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| Eskomlogo 2002 Black |

NEC3 Supply Contract (SC3)

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| --- | --- | --- |
| **Between** | **ESKOM HOLDINGS SOC Ltd**  **(Reg No. 2002/015527/30)** | |
| **and** |  | |
| **for** | **The manufacture, supply and delivery of 500KVA Minisubs on a once off basis for Gauteng Cluster** | |
|  |  | |
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|  |  |  |
| **Contract No.** |  | |
|  |  | |
|  |  | |
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PART C1: AGREEMENTS & CONTRACT DATA

|  |  |  |
| --- | --- | --- |
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C1.1 Form of Offer & Acceptance

## Offer

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

**The manufacture, supply and delivery of 500KVA Minisubs on a once off basis for Gauteng Cluster**

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

By the representative of the Tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the Tenderer offers to perform all of the obligations and liabilities of the *Tenderer* 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 | **Rates Based Contract** |
|  | Value Added Tax @ 15% is | **Rates based Contract** |
|  | The offered total of the amount due inclusive of VAT is[[1]](#footnote-1) | **Rates Based Contract** |
|  | (in words) **Rates Based Contract** | |

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 Contract Data, or other period as agreed, whereupon the Tenderer becomes the party named as the *Tenderer* in the *conditions of contract* identified in the Contract Data.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| **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 Tenderer 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: Goods Information including Supply Requirements

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

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

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| for the Employer | **Eskom Holdings SOC Limited**  **1Maxwell Drive,**  **Sunninghill, 2000** | | | |
| Name & signature of witness |  |  | Date |  |

## 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 Contracting.
2. The extent of deviations from the Contract documents issued by the Employer prior to the Contract closing date is limited to those permitted in terms of the Conditions of Contract.
3. A Tenderer’s covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

|  |  |  |
| --- | --- | --- |
| No. | Subject | Details |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |

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 Contract Data and any addenda thereto listed in the Contract 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 Contract 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 |  |  | **Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2000** |
| Name & signature of witness |  |  |  |
| Date |  |  |  |

