

NEC3 Term Service Contract (TSC3)

**Between Eskom Rotek Industries
(Reg No. 1990/006897/30)**

**and
(Reg No.)**

**for Maintenance Service, Breakdown and Load Test of
hydraulics on an “as and when” required.**

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

APPOINTMENT OF A SUPPLIER FOR PROVISION OF MAINTENANCE SERVICE, BREAKDOWN AND LOAD TEST ON HYDRAULICS ON AN "AS AND WHEN" REQUIRED BASIS FOR A PERIOD OF 60 MONTHS.

The tenderer, identified in the signature block below, having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, 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.

The offered total of the Prices exclusive of VAT is	R (Rates based)
Value Added Tax @ 15% is	R
The offered total of the Prices inclusive of VAT is	R (Rates based)
(in words) (Rates based)	

This Offer may be accepted by the *Employer* by signing the form of Acceptance overleaf 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

Ms Nandipha Mdletshe

General Manager (Acting)
Logistics Services
Eskom Rotek Industries SOC Ltd.
Lower Germiston Road.
Cleveland.
2022.

**For the
tenderer:**

Name &
signature of
witness

Date

Acceptance

By signing this part of this Form of Offer and Acceptance, the *Employer* identified below accepts the tenderer's Offer. In consideration thereof, the *Employer* shall pay the *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 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Service Information

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

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender 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, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week 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 copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

Signature(s)

Name(s)

Capacity

for the
Employer

Ms Nandipha Mdletshe

**General Manager (Acting)
Logistics Services**

**Eskom RoteK Industries SOC Ltd.
Lower Germiston Road.
Cleveland.**

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tender offers, further copies of this document may be used for that purpose, duly endorsed, 'Alternative Tender No. _____'

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	dispute resolution Option	A: Priced contract with price list
	and secondary Options	W1: Dispute resolution procedure
		X1: Price adjustment for inflation
		X2: Changes in the law
		X17: Low performance
		X18: Limitation of liability
		X19: Task Order
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract (June 2005) ¹	
10.1	The <i>Employer</i> is :	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in the Republic of South Africa Registered office at Megawatt Park, Maxwell Drive, Sandton
10.1	The <i>Service Manager</i> is :	Mutshinyani Baloi
	Address	Eskom Rotek Industries, Lower Germiston Rosherville Johannesburg PO Box 40099 Cleveland 2022
	Tel	011 629 4992
	Fax	N/A
	e-mail	<u>Seabem@eskom.co.za</u>

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

11.2(2)	The Affected Property is	
11.2(13)	The <i>service</i> is	Maintenance Service, Breakdown and Load Test of hydraulics on an “as and when” required.
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it refers.
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
2	The Contractor’s main responsibilities	(If the optional statement for this section is not used, no data will be required for this section)
21.1	The <i>Contractor</i> submits a first plan for acceptance within	1 week of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	Date of contract signature
30.1	The <i>service period</i> is	60 Months
4	Testing and defects	No data is required for this section of the conditions of contract.
5	Payment	
50.1	The <i>assessment interval</i> is	Daily
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	14 Days
51.4	The <i>interest rate</i> is	Not applicable
6	Compensation events	No data is required for this section of the conditions of contract.
7	Use of Equipment Plant and Materials	No data is required for this section of the conditions of contract.
8	Risks and insurance	
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:	the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
9	Termination	There is no Contract Data required for this section of the conditions of contract.

10	Data for main Option clause								
A	Priced contract with price list								
20.5	The Contractor prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	N/A							
11	Data for Option W1								
W1.1	The Adjudicator is (Name)	The person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him.							
W1.2(3)	The Adjudicator nominating body is:	The Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See www.jointcivils.co.za)							
W1.4(2)	The tribunal is:	Arbitration							
W1.4(5)	The arbitration procedure is	The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.							
	The place where arbitration is to be held is	Johannesburg, South Africa							
	The person or organisation who will choose an arbitrator	The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.							
	- if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is								
12	Data for secondary Option clauses								
X2	Changes in the law	Changes in legislation pertaining to the recycling / disposal of fluorescents will apply as an when it happens. Facility will be notified as they have to be compliant at all times.							
X17	Low service damage	<table><tr><td>Vehicles being withheld due to payments challenges with the principal contractor after Completion.</td><td></td></tr><tr><td>No communication or Response within 24 hrs a breakdown has been reported.</td><td></td></tr><tr><td>Failure to communicate Vehicle Off road progress report every working day (Per Vehicle).</td><td></td></tr></table>		Vehicles being withheld due to payments challenges with the principal contractor after Completion.		No communication or Response within 24 hrs a breakdown has been reported.		Failure to communicate Vehicle Off road progress report every working day (Per Vehicle).	
Vehicles being withheld due to payments challenges with the principal contractor after Completion.									
No communication or Response within 24 hrs a breakdown has been reported.									
Failure to communicate Vehicle Off road progress report every working day (Per Vehicle).									
X18	Limitation of liability								
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to	R0.0 (zero Rand)							

