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**NEC3 Term Service Contract (TSC3)**

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| --- | --- | --- |
| **Between** | **ESKOM HOLDINGS SOC Ltd**  **(**Reg No. 2002/015527/30) | |
| **and** | **………………………………………**  **(**Reg No. ……………………………….) | |
| **for** | **Approved Inspection Authority for Occupational Hygiene stressors services for Peaking Power Stations** | |
|  |  | |
| **Contents:** |  |  |
| **Part C1** | **Agreements & Contract Data** |  |
| **Part C2** | **Pricing Data** |  |
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|  |  |  |
| **CONTRACT No.** | **46000………………** | |
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|  |  | |
|  |  | |

PART C1: AGREEMENTS & CONTRACT DATA

|  |  |  |
| --- | --- | --- |
| **Contents:** |  |  |
| **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]** |  |

**C1.1 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:

# Approved Inspection Authority for Occupational Hygiene stressors services for Peaking Power Stations

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

|  |  |  |
| --- | --- | --- |
| **Option A** | **The offered total of the Prices exclusive of VAT is** | **R [●]** |
|  | **Sub total** | **R [●]** |
|  | **Value Added Tax @ 15% is** | **R [●]** |
|  | **The offered total of the amount due inclusive of VAT is[[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:** | ***(Insert name and address of organisation)*** | | | |
| **Name & signature of witness** | **Signature:…………………………**  **Print Name: …………….:………** |  | **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) | Avi Singh |  |  | |
| Capacity | General Manager: Peaking Power Stations |  |  | |
| for the *Employer* | Eskom Holdings SOC Ltd  c/o 15 Pasita Street  Rosenpark  7530 | | | |
| Name & signature of witness | ……………………………  Marna Bester  Procurement Manager |  | 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** | …………………………………………. |  | Avi Singh |
| **Capacity** | ………………………………………….. |  | General Manager: Peaking Power Stations |
| **On behalf of** | *(Insert name and address of organisation)* |  | Eskom Holdings SOC Ltd  c/o 15 Pasita Street  Rosenpark  7530 |
| **Name & signature of witness** | ………………………………………..  ……………………………………….. |  | ……………………………  Marna Bester  Procurement Manager |
| **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 *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** | | | |
|  | | | and secondary Options | |  | | | |
|  | | |  | | **X1: Price adjustment for inflation** | | | |
|  | | |  | | **X2 Changes in the law** | | | |
|  | | |  | | **X17: Low service damages** | | | |
|  | | |  | | **X18: Limitation of liability** | | | |
|  | | |  | | **X19: Task Order** | | | |
|  | | |  | | 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 | | | |
| 10.1 | | | The *Employer* is (name): | | **Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa** | | | |
|  | | | Address | | **Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg** | | | |
| 10.1 | | | The *Service Manager* is (name): | | **FJ van Loggerenberg** | | | |
|  | | | Address | | **15 Pasita Street**  **Rosenpark**  **7530** | | | |
|  | | | Tel | | **021 859-9205** | | | |
|  | | | e-mail | | [**vLoggeFJ@eskom.co.za**](mailto:vLoggeFJ@eskom.co.za) | | | |
| 11.2(2) | | | The Affected Property is | | **Acacia Power Station**  **Ankerlig Power Station**  **Drakensberg Pumped Storage**  **Gariep Power Station**  **Gourikwa Power Station**  **Ingula Pumped Storage**  **Palmiet Pumped Storage**  **Port Rex Power Station**  **Vanderkloof Power Station**  **Sere Wind Farm**  **Renewables** | | | |
| 11.2(13) | | | The *service* is | | **Approved Inspection Authority for Occupational Hygiene stressors services for Peaking Power Stations** | | | |
| 11.2(14) | | | The following matters will be included in the Risk Register | | **Termination by *Employer* due to unavailability of budget of forthcoming Financial Year(s)** | | | |
| 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 *law of the contract* is the law of | | **the Republic of South Africa** | | | |
| 13.1 | | | The *language of this contract* is | | **English** | | | |
| 13.3 | | | The *period for reply* is | | **24 Hours** | | | |
| 2 | | | 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** | | | |
| 21.1 | | | The *Contractor* submits a first plan for acceptance within | | **7 working days prior to commencement of any work** | | | |
| 3 | | | Time | |  | | | |
| 30.1 | | | The *starting date* is. | | **01 February 2023** | | | |
| 30.1 | | | The *service period* is | | **5 Years ending 31 January 2028** | | | |
| 4 | | | 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 | | | |
| 5 | | | Payment | |  | | | |
| 50.1 | | | The *assessment interval* is | | **After work has been performed as per *Employer*’s instruction** | | | |
| 51.1 | | | The *currency of this contract* is the | | **South African Rand** | | | |
| 51.2 | | | The period within which payments are made is | | **30 days after receipt of tax invoice and copy of *Employers* assessment certificate** | | | |
| 51.4 | | | 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.** | | | |
| 6 | | | Compensation events | | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data** | | | |
| 7 | | | 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 *Employer*'s risks | | | | **None** | | | | |
| 83.1 | When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force. | | | | | | | | |
| 83.2 | The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination | | | | **Refer insurance table A below** | | | | |
|  | **INSURANCE TABLE A** | | | | | | | | |
|  | **Insurance against** | | | | **Minimum amount of cover or minimum limit of indemnity** | | | | |
|  | Loss of or damage caused by the *Contractor* to the *Employer*’s property | | | | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | | | |
|  | Loss of or damage to Plant and Materials | | | | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | | | |
|  | Loss of or damage to Equipment | | | | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | | | |
|  | The *Contractor*’s liability for 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 | | | | **Loss of or damage to property**  The replacement cost  **Bodily injury to or death of a person**  The amount required by the applicable law. | | | | |
|  | Liability for 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 | | | | The amount required by the applicable law | | | | |
| 86 | Insurances by the *Employer* | | | | The *Employer* provides the insurances stated in the Insurance Table B below.  The *Contractor* will be liable for the applicable deductible, if any | | | | |
|  | **INSURANCE TABLE B** | | | | | | | | |
|  | **Insurance against or name of policy** | | | | **Minimum amount of cover or minimum limit of indemnity** | | | | |
|  | Assets All Risk | | | | Per the insurance policy document | | | | |
|  | Contract Works insurance | | | | Per the insurance policy document | | | | |
|  | Environmental Liability | | | | Per the insurance policy document | | | | |
|  | General and Public Liability | | | | Per the insurance policy document | | | | |
|  | Transportation (Marine) | | | | Per the insurance policy document | | | | |
|  | Motor Fleet and Mobile Plant | | | | Per the insurance policy document | | | | |
|  | Terrorism | | | | Per the insurance policy document | | | | |
|  | Cyber Liability | | | | Per the insurance policy document | | | | |
|  | Nuclear Material Damage and Business Interruption | | | | Per the insurance policy document | | | | |
|  | Nuclear Material Damage Terrorism | | | | Per the insurance policy document | | | | |