C1.2 SC3 Contract Data

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

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Clause** | **Statement** | **Data** | | | | | |
| 1 | **General** |  | | | | | |
|  | The *conditions of contract* are the core clauses and the clauses for Options |  | | | | | |
|  |  | **X2 Changes in the Law** | | | | | |
|  |  | **X7: Delay damages** | | | | | |
|  |  |  | | | | | |
|  |  | **Z: *Additional conditions of contract*** | | | | | |
|  | of the NEC3 Supply Contract (April 2013) [[2]](#footnote-2) | (If the December 2009 edition is to be used delete April 2013 and replace by December 2013) | | | | | |
| 10.1 | The *Employer* is (name): | **Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa** | | | | | |
|  | Address | **Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg** | | | | | |
|  | Tel No. | **011 800 3000** | | | | | |
|  | Fax No. | **N/A** | | | | | |
| 10.1 | The *Supply Manager* is (name): |  | | | | | |
|  | Address | **Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2000** | | | | | |
|  | Tel |  | | | | | |
|  | e-mail |  | | | | | |
| 11.2(13) | The *goods* are | **500KVA Minisubs** | | | | | |
| 11.2(13) | The *services* are | **The manufacture, supply and delivery of 500KVA Minisubs on a once off basis for Gauteng Cluster** | | | | | |
| 11.2(14) | The following matters will be included in the Risk Register | **Shortage of material**  **Late issue of Task Orders**  **Striking of Workers**  **Delay of Deliveries**  **Covid 19 Regulations** | | | | | |
| 11.2(15) | The Goods Information is in | **Part 3: Scope of Work and all documents and drawings to which it makes reference.** | | | | | |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | **Annexure A to this Contract Data** | | | | | |
| 12.2 | The *law of the contract* is the law of | **the Republic of South Africa** | | | | | |
| 13.1 | The *language of this contract* is | **English** | | | | | |
| 13.3 | The *period for reply* is | **No later than 5 working days** | | | | | |
| 2 | **The *Tenderer’s* main responsibilities** | **Data required by this section of the core clauses is provided by the *Tenderer* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.** | | | | | |
| 3 | **Time** |  | | | | | |
| 30.1 | The *starting date* is. | **15 June 2022** | | | | | |
| 30.1 | The *delivery date* of the *goods* and *service*s is: | ***goods and services*** | | | | ***delivery date*** | |
|  |  | **1** | **As per Purchase Order** | | **As per Purchase Order** | | | | |
|  |  |  |  | |  | | | | |
|  |  |  |  | |  | | | | |
| 30.2 | The *Tenderer* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date. |  | | | | | |
| 31.1 | The *Tenderer* is to submit a first programme for acceptance within | **One week of the Purchase Order Date.** | | | | | |
| 32.2 | The *Tenderer* submits revised programmes at intervals no longer than | **Four weeks.** | | | | | |
| 4 | **Testing and defects** |  | | | | | |
| 42 | The *defects date* is | **24 Months after Delivery.** | | | | | |
| 43.2 | The *defect correction period* is | **A minimum of 7 working days** | | | | | |
| 42.2 | The *defects access period* is | **3 working days unless otherwise agreed** | | | | | |
| 5 | **Payment** |  | | | | | |
| 50.1 | The *assessment interval* is | **Within 30 working days after the complete delivery of each Purchase Order** | | | | | |
| 51.1 | The *currency of this contract* is the | **South African Rand** | | | | | |
| 51.2 | The period within which payments are made is | **Within 14 or 30 days upon submission of a tax compliant invoice to Eskom Financial Shared Services depending the B-BBEEE status of the supplier** | | | | | |
| 51.4 | The *interest rate* is | **the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (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 Rand** | | | | | |
| 6 | **Compensation events** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** | | | | | |
| 7 | **Title** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** | | | | | |
| 8 | **Risks, liabilities, indemnities and insurance** |  | | | | | |
| 80.1 | These are additional *Employer’s* risks | **1. Shortage of material** | | | | | |
|  |  | **2. Protests** | | | | | |
|  |  | **3. Subcontracting work without notifying the client and using unaccredited subcontractors** | | | | | |
| 84.1 | The *Employer* provides these insurances from the Insurance Table | **See notes about *Employer* provided insurance in Annexure B to this Contract Data** | | | | | |
|  | 1. Insurance against | **Loss of or damage to the *goods*, plant and materials.** | | | | | |
|  | Cover / indemnity is | **Overseas shipment / transit insurance (only) to cover events at the *Tenderer*’s risk (if any) after the *goods* have left the *Tenderer*’s overseas premises. See notes in Annexure B**  **If this contract includes the supervision of installation, testing, commissioning or building work at the *Employer*’s premises, the *Employer* also provides cover for physical loss of or damage to the *Employer*’s surrounding property including any temporary work required to complete the Delivery.** | | | | | |
|  | The deductibles are | **See notes in data for clause 88.2 below and Annexure B** | | | | | |
| 84.1 | The *Tenderer* provides these additional insurances | **See notes in Annexure B** | | | | | |
| 84.2 | The minimum amount of cover for loss of or damage to any plant and materials provided by the *Employer* is: | **•R1 million** | | | | | |
| 84.2 | The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Tenderer*) caused by activity in connection with this contract for any one event is: | **whatever the *Tenderer* deems necessary in addition to that provided by the *Employer* for any one event with cross liability so that the insurance applies to the Parties separately.**  **However if the *Tenderer* is exposed to damage to the *Employer*’s property the cover limit amount is not less than**  **N/A**  **for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.** | | | | | |
| 84.2 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Tenderer* arising out of and in the course of their employment in connection with this contract for any one event is: | **As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the *Contractor’s* 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 Rand).** | | | | | |
| 88.1 | The *Tenderer’s* liability to the *Employer* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | **R0.0 (zero Rand)** | | | | | |
| 88.2 | For any one event, the *Tenderer’s* liability to the *Employer* for loss of or damage to the *Employer’s* property is limited to | **(1) for the *Employer’s* existing and surrounding property in the care, custody and control of the *Tenderer* the amount of the deductible (first amount payable) relevant to the event described in the “Format Dx insurance policy**  **and**  **See notes in Annexure B** | | | | | |
