



NEC3 Engineering & Construction Contract

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

and [Insert at award stage]
(Reg No. _____)

for **THE PROVISION OF EMERGENCY DISTRIBUTION LINE
REPAIRS AND MAINTENANCE –6.6KV – 33KV UNDER
DEAD WORK CONDITION ON AN AS WHEN REQUIRED
BASIS FOR A PERIOD OF 36 MONTHS IN THE FREE STATE
OPERATING UNIT WITH CONTRACTORS WHO ARE B-
BBEE LEVEL 1-3**

Contents:	No of pages
Core clauses to the NEC 3 ECC	
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work	[•]
Part C4 Site Information	[•]
Package Order Number	

Part C1: Agreements & Contract Data

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
C1.2a Contract Data provided by the <i>Employer</i>	[•]
C1.2b Contract Data provided by the <i>Contractor</i>	[•]
C1.3 Pro forma Guarantees	[•]

C1.1 Form of Offer & Acceptance

Offer

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

THE PROVISION OF EMERGENCY DISTRIBUTION LINE REPAIRS AND MAINTENANCE – 6.6KV – 33KV UNDER DEAD WORK CONDITION ON AN AS WHEN REQUIRED BASIS FOR A PERIOD OF 36 MONTHS IN THE FREE STATE OPERATING UNIT WITH CONTRACTORS WHO ARE B-BBEE LEVEL 1-3

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

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

Options A	The offered total of the Prices exclusive of VAT is	R
	Value Added Tax @ 14% is	R
	The offered total of the amount due inclusive of VAT is ¹	R
	(in words)	
	NOTE: TOTAL ESTIMATED QUANTITIES MAY CHANGED AND WILL BE BASED ON ESKOM REQUIREMENTS	

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

Date

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*.

Tenderer's CIDB registration number:

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Service Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

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

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature
of witness

Date

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		B: Priced contract with bill of quantities
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1 Price adjustment for Inflation
		X2 Changes in the law
		X5: Sectional Completion
		X7: Delay damages (project specific)
		X15: Limitation of contractors liability for design to reasonable skill and care
		X16: Retention
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Engineering and Construction Contract, June 2005 (ECC3) (with amendments June 2006)	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Limited (reg. no.: 2002/015527/06), a juristic person incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Represented by:	Ntsebeng Makana
	Tel No.	051 404 2111
	Fax No.	
10.1	The <i>Project Manager</i> is: (Name)	Sector managers will appoint a delegate in their own sections responsible for the area.
	Address	
	Tel	
	Fax	
	e-mail	

10.1	The <i>Supervisor</i> is: (Name)	The Supervisor will be the line owner appointed for a specific project and he will be specified in the project specification agreement.
	Address	
	Tel No.	
	Fax No.	
	e-mail	
11.2(13)	The <i>works</i> are	The provision of emergency distribution line repairs and maintenance –6.6Kv – 33kV under dead work condition on an as when required basis for a period of 36 months in the Free State Operating Unit with contractors who are B-BBEE level 1-3
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Outage unavailability • Excessive rain • Cost overruns due to unpredictable surface conditions on site • Late completion date • Late material delivery on site • Theft of material • Vandalism of equipment and Material
11.2(15)	The <i>boundaries of the site</i> are	All projects to be executed on this contract will be done in BETHLEHEM ZONE for Central East Cluster.
11.2(16)	The Site Information is in	The site information will be part of the project specific Agreement for each project/site/area to be executed in terms of this contract
11.2(19)	The Works Information is in	The works information will be part of the project specific Agreement for each project/site/area to be executed in terms of this contract
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	1 week (5 working Days)

2 The Contractor's main responsibilities

Data required by this section of the core clauses is provided by the contractor in Part 2 and terms in Italics used in this sections are identified elsewhere in the contract data

3Time			
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	36 months	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met Any key date and conditions specified in the project specific Agreement for any project executed in terms of this contract	key date
30.1	The <i>access dates</i> are:	Part of the Site Access to site will be provide specified in the project specific agreement for any project executed in terms of this contract	Date
31.1	The <i>Contractor</i> is to submit a first programme for acceptance with	One week of the contract date	
31.2	The <i>starting date</i> is	TBA	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks	
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the <i>Completion Date</i>		
4Testing and Defects			
42.2	The <i>defects date</i> is	52 weeks after Completion of the whole of the <i>works</i> .	
43.2	The <i>defect correction period</i> is	1 weeks upon notification of defects	
5Payment			
51.1	The <i>currency of this contract</i> is the	South African Rand	
51.2	The period within which payments are made is	30 days	
51.4	The <i>interest rate</i> is	(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall	

not be necessary to prove) for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *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	
60.1(13)	<p>The place where weather is to be recorded is</p> <p>The weather measurements to be recorded for each calendar month are</p> <p>The weather measurements are supplied by</p> <p>The weather data are the records of past weather measurements for each calendar month which were recorded at</p> <p>and which are available from</p>	<p>The contractor construction site camps and the closest Weather Bureau Station.</p> <p>Excessive wind is wind in excess of 10/s or 36km/h</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> <p>the number of days with minimum air temperature less than 0 degrees Celsius</p> <p>the number of days with snow lying at 09:00 hours South African Time</p> <p>South African Weather Services</p> <p>The closest weather bureau stations to the Works</p> <p>the South African Weather Bureau</p>
7	Title	
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	<p>1. unavailability of outages</p> <p>2. excessive rainfall</p> <p>3. Excessive wind</p>