| 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 *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than | | **Not applicable** | | | |
| 11 | | | Data for Option W1 | |  | | | |
| W1.1 | | | 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).** | | |
| W1.2(3) | | | 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.** | | | |
| W1.4(2) | | | The *tribunal* is: | | **Arbitration** | | | |
| W1.4(5) | | | The *arbitration procedure* is | | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** | | | |
|  | | | The place where arbitration is to be held is | | **Cape Town, 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 *base date* for indices is | | **3 Months before contract start date** | | | |
|  | | | The proportions used to calculate the Price Adjustment Factor are: | | **proportion** | **linked to index for** | **Index prepared by** | |
|  | | |  | | 100 | CPI Index Table B | *Contractor* & approved by *Employer* | |
| **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 *service level table* is** | | **Listed below** | | | |
|  | | | |  |  |  | | --- | --- | --- | | **Low Service Damage Description** | **Value Of Low Service Damages** | **Limit Of Low Service Damage** | | Service delaying outage critical path (delaying other *Contractor*(s) from starting / completing their work) | 1.5% of fixed monthly service or Task order value for an ad-hoc service | Limited to 10% of monthly task order service value / task order value for ad-hoc service | | Service delays not finishing as per agreed upon programmed submitted to the *Service Manager* | 2% of fixed monthly service or Task order value for an ad-hoc service | Limited to 10% of monthly task order service value / task order value for ad-hoc service | | Delay in submission of documents as detailed in this agreement | 1% of fixed monthly service or Task order value for an ad-hoc service | Limited to 10% of monthly task order service value / task order value for ad-hoc service | | Rework due to poor workmanship | 3% of fixed monthly service or Task order value for an ad-hoc service | Limited to 10% of monthly task order service value / task order value for ad-hoc service | | No response of NCR within 3 days | 1% of fixed monthly service or Task order value for an ad-hoc service | Limited to 10% of monthly task order service value / task order value for ad-hoc service | | | | | | |
| X18.1 | | | The *Contractor*’s liability to the *Employer* for indirect or consequential loss is limited to | | **R0.0 (zero Rand)** | | | |
| X18.2 | | | For any one event, the *Contractor*’s liability to the *Employer* for loss of or damage to the *Employer*’s property is limited to | | **the amount of the deductibles relevant to the event** | | | |
| X18.3 | | | The *Contractor*’s liability for Defects due to his design of an item of Equipment is limited to | | **The greater of**   * **the total of the Prices at the Contract Date**   **and**  **the amounts excluded and unrecoverable from the *Employer*’s insurance (other than the resulting physical damage to the *Employer*’s property which is not excluded) plus the applicable deductibles** | | | |
| X18.4 | | | The *Contractor*’s total liability to the *Employer*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | | **the total of the Prices other than for the additional excluded matters.**  **The *Contractor’s* total liability for the additional excluded matters is not limited.**  **The additional excluded matters are amounts for which the *Contractor* is liable under this contract for**   * **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 *Employer*’s property, Plant and Materials),** * **death of or injury to a person and**   **infringement of an intellectual property right.** | | | |
| X18.5 | | | The *end of liability date* is | | **One (1) months after the end of the *service period*.** | | | |
| **X19** | | | **Task Order** | |  | | | |
| X19.5 | | | The *Contractor* submits a Task Order programme to the *Service Manager* within | | **3 days of receiving the Task Order** | | | |
| **Z** | | | **The *additional conditions of contract* are** | | **Z1 to Z14 always apply.** | | | |
| **Z1** | | | **Cession delegation and assignment** | | | | |
| Z1.1 | | | The *Contractor* does notcede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.* | | | | |
| Z1.2 | | | Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry. | | | | |
| **Z2** | | | **Joint ventures** | | | | |
| Z2.1 | | | If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract. | | | | |
| Z2.2 | | | Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf. | | | | |
| Z2.3 | | | The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing. | | | | |
| **Z3** | | | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** | | | | |
| Z3.1 | | | Where a change in the *Contractor’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor*’s B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change. | | | | |
| Z3.2 | | | The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*. | | | | |
| Z3.3 | | | Where, as a result, the *Contractor’s* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor*’s obligation to Provide the Service. | | | | |
| Z3.4 | | | Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. | | | | |
| **Z4** | | | **Confidentiality** | | | | |
| Z4.1 | | 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. | | | | | |
| Z4.2 | | 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*. | | | | | |
| Z4.3 | | 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. | | | | | |
| Z4.4 | | 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*. | | | | | |
| Z4.5 | | The *Contractor* ensures that all his sub*Contractor*s abide by the undertakings in this clause. | | | | | |
| **Z5** | | **Waiver and estoppel: Add to core clause 12.3:** | | | | | |
| Z5.1 | | 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. | | | | | |
| **Z6** | | | **Health, safety and the environment: Add to core clause 27.4** | | | | |
| Z6.1 | | | 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 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 Sub*Contractor*s, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing. | | | | |
| Z6.2 | | | 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 Sub*Contractor*s, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing. | | | | |
| **Z7** | | **Provision of a Tax Invoice and interest. Add to core clause 51** | | | | | |
| Z7.1 | | 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. | | | | | |
| Z7.2 | | 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. | | | | | |
| Z7.3 | | 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. | | | | | |
| **Z8** | | **Notifying compensation events** | | | | | |
| Z8.1 | | 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. | | | | | |
| **Z9** | | ***Employer’s* limitation of liability** | | | | | |
| Z9.1 | | The *Employer’s* liability to the *Contractor* for the *Contractor’s* indirect or consequential loss is limited to R0.00 (zero Rand) | | | | | |
| Z9.2 | | 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 in core clause 63 and X19.11 if Option X19 Task Order applies to this contract. | | | | | |
| **Z10** | | **Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":** | | | | | |
| Z10.1 | | or had a business rescue order granted against it. | | | | | |
| **Z11** | | **Ethics**  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 Sub*Contractor*s or Sub*Contractor’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 Sub*Contractor*s or the Sub*Contractor’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 | | | | | |

