



## NEC3 Term Service Contract (TSC3)

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

and

for The provision of approved inspection authority asbestos inspection services on as and when required basis for a period of 60 months at Camden power station

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**CONTRACT No.**

## PART C1: AGREEMENTS & CONTRACT DATA

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## C1.1 Form of Offer & Acceptance

### Offer

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

#### Asbestos Approved Inspection Authority for 60 months at Camden Power Station

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and agenda 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 or C	The offered total of the Prices exclusive of VAT is	R
Option E	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	R
	Sub total	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	R

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

Signature(s)

Name(s)

Capacity

**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: 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 agenda 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)

Justice Bore

Capacity

General Manager Camden Power station

**for the  
Employer**

ESKOM HOLDINGS SOC LTD, Camden Power Station, Private Bag X1002, NUCAM, 2355

Name &  
signature of  
witness

Date

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

The provision of approved inspection authority asbestos inspection services on as and when required basis for a period of 60 months at Camden power station

CONTRACT NO.

### 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 is the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1	N/A	
2	N/A	

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

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

#### For the tenderer:

#### For the Employer

Signature

Name

Capacity

On behalf  
of

Name &  
signature  
of witness

Date

Justice Bore

Camden Power Station

Eskom Holdings SOC LTD, Camden Power  
Station

## C1.2 TSC3 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:	
		<b>A: Priced contract with price list</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
		<b>X1: Price adjustment for inflation</b>
		<b>X2: Changes in the law</b>
		<b>X17: Low service damages</b>
		<b>X19: Task Order</b>
		<b>X20: Key performance indicators</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Term Service Contract (June 2005) <sup>2</sup>	
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:	
	Tel No.	
	Fax No.	
10.1	The <i>Service Manager</i> is (name):	<b>Tshilidzi Khwashaba</b>
	Address	<b>Camden Power Station Private Bag X1002 Nucam 2355</b>
	Tel	<b>017 779 8662</b>

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

Fax

e-mail

khwast@eskom.co.za

11.2(13)	The <i>service</i> is	<b>Asbestos Approved Inspection Authority for 60 months at Camden Power Station</b>
11.2(14)	The following matters will be included in the Risk Register	<b>N/A</b>
11.2(15)	The Service Information is in	<b>The document called 'Service Information' in Part 3 of this contract.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>5 working days</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	<b>60 Months ( 5 years )</b>
<b>4</b>	<b>Testing and defects</b>	<b>No data is required for this section of the <i>conditions of contract</i>.</b>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	
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>14 days</b>
51.4	The <i>interest rate</i> is	<p>(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(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 <i>mutatis mutandis</i> 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</p>

		<b>Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</b>
<b>6</b>	<b>Compensation events</b>	<b>to this contract</b>
<b>7</b>	<b>Use of Equipment Plant and Materials</b>	<b>No data is required for this section of the conditions of contract.</b>
<b>8</b>	<b>Risks and insurance</b>	
80.1	The <i>Contractor</i> is not liable to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property in excess of	<b>the amount of the deductibles relevant to the event described in the "Format TSSC3" insurance policy 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>
82.1	The <i>Employer</i> provides this insurance	<b>as stated for "Format TSSC3" 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 A for basic guidance)</b>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for "Format TSC3" 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 A for basic guidance).</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>as stated for "Format TSC3" 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 A for basic guidance)</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy 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>
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy 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>
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>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>



<b>9</b>	<b>Termination</b>	<b>There is no Contract Data required for this section of the <i>conditions of contract</i>.</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	<b>Intervals will be agreed between <i>Parties</i></b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is (Name)	<b>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.</b>
	Address	<b>N/A</b>
	Tel No.	<b>N/A</b>
	Fax No.	<b>N/A</b>
	e-mail	<b>N/A</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>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>)</b>
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	The place where arbitration is to be held is	<b>South Africa</b>
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	<b>the Chairman for the time being or his nominee</b>
	- if the arbitration procedure does not state who selects an arbitrator, is	<b>of the Association of Arbitrators (Southern Africa) or its successor body.</b>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price adjustment for inflation</b>	
X1.1	The <i>base date</i> for indices is	<b>Month before the tender closing date</b>
		Prices will be fixed and firm for the first 16 months, calculated from the base date, and thereafter CPA adjustments will apply
	The proportions used to calculate the Price Adjustment Factor are:	