84.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for Format A available on http://www.eskom.co.za/c/101/insurance-policies-procedures/ (See Annexure B for basic guidance)
84.1	The <i>Employer</i> provides these additional insurances	as stated for Format A available on http://www.eskom.co.za/c/101/insurance-policies-procedures/ (See Annexure B for basic guidance)
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract for any one event is	Whatever the <i>Contractor</i> deems necessary for any one event in addition to that provided by the Employer
84.2	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	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 Rand); and/or As provided by the laws of the Country in which the <i>Contractor's</i> employees are domiciled.
9	Termination	There is no reference to this contract data in italics used in this section are identified elsewhere in this contract data
10	Data for main Option clause	
B	Priced contract with bill of quantities	
60.6	The <i>method of measurement</i> is	as stated in Part C2.1, Pricing Assumptions.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	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). 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 <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a Joint Division of the South African Institution of Civil Engineering. (See www.ice-sa.org.za)

W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his
	- if the arbitration procedure does not state who selects an arbitrator, is	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 proportions used to calculate the Price adjustment Factor are:	The prices will be fixed and firm rates for the first 12 months of the contract and therefore be adjusted for the second and the third year in accordance to the SEIFSA indices Table C-3 of Labour
X2	Changes in the law	The is no reference to Contract Data in this Option and terms in Italics are identified elsewhere in this Contract Data
X5	Sectional Completion	
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	The completion date for each of section of the works will be specified in the project specific agreement for any project executed in terms of this contract
X5 & X7	Sectional Completion	
	Sectional Completion and Delayed damages used together	The Delayed Damages for each of section of the works will be specified in the project specific agreement for any project executed in terms of this contract

X16	Performance bond		
	The amount of the performance bond is		
	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care		
	Retention (not used with Option F)		
X16.1	The <i>retention free amount</i> is		Nil
	The <i>retention percentage</i> is	0%	
X18	Limitation of liability	sec tion	Description
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	1	The sum of the loss as a result of any action arising by any negligent act by any person under the contractors employ or any person performing work under the direct supervision of the contractor.
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	2	the amount of the deductibles relevant to the event described in the insurance policy format selected in the data for clause 84.1 above, which policy is available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	3	The total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the Employer's assets policy for correcting the Defects (other than resulting physical damage which is not excluded) plus R15M first payable in terms of the Employers assets policy.
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 excluded matters, is limited to:		the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for

		<ul style="list-style-type: none"> • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site, • loss of or damage to property (other than the works, Plant and Materials), • death of or injury to a person and <p>Infringement of an intellectual property right.</p>
X18.5	The <i>end of liability date</i> is	
X13	The <i>Additional conditions of contract</i> are	N/A
X13.1		
X15	Cession delegation and assignment	
X16	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
X16.1	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry.	R0
		5% of contract value
X18	Joint ventures	N/A
X18.1	If the <i>Contractor</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the <i>Employer</i> for the performance of this contract.	R0
X18.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Project Manager</i> within two weeks of the date of issue of the Package Order of the key person who has the authority to bind the <i>Contractor</i> on their behalf.	<ul style="list-style-type: none"> • for the <i>Employer's</i> existing and surrounding property in the care, custody and control of the <i>Contractor</i>: <p>the amount of the deductible (first amount payable) relevant to the event described in the Format A insurance policy available on http://www.eskom.co.za/c/101/insurance-policies-procedures/</p> <ul style="list-style-type: none"> • for all other existing <i>Employer's</i> property:

		<p>For any one occurrence or series of occurrences arising out of one event but unlimited during the period of Contract:</p> <ul style="list-style-type: none"> ○ R15 million (fifteen million Rand) for Generation property; ○ R7.5 million (seven million five hundred thousand Rand) for Transmission property; ○ R1 million (one million Rand) for Distribution and all other <i>Employer's</i> property
<p>X18.3</p>	<p>The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.</p>	<p>The greater of</p> <ul style="list-style-type: none"> • the total of the Prices at Completion of the Package Order or • where a claim is made against the <i>Employer's</i> insurance the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) <p>plus,</p> <p>where a claim is made against the <i>Employer's</i> assets policy, the highest applicable deductible (first amount payable) namely:</p> <ul style="list-style-type: none"> ○ R15 million (fifteen million Rand) for Generation property; ○ R7.5 million (seven million five hundred thousand Rand) for Transmission property; • R1 million (one million Rand) for Distribution and all other <i>Employer's</i> property.
<p>X18.4</p>		<p>the total of the Prices at Completion of the Package Order other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site,