**Z12 Insurance**

**Z \_12\_.1 Replace core clause 83 with the following:**

|  |  |  |
| --- | --- | --- |
| **Insurance cover** | 83 |  |
|  | 83.1 | When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force. |
|  | 83.2 | The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.   |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | **INSURANCE TABLE A**   |  |  | | --- | --- | | **Insurance against** | **Minimum amount of cover or minimum limit of indemnity** | | Loss of or damage caused by the *Contractor* to the *Employer*’s property | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | Loss of or damage to Plant and Materials | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | Loss of or damage to Equipment | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | The *Contractor*’s liability for 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 | **Loss of or damage to property**  The replacement cost  **Bodily injury to or death of a person**  The amount required by the applicable law. | | Liability for 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 | The amount required by the applicable law | | |
|  |  |  |
|  |  |  |

**Z \_\_12.2 Replace core clause 86 with the following:**

|  |  |  |
| --- | --- | --- |
| **Insurance by the *Employer*** | 86 |  |
|  | 86.1 | The *Employer* provides the insurances stated in the Insurance Table B |

|  |  |
| --- | --- |
| **Insurance against or name of policy** | **Minimum amount of cover or minimum limit of indemnity** |
| Assets All Risk | Per the insurance policy document |
| Contract Works insurance | Per the insurance policy document |
| Environmental Liability | Per the insurance policy document |
| General and Public Liability | Per the insurance policy document |
| Transportation (Marine) | Per the insurance policy document |
| Motor Fleet and Mobile Plant | Per the insurance policy document |
| Terrorism | Per the insurance policy document |
| Cyber Liability | Per the insurance policy document |
| Nuclear Material Damage and Business Interruption | Per the insurance policy document |
| Nuclear Material Damage Terrorism | Per the insurance policy document |

|  |  |  |
| --- | --- | --- |
| **Z13** | **Nuclear Liability** | |
| Z13.1 | The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS. | |
| Z13.2 | The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*. | |
| Z13.3 | Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*. | |
| Z13.4 | The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter. | |
| Z13.5 | The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned. | |
| **Z14** | **Asbestos** | |
| For the purposes of this Z-clause, the following definitions apply: | | |
| **AAIA** | | means approved asbestos inspection authority. |
| **ACM** | | means asbestos containing materials. |
| **AL** | | means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL. |
| **Ambient Air** | | means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet. |
| **Compliance Monitoring** | | means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| **OEL** | | means occupational exposure limit. |
| **Parallel Measurements** | | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results. |
| **Safe Levels** | | means airborne asbestos exposure levels conforming to the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| **Standard** | | means the *Employer*’s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles. |
| **SANAS** | | means the South African National Accreditation System. |
| **TWA** | | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA. |
| Z14.1 | The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM. | |
| Z14.2 | Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor*’s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan. | |
| Z14.3 | The *Employer* manages asbestos and ACM according to the Standard. | |
| Z14.4 | In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe. | |
| Z14.5 | The *Contractor*’s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable. | |
| Z14.6 | The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001. | |
| Z14.7 | Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer*’s expense, and conducted in line with South African legislation. | |

