultant, specialists and support staff.</i>
Contract Assessment	Monthly – 25 <sup>th</sup> of the month	Majuba Power Station / MS Teams	<i>Employer's Agent, Consultant, specialists and support staff.</i>
Gemba Plant Walk	<b>While the Consultant is based on site,</b> Every Friday, 09:00 – plant walk 10:00 – feedback meeting	Majuba Power Station, In person	<i>Employer's Agent, Consultant, Safety representatives.</i>
Monthly Business Unit (BU) and Consultant's safety meeting	<b>While the Consultant is based on site, (boardroom) or to connect via MS Teams.</b> Monthly	Majuba Power Station / MS Teams	<i>Employer's Agent, Consultant, Safety representatives and support staff.</i>
Monday safety session	Every Monday morning (08:00)	Majuba Power Station / MS Teams / In person	<i>Consultant, Consultant's specialists and support staff.</i>
Toolbox talks, pre-job and post-job briefings, health and safety meetings, and risk assessment meetings etc.	As and when required and compulsory when the <i>Consultant</i> is working on site.	Majuba Power Station or <i>Consultant's</i> premises	<i>Consultant, Consultant's specialists and support staff.</i>

Meetings of a specialist nature may be convened as specified elsewhere in this scope or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *services*.

All meetings are recorded using minutes and an attendance register prepared and circulated by either the *Consultant* or the *Employer's Agent*. Such minutes of the meeting is not used for the purpose of confirming actions or instructions under the contract as these are done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

### 3.2. **Consultant's key persons**

The *Consultant* submits a list of all relevant *key persons* with their contact details.

The *Consultant* submits a company organogram indicating the names and company positions with his people and their lines of authority / communication. Sub-consultants, Sub-Consultants and Joint Ventures are also indicated.

The *Consultant* submits an additional project organogram indicating the names and contract appointments / positions of people and their lines of authority / communication, for those involved with the *services*. Sub-consultants, Sub-Consultants and Joint Ventures are also indicated.

The *Consultant* submits detailed CVs of all key personnel involved with the *services*.

### 3.3. **Documentation submission, control and retention**

#### 3.3.1. **Identification and communication**

All contract related information must be sent in writing between the *Consultant / Consultant's* agent and the *Employer / Employer's* agent. All documentation requirements are supplied by the *Consultant*. All documentation conforms to the *Employer's* requirements, for review and acceptance by the *Employer*.

### **3.3.2. Retention of documents**

Clause 13.6 states that the Consultant retains copies of drawings, specifications, reports and other documents which record the services in the form stated in the SOW. While hard copies are required in terms of this contract, the *Consultant* also keeps all documents electronically. Note the period for retention stated in the Contract Data of ten (10) years for which the *Consultant* is to safely retain all documents.

### **3.3.3. Documentation**

#### **Submissions with the tender**

The *Consultant* submits all documents stated as per the Technical Evaluation Criteria (TEC) requirements. The *Consultant* submits all other documentation as specified by the Commercial and SHEQ requirements.

#### **Submissions after contract award and during the contract**

The *Consultant* submits the following to the *Employer's* representative within three (3) weeks of the start date:

- A valid B-BBEE certificate and Letters of Good Standing for COID and SARS.
- A project human resource plan with a project-specific organogram indicating all the labour and management resources allocated to the project.
- CV's and qualification certificates of the key persons (management, supervisory and specialised skills) that are used. The *Employer* references the information submitted during the tender and post-tender noting any changes that must be motivated by the *Consultant*, while still complying to minimum requirements.
- A detailed programme indicating start and completion dates for the various activities to be conducted and milestones from the start date to the completion date / planned completion.
- A project execution methodology for the entire services.
- Safety management plan for *Employer's* approval, including relevant company and personnel records.
- Quality management plan for *Employer's* review and acceptance.
- A detailed Forecast Rate of Invoicing (FRI) for the full contract term, updated monthly or as soon as changes are known by the *Consultant*.

### **3.3.4. Design, Drawings & Datasheets**

- The *Consultant* submits preliminary detailed designs and reports with drawings that meet the scope of work.
- Drawings are professional, engineering, computer-aided design (CAD) drawings drafted in MicroStation software format, using DGN file-type. The drawing template with Eskom title block is provided by the *Employer* for the *Consultant's* use.