X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p>The greater of</p> <ul style="list-style-type: none"> the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/live/content.php?Item_ID=9248
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> Defects due to his design, plan and specification, Defects due to manufacture and fabrication outside the Affected Property, loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), death of or injury to a person and infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	12 months after the end of the <i>service period</i> .
X19	Task Order	
X19.5	The <i>Contractor</i> submits Quotations/Rebill programme to the <i>Service Manager</i> within	2 days of receiving the Defect Report
X20	Key Performance Indicators (not used when Option X12 applies)	
X20.1	A report of performance against each Key Performance Indicator is provided at intervals of	Monthly
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.
Z1	Cession delegation and assignment	

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

Z2 Joint ventures

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not 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 *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the 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 P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Ethics

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

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

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

Z5 Confidentiality

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

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

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

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

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

Z9 Notifying compensation events

- Z9.1 Not applicable

Z10 Employer's limitation of liability

- Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

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

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

Annexure A: Insurance provided by the Employer

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

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering *Contractors* and their brokers should consult the internet web link given below and scroll to 'Format TSC3' to establish both the cover and the deductibles in relation to the service provided in terms of this contract.

4. Tendering *Contractors* should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering *Contractor* or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 “the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide”. Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom’s Marine Policies Procedures found at internet website given below.
6. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

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

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

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

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

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

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering *Contractor*:

1. Please read both the NEC3 Term Service Contract (June 2005) and the relevant parts of its Guidance Notes (TSC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete.
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. Email Address.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	N/A % N/A %
11.2(14)	The following matters will be included in the Risk Register	Vehicles being withheld due to payments challenges with the principal contractor. No communication or Response within 24 hrs a breakdown has been reported. Failure to communicate Vehicle Off road progress report every working day.
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	Part 3: Scope of Work and all documents and drawings to which it refers.
21.1	The plan identified in the Contract Data is contained in:	Part 3: Scope of Work - Service Information
24.1	The key persons are: Name: Job: Responsibilities:	Mutshinyani Baloi Technical Workshop Manager - Technical Department Overseeing contract operations

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

Qualifications:

Experience: **10 years**

A Priced contract with price list		
11.2(12)	The <i>price list</i> is in	Part C2 Pricing Data
11.2(19)	The tendered total of the Prices is	(Rates based)

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PART 2: PRICING DATA

TSC3 Option A

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

C2.1 Pricing assumptions: Option A

The *conditions of contract*

How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (TSC3) core clauses and Option A states:

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

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

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

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

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

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

4 Hence the Prices and rates tendered by the *Contractor* in the *price list* are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk.

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

Format of the *price list*

(From page 73 of the TSC3 Guidance Notes)

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

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

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

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

C2.2 the *price list*

C2.2 Price List

Part 1

DRAFT

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	
A	<i>General</i>	[1]
B	<i>Scope of Work</i>	[2]
Total number of pages		

C3: Scope of Work

Other requirements

Maintenance Service, Breakdown and Load Test of hydraulics on an “as and when” required.

Logistics Services have hydraulically operated attachments on trucks (Cranes), Hook lifter, Compactors, Skips Loader, forklift and Teleloggers. These equipment's needs to be maintained to continue operating effectively in executing daily production, hence Regular service and maintenance are essential to keep hydraulic systems operating smoothly.

key tasks involved:

1. Service and Maintenance

- Inspection- Regular inspections on all components of the hydraulic system, including cylinders, valves, hoses, and pumps. Look for signs of wear and Tear, leaks, or damage.
- Fluid Checks- Monitor hydraulic fluid levels and quality. Top up or replace fluid as needed.
- Filter Replacement- Change hydraulic fluid filters to maintain optimal performance.
- Seals Inspection - Inspect seals and gaskets for wear and leaks.
- Lubrication- Lubricate moving parts to prevent friction and ensure smooth operation.