| 88.3 | The *Tenderer’s* liability for Defects due to his design which are not notified before the last *defects date* is limited to: | **The total cost of the defect rectification.** | | | | | |
| 88.4 | The *Tenderer’s* total liability to the *Employer*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | **Refer to Annexure B for product liability.** | | | | | |
| 88.5 | The *end of liability date* is | **5 years after Delivery of the whole of the *goods* and *service*s.** | | | | | |
| **9** | **Termination and dispute resolution** |  | | | | | |
| 94.1 | The *Adjudicator* is | **the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see** [**www.ice-sa.org.za**](http://www.ice-sa.org.za)**). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).** | | | | | |
| 94.2(3) | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See** [**www.ice-sa.org.za**](http://www.ice-sa.org.za)**)** | | | | | |
| 94.4(2) | The *tribunal* is: | **arbitration** | | | | | |
| 94.4(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.** | | | | | |
| 94.4(5) | The place where arbitration is to be held is | **Johannesburg, South Africa** | | | | | |
|  | The person or organisation who will choose an arbitrator   * if the Parties cannot agree a choice or * if the arbitration procedure does not state who selects an arbitrator, is | **the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.** | | | | | |
| **10** | **Data for Option clauses** |  | | | | | |
| **X2** | **Changes in the law** |  | | | | |
| X2.1 | A change in the law of | **RSA** | | | | |  | | | |  |
| **X7** | **Delay damages** |  | | | | |
| X7.1 | Delay damages for Delivery are |  | | **amount per day** | | | |
|  |  |  | | **R1000.00 per day delay after normal lead if not readily available / ex-stock.**  **Up to maximum of 10% per Purchase Order.** | | | |
| **Z** | **The *additional conditions of contract* are** | **Z1 to Z12 always apply for Eskom** | | | | | |
|  |  | | | | | | |
| **Z1** | **Cession delegation and assignment** | | | | | | | |
| Z1.1 | The *Tenderer* does notcede, 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 *Tenderer* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry. | | | | | | | |
| **Z2** | **Joint ventures** | | | | | | | |
| Z2.1 | If the *Tenderer* 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 *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Tenderer* on their behalf. | | | | | | | |
| Z2.3 | The *Tenderer* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Tenderer* in writing. | | | | | | | |
|  |  | | | | | | | |
| **Z3** | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** | | | | | | |
| Z3.1 | Where a change in the *Tenderer’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Tenderer*’s B-BBEE status, the *Tenderer* notifies the *Employer* within seven days of the change. | | | | | | |
| Z3.2 | The *Tenderer* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*. | | | | | | |
| Z3.3 | Where, as a result, the *Tenderer’s* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Tenderer*’s obligation to Provide the Goods and Services. | | | | | | |
| Z3.4 | Failure by the *Tenderer* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. | | | | | | |
|  |  | | | | | | |
| **Z4** | **Ethics** | | | | | | | |
| Z4.1 | Any offer, payment, consideration, or benefit of any kind made by the *Tenderer*, 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 *Tenderer*’s obligation to Provide the Goods and Services or taking any other action as appropriate against the *Tenderer* (including civil or criminal action). | | | | | | | |
| Z4.2 | The *Employer* may terminate the *Tenderer*’s obligation to Provide the Goods and Services if the *Tenderer* (or any member of the *Tenderer* where the *Tenderer* 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 *Tenderer* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice. | | | | | | | |
| Z4.3 | Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93. | | | | | | | |
|  |  | | | | | | | |
| **Z5** | **Confidentiality** | | | | | | | |
| Z5.1 | The *Tenderer* 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 *Tenderer*, enters the public domain or to information which was already in the possession of the *Tenderer* at the time of disclosure (evidenced by written records in existence at that time). Should the *Tenderer* disclose information to Others in terms of clause 23.1, the *Tenderer* ensures that the provisions of this clause are complied with by the recipient. | | | | | | | |
| Z5.2 | If the *Tenderer* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*. | | | | | | | |
| Z5.3 | In the event that the *Tenderer* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Tenderer*, 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 *Tenderer* 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 *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Employer*. | | | | | | | |
| Z5.5 | The *Tenderer* 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 *Supply 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 25.4** | | | | | | |
| Z7.1 | The *Tenderer* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.  Without limitation the *Tenderer*:   * warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with 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 supply and * undertakes, in and about the execution of the supply, to comply 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 *Tenderer’s* direction and control, likewise observe and comply with the foregoing. | | | | | | |
| Z7.2 | The *Tenderer*, in and about the execution of the supply, 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 *Tenderer’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 *Supply Manager* in terms of core clause 51.1, the *Tenderer* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate. | | | | | | | |
| Z8.2 | If the *Tenderer* 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 *Tenderer* (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 | As per the conditions of the NEC3 Supply Contract (April 2013). | | | | | | | |
|  |  | | | | | | | |
| **Z10** | ***Employer’s* limitation of liability** | | | | | | | |
| Z10.1 | The *Employer’s* liability to the *Tenderer* for the *Tenderer’s* indirect or consequential loss is limited to R0.00 (zero Rand) | | | | | | | |
| Z10.2 | The *Tenderer*’s entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Employer*’s liability under the indemnity is limited. | | | | | | | |
|  |  | | | | | | | |
| **Z11** | **Termination** | | | | | | | |
| Z11.1 | As per the conditions of the NEC3 Supply Contract (April 2013). | | | | | | | |
|  |  | | | | | | | |
| **Z12** | **Addition to secondary Option X7 Delay damages** | | | | | | | |
| Z12.1 | If the amount due for the *Tenderer*’s payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Employer* may terminate the *Tenderer*’s obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table. | | | | | | | |
|  |  | | | | | | | |
|  |  | | | | | | | |

