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| Eskomlogo 2002 Black |

NEC3 Term Service Contract (TSC3)

|  |  |  |
| --- | --- | --- |
| **Between** | **ESKOM HOLDINGS SOC Ltd**  **(Reg No. 2002/015527/30)** | |
| **and** | **(Reg No. \_\_\_\_\_\_\_\_\_\_\_ )** | |
| **for** | **Service, repair, replace and calibration of mass meters** | |
|  |  | |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** |  |
| **Part C2** | **Pricing Data** |  |
| **Part C3** | **Scope of Work** |  |
|  |  |  |
| **CONTRACT No.** |  | |
|  |  | |
|  |  | |
|  |  | |

**PART C1: AGREEMENTS & CONTRACT DATA**

|  |  |  |
| --- | --- | --- |
| **Contents:** |  | **No of pages** |
| **C1.1** | **Form of Offer and Acceptance**  **[to be inserted from Returnable Documents at award stage]** | **[●]** |
| **C1.2a** | **Contract Data provided by the *Employer*** | **[●]** |
| **C1.2b** | **Contract Data provided by the *Contractor***  **[to be inserted from Returnable Documents at award stage]** | **[●]** |
| **C1.3** | **Proforma Guarantees** | **[●]** |

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**: Service, repair, replace and calibration of mass meters quarterly.**

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

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

Delete the row for the Options which do not apply

|  |  |  |
| --- | --- | --- |
| Options C | The offered total of the Prices exclusive of VAT is | **R** |
|  | Value Added Tax @ 15% is | **R** |
|  | The offered total of the amount due inclusive of VAT is[[1]](#footnote-1) | **R** |
|  | (in words) | |

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| **For the tenderer:** |  | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | Date |  |
| Tenderer’s CIDB registration number: | |  | | |

**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 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) | F Munyai |  |  | |
| Capacity | Procurement Manager |  |  | |
| **for the Employer** | Eskom Holding SOC Limited  Matimba power station  Private Bag X 215  Lephalale  0555 | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | Date |  |

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

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

Note:

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

|  |  |  |
| --- | --- | --- |
| No. | Subject | Details |
| 1 | None |  |
|  |  |  |

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 |  |  | F Munyai |
| Capacity |  |  | Procurement Manager |
| On behalf of | *(Insert name and address of organisation)* |  | Eskom Holding SOC Limited  Matimba power station  Private Bag X 215  Lephalale  0555 |
| Name & signature of witness |  |  |  |
| Date |  |  |  |

