



NEC3 Term Service Contract (TSC3)

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

and _____

(Reg No. _____)

for

The Provision Home-Work-Home transportation of Eskom three cycle shift employees from Emalahleni to Hendrina Power Station and from Emalahleni - KwaGuqa and Klarinet and the surrounding areas to a central point Total fuel garage next to BMW on the road from The Ridge leading towards Witbank dam and from the central point back to Emalahleni - KwaGuqa and Klarinet.

And

Home-Work-Home transport services for Eskom employees from Emalahleni to Hendrina Power Station and back daily Monday to Friday excluding public holidays.

For the period of 36 Months at Hendrina Power Station.

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

The Provision Home-Work-Home transportation of Eskom three cycle shift employees from Emalahleni to Hendrina Power Station and from Emalahleni - KwaGuqa and Klarinet and the surrounding areas to a central point Total fuel garage next to BMW on the road from The Ridge leading towards Witbank dam and from the central point back to Emalahleni - KwaGuqa and Klarinet.

And

Home-Work-Home transport services for Eskom employees from Emalahleni to Hendrina Power Station and back daily Monday to Friday excluding public holidays.

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

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

Options A	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	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:**

(Insert name and address of

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*.

Name & *organisation)*
signature of
witness

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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Employer**

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		
2		
3		
4		
5		
6		
7		

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

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

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

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X17: Low service damages
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract (June 2005) ²	
10.1	The <i>Employer</i> is (name):	Eskom Holdings SOC Limited (Reg No: 2002/015527/06), a juristic person 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 <i>Service Manager</i> is (name):	Christopher Zulu
	Address	Hendrina Power Station, Impala Street, Pullenshope
	Tel	013 296 3833
	Fax	
	e-mail	ZuluZC@eskom.co.za
11.2(2)	The Affected Property is	Hendrina Power Station
11.2(13)	The <i>service</i> is	Home-Work-Home transportation of Eskom three cycle shift employees from

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

		Emalahleni to Hendrina Power Station and from Emalahleni - KwaGuqa and Klarinet and the surrounding areas to a central point Total fuel garage next to BMW on the road from The Ridge leading towards Witbank dam and from the central point back to Emalahleni - KwaGuqa and Klarinet.
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 days
2	The Contractor's main responsibilities	(If the optional statement for this section is not used, no data will be required for this section)
21.1	The <i>Contractor</i> submits a first plan for acceptance within	N/A
3	Time	
30.1	The <i>starting date</i> is.	TBA
30.1	The <i>service period</i> is	36 months
4	Testing and defects	No data is required for this section of the <i>conditions of contract</i> .
5	Payment	
50.1	The <i>assessment interval</i> is	Last day of the month
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	2 weeks
51.4	The <i>interest rate</i> is	(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if

		no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.
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
	These are additional compensation events:	
7	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
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	
9	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
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	N/A
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	the person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him.
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See www.jointcivils.co.za)
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern

		Africa) or its successor body.		
	The place where arbitration is to be held is	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.		
12	Data for secondary Option clauses			
X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is			
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		0.		
		0.		
		0.		
		100%		
X2	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		
X17	Low service damages			
X17.1	The <i>service level table</i> is in			
X18	Limitation of liability			
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.00		
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248		
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of <ul style="list-style-type: none">the total of the Prices at the Contract Date and <ul style="list-style-type: none">the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/live/content.php?Item_ID=9248		

X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none">• Defects due to his design, plan and specification,• Defects due to manufacture and fabrication outside the Affected Property,• loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),• death of or injury to a person and• Infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	One (1) month after the end of the <i>service period</i> .

Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.
Z1	Cession delegation and assignment	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry.	
Z2	Joint ventures	
Z2.1	If the <i>Contractor</i> 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 <i>Employer</i> for the performance of this contract.	
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Service Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.	
Z2.3	The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.	
Z3	Change of Broad Based Black Economic Empowerment (B-BBEE) status	
Z3.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.	
Z3.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Service Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Service Manager</i> .	
Z3.3	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works.	
Z3.4	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.	
Z4	Ethics	
Z4.1	Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i> , 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 <i>Contractor's</i> obligation to Provide the Service or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).	

- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

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

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

Z5 Confidentiality

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

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

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

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

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

Z9 Notifying compensation events

- Z9.1 Delete from the last sentence in core clause 61.3, and replace with: If a Contractor does not notify compensation event within eight weeks of becoming aware of the event, he is not entitled to the change in Prices.

Z10 Employer's limitation of liability

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

Employer's liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

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

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

Annexure A: Insurance provided by the Employer

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

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self-insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the service provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
6. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

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

Annexure B: The Employer's Panel of Adjudicators

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

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

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

Part two - Data provided by the Contractor

[illegible]

CV's (and further key person's data including CVs) are in _____.

A	Priced contract with price list
11.2(12)	The <i>price list</i> is in
11.2(19)	The tendered total of the Prices is R

PART 2: PRICING DATA
TSC3 Option A

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

C2.1 Pricing assumptions: Option A

The conditions of contract

1. How work is priced and assessed for payment

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

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

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

2. Function of the Price List

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

3. Link to the Contractor's plan

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

4. Preparing the price list

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC Guidance Notes pages 14 & 15. In an Option A 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 A,

- Understands the function of the Price List and how work is priced and paid for,
- 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

4.1 Format of the *price list*

(From page 73 of the TSC3 Guidance Notes)

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

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

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

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

C2.2 the *price list*

Description/ Scope of work	Bus type	Estimated km per day	Estimated km per month	Days per month	Rate per km	Rate per month	Value
Home-Work- Home from Emalahleni (KwaGuqa and Klarinet) and the surrounding areas to a central point Total fuel garage next to BMW on the road from The Ridge leading towards Witbank dam and from the central point back to Emalahleni (KwaGuqa and Klarinet), Monday to Sunday including public holidays.	2 x 14 seater						
Home-Work- Home transportation of Eskom three cycle shift employees from Emalahleni and surrounding areas to Pullenshope Hendrina Power Station and back, Monday to Sunday including public holidays	3X14 seater						
transportation of employees from Emalahleni and surrounding areas to Pullenshope Hendrina	1X14 seater						

Power Station and back on and when required basis on the following times:19:00 on Monday, Tuesday, Wednesday, Friday Saturday and Sunday (*NOTE – This exclude Thursday). This additional transportation is for only employees that are working overtime 07:00 – 19:00							
Home-Work-Home transport services for Eskom employees from Emalahleni to Hendrina Power Station and back daily Monday to Friday excluding public holidays.	8 x 14 seater						
Home-Work-Home transport services for Eskom employees from Emalahleni to Hendrina Power Station and back daily Monday to Friday excluding public holidays.	2x22 seater						

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the service

1.1 Executive overview

1. Provision of 2 X 14 seater minibus to transport Eskom Hendrina Power Station shift employees from Emalahleni (KwaGuqa and Klarinet) and the surrounding areas to a central point Total fuel garage next to BMW on the road from The Ridge leading towards Witbank dam and from the central point back to Emalahleni (KwaGuqa and Klarinet), Monday to Sunday including public holidays.
2. Provision of 3 X 14 seater minibus to transport Eskom Hendrina Power Station **three (3) cycle** shift employees from Emalahleni and surrounding areas to Pullenshope Hendrina Power Station and back, Monday to Sunday including public holidays.
3. Provision of 1 X 14 seater minibus to transport Eskom Hendrina Power Station shift employees from Emalahleni and surrounding areas on and when required basis at the stipulated times 19:00 Monday, Tuesday, Wednesday, Saturday and Sunday (*NOTE – This excludes Thursday). Only for transportation is for only employees that are working overtime 07:00 – 19:00.

