



## NEC3 Term Service Contract (TSC3)

**Between ESKOM HOLDINGS SOC LIMITED**  
**(Reg. No. 2002/015527/30)**

**and**  
**(Reg. No.)**

**for THE PROVISION OF STAFF BUS TRANSPORT**  
**SERVICES FOR MEDUPI POWER STATION PROJECT**

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**CONTRACT No. TBA**

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## PART C1: AGREEMENTS & CONTRACT DATA

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## C1.1 Form of Offer & Acceptance

### Offer

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

### The Provision of Bus Transportation Services for Medupi Power Station Project

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                  |  |
|           | Value Added Tax @ 15% is   |  |
|           | The offered total of the amount due inclusive of VAT is <sup>1</sup> |  |

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

Signature(s)

Name(s)

Capacity

**For the  
tenderer:**

Name &  
signature of  
witness

Date: .....

Tenderer's CIDB registration number:

N/A

<sup>1</sup> This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

## THE PROVISION OF STAFF BUS TRANSPORT SERVICES FOR MEDUPI POWER STATION PROJECT

**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)

Zandi Shange

Capacity

General Manager Group Capital -  
Medupi

**for the  
Employer**

Eskom Holdings SOC Ltd

Name &  
signature of  
witness

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**

| No. | Subject | Details |
|-----|---------|---------|
|     | None    | N/A     |

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

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

**For the tenderer:****For the Employer**

Signature

Name

Capacity

On behalf  
ofName &  
signature  
of witness

Date

## C1.2 TSC3 Contract Data

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

| Clause   | Statement   | Data  |
|----------|---|---|
| 1        | <b>General</b>  |   |
|          | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: |   |
|          | dispute resolution Option   | <b>A: Priced contract with price list</b>   |
|          | and secondary Options   | <b>W1: Dispute resolution procedure</b>   |
|          |   | <b>X2 Changes in the law</b>  |
|          |   | <b>X18: Limitation of liability</b>   |
|          |   | <b>X19: Task Order</b>  |
|          |   | <b>Z: Additional conditions of contract</b>   |
|          | of the NEC3 Term Service Contract (April 2013) <sup>2</sup>                             |   |
| 10.1     | The <i>Employer</i> is (name):  | <b>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</b> |
|          | Address   | <b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>   |
| 10.1     | The <i>Service Manager</i> is (name):   | <b>Harold Marais</b>  |
|          | Address   | <b>Group Capital Division<br/>Medupi Power Station Project<br/>Site Infrastructure Department<br/>Private Bag 7502<br/>Onverwacht<br/>0557</b>          |
|          | Tel   | <b>+27 14 762 2417</b>  |
|          | Fax   | <b>N/A</b>  |
|          | e-mail  | <b><a href="mailto:MaraisHJ@eskom.co.za">MaraisHJ@eskom.co.za</a></b>   |
| 11.2(2)  | The Affected Property is  | <b>Medupi Power Station Project</b>   |
| 11.2(13) | The <i>service</i> is   | <b>Bus Transportation Services</b>  |
| 11.2(14) | The following matters will be included in the Risk Register                             | <b>Covid-19 risk</b>  |

