|  |
| --- |
|  |

NEC3 Engineering & Construction Contract

|  |  |  |
| --- | --- | --- |
| **Between** | **ESKOM HOLDINGS SOC Ltd**  **(Reg No. 2002/015527/30)** | |
| **and** | **[Insert at award stage]**  **(Reg No. \_\_\_\_\_\_\_\_\_\_\_ )** | |
| **for** | **The Installation of Smart meters for the Central East Cluster(FSOU) on an “as and when” required basis for the period of 3 (Three) years** | |
|  |  | |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** | **[●]** |
| **Part C2** | **Pricing Data** | **[●]** |
| **Part C3** | **Scope of Work** | **[●]** |
| **Part C4** | **Site Information** | **[●]** |
|  |  |  |
| **CONTRACT No.** | **[Insert at award stage]** | |
|  |  | |
|  |  | |
|  |  | |

Part C1: Agreements & Contract Data

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

C1.1 Form of Offer & Acceptance

**Offer**

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

**The Installation of Smart meters for the Central East Cluster(FSOU) on an “as and when” required basis for the period of 3 (Three) years**

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 B, C or D | The offered total of the Prices exclusive of VAT is | **Rate base contract** |
|  | Value Added Tax @ 15% is | **Rate base contract** |
|  | The offered total of the amount due inclusive of VAT is[[1]](#footnote-2) | **Rate base contract** |
|  | **Rate base contract** | |

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

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

**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: Works Information

Part C4 Site 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 signed between them of this document, including the Schedule of Deviations (if any).

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| **for the Employer** |  | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | Date |  |

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

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

Note:

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

|  |  |  |
| --- | --- | --- |
| No. | Subject | Details |
| 1 | **[●]** | **[●]** |
| 2 | **[●]** | **[●]** |
| 3 | **[●]** | **[●]** |
| 4 | **[●]** | **[●]** |
| 5 | **[●]** | **[●]** |
| 6 | **[●]** | **[●]** |
| 7 | **[●]** | **[●]** |
|  |  |  |

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

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **For the tenderer:** |  | **For the Employer** |
| Signature |  |  |  |
| Name |  |  |  |
| Capacity |  |  |  |
| On behalf of | *(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***

**[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)**

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Some ECC3 options are always selected by Eskom Holdings SOC Ltd. The remaining ECC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used “**[●]” -** data is required to be inserted relevant to the specific option selected.]