### **3.3.5. Data File of Returnables**

- The *Consultant* develops a Method Statement and QCP's for all activities to be performed during the services. The drafted QCPs may be grouped as per the work breakdown of activities and disciplines. These ITP's/QCP's are reviewed and accepted by the *Employer* before any activity to which they apply commences.
- The *Consultant* files these QCP's and Method Statements in a Data File, together with all other relevant technical documents.
- All documentation requirements such as forms, datasheets, certificates, drawings, manuals, etc. are the responsibility of the *Consultant*. All documentation conforms to the *Employer's* requirements, for review and acceptance by the *Employer* or *Employer's* delegates e.g., Engineer reviews and accepts the QCP's, Method Statements, drawings and designs.
- The *Consultant* files all documents in a Data File as the work progresses and QC files are reviewed regularly to check and confirm that the *Employer's* requirements are met. By completion, the Data

File is almost fully compiled and ready for the *Consultant* to make and submit copies and perform take-over.

- The additional requirements for the Data File include:
  - Project title, Power Station name and contract number.
  - Index page/s.
  - List of reference drawings.
  - Detailed description, specifications and drawings of all components.
  - Properly divided into sections with numerical, labelled dividers.
  - Submitted in hardcover, loose-leaf binders in A4 size. Fixings are preferably 'D' ring and are of the snap close type or lever arch type. The document identity appears on printed labels both the front cover and on the spine.
- The Data File must have an overall Contract Quality Plan, Completion Certificate and Take-over Certificate for the *services*.
- The *Consultant* submits one set of the Data Pack in draft for review and acceptance by the *Employer*. The takeover cannot be done unless the Data Pack is accepted and may also affect the *Employer*'s hand-over of the plant to the power station.
- After acceptance by the *Employer*, the *Consultant* submits three (3) sets of the final version of the Data Pack in hardcopy (one original and two copies) and two electronic copies (on USB flash drives). Drawings must be in editable format (Microstation, DGN file originals) and electronic files may not be password protected, encrypted or protected by any means to prevent the *Employer* and others from use, as required.
- Relevant payments may be withheld by the *Employer* until the Data Pack is submitted in full by the *Consultant*. Failing proper submission or completion of the data packs, the *Employer* may re-evaluate and deduct the applicable costs for loss of information from retention payments.

### 3.3.6. Other Requirements

- All key contractual communications are in English, in the form of letters or forms on letterheads attached to e-mails and not as a message in the e-mail itself.
- All documentation and contractual communications are addressed to the recipient by name, be identified with an alpha-numeric system following a sequence which indicates source (*Employer* = E, *Consultant* = C), example CE001 (*Consultant* to *Employer*) or EC001 (*Employer* to *Consultant*) and indicate the contract number and subject of the communication. Subsequent replies to the same subject keep the original references and past content.
- A name list of project personnel with ID numbers and cellphone numbers and a list of vehicles used on site to be submitted – both are kept updated by the *Consultant* at all times.
- For contractual issues, standard NEC templates and forms are used but if unavailable, the *Consultant*'s templates and forms are used, unless stated otherwise.
- The programme and FRI is updated and submitted on a two-weekly basis after the contract *start date* however, if changes to the FRI are known earlier, the *Consultant* updates the FRI immediately and sends it to the *Employer*.
- Upon site establishment or site visits the *Consultant* supplies comprehensive, printed tools or equipment list/s and uses the same list/s when necessary to remove the tools and equipment from site.
- Delivery notes are submitted to Majuba Stores Department for all deliveries of materials to *site* and a copy provided to the *Employer* or his agent who countersigns as acknowledgment.
- For the period of the *services* the *Consultant* completes and supplies a daily diary which includes details such as the labour resources used, starting time, ending time, equipment and/or materials used, weather conditions (on site), interruptions and issues etc. The *Consultant* ensures that the diary is submitted to the *Employer* weekly.
- The *Consultant* supplies relevant procedures in accordance with the *Employer*'s requirements.
- Final documentary submissions upon contract completion include the SHEQ files with all approved and signed/approved documents, reports, drawings and others.

### 3.4 Records and forecasting of expenses

The *Consultant* keeps detailed records of all costs for the *Employer*'s inspection and for consideration of claims and compensation events and submits them to the *Employer* upon request.