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

**Industrial Action**

|          |  |   |
|----------|--|---|
| 11.2(15) | The Service Information is in                                    | <b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>  |
| 12.2     | The <i>law of the contract</i> is the law of                     | <b>the Republic of South Africa</b>   |
| 13.1     | The <i>language of this contract</i> is                          | <b>English</b>  |
| 13.3     | The <i>period for reply</i> is                                   | <b>7 Days</b>   |
| 2        | <b>The <i>Contractor's</i> main responsibilities</b>             |   |
| 21.1     | The <i>Contractor</i> submits a first plan for acceptance within | <b>7 days</b>   |
| 3        | <b>Time</b>  |   |
| 30.1     | The <i>starting date</i> is.                                     | <b>01 December 2022</b>   |
| 30.1     | The <i>service period</i> is                                     | <b>twelve (12) Months (30 November 2023)</b>  |
| 4        | <b>Testing and defects</b>                                       |   |
| 5        | <b>Payment</b>   |   |
| 50.1     | The <i>assessment interval</i> is                                | <b>The 25<sup>th</sup> day of each successive month.</b>  |
| 51.1     | The <i>currency of this contract</i> is the                      | <b>South African Rand</b>   |
| 51.2     | The period within which payments are made is                     | <b>14 days from receipt of valid tax invoice.</b>   |
| 51.4     | The <i>interest rate</i> is                                      | <b>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.</b>   |
| 6        | <b>Compensation events</b>                                       | <b>Compensation event to be dealt as they becomes known and in accordance with sub clause 60 to 65 of this contract.<br/>The <i>Contractor</i> must submit a quotation for a compensation event, ie Additional transport services that might be required. . The <i>Service Manager</i> will assess the quotation at market related prices at the time of the event.</b> |
|          | These are additional compensation events:                        |   |
| 7        | <b>Use of Equipment Plant and Materials</b>                      | <b>Not Applicable</b>   |
| 8        | <b>Risks and insurance</b>                                       |   |
| 80.1     | These are additional <i>Employer's</i> risks                     | <b>None (these risks are addressed as part of the standard NEC)</b>   |

## THE PROVISION OF STAFF BUS TRANSPORT SERVICES FOR MEDUPI POWER STATION PROJECT

|           |   |   |
|-----------|---|---|
| 83.1      | The <i>Employer</i> provides these insurances from the Insurance Table  | <b>None</b>   |
| 83.1      | The <i>Employer</i> provides these additional insurances  | <b>None</b>   |
| 83.1      | The <i>Contractor</i> provides these additional insurances:   | <b>Against failure of the <i>Contractor</i> to use the skill and care normally used by <i>Contractors</i> providing products and services similar to the service for amounts at the discretion of the <i>Contractor</i></b>   |
| 83.1      | The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is  | <b>R 1Million (One Million Rand) per incident but unlimited during the service period</b>   |
| 83.1      | The minimum amount of cover for loss of or damage to Equipment including but not be limited to breakage, damage, loss, fire, theft, malicious damage or damages induced by riot & strike (SASRIA) is:   | <b>For a sum sufficient to provide for their replacement at the Site</b>  |
| 83.1      | The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is: | <b>Whatever the <i>Contractor</i> deems necessary for any one incident but unlimited during the period of insurance with "cross liability" so that the insurance applies to the Parties involved in the Contract separately.</b><br><br><b>Whilst the amount of cover to be purchased is at the discretion of the <i>Contractor</i>, the <i>Employer</i> suggests that the minimum cover not be less than R25 000 000 (twenty five million Rand) per incident and unlimited during the period of the Contract</b> |
| 83.1      | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:  | <b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands) and/or as provided by the laws of the Country in which the <i>Contractor's</i> employees are domiciled</b>   |
| <b>9</b>  | <b>Termination</b>  | <b>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. Section 9 of the <i>conditions of contract</i> will be applicable</b>   |
| <b>10</b> | <b>Data for main Option clause</b>  |   |
| A         | Priced contract with price list   | <b>Main Option A</b>  |
| 20.5      | The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than  | <b>Four (4) weeks.</b>  |
| <b>11</b> | <b>Data for Option W1</b>   |   |

|            |  |  |
|------------|--|--|
| W1.1       | The <i>Adjudicator</i>   | 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA). |
|            | Address  | To be selected for list of Adjudicators available from Arbitration foundation of Southern Africa   |
| W1.2(3)    | The <i>Adjudicator nominating body</i> 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.   |
| 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   | Johannesburg, South Africa   |
|            | The person or organisation who will choose an arbitrator   | the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.  |
|            | - if the Parties cannot agree a choice or  |  |
|            | - if the arbitration procedure does not state who selects an arbitrator, is  |  |
| <b>12</b>  | <b>Data for secondary Option clauses</b>   |  |
| <b>X2</b>  | <b>Changes in the law</b>  | There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data. As per Section X2.1 <i>conditions of contract</i>   |
| <b>X18</b> | <b>Limitation of liability</b>   |  |
| X18.1      | The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to  | <b>R0.0 (zero Rand)</b>  |
| X18.2      | For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to                                  | <b>R 1Million (one million Rand ) per incident but unlimited during the service period</b>   |
| X18.3      | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to  | greater of <ul style="list-style-type: none"> <li>the total of the Prices at Completion and</li> <li>the amounts excluded and unrecoverable from the <i>Employer's</i> insurance</li> </ul>  |
| 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 | the total of the Prices other than for the additional excluded matters.<br><br>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.<br><br>The additional excluded matters are amounts  |