**Annexure A: Supply Requirements**

**The Supply Requirements for this contract;**

The *Tenderer* supplies the *goods* as follows:

The specification is as per D-DT drawing and will be stated in the enquiry as follows:

|  |  |  |
| --- | --- | --- |
| **ITEM** | **SAP NO.** | **MATERIAL DESCRIPTION** |
| 1 | 0182408 | M/SUB 500kVA 11kV/420V B CB INLD D8050 |

**Annexure B: Insurance provided by the *Employer***

*These notes are provided as guidance to Contracting tenderers and the Tenderer about the insurance provided by the Employer. These notes are not part of this contract. The Tenderer must obtain its own advice.*

**Transit insurance of *goods* originating from outside the borders of the Republic of South Africa**

For the purpose of supply contracts, the only insurance provided by Eskom (the *Employer*) is transit shipment cover, commonly known as Marine Insurance for air, sea, rail and road freight (including local land arrangements) for conveyance of *goods* originating outside RSA. Please consult the website stated below to ascertain whether Format A, Format B or Format Dx is applicable to this contract and then the

* Marine Insurance Policy wording;
* Eskom Shipment Policies and Procedures – note a pre-shipment survey form has to be completed under certain circumstances;
* Marine Claims Handling Procedures – for important shipment actions and claims forms in event of damages to cargo freight via sea, barge, air, road or rail.

For EXW (Ex Works collections) this is of no concern to the *Tenderer* but for any other Supply Requirement (such as CIF, DDU, or DDP) the *Tenderer* need not provide such insurance even if the INCOTERM requires it and Contracting tenderers should ‘discount’ their prices when Contracting to allow for this provision by the *Employer* (Eskom).

***Tenderer*’s liability for damage to the *Employer*’s property**

Whilst this is a liability the *Tenderer* carries and should cover (if he is required to deliver the *goods* to the *Employer*’s premises) his liability is limited to the amount of cover provided to the *Employer* within his assets policy. This amount varies depending on the Division within Eskom to which the *Tenderer* is making the delivery. For any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance the *Tenderer*’s liability would be:

* R15million for Generation Division projects,
* R7.5million for Transmission Division projects or
* R1.0million for Distribution Division projects

**All other insurance**

As required by clause 84, the *Tenderer* provides all other insurance for his risks. The *Tenderer* should give further consideration to providing for these additional insurance concepts [for amounts and periods of insurance the *Tenderer* deems fit and necessary].