Refer to core clause 6 Compensation events.

### 3.5. Invoicing and payment

- The *Consultant*, as a minimum, submits a detailed Forecast Rate of Invoicing (FRI) by the assessment date and thereafter, provides an update every four (4) weeks. However, submissions are required more frequently if the *Consultant* becomes aware of a change to the previous FRI submitted.
- The FRI break down corresponds to section C2.2 - The Activity Schedule by means of a detailed Excel spread sheet and indicates the planned phasing of invoicing and assessment for every assessment period (monthly) for the contract duration. Further breakdown of line item costing may be necessary to facilitate accurate forecasting and payments.
- The *Consultant* prepares and submits his assessment of work completed to the *Employer* on or before the assessment day. The *Consultant*, *Employer*, quantity surveyor, engineer and parties may inspect the documents and services to verify the actual progress. The *Employer* decides on the actual progress achieved and determines what activities may be assessed and invoiced.
- A payment/assessment certificate is supplied with the service entry (SE) and goods receipt (GR) number/s to the *Consultant*, which is signed by both the *Employer* and the *Consultant*. Failing to get the *Consultant*'s signature for whatever reason, the *Employer* may continue to process the assessment.
- Within one (1) week of receiving a payment/assessment certificate from the *Employer* in terms of core clause 51.1, the *Consultant* provides the *Employer* (Finance Shared Services Department) with a tax invoice showing the amount due for payment equal to that stated in the *Employer*'s payment or assessment certificate. The *Employer*'s Agent is issued with a copy of the invoice.
- The *Consultant* addresses the tax invoice to Eskom Holdings SOC Ltd. and includes on each invoice the following information:
  - Name and address of the *Consultant* and the *Employer*;
  - The contract number and title;
  - Purchase order number;
  - *Consultant*'s VAT registration number;
  - The *Employer*'s VAT registration number 4740101508;
  - Description of service provided for each item invoiced based on the Price List;
  - The total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT; (add other as required)
- The *Consultant* attaches the detailed payment or assessment certificate of the amount due to each tax invoice showing the Price for Services Done to Date for each item in the Price List for work, which is completed.
- The invoices are submitted by emails to [invoiceseskocomlocal@eskom.co.za](mailto:invoiceseskocomlocal@eskom.co.za)
- To facilitate payment, the *Consultant* must ensure the following:
  - The Eskom contract number and order number are clearly indicated on your invoice together with the line number of the items/activity on the order being billed.
  - All electronic invoices must be sent in PDF format only.
  - Each PDF file contains one invoice; or one debit note; or one credit note only as Eskom's SAP System does not support more than one PDF being linked into the workflow at a time.
  - The *Consultant*'s e-mail may contain more than one PDF file (e.g. 2 invoices on 2 separate PDF files in one e-mail).
- A PDF file that was created directly from a system meets the definition of the original document and is allowed (including saving documents from Excel to PDF, Word to PDF etc.).
- An invoice that was printed and then scanned to PDF by the *Consultant* is not acceptable as this is not an original tax invoice by SARS definition but a copy.
- The following wording needs to appear on the invoice: "Your invoice is encrypted in order to comply with SARS requirements that invoices and statements sent electronically are tamperproof."

- A goods receipt (GR) number is not required before submitting the invoices however when the GR number is received, the *Consultant* can send the GR number to the FSS contact centre at [FSS@eskom.co.za](mailto:FSS@eskom.co.za) or 011 800 5060.
- All queries and follow-ups on invoice payments are made by contacting the FSS Contact Centre: Tel: 011 800 5060.
- Payment is made thirty (30) days after receipt of an acceptable invoice. Payments are made on Tuesdays and Thursdays only.
- It is important that the value stated on the invoice must be the same as the value stated on the order. If the invoice value is different from the order value, payment of the invoice may be delayed. If there are any discrepancies on the invoice, it must be rectified with the *Employer* BEFORE it is submitted for payment.
- The *Consultant* informs the *Employer* upon receiving payment.

### 3.6. Programme

The *Consultant* ensures that the programme includes all the detailed activities and is realistic in duration and sequencing, with provision for slack/contingencies. It is necessary that the *Consultant* utilises a planner or similar resource who is trained and competent to draft the programme and provide updates. The programme is always accompanied by a statement of the means of execution.