2. Breakdown and Repairs

- Troubleshooting - Diagnose the issue by checking for error codes, abnormal noises, or unexpected behaviour.
- Leak Detection - Identify and fix any hydraulic fluid leaks promptly.
- Component Replacement - Replace faulty components such as valves, seals, or hoses.
- Emergency Repairs - Address urgent issues to minimize downtime of operations.

3. Load Testing to ensure that the crane system can handle its rated load safely.

- Load the crane with weights equivalent to its maximum rated load.
- Run the crane through its full range of motion (up and down) while monitoring performance.
- Check for any abnormal behaviour, noise, or stress on components.
- Frequency: Load tests should be conducted annually or as specified by regulations.
- Qualified Inspectors (LMI) : Only qualified inspectors should perform load tests.
- Documentation: Share and Maintain records of load test results for compliance and safety purposes.

4. Mandatory Compliance with Standards and Regulations

- Load Testing is a requirement by the Occupational Health and Safety Act.
- Refer to the ****ASME A17.2-2020**** standard, which provides guidelines for inspection and testing procedures for electric and hydraulic cranes, escalators, and moving Machinery.
- Ensure that your procedures align with ASME A17.1 requirements and any applicable exceptions for CSA B44 (Safety Code for elevators).

The following Services are Statutory according as per Eskom's Safety Standards and regulations.

- Yearly Load Test that includes major hydraulics Service (replace oil filter and check all pressure.
- Six-monthly inspection on cranes that includes minor service hydraulics service.
- Three-monthly inspection on compactor slings
- Yearly load test on chains on the skip loader and do major repairs on the hydraulic
- Six monthly inspections on chains and minor service on hydraulics

Recommendations

- Supplier to comply and follow the OEM maintenance plan.
- The Company must be LME (LIFTING MECHINARY ENTITY) and have a qualified LMI (LIFTING MECHINARY INSPECTOR)
- To perform ongoing repairs, the supplier must have an LDV that has been in operation for no more than three (3) years or 100,000 kilometres.
- To avoid having to drive great distances to attend to breakdowns, the provider must have a national footprint (Note: The total distance travelled, including the return trip, should not exceed 200 km).

Logistics services have depots at the following areas:

- Johannesburg Rosherville depot
- Polokwane depot
- Durban depot
- Middelburg (Duvha Power Station)
- Medupi

*Majority of vehicles are operating in Johannesburg ;hence the supplier must have atleast 2 premises that are not more than 40km far from the Johannesburg Depot.

1.1 Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
CPA	Contract Price Adjustment
SD&L	<i>Supplier / Contractor</i> Development & Localisation

2 Management strategy and start up.

2.1 The Contractor's plan for the service

The *Employer* has provided the following plan for this service and the *Contractor* to follow:

2.2 Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
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Overall contract progress and feedback (Evaluation)	Monthly (30 th Day of each month)	Teams/call meeting Physical, if necessary, at employers' office	Employer and the Contractor
Weekly Progress and feedback	BI Weekly	Teams/call meeting Physical, if necessary, at employers' office	Employer and the Contractor

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the service. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

2.3 Contractor's management, supervision, and key people

The *Contractor* must provide a contract/account specific organogram prior to commencement on the contract.

2.4 Invoicing and payment

Within one week of receiving a payment certificate/Released Task order from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Service Manager's* payment certificate/Released Task order. **See Addendum 1 (Process flow) at the end of this document.**

The *Contractor* shall address the tax invoice to and include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

2.5 Contract change management.

It is envisaged that from time to time the *Employer* amend the scope of work, depending on the business needs. This change will take place after properly engaging the *Contractor* of such.

2.6 Design and supply of Equipment

There are different types of GDS (Global Distribution Systems) used in the industry. Therefore, it is the *Employer's* expectation that the *Contractor* uses any of the reliable and efficient technology available in the market.

2.7 Management of work done by Task Order

The *Employer* will make use of vehicle Defect request form as an instruction for the *Contractor* to start with work. The *Contractor* to produce quotations and or Rebill documents as per the defect request for the Service manager approval. The Task order will then be created on SAP and released for the payment process to start as per the Eskom's Process flow. **See Addendum 1 (Process flow) at the end of this document.**

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

The *Contractor* shall comply with the health and safety requirements contained in **Eskom SHEQ Policy** to this Service Information. The *Contractor* to submit SHEQ Plan within 14 days of contract commencement, which will be reviewed periodically i.e. quarterly.