C1.2 TSC3 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 main Option: |  | | | | | | |
|  |  |  | | | | | | |
|  |  | **A Priced contract with price list** | | | | | | |
|  | dispute resolution Option | **W1: Dispute resolution procedure** | | | | | | |
|  |  | **X1: Price adjustment for inflation** | | | | | | |
|  |  | **X2 Changes in the law** | | | | | | |
|  |  | **X17: Low service damages**  **X18: Limitation of liability** | | | | | | |
|  |  | **X19: Task Order**  **X20: Key performance indicators** | | | | | | |
|  |  | **Z: *Additional conditions of contract*** | | | | | | |
|  | of the NEC3 Term Service Contract April 2013[[2]](#footnote-2) (TSC3) | If 2005 Edition is to be used delete “April 2013” and replace with “June 2005 with amendments June 2006”. Always delete this note before finalising this Data | | | | | | |
|  | 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. |  | | | | | | |
|  | Fax No. |  | | | | | | |
| 10.1 | The *Service Manager* is (name): | **Humbelani Nemakhavhani** | | | | | | |
|  | Address | **Eskom- Matimba Power Station**  **Private Bag X 2015**  **LEPHALALE**  **0555** | | | | | | |
|  | Tel | **0147638861** | | | | | | |
|  | Fax | **014 763 8426** | | | | | | |
| 10.1 | e-mail | **Nemakhh@eskom.co.za** | | | | | | |
|  | The Affected Property is | **Matimba Power Station** | | | | | | |
|  | The *service* is | **Service, repair, replace and calibration of mass meters** | | | | | | |
|  | The following matters will be included in the Risk Register | **As per risk assesment** | | | | | | |
|  | The Service Information is in | **Part 3: Scope of Work and all documents and drawings to which it makes reference.** | | | | | | |
| 11.2(2) | The *law of the contract* is the law of | **the Republic of South Africa** | | | | | | |
| 11.2(13) | The *language of this contract* is | **English** | | | | | | |
| 11.2(14) | The *period for reply* is | **7 days** | | | | | | |
| 11.2(15) | **The *Contractor*’s main responsibilities** | **Data required by this section of the core clauses is also provided by the *Contractor* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data** | | | | | | |
| 12.2 | The *Contractor* submits a first plan for acceptance within | **2 weeks of the Contract Date** | | | | | | |
| 13.1 | **Time** |  | | | | | | |
| 13.3 | The *starting date* is. | **01 Otober 2022** | | | | | | |
| 2 | The *service period* is | **5 years** | | | | | | |
| 21.1 | **Testing and defects** | **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** | | | | | | |
| 3 | **Payment** |  | | | | | | |
| 30.1 | The *assessment interval* is | **After completion of each task order** | | | | | | |
| 30.1 | The *currency of this contract* is the | **South African Rand** | | | | | | |
| 4 | The period within which payments are made is | **4 weeks.** | | | | | | |
| 5 | The *interest rate* is | **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 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 Rands and**  **(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 *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.** | | | | | | |
| 50.1 | **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** | | | | | | |
| 51.1 | **Use of Equipment Plant and Materials** | **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** | | | | | | |
| 51.2 | **Risks and insurance** |  | | | | | | |
| 51.4 | These are additional *Employer*'s risks | **Not Applicable** | | | | | | |
| 6 |  |  | | | | | | |
| 7 |  |  | | | | | | |
| 8 | The *Employer* provides these insurances from the Insurance Table | **as stated for “Format TSC3” available on** *http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_*  *From\_1\_April\_2014\_To\_31\_March\_2015.aspx*  **(See Annexure A for basic guidance)*.*** | | | | | | |
| 80.1 | The *Employer* provides these additional insurances | **as stated for “Format TSC3” available on**  *http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_*  *From\_1\_April\_2014\_To\_31\_March\_2015.aspx*  **(See Annexure A for basic guidance)** | | | | | | |
|  | The *Contractor* provides these additional insurances: | **N/A** | | | | | | |
|  | The minimum amount of cover for insurance against loss and damage caused by the *Contractor* to the *Employer*’s property is | **the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on** *http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_*  *From\_1\_April\_2014\_To\_31\_March\_2015.aspx* | | | | | | |
| 83.1 | The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of | **N/A** | | | | | | |
| 83.1 | The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer*’s property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor*’s Providing the Service for any one event is: | **whatever the *Contractor* deems necessary in addition to that provided by the *Employer*.** | | | | | | |
| 83.1 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* 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 Rands)..** | | | | | |
| 83.1 | **Termination** | **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.** | | | | | | |
| 83.1 | **Data for main Option clause** |  | | | | | |
| 83.1 | **Target contract with price list** |  | | | | | | |
| 83.1 | The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than | **4 weeks.** | | | | | | |
| **9** | The *exchange rates* are those published in | **Not Applicable** | | | | | | |
| **10** | The *Contractor's* share percentages and the share ranges are | ***share range*** | | | | | | |
| **C** |  | **less than [●] %** | | | | | | |
| 20.4 |  | **from [●]% to [●]%** | | | | | | |
| 50.6 |  | **from [●]% to [●]%** | | | | | | |
| 53.1 |  | **greater than [●]%** | | | | ***Contractor’s share %-age*** | | |
|  | The *Contractor*’s share is assessed on (dates) | **[●]** | | | | **[●]%** | | |
|  | The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than | **weeks /months** | | | | **[●]%** | | |
|  | The *exchange rates* are those published in | **[●] on [●] (date)** | | | | **[●]%** | | |
|  | **Data for Option W1** |  | | | | **[●]%** | | |
| 53.3 | The *Adjudicator* | **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).** | | | | | | |
| 20.4 | Address | **[●]** | | | | | | |
|  | Tel No. | **[●]** | | | | | | |