Refer to clauses 31 and 32 for requirements of the programme in addition to the following:

- The *Consultant* provides a detailed initial programme to the *Employer* within three (3) weeks of the *starting date*. The programme is provided electronically in MS Project format (preferably 2013 version) and provides for all high-level and low-level activities and sub-activities with planned durations, start and completion dates, milestones, and resource allocations (per activity/section). If suitable, the *Employer* accepts the programme after review otherwise requests changes.
- After acceptance, the *Consultant* updates the programme on a two-weekly basis, including providing of actual progress with actual dates and durations, while optimising remaining activities to ensure that the original planned *completion date* is met.
- Non-compliance by the *Consultant* to the *completion date* on the programme results in claims for *delay damages* by the *Employer*.
- Completion of any activity on the programme is achieved only upon sign-off of the relevant quality document by the *Consultant*, *Employer* and *Employer's* Representatives/Engineers, with submission of all relevant documentation, and takeover of the plant by the *Employer*.

### 3.7. Quality management

#### 3.7.1. System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system. The *Employer's* requirements are:

- The *Consultant* establishes and implements a system that, as a minimum, meets the requirements of the ISO 9001: 2015 certificate, or equivalent for quality Management Systems.
- The *Employer* specifies within the Works Information, the Quality Management code and the application of the code, on the Enquiry / Contract / Order Quality Requirements form: Form A
- The *Consultant* ensures that appropriate Quality requirements are placed on his Sub-Consultants to comply with the Works Information.
- The *Consultant* notifies the *Employer* of any proposed changes to the Quality Management System, which will affect the Contract Quality Requirements, prior to implementing such changes.

#### 3.7.2. Information in the quality plan / Quality Control Plan (QCP)

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with these requirements:

#### Documents to be submitted with the tender (Instructions to Tenderers)

The Tenderer / *Consultant* submits the following:

- Signed Enquiry / Contract / Order Quality Requirements, Form A.

- ISO 9001: 2015 Registration Certificate of Compliance.
- The *Consultant* complies with the Eskom's quality requirements as specified in Standard 240-10565800 (previously QM 85).

#### **Documents to be submitted after the Contract Award Date**

The *Consultant* submits the following documents within six weeks after the contract award date, and prior to the commencement of work, for acceptance by the *Employer*:

- One copy of the Quality Policy Manual.
- One copy of the Quality System Procedures.
- One controlled copy of the Contract Quality Plan.
- One copy of a Quality Control Plan required for the commencement of work.
- One copy of the proposed Quality Data Book index.
- CV of all key personnel with listed experience and certificates.

#### **Consultant's inspection**

- The *Consultant* ensures that all work has been reviewed and properly documented prior to requesting any inspections by the *Employer* or the relevant Authority/Agency.
- The *Consultant* gives three days prior notification of the need for an inspection by relevant parties.
- All quality control documentation must be submitted to the *Employer's Agent*.
- Together with the signed-off QCP the *Consultant* submits lessons learnt after each stage of the services.

#### **Non-Conformance (NC)**

- The *Employer* make use of a Quality Issue Management (QIM) system for capturing, monitoring and tracking Non-conformances related issues such as Defect Notifications.
- All Defect Notifications shall be loaded in the QIM system as a Non-Conformance for tracking purposes.
- To close a Non-Conformance in the QIM system, the *Consultant* must rectify the defect within the allowable time and present the NC to a Non-Conformance Committee.
- The NC will only be closed after the Non-Conformance Committee has approved it.

Also refer to **3.3.5 Data File of Returnables**, which apply.

### **3.8. The Parties use of material provided by the Consultant**

#### **3.8.1. Employer's purpose for the material**

The *Employer* has the right to use the material provided by the *Consultant* for all purposes of rehabilitating the area stated in the Scope and for future maintenance purposes, as may be required.

#### **3.8.2. Restrictions on the Consultant's use of the material for other work**

The *Consultant* may not use the material provided by him for this contract on any other work. All information and materials provided by the *Employer* remains confidential.

#### **3.8.3. Transfer of rights**

Option X9 applies without exception.