		<ul style="list-style-type: none"> • loss of or damage to property (other than the <i>works</i>, <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right.
X18.5	Change of Broad Based Black Economic Empowerment (B-BBEE) status	<p>(i) seven years after the <i>defects date</i> for latent Defects (Latent Defects) and</p> <p>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A Latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period.</p> <p>If the <i>Employer</i> or the <i>Supervisor</i> undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Latent Defect.</p>
Z	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.	The Z-clauses here below.
	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Project Manager</i> .	
Z1	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works.	
Z1.1	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.	
Z1.2	<p>Ethics</p> <p>Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i>, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).</p>	
Z2		

- Z2.1 The *Employer* may terminate the *Contractor's* obligation to Provide the Works if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include, but are not limited to, the making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

- Z2.2 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z2.3

Confidentiality

- Z3 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

- Z3.1 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.
- Z3.2 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z3.3 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z3.4 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z4 Waiver and estoppel: Add to core clause 12.3:

- Z4.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z4.2

Z4.3 Health, safety and the environment: Add to core clause 27.4

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

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;

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

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

- Z5** The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z5.1

Z5.2 Provision of a Tax Invoice and interest: Add to core clause 51

Z5.3 Within one week of receiving a payment certificate from the *Project 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 Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z5.4 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.

Z5.5 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z6 Notifying compensation events

Z6.1 Delete from the last sentence in core clause 61.3, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

Z7 Employer's limitation of liability

Z7.1 • The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z7.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

Z8 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z8.1 or had a judicial management order granted against it.

Z8.2

Z8.3 Addition to secondary Option X7 Delay damages

If the amount due for the *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

The *Employer* levies sectional and overall Completion Dates' delay damages, as follows:

While the *Contractor* provides the Works where sectional Completion applies, the *Employer* levies, and the *Contractor* pays, sectional Completion delay damages as "Delay damages for late Completion of the sections of the works": as per X7.1 in the NEC3 ECC3.

Where sectional Completion delay damages were levied and Completion is on or before the Completion Date, the *Employer* refunds any sectional Completion delay damages that the *Contractor* paid.

Where sectional Completion damages were levied, and Completion is after the Completion Date, the *Employer* calculates delay damages on the overall Completion Date and levies such delay damages on the *Contractor*.

The *Employer* then refunds any sectional Completion delay damages paid by the *Contractor* to the extent that sectional Completion payments by the *Contractor* exceed the overall Completion delay damages levied.

Z9

Irrespective of the content of clause Z12.2.4, where the *Employer* levies sectional completion delay damages since it requires sectional Completion to hand over the Site to a third party or itself requires the use of the Site, and the *Contractor* pays it, the *Employer*, does not refund such sectional Completion delay damages to the *Contractor*, but a reconciliation is done between the sectional Completion delay damages that may otherwise be refundable, and the Completion delay damages levied, whereafter an appropriate payment or refund is made.

Annexure A: ONE-IN-TEN-YEAR-RETURN WEATHER DATA OBTAINED FROM SA WEATHER BUREAU FOR WEATHER STATION

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the works and at the place stated in this Contract Data is shown to be more adverse than the amount stated below then the *Contractor* may notify a compensation event.

Month	Weather measurement				
	Cumulative rainfall (mm)	Number of days with rain more than 10mm	Number of days with min air temp < 0 deg.C	Number of days with snow lying at 08:00 CAT	[Other measurements if applicable]
January	[•]	[•]	[•]	[•]	
February	[•]	[•]	[•]	[•]	
March	[•]	[•]	[•]	[•]	
April	[•]	[•]	[•]	[•]	
May	[•]	[•]	[•]	[•]	
June	[•]	[•]	[•]	[•]	
July	[•]	[•]	[•]	[•]	
August	[•]	[•]	[•]	[•]	

September	[•]	[•]	[•]	[•]	
October	[•]	[•]	[•]	[•]	
November	[•]	[•]	[•]	[•]	
December	[•]	[•]	[•]	[•]	

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

Annexure B: Insurance provided by the Employer

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

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of “project” or “contract” value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A “project” is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A “contract” is a single contract not linked to or being part of a “project”.

2. For ECC3 there are three main “formats” of cover and deductible structure; Format A, Format B and Format Dx.

Format A is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

Format B is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

Format Dx applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

Format A generally applies to Transmission Division projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 84.2. In terms of clause 84.1 “the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide”. Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
4. When the Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom’s Marine Policies Procedures found at internet website given below.
5. Further information and full details of all Eskom provided policies and procedures may be obtained from:

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies.aspx

Annexure C: The *Employer's* Panel of Adjudicators

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

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

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	% %
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	CV's (and further key persons data including CVs) are appended to Tender Schedule .
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	
11.2(14)	The following matters will be included in the Risk Register	Will be provided in the Project Design Package
11.2(19)	The Works Information for the <i>Contractor's</i> design	Will be provided in the Project Design Package
31.1	The programme identified in the Contract Data	Will be provided in the Project Design Package

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C1.3 Forms of Securities

Pro forma for Bonds & Guarantees

Not Applicable in this contract

PART 2: PRICING DATA

How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract (ECC3) Option B states:

Identified and defined terms	11	
	11.2	(21) The Bill of Quantities is the <i>bill of quantities</i> as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.
		(28) The Price for Work Done to Date is the total of <ul style="list-style-type: none">• the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and• a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed. Completed work is work without Defects which would either delay or be covered by immediately following work.
		(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

This confirms that Option B is a re-measurement contract and the bill comprises only items measured using quantities and rates or stated as lump sums. Value related items are not used. Time related items are items measured using rates where the rate is a unit of time.