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

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Clause** | | **Statement** | **Data** | | | | | | |
| 1 | | **General** |  | | | | | | |
|  | | The *conditions of contract* are the core clauses and the clauses for main Option |  | | | | | | |
|  | |  | **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** | | | | | | |
|  | |  | **X7: Delay damages** | | | | | | |
|  | |  | **X13: Performance Bond( Provisional)** | | | | | | |
|  | |  | **X18: Limitation of liability** | | | | | | |
|  | |  | **Z: *Additional conditions of contract*** | | | | | | |
|  | | of the NEC3 Engineering and Construction Contract, April 2013 (ECC3) | If 2005 Edition is to be used delete “April 2013” and replace with “June 2005 with amendments June 2006”. Always delete this note before finalising this Data | | | | | | |
| 10.1 | | The *Employer* is (Name): | **Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa** | | | | | | |
| Address | **Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg** | | | | | | |
| 10.1 | | The *Project Manager* is: (Name) | **Various** | | | | | | |
|  | | Address |  | | | | | | |
|  | | Tel |  | | | | | | |
|  | | e-mail |  | | | | | | |
| 11.2(13) | | The *works* are | **The Installation of Smart meters for the Central East Cluster(FSOU) on an “as and when” required basis for the period of 3 (Three) years**  **[●]** | | | | | | |
| 11.2(14) | | The following matters will be included in the Risk Register | 1. **Inclement weather** 2. **Resident Complaints** 3. **Accessibility** | | | | | | |
| 11.2(15) | | The *boundaries of the site* are | **All projects to be executed in terms of this contract will be executed at various sites within the Free State Operating Unit.** | | | | | | |
| 11.2(16) | | The Site Information is in | **The Site Information will form part of the Project Specific PO for each project to be executed in terms of this contract.** | | | | | | |
| 11.2(19) | | The Works Information is in | **The Works Information will form part of the Project Specific Agreement for each project to be executed in terms of this contract** | | | | | | |
| 12.2 | | The *law of the contract* is the law of | **the Republic of South Africa** | | | | | | |
| 13.1 | | The *language of this contract* is | **English** | | | | | | |
| 13.3 | | The *period for reply* is | **2 weeks** | | | | | | |
| **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 section are identified elsewhere in this Contract Data.** | | | | | | |
| **3** | | **Time** |  | | | | | | |
| 11.2(3) | | The *completion date* for the whole of the *works* is | **Contract Duration of 36 months** | | | | | | |
| 11.2(9) | | The *key date*s and the *condition*s to be met are: | ***Condition* to be met** | | | | | | ***key date*** |
|  | |  | **1** | **Any key date and conditions will be specified in the Project Specific PO for any project executed in terms of this contract [●]** | | | | | **As per the start and delivery dates of the Purchase Order [●]** |
| 30.1 | | The *access dates* are: | **Part of the Site** | | | | | **Date** | |
|  | |  | **1** | **Access dates will be specified in the Project Specific PO for any project executed in terms of this contract [●]** | | | | **As per the access to site certificate [●]** | |
| 31.1 | | The *Contractor* is to submit a first programme for acceptance within | **2 weeks of the Contract Date.** | | | | | | |
| 31.2 | | The *starting date* is | **Contract Duration is 36 Months, commencement date to be notified** | | | | | | |
| 32.2 | | The *Contractor* submits revised programmes at intervals no longer than | **2 weeks after kick-off meeting.** | | | | | | |
| 35.1 | | The *Employer* is not willing to take over the *works* before the Completion Date. | [No data needed if this statement is included] | | | | | | |
| **4** | | **Testing and Defects** |  | | | | | | |
| 42.2 | | The *defects date* is | **52 weeks after Completion of the whole of the *works*.** | | | | | | |
| 43.2 | | The *defect correction period* is | **2 weeks** | | | | | | |
| **5** | | **Payment** |  | | | | | | |
| 50.1 | | The *assessment interval* is | **between the 25th day of each successive month.** | | | | | | |
| 51.1 | | The *currency of this contract* is the | **South African Rand.** | | | | | | |
| 51.2 | | The period within which payments are made is | **TBD** | | | | | | |
| 51.4 | | The *interest rate* is | **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 Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and**  **(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.** | | | | | | |
| **6** | | **Compensation events** |  | | | | | | |
| 60.1(13) | | The place where weather is to be recorded is: | **[●]** | | | | | | |
|  | | The *weather measurements* to be recorded for each calendar month are, | **the cumulative rainfall (mm)** | | | | | | |
|  | |  | **the number of days with rainfall more than 10 mm** | | | | | | |
|  | |  | **the number of days with minimum air temperature less than 0 degrees Celsius** | | | | | | |
|  | |  | **the number of days with snow lying at 09:00 hours South African Time** | | | | | | |
|  | |  | **and these measurements:** | | | | | | |
|  | | The *weather measurements* are supplied by | **The Contractor** | | | | | | |
|  | | The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at: | **Nearest weather station of the South African Weather Services closest to site** | | | | | | |
|  | | and which are available from: | **the South African Weather Bureau** | | | | | | |
| 60.1(13) | | Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are: | **As stated in Annexure A to this Contract Data provided by the *Employer*.**  **Note: If this arrangement is used, delete the rows above for 60.1(13) and delete this note.** | | | | | | |
| **7** | | **Title** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** | | | | | | |
| **8** | | **Risks and insurance** |  | | | | | | |
| 80.1 | | These are additional *Employer*'s risks |
|  | |  |
|  | |  |
| **9** | | **Termination** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** | | | | | | |
| **10** | | **Data for main Option clause** |  | | | | | | |
| **B** | | **Priced contract with bill of quantities** |  | | | | | | |
| 60.6 | | The *method of measurement* is | **Assessment on the work done** | | | | | | |
| **11** | | **Data for Option W1** |  | | | | | | |
| W1.1 | | The *Adjudicator* is | **the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see** [**www.ice-sa.org.za**](http://www.ice-sa.org.za)**). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).** | | | | | | |
| W1.2(3) | | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See** [**www.ice-sa.org.za**](http://www.ice-sa.org.za) **) or its successor body.** | | | | | | |