The *Consultant* provides to the *Employer* the documents which transfer these rights to the *Employer* and the *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

### **3.9. Health and safety**

- The *Consultant* performs all work according to OHSAS 18001, Occupational Health and Safety Act 85 of 1993 and Eskom standards to ensure the health and safety of persons carrying out the services.

- The *Consultant* must comply with the SHE specifications, standards and procedures provided in the Works Information.
- The *Consultant* complies with the Eskom Life Saving rules according to Directive, 240- 62196227 and they are as follows:
  - RULE 1: OPEN, ISOLATE, TEST, EARTH, BOND, AND/OR INSULATE BEFORE TOUCH (That is, any plant operating above 1 000 V)
  - RULE 2: HOOK UP AT HEIGHTS (Comply with working at heights procedure)
  - RULE 3: BUCKLE UP (Driver and passengers wear seatbelts at all times, on and off site)
  - RULE 4: BE SOBER (Acceptable alcohol breathalyser reading is 0.0)
  - RULE 5: ENSURE THAT YOU HAVE A PERMIT TO WORK (To perform work on any plant)
- Failure by any person or *Consultant* engaged in doing business with Eskom to adhere to Eskom Life Saving rules will lead to serious action being taken with serious consequences. These actions may include termination of services and blacklisting of *Consultant*'s from all Eskom sites.
- The *Consultant* hereby indemnifies the Client (*Employer*) and holds the Client (*Employer*) harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expense that may be made against the Client (*Employer*) and/or suffered or incurred by the Client (*Employer*) (as the case may be) as a result of, any failure of the *Consultant*, its employees, agents, Sub-*Consultants* and/or mandatories to comply with their obligations in terms of this clause 18, and/or the failure of the Client (*Employer*) to procure the compliance by the *Consultant*, its employees, agents, Sub-*Consultants* and/or mandatories with their responsibilities and/or obligations in terms of or arising from the OHSA.
- The *Consultant* complies with Eskom SHEQ Policy, 32-727 and SHE Requirements for Eskom Commercial Process, 32-726
- All employees or agents, visitors of the *Consultant* are medically, physical, and psychologically fit to enter the Power Station and carry out services. Employees must have a valid medical certificate of fitness specific to the work to be performed.
- All *Consultant* staff undergo Safety Induction, presented by the *Employer*'s Risk Management Department before temporary site access permits are issued.
- The *Consultant*'s Safety Plan file must be prepared and submitted to the *Employer*'s Safety Officer for auditing and approval before any work can commence. The *Consultant*'s Safety Officer/Professional liaises directly with the *Employer*'s Safety Risk Officer regarding the plan, which is the *Employer*'s requirement and remains the *Employer*'s property. The safety plan is handed over to the *Employer* in a clean and tidy condition upon completion and includes exit medicals for all personnel.
- The *Consultant*'s Safety officer/Professional makes appointments with the *Employer*'s Safety Risk Officer/s monthly to conduct a monthly audit of the safety file for compliance. Any item which is found non-compliant is rectified by the *Consultant*'s safety officer immediately.
- The *Consultant* must keep and submit accurate records of the number of employees on site and the Safety Officer submits accurate man-hours report, by the first working day of each new month to the *Employer*.
- The *Consultant* must always adhere to the PTW system used at MPS. The *Employer*'s RP applies for and accepts a permit to work before informing the *Consultant* that work may proceed. The RP shows the PTW to all workers and signs them onto the RP's workers register.
- The *Consultant* is responsible to provide personal protective equipment (PPE) free of charge to their personnel while Performing the Service. In addition to standard PPE such as safety boots, hard-hat, overalls, hearing protectors, safety glasses etc., the *Consultant* ensures that adequate PPE is worn for protection against all hazards by performing continuous risk assessments.
- All other regulations and site rules/procedures are complied with.

### 3.10. Environmental Management Rules and Regulations

- Majuba Power Station is ISO 14001 2004 certified. The *Consultant* ensures that all works are carried out as per the ISO 14001 standard and with the following procedures:
  - Eskom Environmental Policy, BIA/ENV/04.
  - Majuba Waste Management Procedure, RA/ENV/06.
  - Safety, Health & Environmental Specification for Contractors, RA/RM/STD/01
  - Emergency Preparedness and response, 39-29.
  - Eskom Smoking Policy, 32-1126.