Function of the Bill of Quantities

Clause 55.1 in Option B states, "Information in the Bill of Quantities is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Bill, but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Bill of Quantities. The Bill of Quantities is only a pricing document.

Guidance before pricing and measuring

Employers preparing tenders or contract documents, and tendering contractors are advised to consult the sections dealing with the bill of quantities in the NEC3 Engineering and Construction Contract (June 2005) Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

The NEC approach to the P & G bill assumes use will be made of method related charges for Equipment applied to Providing the Works based on durations shown in the Accepted Programme, fixed charges for the use of Equipment that is required throughout the construction phase, time related charges for people working in a supervisory capacity for the period required, and lump sum charges for other facilities or services not directly related to performing work items typically included in other parts of the bill.

The P & G section of the bill is not used for the assessment of compensation events.

4. Measurement and payment

4.1 Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:

Abbreviation	Unit
%	percent
h	hour
ha	hectare
kg	kilogram
kl	kilolitre
km	kilometre
km-pass	kilometre-pass
kPa	kilopascal
kW	kilowatt
l	litre
m	metre
mm	millimetre
m ²	square metre
m ² -pass	square metre pass
m ³	cubic metre
m ³ -km	cubic metre-kilometre
MN	meganewton
MN.m	meganewton-metre
MPa	megapascal
No.	number
sum	Lump sum
t	tonne (1000kg)

4.2 General assumptions

4.2.1 Unless otherwise stated, items are measured net in accordance with the drawings, and no allowance has been made in the quantities for waste.

4.2.2 The Prices and rates stated for each item in the Bill of Quantities shall be treated as being fully inclusive of all work, risks, liabilities, obligations, overheads, profit and everything necessary as incurred or required by the *Contractor* in carrying out or providing that item.

4.2.3 An item against which no Price is entered will be treated as covered by other Prices or rates in the *bill of quantities*.

4.2.4 The quantities contained in the Bill of Quantities may not be final and do not necessarily represent the actual amount of work to be done. The quantities of work assessed and certified for payment by the *Project Manager* at each assessment date will be used for determining payments due.

4.2.5 The short descriptions of the items of payment given in the *bill of quantities* are only for the purposes of identifying the items. Detail regarding the extent of the work entailed under each item is provided in the Works Information.

¹ Provisional Sums should not be used unless absolutely unavoidable. Rather include specifications and associated bill items for the most likely scope of work, and then change later using the compensation event procedure if necessary.

4.3 Departures from the *method of measurement*

4.4 Amplification of or assumptions about measurement items

The following is provided to assist in the interpretation of descriptions given in the *method of measurement*. In the event of any ambiguity or inconsistency between the statements in the *method of measurement* and this section, the interpretation given in this section shall be used.

PART 3: SCOPE OF WORK

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

3.1 Description of the works

The *Contractor* must provide labour, plant, transport and equipment necessary to perform the works as detailed on the bill of quantities and design handover document.

All civil work must be done in accordance with SANS 1200(Attach on Tender) and all addendum's thereof and other work according to the *Employer's* standards and specifications

Quantities reflected on the bill of quantities are provisional and subject to re-measurement on completion of the project.

Eskom reserves the right to exclude any of the items listed in the bill of quantities.

At any valuation stage, the *Contractor* must engage the *Employer's* Quantity Surveyor for site measurements.

Progress payment claims will be based on quantities of work done on contract rates.

Progress payment certificates will be based on cumulative work done, less previous to determine the current payment.

The *Contractor* will supply own equipment for all related tasks and this will include truck and cranes , *Contractor* need to supply all related inspection and official test results for load equipment and or calibration certificates .

There will be fall protection plan per standard 32 – 418 on site.

Contractor need to get outcome 4B authorization to get permit and apply own working earth on working site.

1.1 EMERGENCY WORK/BREAK DOWN WORK

The *Contractor* will work according to *Employer* maintenance, operating, safety and environmental standards, business rules and specifications and will take full responsibility for all work. (This includes the latest DT drawings for Free State. Task manuals or method statement to be use for all the different tasks) The *Contractor* will work under the control of the CNC in whose area the emergency work is done.

The *Employer* Senior Supervisor will do regular quality inspections and job observations on *Contractor's* work as well as personnel and all non-conformances must be rectified within one month. If the Senior Supervisor identify that the same defects still exist on a repeat visit, the *Contractor* will be held liable for *Employer* costs incurred.

1.2 OPERATING(TO ATTACH STANDARDS)

For a *Contractor* to do operating on *Employer* plant he must be authorized. In order for a *Contractor* to receive authorization to do operating on *Employer's* plant, *Contractor* must comply with Portfolio of evidence (240- 70413681 rev 3 and use outcome 4B authorization). The_M&O zone_Manager for the area of operation will authorize the *Contractor* for operating.

Theoretical, practical and testing within the period of three years.

On job observation conducted by *Employer* in conjunction with the *Contractor* will be done annually.