| **11** | Fax No. | **[●]** | | | | | | |
| W1.1 | e-mail | **[●]** | | | | | |
|  | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see** [**www.ice-sa.org.za**](http://www.ice-sa.org.za) **) or its successor body.** | | | | | | |
|  | The *tribunal* is: | **Arbitration** | | | | | | |
|  | The *arbitration procedure* is | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** | | | | | | |
|  | The place where arbitration is to be held is | **[●] South Africa** | | | | | | |
| W1.2(3) | 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.** | | | | | | |
| W1.4(2) | **Data for secondary Option clauses** |  | | | | | | |
| W1.4(5) | **Price adjustment for inflation** |  | | | | | | |
|  | The *base date* for indices is | **[●].** | | | | | | |
|  | * The proportions used to calculate the Price Adjustment Factor are: | **Proportion** | | | | | | |
| **12** |  | **0.** | | | | | | |
| **X1** |  | **0.** | | | | | | |
| X1.1 |  | **0.** | | | | | | |
|  |  | **0.** | **linked to index for** | | **Index prepared by** | | | |
|  |  | **0.** | **[●]** | | **[●]** | | | |
|  |  | **[●]** | **[●]** | | **[●]** | | | |
|  |  | **1.00** | **[●]** | | **[●]** | | | |
|  | **Changes in the law** | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.** | **[●]** | | **[●]** | | | |
|  | **Multiple currencies** |  | **[●]** | | **[●]** | | | |
|  | The *Employer* will pay for these items or activities in the currencies stated | **Items & activities** | **non-adjustable** | |  | | | |
|  |  | **[●]** |  | |  | | | |
| **X2** |  | **[●]** | | | | | | |
| **X3** |  | **[●]** | | | | | | |
| X3.1 |  | **[●]** | | **Other currency** | | | **Maximum payment in other currency** | |
|  | The *exchange rates* are those published in | **[●] on [●] (date)** | |  | | |  | |
|  |  | **The items & activities will be paid in the other currency**  **- to a foreign Bank account nominated by the *Contractor***  **- to a valid SARB approved CFC account in South Africa**  **- in accordance with an alternative payment method agreed with the *Employer* before the Contract Date.**  **(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)** | |  | | |  | |
|  | **Parent company guarantee** | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.** | |  | | |  | |
| X 17 | **Low service damages** |  | |  | | |  | |
|  | The *service level table* is in | **[●]** | | | | | | |
| **X18** | **Task Order** |  | | | | | | |
| X18.1  X18.2 | The *Contractor* submits a Task Order programme to the *Service Manager* within | **1 day(s) of receiving the Task Order** | | | | | | |
| **X18** | **Key Performance Indicators (not used when Option X12 applies)** |  | | | | | | |
| X18.3  X18.4 | The *incentive schedule* for Key Performance Indicators is in | **Annexure [●] to this Contract Data** | | | | | | |
| A report of performance against each Key Performance Indicator is provided at intervals of | **N/A** | | | | | | |
| X18.5 | **The *additional conditions of contract* are** | **Z1 to Z11 always apply.** | | | | | | |
| **X19** |  |  | | | | | | |
| X19.5 | **Cession delegation and assignment** |  | | | | | | |
| **Z** | **Joint ventures** |  | | | | | | |
|  | 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. |  | | | | | | |
| **Z1** | 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. |  | | | | | | |
| Z1.1 | The *Contractor* 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 *Contractor* in writing. |  | | | | | | |
| Z1.2 |  |  | | | | | | |
|  | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** |  | | | | | | |
| **Z2** | 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. |  | | | | | | |
| Z2.1 | 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*. |  | | | | | | |
| Z2.2 | 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 Service. |  | | | | | | |
| Z2.3 | 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. |  | | | | | | |
|  |  |  | | | | | | |
| **Z3** | **Confidentiality** |  | | | | | | |
| Z3.1 | 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. |  | | | | | | |
| Z3.2 | 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*. |  | | | | | | |
| Z3.3 | 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. |  | | | | | | |
| Z3.4 | 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*. |  | | | | | | |
|  | The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause. | | | | | | | |
| **Z4** |  | | | | | | |
| Z4.1 | **Waiver and estoppel: Add to core clause 12.3:** | | | | | | |
| Z4.2 | 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. | | | | | | |
| Z4.3 |  | | | | | | |
| Z4.4 | **Health, safety and the environment: Add to core clause 27.4** | | | | | | |
| Z4.5 | 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 2014 (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. | | | | | | |
|  | 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. | | | | | | |
| **Z5** |  | | | | | | |
| Z5.1 | **Provision of a Tax Invoice and interest. Add to core clause 51** | | | | | | |
|  | 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. | | | | | | |
| **Z6** | 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. | | | | | | |
| Z6.1 | 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. | | | | | | |
| Z6.2 |  | | | | | | |
|  | **Notifying compensation events** | | | | | | |
| **Z7** | Delete the last paragraph of core clause 61.3 and replace with:  If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices. | | | | | | |
| Z7.1 |  | | | | | | |
| Z7.2 | ***Employer’s* limitation of liability** | | | | | | |
| Z7.3 | The *Employer’s* liability to the *Contractor* for the *Contractor’s* indirect or consequential loss is limited to R0.00 (zero Rand) | | | | | | |
|  | 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 in core clause 63 and X19.11 if Option X19 Task Order applies to this contract. | | | | | | |
| **Z8** |  | | | | | | |
| Z8.1 | **Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":** | | | | | | |
|  | or had a business rescue order granted against it. | | | | | | |
| **Z9** |  | | | | | | |
| Z9.1 | **Ethics** | | | | | | |
| Z9.2 |  | | | | | | |
|  |  | | | | | | |
| **Z10** |  | | | | | | |
| Z10.1 |  | | | | | | |
|  |  | | | | | | |
| **Z11** |  | | | | | | |
|  |  | | | | | | |

