



## NEC3 Engineering & Construction Contract

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

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

for **DESIGN, MANUFACTURE, SUPPLY, INSTALLATION  
AND COMMISSIONING OF FUEL OIL PRESSURE  
CONTROL VALVES AND HYDRAULIC ACTUATORS  
FOR A PERIOD OF 36 (THIRTY-SIX) MONTHS**

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Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
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**CONTRACT No. [Insert at award stage]**

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Part C1: Agreements & Contract Data

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	[•]
C1.2b Contract Data provided by the <i>Contractor</i>	[•]
[to be inserted from Returnable Documents at award stage]	

## 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:

#### **DESIGN, MANUFACTURE, SUPPLY, INSTALLATION AND COMMISSIONING OF FUEL OIL PRESSURE CONTROL VALVES AND HYDRAULIC ACTUATORS FOR A PERIOD OF 36 (THIRTY-SIX) MONTHS**

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

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

Options A B, C or D	The offered total of the Prices exclusive of VAT is	<b>R</b>
Option E or F	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	<b>R</b>
	Sub total	<b>R</b>
	Value Added Tax @ 15% is	<b>R</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<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 *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the  
tenderer:**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

Tenderer's CIDB registration number:

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

## Acceptance

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

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Employer**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

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

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

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

<b>For the tenderer:</b>	<b>For the Employer</b>
Signature _____	_____
Name _____	_____
Capacity _____	_____
On behalf of _____ (Insert name and address of organisation)	_____
Name & signature of witness _____	_____
Date _____	_____

## C1.2 ECC3 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	
	Option A	<b>A: Priced contract with Activity Schedule</b>
	dispute resolution Option and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X1: Price adjustment for inflation</b>
		<b>X2: Change in the law</b>
		<b>X5: Section Completion</b>
		<b>X7: Delay damages</b>
		<b>X16: Retention</b>
	[always used by Eskom]	<b>X18: Limitation of liability</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Engineering and Construction Contract, June 2005 (ECC3) (with amendments June 2006)	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings Limited (reg no: 2002/015527/06), a juristic person 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>
	Represented by:	<b>Precious Mkize</b>
	Tel No.	<b>[•]</b>
	Fax No.	<b>[•]</b>
10.1	The <i>Project Manager</i> is: (Name)	<b>Precious Mkize</b>
	Address	<b>Duvha Power Station</b>
	Tel	<b>+27 13 690 0127</b>
	Fax	<b>+27 86 537 4438</b>

	e-mail	mkizepr@eskom.co.za	
10.1	The <i>Supervisor</i> is: (Name)	TBA	
	Address	[•]	
	Tel No.	[•]	
	Fax No.	[•]	
	e-mail	[•]	
11.2(13)	The <i>works</i> are	DESIGN, MANUFACTURE, SUPPLY, INSTALLATION AND COMMISSIONING OF FUEL OIL PRESSURE CONTROL VALVES AND HYDRAULIC ACTUATORS FOR A PERIOD OF 36 (THIRTY-SIX) MONTHS	
11.2(14)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> <li>1. Permit requirements</li> <li>2. Scaffolding requirements</li> <li>3. Falling</li> <li>4. Dust</li> <li>5. Slippery</li> <li>6. Electric shock</li> <li>7. Falling</li> <li>8. Fracture</li> </ol>	
11.2(15)	The <i>boundaries of the site</i> are	Duvha Power Station, site allocated for this project	
11.2(16)	The Site Information is in	Part 4 of the scope of work	
11.2(19)	The Works Information is in	See Appendix 1	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	3 working days	
<b>2</b>	<b>The Contractor's main responsibilities</b>	Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.	
<b>3</b>	<b>Time</b>		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	: <b>28 February 2026</b>	
11.2(9)	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 Start date	As per the accepted programme
		2 Sectional Completion key date will be clarified during clarification meeting depending on	

		the availability and lead time for the instruments	
30.1	The <i>access dates</i> are:	<b>Part of the Site</b>	<b>Date</b>
		<b>1 Duvha Power Station</b>	<b>After the contract awarded</b>
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	<b>2 weeks of the signed Contract Date.</b>	
31.2	The <i>starting date</i> is: <b>01 March 2023</b>		
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	<b>1 week when there are changes of the key dates and other events</b>	
<b>4</b>	<b>Testing and Defects</b>		
42.2	The <i>defects date</i> is	<b>52 weeks after Completion of each section and sectional completion certificate will be issued</b>	
43.2	The <i>defect correction period</i> is	<b>As per the accepted program depending on the availability of the instruments</b>	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	<b>between the 25 day of each successive month.</b>	
51.1	The <i>currency of this contract</i> is the	<b>South African Rand.</b>	
51.2	The period within which payments are made is	<b>5 weeks.</b>	
51.4	The <i>interest rate</i> is	<b>(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</b>  <b>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted</b>	