for which the **Contractor** is liable under this contract for

- loss of or damage to property (other than the **Employer's** property, Plant and Materials),
- death of or injury to a person and

|            |   |  |
|------------|---|--|
| X18.5      | The <i>end of liability date</i> is   | <b>Last day of the end of the service period</b> |
| <b>X19</b> | <b>Task Order</b>   |  |
| X19.5      | The <b>Contractor</b> submits a Task Order programme to the <i>Service Manager</i> within | <b>2 Days of receiving the Task Order</b>        |
| <b>Z</b>   | <b>The additional conditions of contract are</b>  | <b>Z1 to Z11 always apply.</b>                   |

## **Z1 Cession delegation and assignment**

- Z1.1 The **Contractor** does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the **Employer**.
- Z1.2 Notwithstanding the above, the **Employer** may on written notice to the **Contractor** cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry.

## **Z2 Joint ventures**

- Z2.1 If the **Contractor** constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the **Employer** for the performance of this contract.
- Z2.2 Unless already notified to the **Employer**, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the **Contractor** on their behalf.
- Z2.3 The **Contractor** does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the **Employer** having been given to the **Contractor** in writing.

## **Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status**

- Z3.1 Where a change in the **Contractor's** legal status, ownership or any other change to his business composition or business dealings results in a change to the **Contractor's** B-BBEE status, the **Contractor** notifies the **Employer** within seven days of the change.
- Z3.2 The **Contractor** is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3 Where, as a result, the **Contractor's** B-BBEE status has decreased since the Contract Date the **Employer** may either re-negotiate this contract or alternatively, terminate the **Contractor's** obligation to Provide the Works.
- Z3.4 Failure by the **Contractor** to notify the **Employer** of a change in its B-BBEE status may constitute

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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 subcontractors 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 Subcontractors, 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

## THE PROVISION OF STAFF BUS TRANSPORT SERVICES FOR MEDUPI POWER STATION PROJECT

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.

**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 <i>Contractor</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends, |
| Coercive Action | means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,   |

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- |                    |   |
|--------------------|---|
| 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 <i>Contractor</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,                                   |
| Corrupt Action     | means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,  |
| Fraudulent Action  | means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation, |
| Obstructive Action | means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and        |
| Prohibited Action  | means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.   |
- Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Service for this reason.
- Z 11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.
- Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

## 2 Contract Data

### Part two - Data provided by the *Contractor*

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

| Clause  | Statement  | Data                                       |
|---|--|--|
| 10.1  | The <i>Contractor</i> is (Name):<br>Address<br>Tel No.<br>Email address:.  |  |
| 11.2(8)   | The <i>direct fee percentage</i> is<br>The <i>subcontracted fee percentage</i> is  | %<br>%                                     |
| 11.2(14)  | The following matters will be included in the Risk Register  | <b>None</b>                                |
| 11.2(15)  | The Service Information for the <i>Contractor's</i> plan is in:  | C3.1 <i>Employer's</i> Service Information |
| 21.1  | The plan identified in the Contract Data is contained in:  | Not applicable                             |
| 24.1  | The key persons are:<br>1 Name:<br>Job:<br>Responsibilities:<br>Qualifications:<br>Experience:<br>2 Name:<br>Job:<br>Responsibilities:<br>Qualifications:<br>Experience: |  |
| CV's (and further key person's data including CVs) are in Tender. |  |  |
| <b>A</b>  | <b>Priced contract with price list</b>   |  |
| 11.2(12)  | The <i>price list</i> is in  | <b>Part 2 Pricing Data</b>                 |
| 11.2(19)  | The tendered total of the Prices is  | <b>Rates based</b>                         |

**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>         | 1           |

## C2.1 Pricing assumptions: Option A

### The *conditions of contract*

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

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

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

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

### 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).

### 1. 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*:

## THE PROVISION OF STAFF BUS TRANSPORT SERVICES FOR MEDUPI POWER STATION PROJECT

- Format of the price list 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.