**C1.2 Contract Data**

# Part two - Data provided by the *Contractor*

**[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry)**

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

**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 | **%** |
| 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** |

Part 2: Pricing Data

**TSC3 Option A**

|  |  |
| --- | --- |
| **Document reference** | **Title** |
| C2.1 | Pricing assumptions: Option A |
| C2.2 | The *price list* |

**C2.1 Pricing assumptions: Option A**

# How work is priced and assessed for payment

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

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 11  11.2 | (12) The Price List is the *price list* unless later changed in accordance with this contract. |
|  |  | (17) The Price for Services Provided to Date is the total of   * the Price for each lump sum item in the Price List which the *Contractor* has completed and * where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate. |
|  |  | (19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |

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

# Function of the Price List

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

# Link to the *Contractor*’s plan

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

# Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 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.

## Format of the *price list*

(From the example given in an Appendix within 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***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item nr** |  | **Description** | **Unit** | **Rate** |
|  | 3000031886 | Sampling and testing for asbestos material | EA |  |
|  | 3000030951 | Perform Asbestos air monitoring | EA |  |
|  | 3000027127 | Perform Occupational Hygiene - Ergonomics survey | Day |  |
|  | 3000027127 | Perform Occupational Hygiene – Hazardous chemical agent survey (Excl sampling) | Day |  |
|  | 3000027127 | Perform Occupational Hygiene - Illumination survey | Day |  |
|  | 3000027127 | Perform Occupational Hygiene – Indoor Air Quality survey | Day |  |
|  | 3000027127 | Perform Occupational Hygiene – Noise survey | Day |  |
|  | 3000027127 | Perform Occupational Hygiene – Thermal stress survey (Heat stress & Cold stress) | Day |  |
|  | 3000027127 | Perform Occupational Hygiene – Ultraviolet radiation survey (microwave) | Day |  |
|  | 3000031506 | Perform Occupational Hygiene Risk Assessment | EA |  |
|  | 3000031503 | SAIOH registered Occupational Hygienist Rate | H |  |
|  | 3000031512 | SAIOH registered Occupational Hygiene Technologist Rate | H |  |
|  | 3000018477 | Living out rate per night | EA |  |
|  | 3000003193 | Transport of personnel per Km (Sedan) | KM |  |
|  | 3000018528 | Flights – economy CPT – DUR (either way) | EA |  |
|  | 3000018528 | Flights – economy CPT – BFN (either way) | EA |  |
|  | 3000018528 | Flights – economy CPT – ELS (either way) | EA |  |
|  | 3000018528 | Flights – economy CPT – JNB (either way) | EA |  |
|  | 3000018528 | Flights – economy CPT – GRJ (either way) | EA |  |
|  | 3000018528 | Flights – economy JNB – BFN (either way) | EA |  |
|  | 3000018528 | Flights – economy JNB – ELS (either way) | EA |  |
|  | 3000018528 | Flights – economy JNB – DUR (either way) | EA |  |
|  | 3000018528 | Flights – economy JNB – GRJ (either way) | EA |  |
|  | 3000004572 | PAY FEE:MOTOR VEHICLE,NT,DAILY | EA |  |
|  | 3000033295 | Health & Safety file (Once off duration of the contract) | EA |  |
|  |  |  |  |  |
|  |  |  |  |  |

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

**NOTE**

Prices are fixed for the first year of contract thereafter CPA (Contract Price Adjustment) will apply for the second and subsequent years of contract.

CPA is managed as per Clause X1 under Contract Data by *Employer*. Tenderers are required to complete and submit with offer, the CPA tender returnable, if SEIFSA indices are not known this can be discussed prior to contract award.

Part 3: 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

Occupational Hygiene Stressors including asbestos has been found to be present at Peaking Plants. These occupational hygiene stressors have been listed in the Peaking health risk assessment and poses a risk of employees contracting occupational diseases. To eliminate this risk, Peaking is required to have a contract with the Approved Inspection Authority (AIA) to assist in conducting occupational hygiene surveys in all Peaking stations and during the removal of asbestos as required by the Health Regulation of the Occupational Health and Safety Act No 85 of 1993.

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

Eskom requires the services of an Approved Inspection Authority (AIA) to assist in conducting occupational hygiene surveys in all Peaking stations and during the removal of asbestos as required by the Health Regulation of the Occupational Health and Safety Act No 85 of 1993.

The AIA must be registered in accordance with the provision of the Occupational Health and Safety Act, 1993 (Act No.83 of 1993).

The AIA must produce proof of registration with the department of Employment and Labour.

The AIA must provide Eskom with a safety file with the (minimum) valid medicals, 37(2) Agreement and the letter of good standing.

The AIA must comply with all the Health regulations under the Occupational Health and Safety Act and applicable SANS standard.