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

Affected Party means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party’s employees, agents, or Subcontractors or Subcontractor’s employees, or any one or more of all of these parties’ relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor’s employees,

Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and

Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 11.2 The *Employer* may terminate the *Contractor*’s obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor*’s obligation to Provide the Service for this reason.

Z 11.3 If the *Employer* terminates the *Contractor*’s obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.

Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

**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. The Contractor must obtain its own advice. 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/Tenders/InsurancePoliciesProcedures/Pages/EIMS\_Policies\_

Fr*om\_1\_April\_2014\_To\_31\_March\_2015.aspx*

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 April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)[[3]](#footnote-3) in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Where a form field like this [     ] appears, data is required to be inserted relevant to the option selected. Click on the form field ***once*** and type in the data. Otherwise complete by hand and in ink.

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

|  |  |  |
| --- | --- | --- |
| **Clause** | **Statement** | **Data** |
| 10.1 | The *Contractor* is (Name): |  |
|  | Address |  |
|  | Tel No. |  |
|  | Fax No. |  |
| 11.2(8) | The *direct fee percentage* is | **%** |
|  | The *subcontracted fee percentage* is | **N/A** |
| 11.2(14) | The following matters will be included in the Risk Register |  |
| 11.2(15) | The Service Information for the *Contractor*’s plan is in: |  |
| 21.1 | The plan identified in the Contract Data is contained in: |  |
| 24.1 | The key people are: |  |
|  | 1 Name: |  |
|  | Job: |  |
|  | Responsibilities: |  |
|  | Qualifications: |  |
|  | Experience: |  |
|  | 2 Name: |  |
|  | Job |  |
|  | Responsibilities: |  |
|  | Qualifications: |  |
|  | Experience: |  |
|  |  |  |
|  |  | **CV's (and further key person's data including CVs) are in** **.** |
| **A** | **Priced contract with price list** |  |
| 11.2(12) | The *price list* is in |  |
| 11.2(19) | The tendered total of the Prices is | **R** |
| **C** | **Target contract with price list** |  |
| 11.2(12) | The *price list* is in |  |
| 11.2(20) | The tendered total of the Prices is | **R** |
| **E** | **Cost reimbursable contract** |  |
| 11.2(12) | The *price list* is in |  |

**Part 2: Pricing Data**

**TSC3 Option C**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions: Option C | 2 |
| C2.2 | The *price list* | **[●]** |

C2.1 Pricing assumptions: Option C

**How work is priced and assessed for payment**

Clause 11 in the core clauses and Option C clauses of the NEC3 Term Service Contract (TSC3) state:

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 11  11.2 | (12) The Price List is the *price list* unless later changed in accordance with this contract. |
|  |  | (18) The Price for Services Provided to Date is the Defined Cost which the *Contractor* has paid plus the Fee. |
|  |  | (20) 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. |

Payments are made at Defined Cost plus Fee (See core clauses 11.2(5), 11.2(6) and 11.2(8)). At the dates stated in the Contract Data, the *Service Manager* calculates the *Contractor*’s share in terms of clause 53. If the *Contractor* has been paid more than the equivalent Prices in the Price List for the same work he pays the *Employer* a portion of the over-run (the pain) but if he has been paid less than the equivalent Prices in the Price List he is paid a portion of the under-run (the gain). The Prices in the Price List 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**

In this Option the Price List is used as a means of arriving at a target price. Clause 54.1 in Option C 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.