*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>	
60.1(13)	<p>The place where weather is to be recorded is:</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are,</p> <p>The <i>weather measurements</i> are recorded by</p> <p>The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at:</p> <p>and which are available from:</p>	<p>Duvha Power Station main security area</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> <p>the number of days with minimum air temperature less than 0 degrees Celsius</p> <p>the number of days with minimum air temperature more than 35 degrees Celsius</p> <p>The Contractor</p> <p>Witbank</p> <p>the South African Weather Bureau and included in Annexure A to this Contract Data provided by the <i>Employer</i></p>
<b>7</b>	<b>Title</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>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	1. Underground cables and piping not detected during final land survey.
84.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for "Format A" / "Format B" / "Format Dx" {choose the applicable format then delete the others and delete this note} available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a> (See Annexure B for basic guidance)
84.1	The <i>Employer</i> provides these additional insurances	as stated for "Format A" / "Format B" / "Format Dx" {choose the applicable format, then delete the others and delete this note} available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a> (See Annexure B for basic guidance)

84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is	whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).
<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>B</b>	<b>Priced contract with bill of quantities</b>	
60.6	The <i>method of measurement</i> is	As stated in Part C2.1, Pricing Assumptions.
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is (Name)	The person selected from the Eskom Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him.
	Address	TBA
	Tel No.	[•]
	Fax No.	[•]
	e-mail	[•]
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See <a href="http://www.jointcivils.co.za">www.jointcivils.co.za</a> )
W1.4(2)	The <i>tribunal</i> is:	arbitration.
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Johannesburg South Africa
	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 arbitration procedure does not state who selects an arbitrator, is</li> </ul>	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X7</b>	<b>Delay damages (but not if Option X5 is also used)</b>	
X7.1	Delay damages for Completion of the whole of the <i>works</i> are	<b>0.10% of the total contract value per week limited to 5% of the contract.</b>
<b>X16</b>	<b>Retention (not used with Option F)</b>	
	The <i>retention percentage</i> is	<b>5% of the total contract value</b>
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.0 (zero Rand)</b>
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	<b>the amount of the deductibles relevant to the event described in the insurance policy format selected in the data for clause 84.1 above, which policy is available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a></b>
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	<b>The greater of</b> <b>the total of the Prices at the Contract Date and</b> <b>the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus R15M first amount payable in terms of the <i>Employer's</i> assets policy.</b>
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	<b>The Contractor's total liability to the employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to:</b> <b>The total of the prices other than for the additional excluded matters.</b> <b>The contractor's total liability for the additional excluded matters is not limited.</b>  <b>The additional excluded matters are for the additional excluded matters are not limited.</b> <ul style="list-style-type: none"> <li>• Loss of or damage to property (other than the work, Plant and Material)</li> <li>• Death of or injury to person and</li> </ul>

		<ul style="list-style-type: none"> <li>• Infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<p>(i) 1 year after the <i>defects date</i> for latent defects</p> <p>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period.</p> <p>If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</p>
Z	The <b><i>Additional conditions of contract</i></b> are	Z1 to Z12 always apply.

## **Z1 Cession delegation and assignment**

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

## **Z2 Joint ventures (Not applicable for this contract)**

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

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

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

## **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Works or taking any other action as appropriate against the *Contractor* (including civil or criminal action).  
(The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Works if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.  
(The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)

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

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.  
(The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)

## **Z5 Confidentiality**

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

- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.  
(The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.  
(The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.  
(The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)
- The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.
- Z5.5 (The provision of this clause shall apply equally where Employee or person acting on behalf of the Employer offers bribes or solicits payment from the contractor)

**Z6 Waiver and estoppel: Add to core clause 12.3:**

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

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

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor* accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;  
warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of *works*; and  
undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z7.2 The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided

for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

- Z8.1 Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z9 Notifying compensation events**

- Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

**Z10 Employer's limitation of liability**

- Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

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

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

**Z12 Addition to secondary Option X7 Delay damages (if applicable in this contract)**

- Z12.1 If the amount due for the *Contractor'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 *Contractor's* obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

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## **Annexure A: One-in-ten-year-return *weather data* obtained from SA Weather Bureau for [weather station]**

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the *works* and at the place stated in this Contract Data is shown to be more adverse than the amount stated below then the *Contractor* may notify a compensation event.