| W1.4(2) | | The *tribunal* is: | **arbitration.** | | | | | | |
| W1.4(5) | | The *arbitration procedure* is | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** | | | | | | |
|  | | The place where arbitration is to be held is | **FS South Africa** | | | | | | |
|  | | The person or organisation who will choose an arbitrator   * if the Parties cannot agree a choice or * if the arbitration procedure does not state who selects an arbitrator, is | **the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.** | | | | | | |
| **12** | | **Data for secondary Option clauses** |  | | | | | | |
| **X1** | | **Price adjustment for inflation** | **Applicable** | | | | | | |
| X1.1(a) | | The *base date* for indices is | **1 month prior to Tender Closing Date** | | | | | | |
| X1.1(c) | | The proportions used to calculate the Price Adjustment Factor are: | ***The rates will be fixed and firm for the first 12 months and thereafter adjustable*** | | | **linked to index for** | **Index prepared by** | | |
|  | |  |
|  | |  |
|  | |  |
|  | |  |
|  | |  |
|  | |  | **[●]** | | **non-adjustable** | |  | | |
|  | | Total | **1.00** | |  | |  | | |
| **X2** | | **Changes in the law** | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.** | | | | | | |
| **X7** | | **Delay damages (but not if Option X5 is also used)** |  | | | | | | |
| X7.1 | | Delay damages for Completion of the whole of the *works* are | **0.5 % of the Task Order value per complete week of delay to a maximum of 10%** | | | | | | |
| **X13** | | **Performance bond** |  | | | | | | |
| X13.1 | | The amount of the performance bond is | **TBD if applicable** | | | | | | |
| **X18** | | **Limitation of liability** |  | | | | | | |
| X18.1 | | The *Contractor*’s liability to the *Employer* for indirect or consequential loss is limited to: | **The sum of the loss because of any action arising by any negligent act by any person under the contractor’s employ or any person performing work under the direct supervision of the contractor** | | | | | | |
| X18.2 | | For any one event, the *Contractor*’s liability to the *Employer* for loss of or damage to the *Employer*’s property is limited to: | **the amount of the deductibles relevant to the event described in the insurance policy format selected in the data for clause 84.1 above, which policy is available on ESK2019/20 ACAR** | | | | | | |
| X18.3 | | The *Contractor*’s liability for Defects due to his design which are not listed on the Defects Certificate is limited to | **The greater of**  **the total of the Prices at the Contract Date**  **and**   * **the amounts excluded and unrecoverable from the *Employer*’s assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.** | | | | | | |
| X18.4 | | The *Contractor*’s total liability to the *Employer* 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 *Contractor’s* total liability for the additional excluded matters is not limited.**  **The additional excluded matters are amounts for which the *Contractor* is liable under this contract for**  **Defects due to his design 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**  **infringement of an intellectual property right.** | | | | | | |
| X18.5 | | The *end of liability date* is | **(i) 7 years after the *defects date* for latent Defects and**  **(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.**  **A latent Defect is a Defect which would not have been discovered on reasonable inspection by the *Employer* or the *Supervisor* before the *defects date*, without requiring any inspection not ordinarily carried out by the *Employer* or the *Supervisor* during that period.**  **If the *Employer* or the *Supervisor* do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the *Employer* or the *Supervisor* to have discovered the Defect.** | | | | | | |
| **Z** | | **The *Additional conditions of contract* are** | **Z1 to Z15 always apply.** | | | | | | |
|  |  | | | | | | | | |
| **Z1** | **Cession delegation and assignment** | | | | | | | | |
| Z1.1 | The *Contractor* does notcede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.* | | | | | | | | |
| Z1.2 | Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry. | | | | | | | | |
|  |  | | | | | | | | |
| **Z2** | **Joint ventures** | | | | | | | | |
| Z2.1 | If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract. | | | | | | | | |
| Z2.2 | Unless already notified to the *Employer*, the persons or organisations notify the *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf. | | | | | | | | |
| Z2.3 | The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing. | | | | | | | | |
|  |  | | | | | | | | |
| **Z3** | | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** | | | | | | | |
| Z3.1 | | Where a change in the *Contractor’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor*’s B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change. | | | | | | | |
| Z3.2 | | The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project 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 a reason for termination. If the *Employer* 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. | | | | | | | |
|  |  | | | | | | | | |
| **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 *Project 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 *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*. | | | | | | | | |
| 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 *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. | | | | | | | | |
|  |  | | | | | | | | |
| **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 *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 2014 (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. | | | | | | | |
| Z6.2 | | 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. | | | | | | | |
|  |  | | | | | | | | |
| **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 *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. | | | | | | | | |
| 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 from the last sentence in core clause 61.3, “unless the *Project Manager* should have notified the event to the *Contractor* but did not”. | | | | | | | | |
|  |  | | | | | | | | |
| **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 83.1 is provided for in 60.1(14) and the *Employer*’s liability under the indemnity is limited. | | | | | | | | |
|  |  | | | | | | | | |
| **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** | **Addition to secondary Option X7 Delay damages (if applicable in this contract)** | | | | | | | | |
| Z11.1 | 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. | | | | | | | | |
|  |  | | | | | | | | |