**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 related to items of service priced in the *price list*.

**Preparing the *price list***

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option C contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor:*

* Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option C;
* Understands the Price List is only used as a means of arriving at a target and that work done is paid for at Defined Cost and the resulting Fee;
* Is aware of the need to link operations shown in his plan to items shown in the Price List;
* Has listed and priced items in the *price list* which 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;
* Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
* Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

**Format of the *price list***

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 *price list* includes 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 *price list* includes 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 *price list* includes an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

C2.2 the *price list*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | 2022-2023 | 2023-2024 | 2024-2025 | 2025-2026 | 2026-2027 | Total |
| Service, repair and calibrate 1st Quarter |  |  |  |  |  |  |
| Service, repair and calibrate 2nd Quarter |  |  |  |  |  |  |
| Service, repair and calibrate 3rd Quarter |  |  |  |  |  |  |
| Service, repair and calibrate 4th Quarter |  |  |  |  |  |  |
| SANAS 863 2011 Calibration (Yearly) |  |  |  |  |  |  |
| Health and Safety (Yearly) |  |  |  |  |  |  |
| Travel cost (Quarterly) |  |  |  |  |  |  |
| Total cost |  |  |  |  |  |  |
| Total cost excluding VAT |  |  |  |  |  |  |

|  |  |
| --- | --- |
| The total of the Prices |  |

Note: deviation will lead to disqualification

**Part C3: Scope of Work**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
|  | This cover page | 1 |
| C3.1 | *Employer*’s Service Information |  |
| C3.2 | *Contractor*’s Service Information  (insert at award stage or delete if not applicable) |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  | Total number of pages |  |

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

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**Description of the *service***

**Executive overview**

Matimba Power Station has a total number of 16 mass meters of which 14 (CSR – Coal stacker reclaimer boom conveyor ,S2, S4, S5, T1Ax2, T1Bx2, incline T8A, incline T8B, inclineT8C, incline T8D, incline T8E and incline T8F) are for coal conveyors. In addition, two (Cross 12 & Cross 22) are for Ash conveyor. Mass meters are used to measure the mass of coal or ash travelling through conveyor belts. These devices measure the mass per unit time flowing through conveyors. Coal mass meters help in determining the actual amount of coal received from the mine and ash mass meters help in determining the total amount of ash dispersed at the ash dump.

There are two types of meters that provide data to determine the mass:

• Load Cell

The load cell produces an electric signal, which is directly proportional to the load on the cell

Typically, the error specified will be less than 2%

• Speed sensor

The speed sensor measures how much a belt length has passed during a specific time

The data gathered by the load cell and speed sensor will provide the mass of coal /ash passing over the mass meter. Typically, the error specified will be less than 0,5 %

***Employer*’s requirements for the *service***

A *contractor* is required to:

* Service, repair or replace load cell when required
* Install and calibrate Weigh class rolls
* Ensure that weigh class idlers are used and they include three(3) idlers before and after mass meter , the idler must be aligned properly in line with the direction of the conveyor , to minimize straining forces on the conveyor.
* The contractor should ensure that mass meters are installed closer to the tail-end but far enough to allow material that has been fed onto the conveyor to settle before passing over the mass meter
* During calibration, the contractor is required to achieve an error of less than 1%. It is necessary to verify measurement against a physical standard i.e. a bulk test load. Accuracy of belt scales should have an error of less than 0,5%
* After each calibration, a certificate must be supplied to Eskom for each mass meter.
* Maintenance on mass meter also include but not limited to; Cleaning, inspection, belt tracking, idler alignment and condition, Tachometer condition, functioning, Zero, and span check
* The Contractor should supply all the spares as and when required
* Measuring point (MP2) mass meter i.e. T1Ax2 & T1B x2 must be calibrated yearly to the standards as described in the SANS 863 2011 Conveyor belt scale document and certificate to be issued thereof
* The Contractor to submit all calibration certificates (signed) prior payment when work is complete
* The station needs to conclude a contract with an accredited supplier with full access to software of the mass meter including the password to perform calibration, repairs and replacement in case of breakdown and planned maintenance/calibration as per the legal Metrology Act
* All mass meters and their related parts to be fully owned by Eskom

**Interpretation and terminology**

The following abbreviations are used in this Service Information:

|  |  |
| --- | --- |
| **CSR** | Coal Stacker Reclaimer |
| **SOW** | Scope of work |
| **PPE** | Personal protective equipment |
| **SHE** | Safety, health and environment |