For asbestos work, the AIA will be required to produce the results or clearance certificate as soon as possible but not later than 24 hours from the time survey is completed. For all other Occupational hygiene surveys the final report will need to be submitted to Eskom not later than 15 days from the date of the survey.

When suspected materials are identified on site the services of the AIA will be required to take sample, ensure analysis are performed by an SANAS accredited laboratory and issue a report of the findings to the relevant site within 24 hours preferably or as agreed with management.

The works for the AIA with regards to asbestos work is as follows:

An approved inspection authority involved in type 2 or type 3 asbestos works must -

* ensure that the appropriately registered asbestos contractor performs only type 2 or type 3 asbestos work, as the case may be.
* obtain a copy of an up-to-date inventory of asbestos in place from the asbestos client prior to asbestos work taking place.
* in consultation with the registered asbestos contractor, compile a plan of work in accordance with regulation 15.
* approve and submit the plan of work at least seven days prior to commencement of asbestos work to the Chief Director: Provincial Operations for acknowledgement.
* receive acknowledgement from the Chief Director: Provincial Operations within the seven-day period.
* confirm the employee medical certificate of fitness and asbestos training records for that asbestos work.
* provide guidance and site-specific instructions to the registered asbestos contractor on the approved plan of work.
* inspect adherence to the approved plan of work and requirements of these Regulations.
* stop any registered asbestos contractor from executing any asbestos work which poses a health or safety risk to persons until such time that the risk has been appropriately mitigated.
* perform planned asbestos air monitoring in accordance with regulation 16 and provide, as soon as is reasonably practicable, air monitoring results to the registered asbestos contractor and asbestos client.
* issue a written report, which includes findings and, where necessary, recommendations; and
* ensure that, upon completion of type 2 or type 3 asbestos work, clearance is performed as required in regulation 22.
* AIA to provide a person who is SAIOH registered at an Occupational Hygienist/Technologist level.

## Interpretation and terminology

The following abbreviations are used in this Service Information:

|  |  |
| --- | --- |
| **Abbreviation** | **Meaning given to the abbreviation** |
| AIA | Approved Inspection Authority |
| DEL | Department of Employment and Labour |
| SAIOH | The Southern African Institute for Occupational Hygiene |
| SANAS | South African National Accreditation System |

# Management strategy and start up.

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

Removal of asbestos are sometimes planned to be done during outages or unplanned during breakdowns which are time sensitive. This requires the availability of the contractor on short notices in exceptional cases. The testing of areas in some cases can be reliant on the availability of the asbestos contractor and need to be planned accordingly.

## Management meetings

A meeting will be held on the day the contract start thereafter it will be on request of the supplier or employer’s agent.

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

The contractor will provide full management and supervision services on its staff. Eskom supervises the works.

***Employer* Conditions for personnel working on site:**

* The *Employer* reserves the right to have any of the *Contractor’s* personnel removed off site without cancelling the contract if, in the *Employer’s* opinion, it is warranted.
* The *Employer* reserves the right to request disciplinary/corrective action if, and when, required.
* The main *Contractor* is accountable for the management of their sub-contractors and suppliers and to ensure that the applicable legal and Eskom requirements (applicable during contract execution) are complied with by the sub-contractors and suppliers (all tiers). If there are non-conformances / non-compliance to applicable legal and Eskom requirements identified, then the Main Service Provider/Principle contractor will be penalised.
* The *Contractor* shall operate under the direction and instructions of the Power Station Manager, or such person/people as may be appointed by him if not in conflict with the Occupational Health and Safety Act and the Generation Plant and Safety Regulations.
* The *Contractor* shall maintain a high standard of workmanship expected by the *Employer* and shall comply with any quality assurance and quality procedures implemented by the *Employer.*
* The *Contractor* shall provide all overalls (when needed) for his staff with clearly identifying motifs.  
  The Contractor must provide the necessary supervision to ensure that activities are conducted safely.

## Documentation control

When tests are performed on site the details of tests done must be captured on a report with governing limits to indicate the acceptable and not acceptable results. Once tests are completed and are within the required limits a certificate of clearance (COC) must be issued to the power station management or *Services Manager* within the agreed timeframes.

## 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 assessment certificate.  Assessments are conducted monthly or at completion of task order for an ad-hoc service. Assessments of work completed and value is  mutually agreed between the *Service Manager* and *Contractor*. The *Contractor* issues invoice in line with the assessed value on the assessment certificate

Submitted invoices are paid 30 days from date of receipt of invoice by the *Employer*.