3.2 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in **Eskom SHEQ Policy**. The *Contractor* to submit SHEQ Plan within 14 days of contract commencement, which will be reviewed periodically i.e. quarterly.

3.3 Quality assurance requirements

The *Contractor* shall comply with the Quality assurance requirements criteria and constraints stated in **Eskom SHEQ Policy and Quality Requirement Specification & Guidance (QM58) respectively**. The *Contractor* to submit SHEQ Plan within 30 days of contract commencement, which will be reviewed periodically i.e. quarterly.

3.4 People

3.4.1 Minimum requirements of people employed.

It is mandatory for the *Contractor* to have a team composition that includes Professional Registered Engineer/ Technologist, each site to have, Certified Lifting Machinery Inspector (Registered with LEEASA) and a Qualified Artisan/Fitter & Turner. The contracted *Contractor* to give an organogram of the people who will be working on or assigned to the Eskom contract.

Eskom supports Subcontracting and or contracting with emerging or developed Black Youth, Black People Living with Disabilities, Black Women Owned and Black Owned companies.

3.4.2 BBBEE AND REFERENCING SCHEME

SUPPLIER DEVELOPMENT & LOCALISATION

All *Contractors* will be required to meet **Black Ownership requirements** before they can be considered for tender evaluation and the other criteria are as follows:

a) BBBEE RATING

The new scorecard that is being tabled will be reviewed and consulted on when it happens. An implementation schedule will be given to the *Contractor* to fill and will be submitted 30 days after the contract commencement.

b) INDUSTRIALISATION

The supply market is already local, therefore there will be no definitive targets set for industrialisation.

c) LOCALISATION

- **Sub-contracting:** The *Contractor* shall demonstrate that they are procuring some of their Services and Materials from companies that are owned by Black Youth Owned, Black People Living with Disabilities, Black Woman Owned and Black Owned in this order of preference. The contractor is mandated to produce necessary documentation supporting that the Subcontractor being utilised for execution of work is approved and conforms with the Eskom Standards and requirements.
- **Local-to-site:** The *Contractor*s are required to procure their resources from firstly the district municipality in which they reside, secondly the province before enlisting the *Contractors* elsewhere in South Africa.
- **Local content:** The local content is expected to be 100%.

d) SKILLS DEVELOPMENT

Considering the overall budget, duration of the contract, opportunities for growth in this industry and the industries annual contribution to skills development levies, the successful supplier is obliged to develop skills through a year bursary offer valued at R120 000.00 per student at a registered and accredited South African university.

The skills development initiative will not be part of the weighting criteria however as a condition for contract award, the successful supplier shall offer a year bursary valued at R120 000.00 per student to an assigned beneficiary at a registered and accredited South African university, for every R6 million invoiced of the cumulative contract amount.

Training of candidates

The successful supplier shall offer a year university bursary in favour of a student within the Local Municipality where the service will be consumed for every R6 million invoiced of the cumulative contract amount. The skills development commitment shall be carried out within one month of reaching or exceeding the R6 million threshold.

e) JOB CREATION

During negotiations, these *Contractors* were required to propose new jobs that will be created as a direct result of this contract.

They were also required to disclose the number of jobs they shall retain as a direct result of being awarded this contract.

SUPPLIER DEVELOPMENT AND LOCALISATION TARGETS**1. OBJECTIVE CRITERIA – Local Content and Local-to-site beneficiation**

ERI is using this procurement opportunity to promote socio-economic transformation, empowerment of small enterprises, rural and township enterprises, designated groups and promotion of local industrial development. It is against this background, therefore that ERI reserves the right to award the contract to a supplier that commits to Transformation - B-BBEE Improvement or Retention Plan, Skills Development, Job

Creation and Socio-Economic Development in favour of beneficiaries residing within the Local Municipalities where the service will be consumed.

1.1. Supplier Development & Localisation Matrix

The SDL&I Matrix is not an evaluation criterion; however the successful supplier is under obligation to submit proposals before it is eligible for award in accordance with Section 2 (1) (f) of the Preferential Procurement Policy Framework Act (PPPFA).