Authorization will expire when ORHVS or First Aid expires (whichever expires first)
Authorization can be extended if a new ORHVS or first aid certificate can be supplied before expiry date of initial authorization for candidates.

Whenever an authorized person makes an operating error, his authorization will be revoked with immediate effect.

1.3 MATERIAL HANDLING

The *Contractor* must keep unused material in a safe storeroom and must replenish used material upon agreed intervals from responsible CNC. Refer to 6.

- All obsolete material removed from *Employer* structure's to be returned to the relevant CNC
- All material supplied that was not used must be returned to relevant CNC

1.4 CUSTOMER CARE

The *Contractor* must always be friendly to the customer.

Treat customers and their property with respect.

Always be ethical according to *Employer's* procedure.

Keep to promises.

Never refer customers, but ensure that the right person contacts the customer to solve customer's requirements.

1.5 CUSTOMER COMPLAINTS

Whenever a customer has a complaint the *Contractor* must write a full report and forward it to the responsible CNC within 24 hours for emergencies and 3 days for maintenance after receiving the complaint.

1.6 COMMUNICATION

The Personal Protective Equipment and Vehicles of the *Contractor* must be marked in such a way that he is identifiable as a lawful *Contractor* on *Employer's* behalf.

1.7 SAFETY AND RISK ASSURANCE

The *Contractor* must immediately, after detecting any electrical contact, damage or insurance claimable breakages, inform the responsible CNC in order to investigate and register such incident. The *Contractor* must in the event of a line down or low hanging conductor immediately safeguard the area and inform control. The *Contractor* must have his own safety program and be responsible for the safety of himself and his personnel. He must adhere to all the legal requirements of the Occupational Health and Safety Act.

1.8 DEFINITIONS

- Distribution substation is a substation with a voltage higher than 33kV.
- Distribution voltage means a voltage higher than 33kV up to 132kV.
- Emergency is a breakdown on the network due to acts of nature or unlawful actions.
- A work order is a written request for work to be done according to standard and progress must be given by milestone feedback as defined.
- Milestone is a recognized position to track progress and must be given immediately when that point is reached. Frequently used milestones for scheduled work orders are:
 - milestone 1 – received the fault and is en-route,
 - milestone 2 – located the fault and ready to repair,
 - milestone 3 – fault repaired.

2. Drawings (PLEASE PROVIDE APPLICABLE DRAWINGS)

Note: Some drawings may contain both Works Information and Site Information. Contractors to obtain access to the Employer Distribution Technology website for the drawings

Drawing number	Revision	Title
http://tescod1.eskom.co.za:84/prt09BG/Drawings.HTM		Hyperlink for DT drawings
<u>Assembly Drawings</u>		Hyperlink for DT drawings
http://tescod1.eskom.co.za:84/Tescod2/prt11Workexecution/part11.htm		Maintenance/Task Procedures
http://tescod1.eskom.co.za:84/Tescod2/prt12Operating/PART12.HTM		Operating

3. Technical Specifications applicable to this contract

Contractors need to obtain access to the *Employer's* Distribution Technology Website for Standards, Procedures and Specifications

EMPLOYER DOES NOT GUARANTEE THAT CONTRACTORS WILL BE AWARDED WORK FROM THIS CONTRACT. WORK WILL BE AWARDED ONLY IF AVAILABLE, ON AN, AS, WHEN AND WHERE REQUIRED BASIS AND ACCORDING TO EMPLOYER'S DISCRETION

Title	Date or revision	Tick if publicly available
<u>General Specifications:</u>		
Health and Safety requirements		
Environmental requirements		
Site regulations and access control		
<u>Technical specifications:</u>		
Task manuals for specific tasks task (must have INTRANET access see list attached		

4. Constraints on how the *Contractor* Provides the Works

Statutory requirements and standards

All activities shall comply with the statutory requirements and where possible, within the ambit of guidelines, inter alia;

See Attached 34 - 333 "Occupational Health and Safety Requirements to be met by *contractors* and sub-contractors employed by *Employer* Distribution".

See Health and Safety Requirements for Construction Work

In providing the works, the *contractor* shall be require

Materials to be controlled and managed on site in accordance with the approved construction programme.

As-built drawings and schedule of quantities:

The *Contractor* submits these as-built drawings and as-built schedule of quantities as part of the hand-over documentation in line with the completion Dates indicated on the approved construction programme.

Supply of material:

All material must be SANS approved.

All materials used shall comply with the *Employer*. Requirements and shall be new and of the best quality.

See the Bill of Quantities (**Price List**) when to supply and install or take delivery, handle and install

Materials supplied by the *Employer* and price accordingly. Note al quantities are provisional, and the final quantities will be re-measured on site.

Plant & Materials

- **Three weeks'** notice is required from the *Contractor* to the *Senior Supervisor* as a pre-condition with regard to the delivery date and place.
- **Equipment,**
No equipment shall be supplied by the *Employer* to assist the *Contractor*.

4.1. Meetings

Progress and Technical meetings will be held as mutually agreed by the *Senior Supervisor* and *Contractor*

4.2 Use of standard forms

Details of standard forms to be used by the *Contractor* in the administration of the contract, for example early warning and compensation event notifications will be provided by the *Employer*.