Labour	SEIFSA Table C3	70.00%
Transport	SEIFSA Table L2/L2A	10.00%
Consumables	SEIFSA Table D3	5.00%
Non-Adjust		15%

<b>X2</b>	<b>Changes in the law</b>	<b>No data is required for this Option</b>
<b>X17</b>	<b>Low service damages</b>	<b>2.5% of the invoice</b>
X17.1	The <i>service level table</i> is in	<b>The penalty of 10% of the task order will be deducted should the contractor fail to action the task as required by the employer</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 "Format TSC3" insurance policy 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>
X18.4	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><b>the total of the Prices other than for the additional excluded matters.</b></p> <p><b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <ul style="list-style-type: none"> <li>• Defects due to his design, plan and specification,</li> <li>• Defects due to manufacture and fabrication outside the Affected Property,</li> <li>• loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• Infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<b>2 months after the end of the <i>service period</i>.</b>
<b>X19</b>	<b>Task Order</b>	

<b>X19.5</b>	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within <b>2 days of receiving the Task Order</b>
<b>X20</b>	<b>Not Applicable to this Contract</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b> <b>Z1 to Z11 always apply.</b>

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

## **Z10 Employer's limitation of liability**

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

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

The provision of approved inspection authority asbestos inspection services on as and when required basis for a period of 60 months at Camden power station

CONTRACT NO.

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](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 <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
Robert St. LEGER	Cape Town	+27 21 794 7488 <a href="mailto:bobst@iafrica.com">bobst@iafrica.com</a>
Peter THURLOW	Gauteng	+27 11 787 6226 <a href="mailto:info@thurlowassoc.com">info@thurlowassoc.com</a> <a href="mailto:mailto:thurlow@mweb.co.za">mailto:thurlow@mweb.co.za</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 both the NEC3 Term Service Contract (June 2005) and the relevant parts of its Guidance Notes (TSC3-GN)<sup>3</sup> 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.

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>
11.2(14)	The following matters will be included in the Risk Register	<b>SHEQ and Finance</b>
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	<b>C3 Scope of work</b>
21.1	The plan identified in the Contract Data is contained in:	<b>C2.2</b>
24.1	The key persons are: 1       Name: Job: Responsibilities: Qualifications:  Experience: 2       Name: Job	

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

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Responsibilities:

Qualifications:

Experience:

<b>A</b>	<b>Priced contract with price list</b>
11.2(12)	The <i>price list</i> is in <b>ZAR</b>
11.2(19)	The tendered total of the Prices is
<b>C</b>	<b>Target contract with price list</b>
11.2(12)	The <i>price list</i> is in
11.2(20)	The tendered total of the Prices is <b>R</b>
<b>E</b>	<b>Cost reimbursable contract</b>
11.2(12)	The <i>price list</i> is in

**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:

<b>Identified and defined terms</b>	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"> <li>the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and</li> <li>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.</li> </ul>
		(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

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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.

*Price list*

Kindly refer to BOQ Attached to the tender.

## PART 3: SCOPE OF WORK

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

## 1. Introduction

According to Regulation 11 of the Asbestos Abatement Regulations, Asbestos client (Camden Power Station) is required to appoint an Approved Inspection Authority (AIA) in writing, to monitor the concentration of airborne Asbestos fibres.

Furthermore, Camden Power Station is in the process of maintaining SANAS and ISO 17020:2012 system with the aim of maintaining SANAS AIA certification. The systems require an organisation to identify general requirements for the competence to provide reliable calibration, measurement, sampling, testing, verification, and inspection infrastructure for Eskom, this will assist the business unit in putting in place appropriate measures to ensure compliance and achieve ZERO HARM.

## 2. Supporting Clauses

## **2.1. Scope**

The issued scope of work is applicable to Camden Power Station Generation Division.

### **2.1.1. Purpose**

2.1.1.1. To identify a reliable supplier (a department of labour Approved Inspection Authority for Asbestos) for Camden Power Station. Such supplier needs to be accredited by SANAS as an Inspection body for workplaces as per ISO 17020.

2.1.1.2. The reliable supplier must be or use a SANAS 17025 accredited laboratory. The laboratory must meet the requirements for counting asbestos/analysing bulk samples (to determine the presence of asbestos) taken at Camden Power Station. The identification and evaluation of SANAS compliance will focus on the principles and requirements as set out in the SANS 17020 and SANS 17025 standards.