1.2 Employer's requirements for the service

- 1.2.1 The obligation of the Contractor to Employer, in terms of the contract shall, at all times, have priority above any other obligations he may have outside the contract
- 1.2.2 The Contractor shall abide by the detailed timetable and routes, which will be supplied and approved by Employer. Employer shall, however, have the exclusive right to amend the aforesaid timetables and routes from time to time in consultation with the Contractor
- 1.2.3 Any changes to the transport service, agreed to between Employer and the Contractor, may result in a decrease or an increase in the number of buses required operating the transport service. Should additional buses be required, buses of similar condition and capacity shall be introduced to the fleet. New rates, if applicable, will be negotiated between Employer and the Contractor if routes are changed.
- 1.2.4 The vehicles are to be used to transport Employer employees as defined in the contract only. Failure to comply with this clause will result in cancellation of the contract and Employer will not be held liable for injuries or any other liabilities whatsoever that may be sustained by passengers other than Employer employees.
- 1.2.5 The Contractor must ensure that the buses are kept neat and clean (interior and exterior) at all times.
- 1.2.6 Employer reserves the right to inspect the vehicles at all reasonable times and it is a requirement that the Contractor shall maintain the vehicles in a road-worthy condition and to the satisfaction of Employer. Road-worthy certificates must be submitted to the Employer's Representative every six months
- 1.2.7 The Contractor shall be expected to establish and maintain the services required entirely at his own expense and Employer shall not be liable for any costs whatsoever in connection with, or arising out of, the establishment, maintenance or operation of such service.
- 1.2.8 The Contractor, on request by Employer, shall exchange any of the allocated vehicles for a bigger or a smaller bus depending on the requirement; the prices shall be adjusted accordingly. Should the Contractor not be able to comply with this requirement, Employer reserves the right to obtain the amended bus service from another source and to cancel the specific exchange item of the contract with the Contractor
- 1.2.9 The Contractor undertakes to provide replacement transport services in the event of a vehicle breakdown, and to ensure that the Employer employees reach their destination as speedily as possible.
- 1.2.10 All vehicles provided by the Contractor must be of the same quality and standard and comply with Employer standards.
- 1.2.11 The Contractor undertakes to make transport available, on Employer's request, for any special occasion, which may be organized by Employer. The special service so provided will be subject to the conditions as laid down in this contract

- 1 2 12 The Contractor shall not be entitled to alienate, pledge, cede or deal in any manner whatsoever, with any claim he may have arising out of the contract or his rights and obligations, in terms of such contract, without the prior, written approval of Employer.
- 1.2 13 The Contractor undertakes to limit his service to the prescribed number of Employer passengers per bus. Should additional Employer passengers require transport, this requirement may be accommodated provided the additional passengers are able to produce a valid permit issued by an authorized Employer Transport official.
- 1.2 14 The Contractor shall operate the transportation service in a reasonable, proper and efficient manner and shall ensure that his employees are fully authorized and conduct their appointed tasks in a proper and workmanlike manner
- 1 2 15 A fully equipped First Aid Box and a Fire Extinguisher must be kept in a safe place in the bus driver's cab, to be supplied by the Contractor.
- 1.2.16 At the end of every month the Contractor is to furnish Employer with a detailed statement containing all relevant information e.g. number of passengers per day, etc.
- 1.2 17 Proper records are also to be submitted of all non-scheduled journeys and distances.
- 1 2 18 The Contractor undertakes and guarantees that he is legally authorized, qualified and properly equipped to render the transportation service required and that he is fully conversant with the legal provisions regarding the transport service to be rendered and undertakes to abide by such legal provisions during the contract. He shall, at all times, comply with all legal requirements in respect of the required transportation service and shall, be the holder of all licenses, permits and insurances that may be required in terms of the contract and all applicable legislation. All requisites Licenses and Insurance documents must be supplied by the Contractor to the Employer's Representative prior to commencement of the service. Failure to comply with this requirement can lead to the immediate cancellation of the contract.
- 1 2.19 The Contractor acknowledges that he has insurance cover in terms of the Compensation for Occupational Injuries and Diseases Act, 1993, and undertakes to supply Employer with proof of such insurance
- 1 2.20 The Contractor will make sure that all drivers on the Hendrina contract will be tested for substance abuse before commencing with the routes.
- 1.2.21 The drivers must at all times be in possession of the valid Public Transport Permits. The drivers must be able to produce their permits on demand, e.g. to the Officer of Transport appointed by Employer
- 1.2 22 Within seven (7) days from the date of contract award the Contractor will supply the Employer's Representative of Employer, Hendrina Power Station, with names of the drivers and copies of their PrDP's, Registration Certificates and COF's of the vehicles for this contract.
- 1 2.23 Within seven (7) days from date of contract award the Contractor will supply the Employer with their Road Transportation Permits to transport the Employer employees
- 1 2 24 All drivers must be equipped with a cell phone for direct communication between them and the Contractor. Drivers are not allowed to use cell phones whilst driving
- 1 2 25 The Employer reserves the right to terminate additional trips within 30 days
- 1 2.26 When appointing a new driver the Employer's Representative of Hendrina Power Station will be notified, in writing. The new driver must be tested and evaluated by an Employer employee and copies of his PrDP must be submitted to the Employer's Representative at Hendrina Power Station. The driver will undergo induction before commencing with his/her duties
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- 1 2.27 A R5, 000 00 fine will be payable for late coming of vehicle for the first ½ hour after arrival or pick up time. Thereafter it will be R 7,000.00
- 1 2.28 The Contractor will have a well-established depot where vehicles will be safe. (Nosa)
- 1.2.29 All repairs, break downs and services must be carried out by a qualified artisan and according to manufacturer's specifications. It will be the right of the Employer's representative to audit these requirements during the duration of this contract.