4.3 Invoicing and payment

In terms of core clause 50 the *Contractor* assesses the amount due and applies to the *Employer* for payment. The *Contractor* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

- Name and address of the *Contractor*
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- The total Price for Work Done to Date which the *Contractor* has completed;
- Other amounts to be paid to the *Contractor*;
- Less amounts to be paid by or retained from the *Contractor*;
- The change in the amount due since the previous payment being the invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

The *Contractor* attaches the detail assessment of the amount due to each tax invoice showing the Price for Work Done to Date for each item in the Price List for work which he has completed.

The *Contractor* shall address the tax invoice to:

Eskom Holdings SOC Limited
Henry Street 120
Westdene
Bloemfontein

4.4 Facilities to be provided by the *Contractor*

The Preliminary and General section of the Price List makes provision for the *Contractor* to price items and facilities required for the execution of the works. Amongst other things:

- The *Contractor* shall provide their supply (generator) points necessary for the works. Adequate and/or continuous supply is not guaranteed and no claims for delay or standing time as a result of insufficiencies or failures will be considered. Any measures which the *Contractor* may require to maintain continuity and quality of supply shall be arranged by him at his own expense.
- A site for the *Contractor's* yard will be provided. The *Contractor* shall not occupy any site area other than that allocated to him
- Toilet facilities are not available on site; the *Contractor* is advised to provide his own portable toilet facilities. The *Contractor* is to ensure that these facilities are kept in a clean condition to Eskom's satisfaction.
- There is no drinking water and the *Contractor* has to bring its own water.
- It is the *Contractor's* responsibility to provide its own living accommodation.
- *Contractor* to provide own temporary office, telephone and workshops on site.

- *Contractor* to provide own safe storage for material and plant.
- For more detail see attached approved Project Design Package.

4.5 Title to material from excavation and demolition

The *Contractor* has no title to materials from excavation and demolition.

4.6 Health and safety risk management

The *Contractor* shall comply with the health and safety requirements – Safety, Health and Environmental Specification for the construction

4.7 Environmental constraints and management

The *Contractor* shall have an environmental management system in place that will ensure that the requirements of the environmental management plan are effectively implemented and managed.

Campsite establishment and dis-establishment are to be managed in accordance with specification PDPMAN – WN – 09 (Construction site Establishment and Dismantling).

The layout should be such that it facilitates a circular traffic route that eliminates the need to reverse when loading and off-loading.

4.8 Environmental Control Officer (ECO)

It is the responsibility of the ECO to monitor the *Contractor's* implementation of his duties.

4.9 Reporting

It is required that the *Contractor* makes all documents, weekly plan/ reports, monthly reports, complaints register, Man-hours Report/ incident register, Performance Appraisal report carried by CNC and all relevant personnel, incident register (impacts, legal transgressions, etc.) as well as corrective and preventative actions taken available to the ECO upon request.

4.10 Environmental training and awareness

The *Contractor* ensures that the *Contractor* and sub-*Contractors* staff receives environmental awareness training before commencement of the *works*. The training will be presented by the *Supervisor* with the assistance of the ECO. An attendance register is to be maintained. Any new staff must receive the environmental awareness training.

4.11 Quality assurance requirements

The *Contractor* shall comply with the quality criteria stated in the “Quality Assurance Requirements for the Procurement of Assets Goods and Services”, attached to this Works Information. The *Contractor* is to provide a quality inspection and test plan for the design, manufacture, delivery and installation as stated in the Scope of Work, for approval.

4.12 Contractor's management, supervision and key people

The *Contractor* must submit an organogram which clearly indicates the people resources that will be utilised for this project. The organogram must clearly indicate lines of authority as well as lines of communication. Site staff as well as head office staff must be indicated.

The *Employer* expects the *Contractor* to manage his sub-*Contractors* in the same way that the *Employer* manages the *Contractor*. Special attention must be given to the management of the sub-*Contractors*' SHEQ compliance.

4.13 Plant and Materials

Plant & Materials provided "free issue" by the *Employer*

No Plant is provided "free issue" to the *Contractor* for this Contract. All Plant is to be provided by the *Contractor*. Certain Materials are provided "free issue" to the *Contractor* – refer to Bill of Quantities and 6 (Services and other things provided by the *Employer*) hereunder.

Contractor's procurement of Plant and Materials

All transportation to site of plant and material required for this project will be by means of road transport. The *Contractor* must familiarise himself with the road conditions to site.

The *Contractor* must prepare a fenced off storage yard on or off-site for the off-loading and safekeeping of all plant and material delivered to site. Material must be off loaded and stored separately in areas allocated for this purpose. The *Contractor* must manage such storage areas as to ensure safety compliance as well as security of the plant and material.

Spares and consumables

Any spares must be handed over to the *Supervisor* during the take-over procedure once the *works* is complete.

4.14 Engineering and the Contractor's design NOT APPLICABLE TO THIS CONTRACT

Employer's design APPLICABLE TO THIS CONTRACT

The *Employer* is responsible for the design of the *works* and will bear the responsibility for the adequacy of his designs. The design of the *works* has been done by Engineering NED FSOU.