TABLE 1: SUPPLIER DEVELOPMENT AND LOCALISATION COMPLIANCE MATRIX FOR SUPPLIERS AND CONTRACTORS				
Criteria	Weight (%)	Total Target (%)	Proposed Target (%)	Total Overall Weighted Score
Local Content to South Africa	50.00%	100.00%		
Skills Development	50.00%			
Total Score	100.00%			
Total Supplier Development and Localisation Score				

1.2. Transformation – BBBEE Retention or Improvement Plan

Transformation remains an area of focus, where ERI continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialisation, create employment and contribute to skills development.

ERI encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard, ERI also requests that Respondents submit B-BBEE improvement plan. Respondents will therefore be requested to indicate the extent to which they will maintain (only if the Respondent is a Level 1) or improve their B-BBEE status over the contract period. Respondents with a B-BBEE recognition status below Level 1 contributor, are obliged to submit their B-BBEE Improvement Plan within thirty days of concluding a contract with ERI, to improve their B-BBEE recognition status by at least one level for every of contracted year or twelve months.

1.3. Skills Development

Considering the overall budget, duration of the contract, opportunities for growth in this industry and the industries annual contribution to skills development levies, the successful supplier is obliged to develop skills through a one-year bursary offer valued at R per student at a registered and accredited South African university.

The skills development initiative will not be part of the weighting criteria however as a condition for contract award, the successful supplier shall offer a one-year bursary valued at R per student to an assigned beneficiary at a registered and accredited South African university, for every R4.8 million invoiced of the cumulative contract amount.

Training of candidates

The successful supplier shall offer a one-year university bursary in favour of a student within the Local Municipality where the service will be consumed for every R invoiced of the cumulative contract amount. The skills development commitment shall be carried out within one month of reaching or exceeding the R threshold.

Reporting

At task order stage successful supplier will be required to submit a plan to ERI for approval as part of the implementation schedule, which sets out the following in detail:

- Details of South African university including year of study and full-time programme.

1.4. Job Creation

To be completed by the tenderer

Number of jobs to be created as a direct result of this contract	
Number of jobs to be retained as a direct result of this contract	

- The successful supplier must indicate in the table above the number of jobs to be created and / or retained as a direct result of this contract.
- The expectation will be that the successful supplier has a core team, which will be made up of specialised skills that may not be sourced in the areas surrounding the site. It will be required that at least **50%** of all semi-skilled and **100%** of all unskilled labour that will be utilised in executing the works, will be within Local Municipality where the service will be consumed

1.5. Socio Economic Development

The successful supplier shall spend 1% of its annual NPAT or 0.1% of Annual Revenue/ Allocated budget/ Gross receipts/ Discretionary spend, to fund the Corporate Social Investment initiative(s) aimed at empowering black communities residing within the 40-kilometre radius of the allocated site.

2. Monitoring and reporting of SDL&I commitments

- The successful supplier shall on a quarterly basis submit a report to ERI in accordance with the SDL&I Data Collection Template on its compliance with the SDL&I obligations.
- ERI shall review the quarterly report submitted by the successful supplier within 60 (sixty) days of receipt of the reports and notify the successful supplier in writing if its SDL&I obligations have not been met.
- Upon notification by ERI that the successful supplier has not met its SDL&I obligations, the successful supplier shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following quarter, failing which the SDL&I penalty clause shall be invoked.

3. SDL&I Penalty

- a. At the end of each quarter, ERI will apply a penalty of 2.5% of the invoiced amount excluding VAT for the successful supplier's failure to meet SDL&I obligations during that period.

Every contract shall be accompanied by the SDL&I implementation schedule which must be completed by the successful supplier and returned to the SDL&I representative for acceptance **before** contract award. This will be used as a reference document for monitoring, measuring and reporting on the supplier's progress in delivering on the successful supplier stated SDL&I commitments.

3.5 Subcontracting

3.5.1 Preferred subcontractors

The *Contractor* shall demonstrate that they are procuring some of their goods and services from companies that are owned by Black Youth Owned, Black People Living with Disabilities, Black Woman Owned and Black Owned in this order of preference.

3.5.2 Subcontract documentation, and assessment of subcontract tenders

The *Contractor* shall, during the evaluation stage of the contract placement, provide some form of proof about the status of the subcontractors are dealing with i.e., Share Holders Agreement, Memorandum of Understanding between the two contracting parties (Principal and Subcontractors), Certified Copies of IDs, etc.

3.5.3 Limitations on subcontracting

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Contractor.

WHEREAS, the Employer and the Contractor (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.

7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.