- The *Consultant* is responsible for complying with any new environmental requirements, relevant to the Works Information that may come into effect as part of Majuba Power Station's EMS during the duration of this contract.
- To protect Eskom's environmental interests whenever a product or service is provided by a *Consultant*, the *Consultant* complies with all relevant and appropriate environmental legal requirements contained in governmental notices, laws and regulations promulgated by the central and provincial governments.
- The *Consultant* also accepts all responsibilities, accountabilities and liabilities associated with such legal requirements, unless specifically excluded from a contract by a mutually acceptable written agreement.
- If a Supplier/ *Consultant* provides Eskom with a product or service falling in the scope of Act 36 of 12874 or Hazardous Substances Act no 15 of 1973 the Supplier, *Consultant* or service provider provides Eskom with all the necessary information to comply with the legal requirements of Government Notice R 1179 in Government Gazette No 16596 of 25 August 1995 (Exposure of the Employer's Hazardous Chemical Substances) and Section 10 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, No 36 of 1947 (Registered pesticides, fertilisers and agricultural remedies, including herbicides ("weed killer").
- Although all environmental legislation must be adhered to, the following list of acts can be used as a guideline:
  - NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004
  - NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 (NEMA)
  - ENVIRONMENT CONSERVATION ACT 73 OF 1989
  - HAZARDOUS SUBSTANCES ACT 15 OF 1973
  - NATIONAL WATER ACT 36 OF 1998
  - NATIONAL HEALTH ACT 61 OF 2003
- The *Consultant* must comply with all the Environmental specifications, standards and procedures provided in the Works Information.
- The Eskom procedures are given to the *Consultant* before the commencement of the services.
- The *Consultant* must identify all Environmental aspects and impacts related to his or her activities.
- The *Consultant* must have a copy of the legal register related to the scope.
- Non-adherence to the following rules may result in a contract defect or non-conformance report being issued to the *Consultant*:
  - Provide sufficient waste storage containers/skips that are labelled depicting general or hazardous waste and store in a designated storage area as per the Majuba Waste Management Procedure.
  - Ensure that all waste (Hazardous and General) is stored as per the Majuba Waste Management procedure.
  - Ensure compliance with general good housekeeping practices.
  - Report all environmental incidents before the end of the shift or within twenty-four (24) hours as per the Environmental non-conformities, corrective and preventive actions.
  - No oil, chemicals or waste will be spilled or dumped into the station drains or anywhere on the premises.
  - No oil, chemicals or waste will be spilled or dumped in an unauthorised area or unlicensed waste site.

### 3.11. Procurement

#### 3.10.1. Preferred subconsultants

The *Consultant* clearly states within the tender if planning to subconsultant or subcontract any part of the scope. The *Consultant* submits the names and company profile of all proposed subconsultants or suppliers with the tender, and again at the start of the contract to the *Employer*, prior to reaching any agreements.

### **3.10.2. Subconsulting / Subcontracting documentation, and assessment of subcontract tenders**

The *Consultant* is to prepare subcontract documentation, preferably using the NEC3 PSC for subconsulting/ subcontracting tenders to be issued. The *Consultant* ensures that the conditions of contract applying to the *Consultant* also apply to the subconsultant. The *Consultant* receives and assesses tenders and submit the outcomes to the *Employer* as a report before awarding a tender/order to a subconsultant.

The *Consultant* is assessed and paid in accordance with the contract with the *Employer* therefore, the *Employer* does not enter into agreements with the subconsultant. The *Consultant* is responsible for managing the subconsultant. The *Employer* treats the subconsultant as the *Consultant* and directs all communications to the *Consultant's* representative/agent.

### **3.10.3. Limitations on subcontracting**

The *Consultant* may perform the complete services which contain two main parts i.e. civil engineering design and environmental assessment. Alternatively, the *Consultant* may subcontract one part of the services to a competent Subconsultant or Subcontractor, however the *Consultant* may not subcontract both parts of the scope.

The use of Subconsultants of the *Consultant* are governed by clause 24.

### **3.10.4. Attendance on Subconsultants**

All conditions of contract applying to the *Consultant* apply to the Subconsultant.

## **3.11. Working on the *Employer's* property**

### **3.11.1. *Employer's* entry and security control, permits, and site regulations**

Police clearance certificates must be supplied by the *Consultant* for all personnel who come to site for any function on this project. This process must begin as of the contract start date and certificates produced to the *Employer* prior to site access. Persons who have a criminal record may be refused entry to MPS.