(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*

| -           | -  | <u>Unit</u>  | <u>Rate</u> |
|-------------|--|--------------|-------------|
| <u>Item</u> | <u>Bill Description</u>                      | -            | -           |
| <b>1.1</b>  | <b>22 Seater Bus</b>                         |              |             |
|             |  |              |             |
| 1.1.1       | Trip From Marapong to Medupi Site and Back   | <i>each</i>  | R -         |
| 1.1.2       | Trip From Onverwacht to Medupi Site and Back | <i>each</i>  | R -         |
| 1.1.3       | Trip From Lephalale to Medupi Site and Back  | <i>each</i>  | R -         |
|             |  |              |             |
| <b>2.1</b>  | <b>AD HOC Bus Services</b>                   |              |             |
|             |  |              |             |
| 2.1.1       | Traditional Council                          | <i>p/km</i>  | R -         |
|             |  |              |             |
| 2.1.2       | Weekend transportation for overtime          | <i>p/km</i>  | R -         |
|             |  |              |             |
| <b>2.2</b>  | <b>Daily Hire Rate</b>                       |              |             |
|             |  |              |             |
| 2.2.1       | 22 Seater Bus                                | <i>p/day</i> | R -         |

## PART 3: SCOPE OF WORK

| Document reference | Title                                 | No of pages |
|--------------------|---------------------------------------|-------------|
| C3.1               | This cover page                       | 1           |
|                    | <i>Employer's Service Information</i> | 8           |
|                    | Total number of pages                 | <b>9</b>    |

## C3.1: EMPLOYER'S SERVICE INFORMATION

### 1 Description of the service

#### 1.1 Executive overview

The contractor is required to provide to transport Eskom Medupi Power Station Project employees for home work home transport on a daily basis. The areas to be serviced include Onverwacht, Lephalale town and Marapong. The service will be for approximately +/-80 people. The service must be provided using 22 seater buses and drivers.

On adhoc basis Eskom will request weekend transport for home work home and transportation of stakeholders to various areas. Arrangements will be done prior by the Service manager.

#### 1.2 Provisions of Resources

##### 1.2.1. To be provided by Employer

- Area of loading at Medupi Power Station
- Buses routes with pick-up/collection points
- Access Permits
- General assistance and support where possible

##### 1.2.2. To be provided by Contractor

- 22 Seater busses
- Drivers
- Uniform
- Proof of cover for passenger liability insurance
- Communication devices for the drivers

##### 1.2.3. Working times

- Work Starting and Finishing Times
  - Normal days (Between Mondays to Thursday)
  - Personnel start 07:00 at Medupi Site and finish at 16:30.
  - Friday knock off time is 13:30.
- For month end Pay Weekends
  - Thursday knock off time is 13:30 and staff is Friday off

Bus schedules must take into consideration travel times and pick up point times must be stated. Any changes or information must be obtained from the fleet management.

#### 1.3 Employer's Requirements for the Service

- The supplier to submit a maintenance program on all buses and allow Eskom Medupi Power Station site representative to visit and evaluate the workshop where maintenance will be done.
- All the buses must be equipped with SABS approved seatbelts for each seat. The extra standby bus (for when a breakdown occurs) to have seatbelts as well.
- Eskom will carry out monthly inspections on each bus in conjunction with the bus driver and will give a detailed report to the contractor.
- The contractor guarantees that they are qualified and properly equipped to render the service and that they are fully conversant with the legal provisions regarding the service to be rendered and shall undertake to abide by such legal provisions.
- The contractor shall at all times comply with all legal requirements in respect of the required service and shall at all times be the holder of all licenses, permits and certificates that may be required in terms of all legislation.
- The contractor shall operate the said bus service in a reasonable, proper and efficient manner and shall ensure that his employees conduct their appointed task in a proper and workmanlike manner. However, the Contractor shall not be liable for any loss or damage

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arising from any failures on his part to operate any particular journey in strict accordance with the agreed time tables and routes, if such failure is due to circumstances beyond his control.