### **2.1.2. Applicability**

This document shall apply to Camden Power Station Generation Division.

### **2.1.3. Effective date**

This document shall be effective on the date of authorisation.

## **2.2. Normative/Informative References**

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

### **2.2.1. Normative**

[1] ISO 9001 Quality Management Systems

[2] ISO 45001:2018 Occupational health and Safety Management Systems

[3] ISO/IEC 17020, General requirements for the competence of testing and calibration laboratories

[4] ISO/IEC 17025:2005, General requirements for the competence of testing and calibration laboratories.

### **2.2.2. Informative**

[5] Occupational health and Safety Act 85 of 1993, Asbestos Abatement Regulations, 2020, as framed under the OHS Act.

[6] Regulations for the prohibition of the use, manufacturing, import, and export of asbestos and asbestos-containing materials, GNR 341 of 2007.



[7] HSG248: Asbestos: The analysts' guide for sampling, analysis, and clearance procedures of the Health and Safety Executive of the United Kingdom, as revised from time to time.

[8] SANS 17025: General requirements for the competence of testing and calibration laboratories.

### 2.3. Definitions

**Asbestos:** Any of the following minerals: grunerite (amosite), chrysotile, crocidolite, fibrous actinolite, fibrous anthophyllite, and fibrous tremolite, or any mixture containing any of these fibrous silicates.

**Asbestos clearance certificate:** A written document verifying that the regulated asbestos fibre concentration in the air meets the clearance indicator.

**Asbestos client:** Any person for whom asbestos work is performed.

**Approved plan of work:** A written site-specific methodology as contemplated in Regulation 15 (AAR) that is at least co-signed by the asbestos client, registered asbestos contractor, and approved inspection authority.

**Asbestos dust:** Airborne or settled dust that contains, or is likely to contain, regulated asbestos fibres.

**Asbestos inventory:** Document used for the recording of all asbestos and ACM in the area of responsibility. The asbestos inventory and asbestos phase-out plan refer to the same document, i.e. Eskom Asbestos Inventory and Phase-out (Template).

**Asbestos phase-out plan:** An authorised management plan that directs the timely removal of asbestos products and ACM from Eskom-owned areas in a formalised manner to ensure total phase-out by the set due date.

**Asbestos Approved Inspection Authority (AAIA):** An asbestos inspection authority accredited by the chief inspector of the **Department of Employment and Audit:** A planned, independent, and documented assessment process to determine whether agreed upon requirements are in conformance with requirements; for example, to SANS 17020, SANS 17025 an audit of the Occupational Hygiene AIA.

**Clearance indicator:** The measured airborne concentration of regulated asbestos fibres is less than 0,01 fibres per millilitre (f/ml) as measured in accordance with HSG248 or an equivalent method.

**Competent:** means a person who has in respect of the work or task to be performed the required knowledge, training and experience and, where applicable, qualifications, specific

to that work or task: Provided that where appropriate qualifications and training are registered in terms of the provisions of the National Qualification Framework Act, 2000 (Act No.67 of 2000), those qualifications and that training must be regarded as the required qualifications and training; and is familiar with the Act and with the applicable regulations made under the Act.

**Environmental air monitoring:** Includes static air monitoring for regulated fibres conducted downwind from outdoor type 2 asbestos work or outside asbestos enclosures where type 3 asbestos work is performed or in any area where there is the potential for asbestos contamination.

**HSG248:** Health and Safety Guidance 248: Asbestos – The analysts' guide for sampling, analysis, and clearance procedures, published in 2005, or the latest update.

**Partner/Contractor:** a person or firm that undertakes a contract to provide materials or labour to perform a service or do a job at Eskom.

**Regulated asbestos fibre:** An asbestos particle with a length-to-diameter ratio greater than 3 to 1, a length greater than 5 µm (micrometres or microns), and a diameter of less than 3 µm.

**Monitoring:** a continuing program of observation, measurement, and judgement.

**Non-Conformance:** Failure to meet or fulfil a specific requirement.

**Occupational Hygienist (ROH):** a person by virtue of his training in occupational hygiene hazard measurement /techniques is certified competent by the Eskom AIA, to carry out occupational hygiene monitoring and is registered with SAIOH as Occupational Hygienist.