ADDITIONAL REQUIREMENTS

1. Mini and must be new or not older than 2 years (proof of registration) and must comply with *Employer's* specifications (240-62946386 Eskom Vehicle Safety Specification e g ABS brakes, driver and passenger airbag, seat belts for all seats)
2. Vehicles must be fitted with heaters
3. Vehicles must be fitted with On Board Computer with active tracking system
- 4 All vehicles must comply with the Road Transportation Act.
5. All drivers will do induction before the start of contract and must comply with the following:
 - 5.1 Driving/ operating permit
 - 5.2 Fitness to drive/operate (Red Ticket);
 - 5.3 Pre-operational inspections,
 - 5.4 Know and obey all Traffic signs,
 - 5.5 Seat belt use;
 - 5.6 Stick to Speed limits,
 - 5.7 Overtaking rules,
 - 5.8 Separation distances including safe approach distance for road going vehicles working mobile equipment;
 - 5.9 Give way rules,
 - 5.10 Prohibition of the use of mobile phones,
 - 5.11 Parking rules including separation distances and immobilization requirement
 - 5.12 Hazardous and restricted area access control rules, Communication and warning signal rules;
 - 5.13 Rules for people working on roadways,
 - 5.14 Controls of vehicle movements to ensure the safety of production and maintenance Personnel working on equipment; and
 - 5.15 Cessation or restriction of operation due to abnormal environmental conditions (for example, rain, high winds, fog), including "Go - No Go" criteria and the responsible person for this decision,
6. All new drivers appointed during the period of the contract must do induction before starting with the contract and documentation submitted to the Contract Manager.
- 7 All drivers on the Hendrina contract must do an advanced driving course. *Employer* will supply the company but the cost will be for the *Contractor* (New drivers will have to do training before appointed)
8. All vehicles must go through the COR Test every 12 months and the certificates shall be handed in at the FLEET OFFICER'S OFFICE for filling and updating. All vehicles to comply with SANS and ECE Standards.
- 9 Rim & Tyre Requirements:
 - i Front Wheels- New Tyres only
 - ii Spare wheels new tyres only
 - iii. Rear Wheels- New Tyres only
 - iv Standard Rims Preference. OEM specification

ALL tyres fitted to the same axle to be the same size / brand and pattern.