- The contractor shall ensure the continuity of the service at all times.
- The contractor shall abide by the detailed timetables and routes which are approved by Medupi Power Station. Medupi Power Station however reserves the right to amend the foresaid timetables and routes from time to time in consultation with the contractor.
- Any changes to the service agreed to between Medupi Power Station and the Contractor may result in a decrease or an increase in the number of busses required to operate the service. Should additional busses be required then buses of similar condition shall be introduced to the fleet. Medupi Power Station reserves the right to reduce the bus or buses depending on the scope of work.
- The contractor to supply Medupi Power Station with the roadworthy certificate of each vehicle.
- Drivers must be in uniform of supplier's choice (No takkies or caps are allowed).
- Drivers must have vehicle safety training or advanced driving certificates.
- All drivers must have Public Driving Permit (PDP), EC1/04 or EC licence certificate.
- Contractor must at least have one replacement vehicle available immediately in case of breakdowns.
- Contractor must have communication to all vehicles in operation. Driver needs to have a communication device at all times.

## 1.4 Vehicle Specifications

All buses must comply with as a minimum the South African Road Traffic Regulations with regard to the Transportation of People and meet or exceed Eskom's Vehicle Safety Standard 32-345

All busses must have:

- Vehicles must have road side assistance (breakdown service assistance).
- Steps must have anti-slip treads.
- All vehicles must have an emergency contact number of the Supplier affixed to the right hand top rear side of the vehicle for 24hrs usage
- Two (2) Bus from each supplier must have wheelchair access for PWD ( People with Disabilities)
- All wheelchair vehicles must be labelled as such on the windscreen and the back of the bus.
- Vehicles must be fitted with a heater and air conditioning;
- Vehicles must have passenger lights.
- Vehicles must have enough leg room to accommodate passengers of at least 1,8m height.
- Vehicles must have ABS brakes
- Vehicles must be fitted with a reverse alarm beeper
- Non-smoking and safety belt stickers must be displayed in all the vehicles.
- Three monthly roads worthy certificate (COF) must be provided throughout the contract period.
- The tires must be commercial steel-belt radial tyres 8-ply. (No rethreads are allowed).
- Prove of valid road worthy certificate (CFO) must be in the vehicle at all times.
- Spare wheels must be available for all vehicles
- Jack and wheel spanners must be on all 22 seater vehicles.
- All vehicles must have a monitoring device connected to Tracker system
- Vehicles must have first Aid kit
- All vehicles must have a warning 2 triangle and the fire extinguisher.
- Vehicles must have a spill kit to contain any fuel or hydraulic oil spills/ leaks should they occur
- All seats must be covered in soft cloth and not vinyl material. Confirmation letter required.
- Vehicles used to carry Eskom employees must comply with The National Road Traffic Act requirements (NRTA).
- The driver's seat must be adjustable. The driver's compartment must be partitioned as per the NRTA specification
- Vehicles must have SABS approved three-point safety belt for every seat.
- Vehicles must not have fold-up or jockey seats.
- Vehicles must have at least two emergency exit for every 12 (twelve) passengers.

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- Vehicles must have a yellow reflective tape that must be fitted at a height of between 250 mm and 1,5m from the road surface, to both sides as well as across the rear covering 80% of the vehicle in compliance with NRTA.
- Vehicles must have a speed warning sign (100 km/h) at the back of the vehicle.