|  |  |  |
| --- | --- | --- |
| **Z12** | **Ethics** | |
| For the purposes of this Z-clause, the following definitions apply: | | |
| **Affected Party** | | means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party’s employees, agents, or Subcontractors or Subcontractor’s employees, or any one or more of all of these parties’ relatives or friends, |
| **Coercive Action** | | means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally, |
| **Collusive Action** | | means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, |
| **Committing Party** | | means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor 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. |
| Z12.1 | A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof. | |
| Z12.2 | The *Employer* may terminate the *Contractor*’s obligation to Provide the Services 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 Services for this reason. | |
| Z12.3 | If the *Employer* terminates the *Contractor*’s obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2. | |
| Z12.4 | 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. | |
|  |  | |
| **Z13** | **Insurance** | |
| **Z 13.1** | **Replace core clause 84 with the following:** | |

|  |  |  |
| --- | --- | --- |
| **Insurance cover** | **84** |  |
|  |  |  |
|  | **84.1** | When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force. |
|  |  |  |
|  | **84.2** | The *Contractor* provides the insurances stated in the Insurance Table A. |
|  |  |  |
|  | **84.3** | The insurances provide cover for events which are at the *Contractor*’s risk from the *starting date* until the earlier of Completion and the date of the termination certificate. |
|  |  |  |
|  |  | **INSURANCE TABLE A**   |  |  | | --- | --- | | **Insurance against** | **Minimum amount of cover or minimum limit of indemnity** | | Loss of or damage to the *works*, Plant and Materials | The replacement cost where not covered by the *Employer*’s insurance  The *Employer*’s policy deductible, as at Contract Date, where covered by the *Employer*’s insurance | | Loss of or damage to Equipment | The replacement cost | | Liability for loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract | **Loss of or damage to property**  *Employer*’s property  The replacement cost where not covered by the *Employer*’s insurance  The *Employer*’s policy deductible, as at Contract Date, where covered by the *Employer*’s insurance  Other property  The replacement cost  **Bodily injury to or death of a person**  The amount required by applicable law | | Liability for death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law | |
|  |  |  |
| **Z 13.2** |  | **Replace core clause 87 with the following:**  The *Employer* provides the insurances stated in the Insurance Table B. |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  | **INSURANCE TABLE B**   |  |  | | --- | --- | | **Insurance against or name of policy** | **Minimum amount of cover or minimum limit of indemnity** | | Assets All Risk | Per the insurance policy document | | Contract Works insurance | Per the insurance policy document | | Environmental Liability | Per the insurance policy document | | General and Public Liability | Per the insurance policy document | | Transportation (Marine) | Per the insurance policy document | | Motor Fleet and Mobile Plant | Per the insurance policy document | | Terrorism | Per the insurance policy document | | Cyber Liability | Per the insurance policy document | | Nuclear Material Damage and Business Interruption | Per the insurance policy document | | Nuclear Material Damage Terrorism | Per the insurance policy document | |

C1.2 Contract Data

# Part two - Data provided by the *Contractor*

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

Whenever a cell is shaded in the left hand column it denotes this data is optional. If not required select and delete the whole row, otherwise insert the required Data.]