**Management strategy and start up.**

**The *Contractor*’s plan for the *service***

**Management meetings**

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

|  |  |  |  |
| --- | --- | --- | --- |
| Title and purpose | Approximate time & interval | Location | Attendance by: |
| Risk Assessment | Per visit and before the work commence | Matimba P/S P&T offices | Contractor team & Contract Manager |
| Overall contract progress and feedback | Per visit at the end of the day | Matimba P/S P&T offices | Site Manager,engineer, coal management department & Contract Manager |
| Safety meeting | Per visit before the work commence | Matimba P/S P&T offices | Site Manager & Contract Manager |

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

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

***Contractor*’s management, supervision and key people**

**Provision of bonds and guarantees**

N/A

**Documentation control**

Supplier to send a report after every test to the contract Manager and the contract Manager must save the report on SharePoint

**Invoicing and payment**

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 showing the amount due for payment equal to that stated in the *Service Manager*’s payment certificate, purchase order number, vendor number, and tax number ,name, address and contact details

The *Contractor* shall address the tax invoice to Invoiceseskomlocal@eskom.co.za

and include on each invoice the following information:

Name and address of the *Contractor* and the *Service Manager;*

The contract number and title;

*Contractor*’s VAT registration number;

The *Employer*’s VAT registration number 4740101508;

Description of service provided for each item invoiced based on the Price List;

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

(add other as required)

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

**Contract change management**

N/A

**Records of Defined Cost to be kept by the *Contractor***

N/A

**Insurance provided by the *Employer***

As per TSC3 Core Clause 86.1

**Training workshops and technology transfer**

Eskom Technician to be present and involved for knowledge and skills transfer

**Design and supply of Equipment**

N/A

**Things provided at the end of the *service period* for the *Employer*’s use**

**Equipment N/A**

**Information and other things**

**Management of work done by Task Order**

No task will be performed without an issue of signed task order and purchase order

**Health and safety, the environment and quality assurance**

**Health and safety risk management**

To be updated when as soon as there is information available after the Strategy meeting

**Environmental constraints and management**

To be updated when as soon as there is information available after the Strategy meeting

**Quality assurance requirements**

To be updated when as soon as there is information available after the Strategy meeting

**Procurement**

**People**

**Minimum requirements of people employed**

**BBBEE and preferencing scheme**

**Accelerated Shared Growth Initiative – South Africa (ASGI-SA)**

The *Contractor* complies with and fulfils the *Contractor’s* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the *Contractor*’s ASGI-SA Compliance Schedule stated below

.

The *Contractor* shall keep accurate records and provide the *Service Manager* with reports on the *Contractor*’s actual delivery against the above stated ASGI-SA criteria. [Elaborate on access to and format of records and frequency of submission etc.]

The *Contractor*’s failure to comply with his ASGI-SA obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

**Subcontracting**

**Preferred subcontractors**

N/A

**Subcontract documentation, and assessment of subcontract tenders**

N/A

**Limitations on subcontracting**

N/A

**Attendance on subcontractors**

N/A

**Plant and Materials**

**Specifications**

**Correction of defects**

***Contractor*’s procurement of Plant and Materials**

N/A

**Tests and inspections before delivery**

N/A

**Plant & Materials provided “free issue” by the *Employer***

N/A

**Cataloguing requirements by the *Contractor***

N/A

**Working on the Affected Property**

***Employer*’s site entry and security control, permits, and site regulations**

Successfully attend induction

Entrance to site shall be subject to permits /approved access

Obtain LAR before work commences and complete Risk Assessment

**People restrictions, hours of work, conduct and records**

Matimba P/S working times are from 07:00 to 16:30

Lunch break is from 12:00 to 12:45

**Health and safety facilities on the Affected Property**

To be updated after the strategy meeting

**Environmental controls, fauna & flora**

To be updated after the strategy meeting

**Cooperating with and obtaining acceptance of Others**

**Records of *Contractor*’s Equipment**

Cell phones, Laptops & Cameras must be declared at the Security gate including tools and equipment

**Equipment provided by the *Employer***

Supplier is required to bring their own equipment

**Site services and facilities**

**Provided by the *Employer***

N/A

**Provided by the *Contractor***

**Control of noise, dust, water and waste**

As per SHEQ specifications

**Hook ups to existing works**

N/A

**Tests and inspections**

**Description of tests and inspections**

As per SOW

**Materials facilities and samples for tests and inspections**

As per SOW

**List of drawings**

**Drawings issued by the *Employer***

N/A

|  |  |  |
| --- | --- | --- |
| **Drawing number** | **Revision** | **Title** |
| N/A |  |  |

1. This total is required by the *Employer* 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](http://www.ecs.co.za) [↑](#footnote-ref-2)
3. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-3)