## Invoices submission

All invoices to be accompanied by the Payment Assessment Certificate as issued by the *Service Manager*.  Invoices to be submitted electronically as PDF documents to:[**Invoiceseskomlocal@eskom.co.za**](mailto:Invoiceseskomlocal@eskom.co.za)

## The Contractor includes the following on the Contractor's Tax Invoice:

* Name and address of Contractor
* Contractor’s VAT registration number if applicable;
* Contractor’s company registration number if applicable;
* Contractor’s banking details;
* Name and address of recipient;
* Tax invoice number and date of issue;
* Description of goods/ service provided;
* Period time for which the Tax Invoice is being rendered;
* Contract Number (commencing with a 46 prefix);
* Relevant Task Order Number (commencing with a 45 prefix);
* Relevant task order line item number;
* Relevant goods receipt / service entry number received from the Employer’s Service Manager
* Statement whether value added tax is included or excluded;
* Invoices to be made out to Eskom Holdings SOC Ltd

## How to submit invoices

**a) General Submission Information**

* The subject line on your email should only contain your Eskom vendor number
* Each invoice in PDF should be named with your invoice number only
* Ensure that the Eskom task order number is clearly indicated on your invoice together with the line number you are billing for
* Ensure you comply with the SARS tax requirements for submitting invoices electronically
* Each PDF files should contain one invoice, one debit note or one credit note only. Ou may submit more than one invoice per email
* All electronic invoices must be sent in PDF format only
* Attach proof of delivery to your invoice (eg assessment certificate)
* Where applicable, supporting documents must be attached to the scanned PDF invoice as one attachment
* Assessment Certificate / delivery note
* CPA calculation sheet
* Retention certificates where it is a retention invoice
* Any other appropriate documents

**b) Shipping Invoices**

* Hard copy invoices to be delivered to the *Service Manager* in addition to the submitted electronic copy
* Invoice (this should only reflect the shipping cost).
* Shipping invoices to be accompanied with
* Commercial invoice
* Delivery note
* Your shipping cost calculation relevant to the invoice – not a generic calculation (The amount of shipping costs calculation must balance with the amount on the invoice
* Forwarding agent’s invoice
* Customs document

**c) Foreign Invoices**

Hard copy invoices to be delivered to the *Service Manager* in addition to the submitted electronic copy

**d)            CPA**

CPA is applied as per Secondary Option X1 in Contract Data. If there is CPA on your invoice, it is recommended that you issue a separate invoice for CPA so that if there any issues on the CPA , the rest of the invoice can be paid whilst CPA issues are resolved.

CPA calculation sheets to accompany invoice

## Payment Queries

For all queries and follow-ups on invoice payments, kindly contact the Finance Shared Services Contact Centre

* Tel: 011 800 5060
* Email: [fss@eskom.co.za](mailto:fss@eskom.co.za)

## Eskom information

* Eskom Tax clearance and BBBEE certificate is available at: <https://www.eskom.co.za/Tenders/BBBEECertificate/Pages/Eskom_BBBEE_Certificate.aspx>
* Eskom VAT  Number is **4740101508**

## Avoid Payment Delays

* Failure to submit a PDF invoice with accompanying assessment electronically to[Invoiceseskomlocal@eskom.co.za](mailto:Invoiceseskomlocal@eskom.co.za) could result in payment delays.
* *Contractor* to ensure the  *Service Manager*  has an updated valid certified copy of BBBEE certificate or sworn affidavit, tax certificate and Letter of Goodstanding during contract period.. Failure to do so, could result in Eskom Vendor Management Dept blocking vendor details on Eskom vendor management system which affects payment processing of invoices
* It is important that the value stated on the invoice must be the same as the value stated on the task order. If the invoice value is different from the task order value, payment of the invoice will be delayed. It is strongly recommended that if there are any discrepancies on the invoice, it will be rectified with the *Service Manager* before it is submitted for payment
* Ensure remittance email address and name on invoice are correct and that Eskom has received the same information to update its records. If different in Eskom’s system, it will delay processing of invoice.

## Contract change management

Instructions to commence work per schedule or any specific requirements that is subject to change per specific station needs.

## Insurance provided by the *Employer*

As indicated in document C1.2 TSC3 Contract Data, Core Clause 83.1.

## Training workshops and technology transfer

Not applicable

## Design and supply of Equipment

Not applicable

# Health and safety, the environment and quality assurance

## Health and safety risk management

The Contractor comply with the South African Occupational Health and Safety Act No. 85 of 1993 and regulations, Eskom Safety, Health, Environment and Quality (SHEQ) Policy 32-727, National Building Regulations as well as SANS 10400 for all works. Furthermore, the Contractor comply with any additional current statutory requirements of any relevant Government Departments regarding health and safety and environmental health.

The Service Manager instruct the Contractor to stop work, without penalty to the Employer, when the Contractor’s personnel do not adhere to acceptable health & safety standards or contravene the health and safety sections and regulations. The Service Manager is immediately or before the end of a particular shift, informed of any injury or damage to property or equipment. The Contractor provides all the required safety and personal protective equipment to his staff for the duration of the contract.

Site SHE Specification, procedures, policies, guidelines, and standards applicable to the service, used as Eskom’s minimum requirements for Health and Safety, are provided to the Contractor.

The Contractor comply with the requirements for COVID-19 as per Government Directive from Department of Employment and Labour (DEL); Consolidate COVID-19 Direction on Health and Safety Measures in Workplaces issued by the Minister in terms of Regulation 4(10) of the National Disaster Regulation.