Professional Indemnity: The insurance provided shall indemnify the *Tenderer* (and/or his professional consultant) for those sums which the *Tenderer* or his consultant shall become legally liable to pay as damages arising from any claim first made against the *Tenderer* / consultant and reported to their insurers during the Period of Insurance, directly arising out of any negligent act, error or omission committed or alleged to have been committed by the *Tenderer* / consultant in the conduct of **professional services** (for example, design) in connection with this contract.

Products Liability: A special General Liability extension for liability arising out of the *Tenderer’s* **defective**:

* production and manufacturing process (workmanship or material), or
* product design, or
* warnings, instructions, usage and maintenance manuals and specifications.

For any further explanation of insurance requirements Contracting tenderers are advised to consult their brokers or insurers who may in turn contact Eskom Insurance Management Services per contact details provided on the following website:

C1.2 Contract Data

**Part two - Data provided by the *Tenderer***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Clause** | **Statement** | **Data** | | | |
| 10.1 | The *Tenderer* is (Name): |  | | | |
|  | Address |  | | | |
|  | Tel No. |  | | | |
|  | Fax No. |  | | | |
| 11.2(8) | The Goods Information for the *Tenderer’s* design is in: | **The manufacture, supply and delivery of 500KVA Minisubs on a once off basis for Gauteng Cluster** | | | |
| 11.2(11) | The Contracted total of the Prices is | **Rates based Contract** | | | |
| 11.2(12) | The *price schedule* is in: | **The attached Price List** | | | |
| 11.2(14) | The following matters will be included in the Risk Register | **Shortage of material**  **Late issue of Task Orders**  **Striking of Workers**  **Delay of Deliveries**  **Covid 19 Regulations** | | | |
| 25.2 | The restrictions to access for the *Supply Manager* and Others to work being done for this contract are | **N/A** | | | |
| 30.1 | The *delivery date* of the *goods* and *service*s is: | ***goods and services*** | | ***delivery date*** |
|  |  | **1** | **As per Purchase Order** | **As per Purchase Order** |
| 31.1 | The programme identified in the Contract Data is contained in: |  | | | |
| 63.2 | The *percentage for overheads and profit* added to the Defined Cost is |  | | | |

**Part 2: Pricing Data**

**NEC3 Supply Contract**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** |  |
| C2.1 | Pricing assumptions |  |
| C2.2 | The *price schedule* |  |

C2.1 Pricing assumptions

**How *goods* and *service*s are priced and assessed for payment**

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 11  11.2 | (11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate. |
|  |  | (12) The Price Schedule is the *price schedule* unless later changed in accordance with this contract. |
| **Assessing the amount due** | 50.2 | The amount due is   * the Price for each lump sum item in the Price Schedule which the *Tenderer* has completed, * where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Tenderer* has completed by the rate, * plus other amounts to be paid to the *Tenderer*, * less amounts to be paid by or retained from the *Tenderer*.   Any tax which the law requires the *Employer* to pay to the *Tenderer* is included in the amount due. |

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *service*s which can be priced as lump sums or as expected quantities of *goods* and *service*s multiplied by a rate, or a mix of both.

**Function of the Price Schedule**

Clause 53.1 states: “Information in the Price Schedule is not Goods Information”. This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, “The *Tenderer* Provides the Goods and Services in accordance with the Goods Information”. Hence the *Tenderer* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

**Preparing the *price schedule***

Items in the *price schedule* may have been inserted by the *Employer* and the Contracting tenderer should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the Contracting tenderer has

* Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
* Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Tenderer’s* risk;
* Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the Contracted total of the Prices;
* Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Tenderer* estimated at time of Contract. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
* Understood that the *Tenderer* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

**Format of the *price schedule***

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Employer* or the Contracting tenderer.