### **3.11.2. People restrictions, hours of work, conduct and records**

The *Consultant* keeps daily records of all people working on this project, including those of his Subconsultants and the *Employer's* Agent must have access to these records at any time. The *Consultant* supplies all records to the *Employer* on a weekly basis.

MPS Working hours are:

- Monday to Thursday; 07:30 to 16:45
- Friday; 07:30 to 12:30

The *Consultant* plans site visits, surveys and meetings within the above times unless restrictions and/or interfaces with other parties necessitate other times. The *Consultant's* working times are not stipulated by the *Employer*. Nonetheless, the *Consultant* shall perform the services and provide feedback and/or reports on a weekly basis. Should the programme fall behind schedule, the *Consultant* takes measures to bring the programme back within the Accepted Programme. The *Employer* does not compensate the *Consultant* for additional working hours or overtime and the *Consultant* plans activities as per the Accepted Programme with the necessary resources to complete the services by the Completion Date.

### **3.11.3. People Requirements**

The *Consultant* supplies personnel who have with the listed qualifications and experience as per the SOW or the *Employer* may instruct the *Consultant* to remove those persons not meeting the minimum requirements and replace them immediately:

- The *Consultant* supplies a project organogram indicating all personnel to be utilised for the project.
- Key personnel (management, supervisory and technical) are identified and their CVs with all proof of qualifications provided.

- The *Consultant* appoints a competent contract manager to be the point of contact with the *Employer's Agent* in managing all contractual issues, as and when required. Proof of relevant qualifications and training completed must be submitted including a technical qualification, management or project management qualification and related experience of at least three (3) years in contract/project management. Regular site visits and attendance of all meetings called by the *Employer* is essential.
- Environmental Assessment Practitioners must have a relevant qualification with five (5) years' experience and be registered with the Environmental Assessment Practitioners Association of South Africa. All specialists must be registered with SACNASP (South African Council for Natural Scientific Professionals) as applicable or any other relevant field. Qualifications, CV's (including employment history) and proof of professional registration is submitted.
- Health and Safety officers/ professionals must have two (2) years' experience in the function and be SACPCMP (South African Council for Project and Construction Management Professionals) registered.

#### **3.11.4. Supplier Development Localisation and Industrialisation (SDL&I)**

The *Consultant* complies with the requirements stipulated for SDL&I as submitted with the tender and agreed by the *Employer*. These requirements form part of this contract.

Tenderers are required to submit proposals for the type and number of jobs that will be created and retained in South Africa as a direct result of being awarded a contract.

#### **3.12. Co-operating with and obtaining acceptance of Others**

The *Consultant* cooperates with the *Employer*, *Employer's* staff and Others with whom the *Consultant* may be required to work. See clause 11.2(7) for the definition of Others.

The *Consultant* ensures professional liaison, consulting and correspondence occurs with authorities or inspection agencies.

#### **3.13. Things provided by the *Employer***

##### **Electricity and Water**

Available at fixed points around MPS.

##### **Site establishment**

A site yard with temporary office may be allocated to the *Consultant* and his personnel, if required.

The *Consultant* includes prices for site establishment and de-establishment in the relevant Price List items, and all requirements are deemed to be included therein. The site establishment for the *services* is at the identified contractor's yard on site. The contractor's yard is located within MPS property having access through tarred and gravel roads. The yard has parking spaces, office containers and a separate kitchen within a fenced yard, however furniture and appliances are not included. Overgrown vegetation/grass may need clearing/cutting by the *Consultant* with spraying of weedkiller in the site yard beforehand and maintaining the condition for the course of the contract period. Portions of the yard and offices may be shared with other contractors.

The *Consultant* provides any other temporary site establishment requirements for the duration of the contract for their personnel during the works e.g. mobile toilets, chairs, office equipment, internet connectivity etc.

Meeting venue/s for project meetings – venues to be booked by the *Consultant* a week in advance.

#### **3.14. General**

- The *Consultant* meets all requirements stated in the General Works Information document issued with the tender.