Only the latest version / revision of the applicable legislation, acts and regulations throughout the duration of the contract, is applied at the Peaking stations. Not limited to the following below, the legislation, acts and regulations that the Contractor complies with are:

* Compensation for Occupational Injuries and Diseases Act 130 of 1993
* National Water Act 36 of 1998
* Occupational Health and Safety Act and Regulations (85 of 1993)
* Disaster Management Act 57 of 2002.
* National Environmental Management Act 107 of 1998
* Applicable South African National Standards (SANS)
* National Road Traffic Act 93 of 1996
* Basic Conditions of Employment Act 75 of 1997
* National Veld and Forest Fire Act and Regulations 101 of 1998
* Environmental Conservation Act and Regulations 73 of 1989
* Committee of Land Transport Officials (COLTO)
* SACPCMP Act no. 48 of 2000
* Radiation Protection Act
* Construction Regulation

The *Contractor* establish and adheres to the health and safety of his own employees and those of its sub-contractors so that high standards of personnel health and safety are achieved and maintained. The *Contractor* exercise and adheres to all necessary care and measures to preclude exposure of personnel, labour, and nearby residents (if any) to potential health hazards and environmental pollutants.

The *Contractor* ensure that all persons who are employed and or deployed to work on site undergo police clearance and are certified to have no criminal records. This is required before any of the *Contractor’s* employees are allowed or given access to start work on site.

**3.1.1 SHE File**

The *Contractor* is required to compile a SHE File to comply with the *Employer’s* specification. The SHE file is submitted to the *Services Manager* for review and acceptance, 60 days before the commencement of the *service* on site and includes, but are not limited to the following:

* Safety, Health and Environmental Plan (SHE Plan)
* SHE organization within the Company-Responsibility & Accountability
* OHS Incident management Procedure (32-95)
* Planning of conduct of work activities including planning for changes and emergency work (Operational Plan)
* Management of PPE - Personal Protective Equipment (Procedure with the matrix)
* Emergency planning and fire risk management
* Vehicle and driver behaviour safety (Competency, Traffic Management, etc.)
* Sub-contractor or supplier selection and management
* Key personnel competency, training, appointments
* Communication and awareness Plan
* Behavioural Based Safety Procedure
* Employer’s Baseline SHE Risk Assessment (BRA).
* Contractor’s Baseline Risk Assessment in line with the Employer’s BRA (Identification, assessment and management of Safety, Health and Environmental risks related to the scope of work. The methodology used for the risk assessment is provided together with the BRA.)
* Valid Letter of Good Standing (COIDA or equivalent)
* SHE policy signed by CEO / MD - Complying to OHS Act Section 7 or ISO 45001
* Occupational hygiene and health risk assessment
* Medical surveillance
* Method Statements / Safe Working Procedures
* COVID-19 Risk Assessments and Workplace Plan

## Quality assurance requirements

The quality requirements are as per ISO 9001:2008 and as per Eskom document QM-58, SUPPLIER CONTRACT QUALITY REQUIREMENTS SPECIFICATION.

The contractor’s company quality documents are subject for verification and acceptance by Eskom.

# Working on the Affected Property

The *Contractor* is responsible for the repair, replacement or correction as necessary of all pieces of tools and equipment supplied by the *Employer* which are damaged and/or lost whilst in the *Contractor’s* custody and control.

The *Contractor* must ensure that any one of his employees, operating hoist equipment belonging to the *Employer*, is authorised*.*

**GPS Co-ordinates**

|  |  |  |
| --- | --- | --- |
| **Site** | **Latitude** | **Longitude** |
| Head offices Durbanville | -33.86790141241296 | 18.642629353967763 |
| Bella Rosa Offices | -33.86300898096185, | 18.640936985905473 |
| Eskom Bellville Offices | -33.901422813827, | 18.632730170058856 |
| Acacia Power Station | -33.88374995223623 | 18.539900755821762 |
| Ankerlig power station | -33.59438608583377 | 18.460802438615644 |
| Drakensberg power station | -28.564689187276056 | 29.084088524999807 |
| Gariep Power station | -30.51076019642638 | 25.493973471430674 |
| Gourikwa Power station | -34.166793053134036 | 21.96310725768296 |
| Ingula Power station | -28.280789607723634 | 29.587958313355394 |
| Palmiet Power Station | -34.19703543266588 | 18.97431105397644 |
| Port Rex Power station | -33.02806607415135 | 27.88142870976471 |
| Sere Wind farm | -31.49959284644088 | 18.113848304446407 |
| Vanderkloof Power Station | -29.99351714104852, | 24.729779726313687 |
| Ncora Hydro Electric station | -31.77869961235491, | 27.71826489226706 |
| Mbashe Hydro Electric station | -32.00078791148902, | 28.582103705059144 |
| First Falls Hydro Electric station | -31.59893058939229, | 28.8206473414517 |
| Second Falls Hydro Electric station | -31.684404467496233, | 28.88225049485534 |

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

* All Life Saving Rules as specified shall be adhered to. ESKOM does not permit any passengers to be transported at the back of any Truck, light domestic vehicle or enclosed light commercial vehicle.
* Each person shall sign the site entrance Register and this information shall also be collated by the *Contractor* for use during the scheduled meetings.
* Parking is allowed in the demarcated areas only and should it be required to drive on site, then please adhere to the following;

1. Maximum speed requirements must be adhered to
2. Driving is only allowed on tarred surfaces
3. Obey all road signs

* Original ID document must be presented to security
* No weapons may be taken on site
* No photographs may be taken whilst on site.
* All persons entering the Power Station premises will be required to undergo a breathalyser test. Any persons testing positive will not be allowed entry. The *Employer* has a zero tolerance towards alcohol.