**Occupational Hygienist (ROHT):** a person by virtue of his training in occupational hygiene hazard measurement /techniques is certified competent by the Eskom AIA, to carry out occupational hygiene monitoring and is registered with SAIOH as Occupational Hygiene Technologist.

**Occupational Hygiene Assistant (ROHA):** a person by virtue of his training in occupational hygiene hazard measurement /techniques is certified competent by the Eskom AIA, to carry out occupational hygiene monitoring and is registered with SAIOH as Occupational Hygiene Assistant.

**Occupational Exposure Limit (OEL) for asbestos:** A limit value of 0.1 regulated asbestos fibres per millilitre of air, averaged over any continuous period of four hours, measured in accordance with HSG248.

**Sampling:** a process consisting of the withdrawal or isolation of a fractional part of a whole.

**Sampling Media:** a substance or material used to collect/ capture samples from atmosphere and surfaces.

**Sampling Train:** The order of sequence in which personal health sampling equipment parts are assembled to complete the cycle of assimilated breathed atmosphere that a person is exposed to during the working time.

**Short-term exposure limit** - A short-term exposure limit of 0.6 regulated asbestos fibres per millilitre of air, measured over a continuous 10-minute period.

**South African National Accreditation System (SANAS):** the sole national accreditation body for conformity assessments in South Africa.

**Sub-contractor:** a firm or person that carries a portion of a contract from the principal contractor or from another subcontractor.

**Verification:** the process of confirming the accuracy and representativeness of any measurement results by means of independent examiner or demonstration of any statement, procedure, program, figures, calculations, and references by an accredited party.

**Workplace:** Any physical location in which work related activities are performed under the control of the organisation

## 2.4. Abbreviations

Abbreviation	Explanation
AAR	Asbestos Abatement Regulations
ACM	Asbestos-Containing Material
ACP	Asbestos Cement Product
AAIA	Asbestos Approved Inspection Authority
A&F	Assurance and Forensic
AL	Action Level
BU	Business Unit
f/ml	fibres per millilitre
ISO	International Organization for Standardization
OH	Occupational Hygiene
OHS Act	Occupational Health and Safety Act 85 of 1993
OU	Operating unit
PPE	Personal protective equipment

PCM	Phase contrast microscopy
RA	Risk assessment
RAC	Registered asbestos contractor
RPE	Respiratory protective equipment
R&S	Risk and Sustainability
SAIOH	Southern African Institute for Occupational Hygiene
SANAS	South African National Accreditation System
SANS	South African National Standards
SEG	Similar exposure group

## **2.5. Roles and Responsibilities**

### **2.5.1. The Client (Camden Power Station)**

- Contact the contractor for service required as per the scope of work.
- Manage the contract and ensure that work is carried out as per the issued scope of work.
- Monitor contractor compliance to legal and other requirements.

### **2.5.2. The Contractor/Supplier (Asbestos Approved Inspection Authority)**

- To comply with the contract requirements and deliver a quality service to Eskom Camden Power station.
- To comply with any requirements stipulated in the scope of work including the turnaround time for the report.
- To comply with the terms and conditions as stipulated in the contract.
- To respond in a timeous manner (as and when required by the client, including weekends).

## **2.6. Process for Monitoring**

Compliance to this document shall be verified via internal audits.

## **3. Scope of work**

### 3.1. General requirements

The scope of work will cover the following but not limited to, for a period of 60 months:

- Conducting of Asbestos monitoring as per Regulation 16 of the Asbestos Abatement Regulations, including environmental air monitoring for type 2 and type 3 asbestos work.
- Counting of Asbestos samples (personal and environmental/static samples) by phase contrast microscopy. Counting to be done by an ISO 17025 accredited laboratory.
- Issuing a report after counting Asbestos (for personal and environmental/static samples).
- Issuing a clearance certificate as per Regulation 22 after completion of monitoring.
- Completion of detailed sample analysis/counting report within the agreed timelines.
- Turnaround time for Asbestos counting/bulk sample report is less than 24 hours.
- Conducting of Asbestos monitoring as and when required, including weekends.

**NB. Asbestos monitoring required as per the nature of business:**

**The Approved Inspection Authority must ensure that an analysis report is made available to Camden Power Station within 24hrs after analysis.**

The following scenarios occur at Camden Power station throughout the year:

1. Response to EMERGENCIES (unit shut down) – no planning.
2. Outages – work will be planned accordingly.
3. Planned weekend maintenance – no proper planning.
4. Standby – emergency work due to boiler tube leaks (no planning).