The design is done according to the Eskom Specification for design and is depicted on the drawings and specifications that have been issued as part of the project.

For more detail see attached approved Project Design Package.

4.15 Construction

Employer's Site entry and security control, permits, and Site regulations

The *Contractor* will be required to monitor and control access to the Site. There is a single main access control point to the transmission sub-stations and Eskom provides security, who are responsible to provide personnel to man this access point during working hours. All employees and visitors to site must undergo an alcohol test which must be carried out by the *Contractor's* personnel.

An entry register must be kept on a daily basis of all vehicles and personnel that enter the *Contractor's* site.

People restrictions on Site, hours of work, conduct and records

The *Contractor* must clearly its proposed working hours in the Tender and specifically in the programme provided with the Tender. After award the *Contractor* will adhere to these agreed working hours and keep detailed and accurate records of compliance herewith. The *Contractor* ensures that the *Supervisor* must sign these records daily and the *Project Manager* and *Supervisor* must have access to these records at any time.

The *Contractor* indicates any shift work or extended working hours required in order to meet with the required completion dates of the Package Order. The *Project Manager* and SHEQ manager's permission to work these hours are obtained prior to working such hours. Permission will only be granted if the longer hours worked have been accepted in writing by the Department of Labour.

Health and safety facilities on Site

The *Contractor* must refer to Safety, Health and Environmental Specification for the Construction . For more detail see attached approved Project Design Package.

Cooperating with and obtaining acceptance of others

The *Contractor* may have to share the working areas and co-operate with other *Contractors* during the execution of Package Order and agrees to do so optimally.

Publicity and progress photographs

The *Supervisor* will record progress by means of a photographic record as required by the *Project Manager*. All *works* will be photographed at the QITP hold points so that a photographic record exists of the quality compliance of the *works* during the various stages of construction.

The *Contractor* may also take photographs as a photographic record of the progress. The *Contractor* must obtain the Project Managers permission to take photos on Site for any other purpose.

Contractor's Equipment

The *Contractor* must keep a daily record of all equipment on Site. The information differentiates between hired and *Contractor*-owned equipment. The record must also clearly indicate when equipment is working and who the operator of the equipment was for the recorded shift.

The *Contractor* ensures that these records are verified and signed off by the *Supervisor* daily and that this document is available on Site at all times.

5.Requirements for the programme

FORMAT OF THE PROGRAM

The *Contractor* shall submit his construction program in terms of the conditions of contract.

All construction activities, including milestones, initial tasks, critical path, required Outages, and target *Dates*. All potential risk activities should be clearly indicated on the **critical path**.

Every activity on the programme will be clearly linked to **labour** resources and **equipment** required to perform the specific activity.

Weather delays (On maintenance) Clause 60.1 (10). Total one seventh of the total numbers of days between the *starting* date and the Completion *Date*.

Projected weekly progress on *site* for the entire duration of the contract.

Completion and hand-over Dates for formal inspection by the site supervisor must be indicated.

Site Establishment and Material Delivery – Lead times to be specified.

Preparation work – Work that can be completed without the necessity of power outages

Outage work – Work that must be completed under outage conditions see P&G's

Planned outages to be included in the programme

The Contract Program will be on display in the *Contractors Site Offices* and will be updated weekly. In addition to the maintaining of this programme, the *Contractor* will report progress to the *Senior Supervisor* at each site meeting or at request of the *Senior Supervisor*.

The *Contractor* shall also provide an organisation chart **showing the personnel to be employed for the works**, along with a detailed CV of all key personnel.

Should any deviations to the program be found the *Contractor* shall submit a revised program to the *Senior Supervisor* within one week of such deviations being brought to the *Contractor's* attention?

The Outages must be arranged with *Employer* via the Outage arrangement procedures, as a pre-requisite for the acceptance of the programme by the *Senior Supervisor*.

Acceptance of any program by the *Senior Supervisor* shall have no contractual status other than an indication that the *Senior Supervisor* is satisfied as to the order in which the work is to be carried out, and that the *Contractor* undertakes to perform all work in accordance with the accepted program.

The *Senior Supervisor* retains the right to alter the accepted program should circumstances on *site* necessitate such a change.

Other information to be shown on the program.

The following Statutory non-working days are included within the contract period:

All Public Holidays for the duration of the contract.

The programme must clearly indicate the non-working days for the entire construction period.

6. Services and other things provided by the *Employer*

Outage switching will be done by the Employer. The Contractor will interface with the Employer through receiving Working Permits before an outage, and returning the Working Permit the Employer

Item	Date by which it will be provided

7. SHEQ RELATED NON-PERFORMANCE.

7.1 Termination due to non-compliance of SHEQ.

ESKOM reserves the right to terminate the contract in the event that the *Contractor* is found to be consistently non-compliant to any SHEQ related issue.

7.2 Penalty for health and safety statistics

Should the Lost Time Incident Rate (LTIR) at any stage during the contract exceed the *Employer* target of 0, 4 a penalty of R100, 000.00 is paid by the *Contractor* on receipt of an invoice for such payment. This penalty will be refunded in the event that the LTIR is below 0, 4 at Completion.