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

It is expected that the *Contractor* and staff will uphold Eskom’s Code of Ethics.

The premises may be entered from 07:30 to 16:00 Mon-Thu, excluding public Holidays and from 07:30 to 12:00 on Fridays.

## Health and safety facilities on the Affected Property

Not all Peaking Power stations have medical facilities on site. Where this is the case the nearest hospital or clinic in the area are to be used. This must be clarified with the specific site before work commence.

## Environmental controls, fauna & flora

Following rules and regulations apply to all Peaking sites, to promote Eskom’s goal of zero harm to the environment:

* Respect and care for the natural environment and for each other
* No fires are allowed
* No poaching of wildlife or plants is allowed

## Records of *Contractor*’s Equipment

The security waybill process will apply for any movement of equipment. All products, parcels, documentation, parts, tools, materials and goods can only be removed from site by means of a removal permit issued by the *Employer*.

Equipment and vehicles left on site is done so at the *Contractor*’s own risk.

## Site services and facilities

### Provided by the *Employer*

Electric power for construction, both 220V AC and 380V 3-phase supply, is supplied at Site free of charge, but connection fees are for the Contractor's account. All installations comply with the details set out in Construction Power Supplies (Occupational Health and Safety Act - Act 85 of 1993).

The Employer does not guarantee continuity of supply and no claims for standing time as a result of power failures will be considered. The Employer connects distribution boards to a 380V three-phase AC power supply, only after the Contractor has submitted the valid Certificate of Compliance. A written request, indicating the Contractor's requirements is submitted to the Project Manager as soon as possible after the Contract Date.

Water

Potable and raw water for construction purposes are also available free of charge at the nearest point of supply installed.

A written request, indicating the Contractor's requirements is submitted to the Project Manager as soon as possible after the Contract Date.

Sanitary facilities

Permanent toilets to serve the Power Station and urinals at the boundary area have been constructed by the Employer and all the Contractor's personnel may make use of these facilities if within the allocated site for execution of the Works.

### Provided by the *Contractor*

The Contractor provide their own transport, tools and equipment. Sites do not have canteen facilities and contractor will be required to provide their own food.

## Control of noise, dust, water and waste

Per site specific requirements

## Hook ups to existing works

In compliance with site work requirements and safety regulations

# List of documents

## Documents issued by the *Employer*

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

|  |  |  |
| --- | --- | --- |
| **Document number** | **Revision** | **Title** |
| OHSAct | Latest Revision | The Occupational Health and Safety Act No. 85 of 1993 and Regulations |
| 32-1034 \*\* | Latest Revision | Eskom’s Procurement and Supply Chain Management Procedure |
| COID | Latest Revision | The Compensation for Occupational Injuries and Diseases Act No.130 of 1993, amended by government notices to 30 April 2004 or Equivalent |
| 32-93 | Latest Revision | Eskom Procedure for Vehicle and Driver Safety Management |
| 320-727 | Latest Revision | Eskom SHEQ Policy |
| 32-421 | Latest Revision | Eskom Life Saving Rules |
| GG 43893, GNR.1196 | Latest Revision | Asbestos Abatement Regulations (Published 10  November 2020) |
| 32-136 | Latest Revision | Contractor Health and Safety Requirements |
|  |  |  |

\* Available on request

\*\* Available at [*https://www.eskom.co.za/Tenders/EskomPurchasingPolicies/Pages/Eskom\_Purchasing\_Policies.aspx*](https://www.eskom.co.za/Tenders/EskomPurchasingPolicies/Pages/Eskom_Purchasing_Policies.aspx)

TASK ORDER

|  |  |  |  |
| --- | --- | --- | --- |
| **To the *Contractor*** | [●] | **Tel:** | [●] |
| **Address** | [●] | **Fax:** | [●] |
| **Attention** | [name] [●] | **Date:** | [●] |
| **E mail** | [●] | **Ref:** | [●] |

Dear Sirs,

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract title** | [●] | **Number:** | [●] |
| **Contract action** | **Clause X19.2 Task Order** | | |

Further to our consultations dated [●………………] about the content of this Task Order and in terms of clause X19.1(1) and X19.1(2) in secondary Option X19 of the above contract, I hereby instruct the *Contractor* to carry out the below stated work as a Task within the *service*.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Task Order No.** | **[●]** | | *service* | .**[●]** |
|  | | | | |
| **Detailed description of the work in the Task:** | | **[●]** | | |
| **Starting date for the Task** | | **[●]** | | |
| **Task Completion Date** | | **[●]** | | |
| **Delay damages (if any)** | | **[●]** | | |
|  | |  | | |
| **A priced list of items of work in the Task in which items are taken from the Price List is attached** | | |  | |
| **Total of Prices for items of work taken from the Price List per the attached priced list is:** | | | R.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| **Total of Prices for items of work not in the Price List (details attached) is:** | | | R.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| **Total of the Prices for this Task Order** | | | R \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

Yours faithfully,

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Signature **(*Service Manager*)** |  | Name |  | Date |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Distribution**: |  |  |  |  |
|  |  |  |  |  |

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)