Vehicles operated under the conditions of this tender shall comply to the following

1 **Maintenance integrity strategy:**

- The Tenderer will have an effective maintenance strategy in place, and which will be audited from time to time This maintenance strategy will include:
- formal servicing and maintenance programmes according to manufacturer's specifications
- recording of maintenance and evidence trail
- competent and qualified technical employee to execute the maintenance strategy

2. **Drivers:**

- The Tenderer will have an effective and documented Driver recruiting, training and management strategy in place in accordance with Eskom standards, and which will be audited from time to time. This strategy will include:
- selection and recruiting processes
- training and re-training of employee
- employee management
- Recording of Driver activities and evidence trail

1 **Employee communication:**

The Contractor will have an effective and documented employee communication system in place which will be audited from time to time

A. Provincial road busses

Busses supplied under the conditions of this tender shall comply to the following Standard:-

Requirements	Description of Requirement
General	With the requirements of the Compulsory Specification for Motor Vehicles of Category M2 and M3 as published by Government Notice No 245 (Government Gazette No 33059) of 1 April 2010 (as attached), and
General	With the latest amended requirements of the Road Traffic Act and Regulations as applicable to the date of first registration of the buses concerned, and
General	The tilt angle of 28 degrees shall be possible when tested to SANS 20107 or Road Traffic Regulation 262

Requirements	Description of Requirement
General	Despite the exclusions permitted in the M2/M3 compulsory specification, the buses shall be fitted with ABS (anti-lock braking systems)
General	All seats shall be forward facing
General	The strength of the seats shall comply with the requirements of UN Reg 80 or SANS 1564 1992 "The strength of seats (and their anchorages) of large passenger buses".
Seatbelts	<p>Seatbelts for the driver and all passengers shall be fitted and shall be of the 3-point emergency locking retractor type, complying with the requirements of SANS 1080</p> <p>Seatbelt anchorages shall comply with the requirements of UN Reg 14 or SANS 1430: 1987 "Motor vehicle safety specification for anchorages for restraining devices in motor vehicles", except that for vehicles of category M3, the indicated test loads shall be supplemented by 6, 6 times the mass of the complete seat</p>
Lighting	<p>Minimum. 10 Lux at 20m, to be risk based.</p> <ul style="list-style-type: none"> - Standard OEM headlights required - Standard OEM Indicator lights - Standard OEM Reverse lights - Standard OEM Stop lights
Adequate walkways, access	<ul style="list-style-type: none"> - Steps shall be of the non-slip plate step type with adequate provision for 2 point contact - Emergency escape exits to comply with national standard
Reversing alarm	<p>Beeper type or OEM reversing alarm must be fitted</p> <p>Minimum Specification 90 dB at 1 m behind the vehicle.</p>
Horn	As per OEM specifications
Windscreen wipers	As per OEM specifications
Equipment identification	<p>Busses to be equipped with reflective numbers on front, rear and sides in order to allow other vehicle drivers to clearly identify the bus from a safe distance</p> <ul style="list-style-type: none"> - Minimum size 300 mm x 400mm - Reflective sheeting must be 3MTM Diamond GradeTM DG3 Reflective Sheeting Fluorescent Yellow Green 4083. - Front number to be transparent (As required by local road traffic department)
	3M reflective sheeting / marking film

Requirements	Description of Requirement
Reflective tape	As per Road Traffic Act. Front. White Side. Yellow Rear Red and yellow chevron which complies with the SABS 1329 standard specification.
ROP's	The strength of the superstructure shall comply with the requirements of UN Reg 66 or SANS 1563.
Fire suppression	Minimum Standard - Bus to be equipped with 2 x 9 kg dry powder ABC handheld fire extinguishers. - Fire extinguishers must be easily accessible - Daily and Monthly checks to be done.
Enclosed & A/C cabs	Busses shall be fitted with effective heaters that minimise noise and dust pollution
Advance in technology	On Board computer system

1.1 SAFETY OF BUSES

The Contractor must ensure that.