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

If the *Tenderer* is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the Contracting *Tenderer* enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the *Tenderer* is to be paid an amount for an item proportional to the length of time for which the *goods* and *service*s are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

C2.2 the *price schedule*

**Part 3: Scope of Work**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** |  |
|  | This cover page |  |
| C3.1 | *Employer*’s Goods Information |  |
| C3.2 | *Suppliers* Goods Information |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
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|  |  |  |
|  |  |  |
|  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **SAP NO.** | **MATERIAL DESCRIPTION** | **Estimated quantities** | **Unit price** | **Totals** |
| 1 | 0182408 | M/SUB 500kVA 11kV/420V B CB INLD D8050 | 30 |  |  |

**C3.1: *Employer’s* Goods Information**

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**Overview and purpose of the *goods* and *service*s**

The manufacture, supply and delivery of 500KVA Minisubs on a once off basis for Gauteng Cluster

**Specification and description of the *goods***

The specification for the required products is contained in the Specification Document:

Distribution Specification – Part 22: MEDIUM-VOLTAGE MINIATURE SUBSTATIONS FOR SYSTEMS WITH NOMINAL VOLTAGES OF 11 KV

Unique Identifier: 34-1621

***Employer*’s design**

The Employer will not provide a design, only a complete specification as listed above.

**Procedure for submission and acceptance of *Supplier* design**

The Employer reserves the right to conduct inspections to ascertain compliance to the specification.

**Other requirements of the *Supplier* design**

The design must comply to the specification.

**Use of *Supplier* design**

The Employer will not use the Suppliers design for any other means except for the specific purpose of this contract.

**Manufacture & fabrication**

The manufacture and fabrication must be conducted in a safe and controlled environment compliant to all relevant legislation.

**SDL&I Undertaking**

**Enterprise Development**

Not applicable

**Job Opportunities**

|  |  |
| --- | --- |
| **Number of Jobs to be created** | **Number of Jobs to be retained** |
|  |  |

Skills Development

Tenderers are required to propose against the following training initiatives;

|  |  |  |
| --- | --- | --- |
| **Category** | **Intake** | **Output** |
| Welder | Matric/N2 | 1 skill per year |

Other Initiatives

* Skills development program is required by Eskom

**Factory acceptance testing (FAT)**

Core Clauses 40 and 41 both make reference to the Goods Information regarding tests and inspections.

There are often comprehensive requirements for testing at place of manufacture and before delivery. The tests are to be witnessed by the *Supply Manager* or a Delegated Technical Representative or by a testing agency of the *Employer*’s nomination. Note, *Supplier* may not restrict *Supply Manager*’s or the Delegated Technical Representative’s right to witness tests per clause 25.2

**Other tests and inspections and commissioning in place of use**

**Not applicable**

**Operating manuals and maintenance schedules**

The Supplier is to provide all relevant operating manuals and guidelines for maintenance applicable to the various products.

**Supply Requirements**

The Supply Requirements for this contract will be provided in each specific Purchase Order.

**Specification of the *service*s to be provided**

Please refer to specification document.

**Constraints on how the *Tenderer* Provides the Goods**

**Programming constraints**

The supplier is to provide a manufacture, and delivery schedule for each Purchase Order. The programme is to detail the various stages in the manufacturing and delivery process.

**Work to be done by the Delivery Date**

Will be detailed on each Purchase Order.

**Marking the *goods***

Please refer to the specification document for markings required.

**Constraints at the delivery place and place of use**

To be detailed on each Purchase Order if required.

**Cooperating with Others**

Cooperation will be required with Eskom’s Technical team to conduct pre-delivery inspections.

**Services & other things to be provided by the *Employer* or *Supplier***

The Employer will provide safety inductions for entry of the Suppliers staff onto any Eskom premises.

The Supplier must allow in their schedules for any safety related inductions by Employer. The Tenderer/Supplier must also make any of their staff information available to the Employer on request for any possible security checks required.

**Management meetings**

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

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply 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.

**Documentation control**

All documentation control shall be done in accordance with the most recent ISO 9001 standard. The Eskom QM58 manual shall be used as a minimum compliance standard should the supplier not have an ISO type or compliant system in place.

**Health and safety risk management**

All tenderers shall comply with, but not limited to the following legislation during the period of this contract.