## 1.5 Covid-19 Guidelines and Protocol

- Passengers and staff should wash their hands before and after they have been on the bus, use non-contact greetings and cough into a tissue or elbow.
- Staff should not travel if they are feeling unwell with symptoms of COVID-19, even if these symptoms are mild.
- Staff should frequently clean and disinfect objects and surfaces that are touched regularly, using standard cleaning products.
- Use posters to remind staff to wash their hands often, follow general hygiene advice and not travel to work if they are unwell.
- Ensure every person is screened and completes a screening register before entering the bus in the morning and in the afternoon.
- Provide 70% alcohol-based hand sanitizers in vehicles for use after opening and closing doors.
- The use of thermometer when commuting will be mandatory in the morning and in the afternoon.
- On a daily clean and disinfect the bus
- Ensure every headcount allowed into the bus is adhered to, as per SA government COVID-19 regulation.
- Passengers must wear face masks to prevent spread at all times while in transit.

Procedures to follow in case someone becomes unwell with symptoms of COVID-19 on the journey

- A designated place for the individual to be apart from other passengers.
- The buses must be decontaminated after a reported covid-19 case.

## 1.6 Interpretation and terminology

The following abbreviations are used in this Service Information:

| Abbreviation | Meaning given to the abbreviation |
|--------------|-----------------------------------|
|              |                                   |
|              |                                   |

## 2 Management strategy and start up.

### 2.1 The *Contractor's* plan for the service

The contractor will submit a first plan to the Service Manager within two weeks of contract award. The contractor will indicate the number of busses required for the service, bus routes, time tables for different routes and contingency plans for the service.

### 2.2 Management meetings

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

| Title and purpose                      | Approximate time & interval | Location  | Attendance by:                 |
|--|-----------------------------|-----------|--------------------------------|
| Overall contract progress and feedback | Monthly                     | Medupi PS | <i>Employer and Contractor</i> |

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

N/A

### 2.4 Provision of bonds and guarantees

N/A

### 2.5 Documentation control

- Only the Service Manager can issue any instruction to the contractor.
- All vehicle records must be handed to the Employer after completion of the contract.
- Documents will be submitted in one hard copy and one soft copy.

### 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.

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;

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- 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)

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

- Submit a pro forma by the 20<sup>th</sup> of each month to the *Employer*
- The *Employer* will verify and return a payment certificate to the *Contractor* around 25<sup>th</sup> of the month
- Following receipt of the payment certificate the *Contractor* would be required to submit a tax invoice to the *Employer* and the following email address  
[invoicesgrpcapitalMHP@eskom.co.za](mailto:invoicesgrpcapitalMHP@eskom.co.za)

Invoices should be addressed as below.

Eskom Holding SOC Limited  
Medupi Power Station Project  
Private Bag X7502  
Onverwacht  
0555

Eskom VAT no: 4740101508

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

N/A

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

N/A

## 2.9 Insurance provided by the *Employer*

Refer to references in the Contract

## 2.10 Training workshops and technology transfer

Drivers need to update their PDP licence on a yearly basis.

## 2.11 Design and supply of Equipment

N/A

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

### 2.12.1 Equipment

N/A

### 2.12.2 Information and other things

## 2.13 Management of work done by Task Order

Monthly task order to be issued for the provision of the service. A task order will be issued for any additional ad hoc services.

## 3 Health and safety, the environment and quality assurance

### 3.1 Health and safety risk management

The *Contractor* shall comply with all the health and safety procedures and policies

### 3.2 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints.

### 3.3 Quality assurance requirements

The *Contractor* shall comply with the ISO requirements as stated in the enquiry.

## 4 Procurement

The *Contractor* shall comply with Eskom procurement procedures and policies.

### 4.1 People

#### 4.1.1 Minimum requirements of people employed

Driver must hold all legally required licences and PDP's and must have held them for a period of not less than the last 3 consecutive years.

- Drivers must hold a First aid level II certificate
- Driver must hold a Fire Extinguisher Competency Certificate
- Must have the ability to obtain an Eskom drivers Permit

#### 4.1.2 BBBEE and preferencing scheme

The *Contractor* shall comply with BBBEE policies and procedures and provide an updated status of the BBBEE verification certificate.