1.2.1 Before every trip

- ⇒ The interior and exterior of the vehicles are examined for any damage or default, especially the brakes
- ⇒ The vehicles must be thoroughly searched for suspicious parcels or objects (exterior and interior) It is of utmost importance that suspicious parcel or objects are reported to the South African Police Services immediately Once removed, the passengers may be transported If the suspect parcels or objects are not removed within a reasonable time the Contractor must provide an alternative service.

1.2.2 In areas of danger the vehicle driver must remove the bus immediately.

1.2.3 The vehicles must be kept at a proper enclosed depot when not in use

1.2.4 Vehicles must go through a test every 12 months and proof of this must be submitted to the Employer's Representative.

1.2.5 All vehicles used for transporting Employer employees will be proper maintained according to manufactures specifications and maintained at a proper workshop with qualified artisans

SAFETY ARRANGEMENTS

The *Contractor* shall, at his own expense, take all precautions requisite for the protection of life and property on, and about, and in any way connected with the service or equipment and shall indemnify, and keep indemnified, *Employer* against all losses, claims, demands, proceedings, damages, costs, charges and expenses of whatsoever nature, howsoever arising, in respect of injury to, or death of, any person at any time during the currency of the Contract

1.3 Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
OBL	Outside battery limits

2 Management strategy and start up.

2.1 The *Contractor's* plan for the service

Contractor's plan to align with Eskom requirement for the service

2.2 Management meetings

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

Title and purpose	Approximate interval	Location	Attendance by:
Contract Management	Monthly	Hendrina Power Station (HPS)	Fleet Officer, Office Business Administration Officer, Support Services Manager & Contractor
Road worthiness and safety of vehicle	Monthly	Contractor's depo	Fleet technical Officer, Fleet Officer, Ass Fleet Officer, Support services Manager & Contractor

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

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

2.3 *Contractor's* management, supervision and key people

Key people to be communicated with the employer before commencement of contract.

2.4 Provision of bonds and guarantees

N/A

2.5 Documentation control

As required by the employer

2.6 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.

The *Contractor* shall address the tax invoice to:

and include on each invoice the following information:

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

2.7 Contract change management

Not applicable

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

Records of all defined costs to be kept for availability on employer's request.

2.9 Insurance provided by the *Employer*

2.10 Training workshops and technology transfer

N/A

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

2.11.1 Equipment

N/A

2.11.2 Information and other things

N/A

2.12 Management of work done by Task Order

N/a

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

The *Contractor* shall comply with the Eskom and Hendrina health and safety requirements.

3.2 Environmental constraints and management

The *Contractor* shall comply with the Eskom and Hendrina environmental requirements.

3.3 Quality assurance requirements

The *Contractor* shall comply with the Eskom and Hendrina quality assurance requirements (QM-58).

4 Procurement

There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information **MUST** include any such procedures to be able to administer Disallowed Cost.

4.1 People

4.1.1 Minimum requirements of people employed

As determined by the service provider

4.1.2 Supplier Development and Localization

4.2 Subcontracting

Not applicable.

4.3 Plant and Materials

N/A

5 Working on the Affected Property

Some works can only be done outside normal working hours.

5.1 Employer's site entry and security control, permits, and site regulations

Permits will be issued by the employer for the service provider access to site

5.2 People restrictions, hours of work, conduct and records

As determined by the service provider

5.3 Health and safety facilities on the Affected Property

Refer to Eskom and Hendrina Health and Safety requirements.

5.4 Environmental controls, fauna & flora

Refer to Eskom and Hendrina Environmental requirements.

5.5 Cooperating with and obtaining acceptance of Others

The service provider is to cooperate with the employer's staff as per clause 25.

5.6 Records of *Contractor's* Equipment

Information regarding the service provider's equipment to be made available to the employer.

5.7 Equipment provided by the *Employer*

N/A

5.8 Site services and facilities

5.8.1 Provided by the *Employer*

N/A

5.8.2 Provided by the *Contractor*

The *Contractor* shall provide everything else necessary for providing the Service.

5.9 Control of noise, dust, water and waste

Noise and dust to be kept at minimal levels at all times.