	<i>Weather measurement</i>			
Month	Average Rainfall (mm)	Average Number of days with rainfall	Absolute High [Low] temperature (C)	Average midday High [Low] temperature (C)
January	138	11	34 [5]	25 [13]
February	89	7	34 [8]	25 [13]
March	75	7	33 [5]	24 [12]
April	52	5	29 [1]	23 [10]
May	9	2	26 [-6]	20 [6]
June	23	2	24 [-3]	18 [4]
July	6	1	25 [-5]	18 [3]
August	11	2	28 [-6]	21 [5]
September	25	3	31 [-2]	24 [8]
October	96	8	33 [0]	25 [10]
November	120	10	33 [-2]	25 [11]
December	159	10	31 [0]	25 [13]

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

## Annexure B: Insurance provided by the Employer

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. Details of the insurance itself are available from the internet web link given below.*

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

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

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

2. For ECC3 there are three main "formats" of cover and deductible structure; Format A, Format B and Format Dx.

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

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

In the case of contracts / packages within a project:

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

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

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

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

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

3. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 84.2. In terms of clause 84.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
4. When the Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
5. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

## Annexure C: The *Employer's* Panel of Adjudicators

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

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

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031)  
(Fax :+27 (0)86 668 0419) E-mail: [Leighton.Itholeng@eskom.co.za](mailto:Leighton.Itholeng@eskom.co.za)

## C1.2 Contract Data

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

#### Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (June 2005) and the relevant parts of its Guidance Notes (ECC3-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 152 to 154 of the ECC3 Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [ ] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	<b>0%</b> <b>Not more than 25%</b>
11.2(18)	The <i>working areas</i> are the Site and	<b>Duvha Power Station premises</b>
24.1	The <i>Contractor's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009

		CV's (and further key persons data including CVs) are appended to Tender Schedule entitled _____.	
11.2(3)	The <i>completion date</i> for the whole of the works is		
11.2(14)	The following matters will be included in the Risk Register	Dust Slippery Electric shock Falling Fracture	
11.2(19)	The Works Information for the <i>Contractor's</i> design is in:		
31.1	The programme identified in the Contract Data is		
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(20)	The <i>activity schedule</i> is in		
11.2(30)	The tendered total of the Prices is	(in figures)  (in words), excluding VAT	
<b>B</b>	<b>Priced contract with bill of quantities</b>		
11.2(21)	The <i>bill of quantities</i> is in		
11.2(31)	The tendered total of the Prices is	(in figures)  (in words), excluding VAT	
<b>C</b>	<b>Target contract with activity schedule</b>		
11.2(20)	The <i>activity schedule</i> is in		
11.2(30)	The tendered total of the Prices is	(in figures)  (in words), excluding VAT	
<b>D</b>	<b>Target contract with bill of quantities</b>		
11.2(21)	The <i>bill of quantities</i> is in		
11.2(31)	The tendered total of the Prices is	(in figures)  (in words), excluding VAT	
<b>F</b>	<b>Management contract</b>		
20.2	Work which the <i>Contractor's</i> will do himself is	Activity	price (lump sum or rate)

	<b>Data for Schedules of Cost Components</b>	<i>Note “SCC” means Schedule of Cost Components starting on page 56 of ECC3, and “SSCC” means Shorter Schedule of Cost Components starting on page 59 of ECC3.</i>		
<b>A</b>	<b>Priced contract with activity schedule</b>	<b>Data for the Shorter Schedule of Cost Components</b>		
<b>B</b>	<b>Priced contract with bill of quantities</b>	<b>Data for the Shorter Schedule of Cost Components</b>		
41 in SSCC	The percentage for people overheads is:	%		
21 in SSCC	The published list of Equipment is the last edition of the list published by  The percentage for adjustment for Equipment in the published list is	Minus %		
22 in SSCC	The rates of other Equipment are:	<b>Equipment</b>	<b>Size or capacity</b>	<b>Rate</b>
61 in SSCC	The hourly rates for Defined Cost of design outside the Working Areas are  <b>Note: Hourly rates are estimated ‘cost to company of the employee’ and not selling rates.</b>  <b>Please insert another schedule if foreign resources may also be used</b>	<b>Category of employee</b>	<b>Hourly rate</b>	
62 in SSCC	The percentage for design overheads is	%		
63 in SSCC	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:			
	<b>If Option C, D or E is used</b>	<b>Data for Schedule of Cost Components</b>		
23 in SCC	The listed items of Equipment purchased for work on this contract, with an on cost charge, are:	<b>Equipment</b>	<b>Time related charge</b>	<b>Per (time period)</b>