#### 4.1.3 Supplier Development and Localisation – (SD&L)

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Supplier Development and Localisation - in accordance with and as provided for in the *Contractor's* SD&L- Compliance Schedule stated below:

| Skills Category | Eskom Target | Entry | output | Tenderers Proposal |
|-----------------|--------------|-------|--------|--------------------|
|                 |              |       |        |                    |
|                 |              |       |        |                    |

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The *Contractor* shall keep accurate records and provide the *Service Manager* with reports on the *Contractor's* actual delivery against the above stated SD&L- criteria.

The *Contractor's* failure to comply with his SD&L- obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

## 4.2 Subcontracting

### 4.2.1 Preferred subcontractors

Not applicable

### 4.2.2 Limitations on subcontracting

Not applicable

## 5 List any Plant and Materials which are to be provided by the Employer. Working on the Affected Property

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

The contractor applies for a photo permit at the Security gate prior to the starting date. Employees must have a valid medical certificate, proof of induction and a security check before applying for the access permit.

The contractors personnel will be required to be in possession of their access permit at all times while on site.

All access permits must be returned to the access office when the relevant personnel leave the site after completion of the works. Failing to return the access permit will have a R200 penalty.

Lost permits will be paid for by the contractor at a cost of R50 per lost permit.

No unauthorised vehicles will be allowed on site. Only contractor's vehicles with displayed contract vehicle permits will be allowed on site. Contract vehicle applications should be directed to the Service Manager.

The contractor will be restricted to the working areas associated with his place of work. The contractor is forbidden to enter any other areas, and must ensure that his employees abide by these regulations.

Eskom Holding SOC Ltd as an entity is a State-Owned Company which is subjected to regulatory compliance as applicable to Government. Medupi Power Station Project Site is designated as a National Key Point in terms of the National Key Point Act 102 of 1980.

Eskom is required to comply with the requirements of paragraph 5 of the Minimum Information Security Standard (MISS) that seeks to implement a criminal check/ screening process which intends to identify individuals whom might through their actions and/ or behaviour, could pose a risk to the operation of Eskom Holdings SOC Ltd.

The Contractor is to ensure that the Contractor's employees are screened by means of criminal clearance verifications with the South African Police Service (SAPS) Criminal Record Centre (CRC) or accredited supplier linked to SAPS AFIS system and provide proof to Eskom security delegated team before access to site is granted. The Contractor's new applications for site access are required to produce the SAPS Clearance Certificate.

The screening process aims at ensuring a certain level of protection to the workforce, assets and information in accordance with Minimum Information Security Standard (MISS) of 1996, National Key

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Point Act 102 of 1980, National Strategic Intelligence Act 39 of 1994 and Protection of Critical Infrastructure Protection Act 8 of 2019.

If the Contractor appoints a subcontractor, the same provisions and measures will apply to the subcontractor.

For the purpose of clarity, Contractor's who was previously found guilty of offences in terms of the National Road Traffic Act 93 of 1996 and/or has paid guilt admission fines, will be exempted and be allowed to access site.

Acceptance of this tender is subject to the condition that both the contracting company's management and its employees will provide Eskom with a clear criminal record not older than thirty (30) days from a reputable screening company.

Acceptance of the tender is also subject to the condition that the contractor will implement all such security measures for the safe performance of the work as required in the scope of the contract.

The Contractor makes his/her own assessment of and allows in his/her rates for those access problems that may be encountered. No extra payment or claim of any kind is allowed on account of difficulties of access to the works, or for the requirement of working adjacent to or in the same area as others.

Medupi Power Station is declared as National Key Point. Access to site shall be in line with the Medupi Power Station's access procedure. The Contractor shall be required to make an application to enter site for the duration of the contract, including the warranty and defect period. A permit shall only be issued once the Contractor and his or her employees have attended the safety induction and has undergone medical checks.

The Contractor shall have no claim against the Employer in respect of delay at the security main gate.

## **5.2 Drawings issued by the *Employer***

N/A