Camden power station operate 24 hours, and the Approved Inspection Authority is required to be available for Asbestos Work (i.e., Asbestos air monitoring during Asbestos removal work) and analysis as and when required, including on weekends.

Samples to be collected from the station on the same day of sampling/monitoring. In cases where samples are collected during the night shift samples to be transported from Camden to the laboratory for analysis the following morning.

**The Approved Inspection Authority needs to take note of the scenarios (1 – 3 above). Special attention for Emergency (Where a unit can break down) and planned emergency work for weekends as it will be critical. Outage work is planned.**

### **3.2. Accreditation requirements**

The supplier must be approved by Department of Employment and Labour as an Approved Inspection Authority for Asbestos or have an agreement with a Department of Employment and Labour as an Approved Inspection Authority for Asbestos (SLA/mutual agreement) and must use only SANAS 17025 accredited laboratory and to satisfy the needs of Camden Power Station as specified in this scope of work.

Such an Approved Inspection Authority needs to be accredited by SANAS as Inspection body for workplaces as per ISO 17025.

### **3.3. Service to Eskom Camden Generation Division**

Communication should be maintained throughout the work. The Approved Inspection Authority should inform the Camden Power station contract manager of any delays or major deviations in the performance.

### **3.4. Complaints**

The Asbestos Approved Inspection Authority appointed shall have a policy and procedure for the resolution of complaints received from Eskom or other parties. Records shall be maintained of all complaints and of the investigations and corrective actions taken by the laboratory.

### **3.5. Improvement**

The Approved Inspection Authority shall continually improve the effectiveness of its management system using the quality policy, quality objectives, audit results, analysis of data, corrective and preventive actions, and management review.

### **3.6. Corrective action**

The Approved Inspection Authority shall establish a policy and a procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the management system or technical operations have been identified. The procedure for corrective action shall start with a root cause investigation, selection and implementation of corrective actions, Monitoring of corrective actions.

### **3.7. Prevention action**

Needed improvements and potential sources of nonconformities, either technical or concerning the management system, shall be identified. When improvement opportunities are identified or if preventive action is required, action plans shall be developed, implemented, and monitored to reduce the likelihood of the occurrence of such non-conformities and to take advantage of the opportunities.

### **3.8. Accommodation and environmental conditions**

The Asbestos Approved Inspection Authority Laboratory facilities for testing, including the environmental conditions, shall be such as to facilitate correct performance of the tests.

### **3.9. Results turnaround time**

The Asbestos Approved Inspection Authority shall honour the agreement with Eskom by adhering to the turnaround time specified. The Asbestos Approved Inspection Authority shall notify the Eskom contract manager of any occurrence that may possibly result in a delayed report time resulting in failure to comply with the turnaround time of 24 hours. Turnaround time shall form part of KPI for the Approved Inspection Authority and failure to meet the KPI will result in NCR.

### **3.10. Reporting the results**

Each report shall include at least the following information:

- a) Title, e.g., "Test Report", or "Report of Results" or "Laboratory Results";
- b) Name and address of laboratory, location where the analysis was carried out, if different from the address of the laboratory, and name and phone number of contact person for questions.
- c) Unique identification of the report (such as serial number) and of each page, the total number of pages, and a clear identification of the end of the report.
- d) Name and address of customer, where appropriate, and project name if applicable.
- e) Description, condition, and clear identification of the analysed samples.
- f) Date of receipt of the sample(s).
- g) Identification of the validated analytical method used.
- h) Any deviations from, additions to, or exclusions from the analytical method, and any other information relevant to a specific analytical method, such as environmental conditions including the use of relevant data qualifiers.
- i) Identification of the standard(s) or specification(s) relevant to the test (when required by customer).

- j) Analytical test results, supported by tables, graphs, sketches, and photographs as appropriate, with units of measurement; and any failures identified; and identification of the quantitation limit and reporting units (such as mg/kg with identification of whether data is calculated on a dry weight or wet weight basis).
- k) A signature and title, or an equivalent identification, of the person(s) accepting responsibility on behalf of the laboratory for the content of the report (however produced), and date of issue.