Eskom contractor Health and Safety requirements standards 32-136

• The National Road Traffic Act (Act 93 of 1996)

• The Hazardous Substance Act (Act 15 of 1973)

• The Occupational, Health and Safety Act (Act 85 0f 1993) in its current state and any subsequent revision thereafter at all times

• The Environment Conservation Act (Act 73 of 1989)

• The National Environmental Management Act (Act 107 of 1998)

• The National Water Act (Act 36 of 1998)

• The National Waste Management Act (Act 59 of 2008

• All Environmental Provincial and Local Government laws relevant to the scope of work

All tenderers shall comply with all relevant Eskom procedures but not limited to the following:

• Waste Management Procedure: EPC 32-245

• Waste Management Plan: 240- 84907678

• Safety, Health, Environmental and Quality Policy: 32-727

• Procedure for the Effective Management of Safety, Health and Environmental Related Incidents: 32-95

Ensure that all Health and Safety Plans are updated to include the management of all COVID 19 risks (office and on – site, transportation, during lunch breaks etc.)

**Environmental constraints and management**

The Supplier shall comply with the environmental criteria and constraints stated in the following:

• National Environmental Management Act 107 of 1998 in its current state and any subsequent revision thereafter at all times.

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

• accepts that the Employer may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Site;

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

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

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

**Quality**

The Supplier shall provide a **5** year warranty on all single and three phase, single rate and programmable meters. The warranty shall include the repair of all failures due to the latent defects (i.e. excluding mishandling or misuse of the equipment by the Purchaser or the Purchaser’s representatives, and normal wear and tear). Any changes associated with the repair/replacements and shipping of the defective equipment shall be for the Supplier’s expense.

**The supplier shall comply with the following quality requirements:**

* Full compliance with 240–105658000 (QM-58) Supplier Contract Quality Requirements Specification – Category 1 as a minimum requirement.
* Supplier shall maintain ISO 9001 certification for the duration of the contract
* Eskom approved Contract Quality Plan as per the requirements of ISO 10005 and Eskom template - for manufacturing ;supply &delivery
* Eskom approved Inspection and Test Plans and Test Plans as per the requirements of ISO 10005.- for manufacturing supply & delivery activities; as per ISO 9001:2015 Clause 8.6;
* In order to verify that the supplier has implemented an effective QMS, supplier need to submit Internal Audit report with approved audit schedules /programme; audit plan; Audit report and NC and CA retained information; after 12 months of contract award;
* Suppliers may be selected supplier audit during execution of the contract.

**Invoicing and payment**

Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Tenderer* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Supply Manager’s* certificate.

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

Name and address of the *Tenderer* and the *Supply Manager;*

The contract number and title;

*Tenderer*’s VAT registration number;

The *Employer*’s VAT registration number.

Description of *goods* and *service*s provided for each item invoiced based on the Price Schedule;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

Goods Receipt number

**Insurance provided by the *Employer***

As mentioned in Annexure B.

**Contract change management**

Compensation events Process will be followed as per the Core Clauses.

**Provision of bonds and guarantees**

Not required for the purposes of this contract.

**Records of Defined Cost, payments & assessments of compensation events to be kept by the *Tenderer***

The *Supplier* is required to keep any records of Defined Cost. Include any other constraint which may be required in regard to format and filing of the records, and whether access for the *Supply Manager* shall be provided in hard copy or electronically.

Contract related documents shall be kept by both the purchaser and supplier and maintained on a regular basis.

**Procurement**

**Subcontracting**

**Preferred subcontractors**

N/A

**Limitations on subcontracting**

N/A

**Spares and consumables**

Some contracts may need to include provision for the supply of a minimum category of spares, fuel, oil or other consumables which the *Employer* may need at or just after delivery or commissioning of the *goods* and that it is best the *Supplier* provide these initially as part of his Providing the Goods and Services

**Cataloguing requirements by the *Supplier***

Cataloguing is not applicable.

**List of drawings**

**Drawings issued by the *Employer***

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

|  |  |  |
| --- | --- | --- |
| **Drawing number** | **Revision** | **Title** |
| Please refer to specification document. |  |  |
|  |  |  |

**C3.2 *suppliers* Goods Information**

|  |
| --- |
| As per the scope of works/ specification above |

1. This total is required by the *Purchaser* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*. [↑](#footnote-ref-1)
2. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za. [↑](#footnote-ref-2)