- The *Consultant* is responsible for carrying out all contracted activities and supplying everything necessary to provide the *services* in accordance with the requirements of this Scope of Work.
- This includes clarification with the *Employer* and co-ordination with the *Employer's* relevant plant engineers and maintenance personnel prior to the commencement of the *works*.
- The *Consultant* has experienced and qualified Project/Contract Manager during the course of the *works*. All instructions given to the *Consultant* by the *Employer* are binding.
- The *Consultant's* achieves completion as per the project program which ensures that completion is achieved before or on the Completion Date.
- *Delay damages* apply from the Completion Date, if the *Consultant* before or by the Completion Date.
- The defects period applies from the completion date until fifty-two weeks later (a full calendar year). All contract terms, conditions and stated requirements in the Works Information, apply during the defects period as well e.g., SHEQ procedures, PTW, planning and organising of site activities.

## 4. List of drawings

### Drawings issued by the *Employer*

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

- Raw Water Reservoir Energy Dissipator Concrete and Reinforcement Details - 0.66/21251.

## 5. Specifications

The *Consultant* sources and obtains all relevant national specifications. The *Employer* supplies all Eskom specifications to the *Consultant*. The *Consultant* complies with all the latest version of all relevant procedures and specifications, including the following:

### List of Specifications

Title		Reference Number	Publicly available
No.	<u>National SHEQ Specifications:</u>		
1	Occupational Health and Safety Act and Construction Regulations, as amended	Act No 85, 1993	Yes
2	Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993	Act 130 of 1993	Yes
4	GN R225 in terms of the National Road Traffic Act 93 of 1996	NRTA Act 93 of 1996	Yes
5	National Environmental Management Act (No 107 of 1998)	NEMA No 107 of 1998	Yes
6	National Environmental Management: Waste Act (No 59 of 2008)	NEMWA No 59 of 2008	Yes
7	Environmental Management Waste Act (Act 59 of 2008)	EMWA Act 59 of 2008	Yes
8	Environmental Conservation Act (Act No. 73 of 1989)	ECA Act No. 73 of 1989	Yes
9	National Water Act, Act 36 of 1998, as amended	Act 36 of 1998	Yes
10	Environmental management systems – Requirements with guidance for use.	SANS/ISO 14001:2015 Edition 3	Yes
11	Quality Management Systems	ISO 9001; 2015	Yes

12	National Key Points Act	Act 102 of 1980	Yes
<b>No.</b>	<b><u>National Technical Specifications:</u></b>		
1	Standardized Specification For Civil Engineering Construction	SANS 1200 Series	Yes
2	The structural use of concrete Part 1 & 2	SANS 10100-1&2	Yes
<b>No.</b>	<b><u>Eskom SHEQ Specifications:</u></b>		
1	Eskom Life Saving Rules, Directive	240-62196227	No
2	Emergency Preparedness plan for Majuba Power Station	240-158605346	No
3	Employees' Right of Refusal to Work in an Unsafe Situation Procedure	240-43848327	No
4	Eskom vehicle and driver safety management	240-62946386	No
5	Occupational Health and Safety Incident Management Procedure	32-95	No
6	Eskom Contractors Health and Safety requirements standards	32-136	No
7	Eskom Waste Management Standard	32-245	No
8	Eskom Vehicle specification	32-345	No
9	Eskom Working at Heights Procedure	32-418	No
10	Eskom Generation Plant Safety Regulations (PSR)	36-681	No
11	SHE Requirements for the Eskom Commercial Process	32-726	No
12	Eskom Safety, Health, Environmental and Quality Policy	32-727	No
13	Supplier Contract Quality Requirement's Specification (previously QM 58)	240-10565800	No
14	MPS Environmental Management Requirements for Contractors and Suppliers	ENV/GEN/SPEC/01	No
15	Majuba Waste Management	ENV/GEN/WI/12	No
<b>No.</b>	<b><u>Eskom Technical Specifications:</u></b>		
1	Project Engineering Change Management Procedure	240-53114026	No
2	Engineering Change Management Procedure	240-53114002	No
3	Design Review Procedure	240-53113685	No
4	Project / Plant Specific Technical Documents and Records Management Work Instruction	240-76992014	No
5	Project Handover Documentation Management Procedure	240-66920003	No

6	Project Documentation Deliverable Requirement Specification	240-65459834	No
7	Technical Documentation Classification and Designation Standard	240-54179170	No