The formula for calculating the LTIR is:

LTIR= No. of Lost Time Incidents X 200 000 / Man-hours

7.3 Fines for health and safety violations

The following fines will apply for health and safety violations and are non – refundable. They are paid by the *Contractor* immediately on receipt of an invoice for such payment:

7.3.1 Life-saving rules (1st violation of any lifesaving rule): R 10 000.00.

7.3.2 Life-saving rules (2nd and further violations of any lifesaving rules): Removal of any repeat offender (of any lifesaving rule) from site and R20, 000.00 payable by the *Contractor*.

7.3.3 Risk assessment and / or *method statement* not in place or available at activity: R15, 000.00 per event

7.3.4 Non-compliance with legislation: R 10,000.00 per event

7.4 Fines for environmental violations

For fines relating to Environmental violations please refer to the document titled “Environmental Requirements for *Contractors* working

7.5 Fines for Quality related issues

7.5.1 NCRs not closed out satisfactorily within 30 days: R10,000.00 per event.

7.6 Fines for Sub – *Contractor* management

Sub-*Contractors* are to be managed in accordance with the requirements of Form 74. Failure to comply will result in a fine of R10,000.00 per non-compliance (ECC Sub Contract)














All the above fines and penalties will be implemented by the Project Manager at his discretion








Specifications

The attached documents form part of this legal binding contract, the *Contractor* confirms that he has familiarized himself with all the embedded documents from 1(a) to 16 as indicated.

Do not print and send them when returning this contract

No	Unique Identifier	Revisi	Document Title
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1(a)	240-73198174	0	SHE Specification Technical Work (Electrification of towns in the FSOU)  1(a)_SHE Specification_Electrific
1 (b)	32 - 727	0	Safety, Health, Environmental and Quality Policy  1(b)_SHEQ Policy 32-727.pdf
2	240-62196227	1	Eskom Life Saving Rules  2_Eskom Life Saving Rules 240-62196227.p
3,4 & 5	34 - 1063	0	Expanded Public Works Report 34-1063.    3_Expanded Public Works Report 34-1063 4_EPWP Guidelines Second edition 2005.p 5_EPWP Report to be inserted in document :
6	EPC 32-247	0	Procedure for Vegetation Clearance  6_Procedure for Vegetation clearance :
7	DST 34-440	1	Selection, purchase and storage of Hazardous material  7_Selection, purchase and storage of Hazard
8	Construction Reg 4		Notification of Construction Work to Department of Labour  8_Notification of Construction Work to I Remember permit to do construction work
9	Construction Reg 5 & 7		Appointment letters for Client representative, Principal Contractor & Contractor    9_1_Appointment letter for Clients Agenl 9_2_Appointment letter for Principal Cor 9_3_Appointment letter for Contractor 7
10	PC QM-58	0	Supplier Contract Quality Requirement Specification  10_Supplier Contract Quality Requirement S
11	32-95	4	Environmental, Occupational, H & S Incident Management Procedure

			 11_Environmental, Occupational, H & S Ir
12	32-136	1	Contractor Health and Safety Requirements  12_Contractor Health and Safety Requireme
13	32-418	1	Work at height Procedure  13_Work at height Procedure Rev1 32-41
14	Government Notice Department of Labour	March 2014	Government Notice  14_Government Notice Exemption CR 2
15	OHS Act Sect 37(2)	2	 15_1_Sect 37(2) Agreement 240-59678  15_2_Section 37(2) Agreement Form 240-
16	Government Notice Department of Labour- Application of Construction Regulations	August 2014	 16_Government Notice Exemption CR 4

Acknowledgement by Contractor

I/We, do hereby acknowledge having read and understood the above Annexed documents from 1(a) to 16 in Part ? of this contract.

I/We undertake to study and abide by these requirements at all time.

Signed at: on the day of20.....

Note: Please return the above page with the other tender returnables to the Eskom office that issued this enquiry after complying with the above.

PART 4: SITE INFORMATION

Document reference	Title	No of pages
C4	This cover page	1
	Site Information	
	Total number of pages	

PART 4: SITE INFORMATION

C4.1: Information about the *site* at time of tender which may affect the work in this contract

1. Access limitations (Site Specific)

Access to the site is dirt and / or tarred roads. Road surfaces are in fairly good condition

2. Ground conditions in areas affected by work in this contract

It shall be the *Contractors* responsibility to grade all excavations according to the classifications as specified SANS 1200. The *Senior Supervisor* or his authorized representative shall have the right to inspect the holes and reclassify if required. In the event that no agreement on the soils profile can be reached, the *Senior Supervisor* shall appoint an independent soil testing laboratory to conduct subsoil investigations and report the findings.

3. Hidden and other services within the *site*

In the event of a discrepancy between physical condition and the information on a drawing, the *Contractor* shall notify the *Senior Supervisor* immediately if the physical condition found on *site* is such that the deviation from the drawing requires a change in the design of the *works* or result in a possible compensation event.

4. Details of existing buildings / facilities which *Contractor* is required to work on

Public services and infrastructures are limited and the *Contractor* shall arrange for the following:

Sanitation and accommodation on site for own use as specified in Preliminary and General.