24 in SCC	The rates of special Equipment are:	<b>Equipment</b>	<b>Size or capacity</b>	<b>Rate</b>
44 in SCC	The percentage for Working Areas overheads is:	: %		
51 in SCC	The hourly rates for Defined Cost of manufacture or fabrication outside the Working Areas are  <b>Note: Hourly rates are estimated 'cost to company of the employee' and not selling rates</b> <b>Please insert another schedule if foreign resources may also be used</b>	<b>Category of employee</b>		<b>Hourly rate</b>
52 in SCC	The percentage for manufacture and fabrication overheads is	%		
	<b>If Option C, D, or E is used</b>	<b>Data for both schedules of cost components</b>		
61 in SCC & SSCC	The hourly rates for Defined Cost of design outside the Working Areas are  <b>Note: Hourly rates are estimated 'cost to company of the employee' and not selling rates.</b> <b>Please insert another schedule if foreign resources may also be used</b>	<b>Category of employee</b>		<b>Hourly rate</b>
62 in SCC & SSCC	The percentage for design overheads is	%		
63 in SCC & SSCC	The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the <i>works</i> and Equipment done outside the Working Areas are:			
	<b>If Option C, D or E is used</b>	<b>Data for the Shorter Schedule of Cost Components</b>		

41 in SSCC	The percentage for people overheads is:	%		
21 in SSCC	The published list of Equipment is the last edition of the list published by  The percentage for adjustment for Equipment in the published list is	%		
22 in SSCC	The rates of other Equipment are:	<b>Equipment</b>	<b>Size or capacity</b>	<b>Rate</b>



PART 2: PRICING DATA

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option B	
C2.2	Activity Schedule	

# C2 Pricing Data for an Activity Schedule

## C2.1 Pricing assumptions

### How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract, June 2005 Option A states:

#### Identified and defined terms

- 11.2 (20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.
- (27) The Price for Work Done to Date is the total of the Prices for
- each group of completed activities and
  - each completed activity which is not in a group.
- A completed activity is one which is without Defects which would either delay or be covered by immediately following work.
- (30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract. This confirms that Option A is a lump sum form of contract where the work is broken down into activities, each of which is priced by the tendering contractor as a lump sum. Only completed activities are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date.

### Function of the Activity Schedule

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

### Preparing the *activity schedule*

The tendering contractor shall prepare the *activity schedule* and should study the Guidance Notes pages 19 and 20 before doing so. The *Employer* may have instructed the tendering contractor to include particular activities (as listed) which he has specified and requires the *Contractor* to identify them in his *activity schedule*.

1. It is the Contractor who prepares the Activity Schedule as part of his tender by breaking down the work described within the Works Information into suitable activities which can be well defined, priced as a lump sum and shown on the programme. The Employer, in his Conditions of Tender or in a Tender Schedule, may have listed some items that he requires the Contractor to include in his activity schedule and be priced accordingly.
2. The Prices are defined in clause 11.2(20) as the lump sum for each activity in the activity schedule and the Price for Work Done to Date (PWDD) (the amount due to the contractor) is defined in clause 11.2(24) as the total of the Prices for each activity that has been completed. Hence activities in the activity schedule should be structured so as to provide an acceptable monthly cash flow as they are only assessed for payment on the assessment date if they have been completed.
3. As the Contractor has an obligation to correct Defects (core clause 43.1) and there is no

compensation event for this unless the Defect was due to an Employer's risk, the lump sum Prices must also include for the correction of Defects.

4. If the Contractor has decided not to identify a particular activity, the cost to the *Contractor* of doing the work must be included in, or spread across, the other Prices in order to fulfil the obligation to complete the works for the tendered total of the Prices.
5. 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 contractor estimated at time of tender.  
The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.
6. Hence the Prices tendered by the Contractor in the *activity schedule* are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an Employer's risk.
7. However, the Contractor does not have to allow in his Prices for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an Employer's risk event listed in core clause 80.1.

## C2.2 Activity Schedule

### Replacement of Fuel Oil Pressure Control Valves Unit 1 to 6

The Prices List (Refer to Scope of work for more clarity) Appendix 1

Item No.	Activity description	QTY	Unit	Price Per Unit	Amount
1.	Site Establishment	1	Sum		
2.	Preliminary and General	1	Sum		
3.	SHEQ	1	Sum		
4.	Transportation	1	Sum		
5.	Site Establishment	1	Sum		
6.	Work Activity				
6.1	Replacement of Pressure Control Valves at Unit 1	1	Sum		
6.2	Replacement of Pressure Control Valves at Unit 2	1	Sum		
6.3	Replacement of Pressure Control Valves at Unit 3	1	Sum		
6.4	Replacement of Pressure Control Valves at Unit 4	1	Sum		
6.5	Replacement of Pressure Control Valves Unit 5	1	Sum		
6.6	Replacement of Pressure Control Valves Unit 6	1	Sum		
				<b>TOTAL Price excluding VAT</b>	

### Part 3: Scope of Work

See attached Appendix 1

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