**Notes to a tendering contractor:**

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)[[2]](#footnote-3) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 (April 2013) Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [     ] appears, data is required to be inserted relevant to the option selected. Click on the form field ***once*** and type in the data. Otherwise complete by hand and in ink.

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Clause | Statement | Data | | | | |
| 10.1 | The *Contractor* is (Name): |  | | | | |
|  | Address |  | | | | |
|  | Tel No. |  | | | | |
|  | Fax No. |  | | | | |
| 11.2(8) | The *direct fee percentage* is | **%** | | | | |
|  | The *subcontracted fee percentage* is | **%** | | | | |
| 11.2(18) | The *working areas* are the Site and |  | | | | |
| 24.1 | The *Contractor's* 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 entitled****.** | | | | |
| 11.2(3) | The *completion date* for the whole of the *works* is |  | | | | |
| 11.2(14) | The following matters will be included in the Risk Register |  | | | | |
| 11.2(19) | The Works Information for the *Contractor*’s design is in: |  | | | | |
| 31.1 | The programme identified in the Contract Data is |  | | | | |
| **B** | **Priced contract with bill of quantities** |  | | | | |
| 11.2(21) | The *bill of quantities* is in |  | | | | |
| 11.2(31) | The tendered total of the Prices is | **(in figures)**  **(in words), excluding VAT** | | | | |
|  | Data for Schedules of Cost Components | *Note “SCC” means Schedule of Cost Components starting on page 60, and “SSCC” means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).* | | | | |
| **B** | **Priced contract with bill of quantities** | **Data for the Shorter Schedule of Cost Components** | | | | |
| 41 in SSCC | The percentage for people overheads is: | **%** | | | | |
| 21 in SSCC | The published list of Equipment is the last edition of the list published by |  | | | | |
|  | The percentage for adjustment for Equipment in the published list is | **Minus** **%** | | | | |
| 22 in SSCC | The rates of other Equipment are: | **Equipment** | **Size or capacity** | | | **Rate** |
|  |  |  |  | | |  |
|  |  |  |  | | |  |
|  |  |  |  | | |  |
|  |  |  |  | | |  |
|  |  |  |  | | |  |
| 61 in SSCC | The hourly rates for Defined Cost of design outside the Working Areas are | **Category of employee** | | **Hourly rate** | | |
|  | **Note: Hourly rates are estimated ‘cost to company of the employee’ and not selling rates.** |  | |  | | |
|  | **Please insert another schedule if foreign resources may also be used** |  | |  | | |
|  |  |  | |  | | |
|  |  |  | |  | | |
| 62 in SSCC | The percentage for design overheads is | **%** | | | | |
| 63 in SSCC | The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are: |  | | | | |
|  | **If Option C, D or E is used** | **Data for Schedule of Cost Components** | | | | |
| 23 in SCC | The listed items of Equipment purchased for work on this contract, with an on cost charge, are: | **Equipment** | **Time related charge** | | **Per (time period)** | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
| 24 in SCC | The rates of special Equipment are: | **Equipment** | **Size or capacity** | | **Rate** | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
| 44 in SCC | The percentage for Working Areas overheads is: | :  **%** | | | | |
| 51 in SCC | The hourly rates for Defined Cost of manufacture or fabrication outside the Working Areas are | **Category of employee** | | **Hourly rate** | | |
|  | **Note: Hourly rates are estimated ‘cost to company of the employee’ and not selling rates** |  | |  | | |
|  | **Please insert another schedule if foreign resources may also be used** |  | |  | | |
|  |  |  | |  | | |
|  |  |  | |  | | |
| 52 in SCC | The percentage for manufacture and fabrication overheads is | **%** | | | | |

Part 2: Pricing Data

**ECC3 Option B**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions: Option B |  |
| C2.2 | The *bill of quantities* |  |

C2.1 Pricing assumptions: Option B

# 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 *bill of quantities* 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   * the quantity of the work which the *Contractor* 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 *Contractor* 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 Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

There is no general provision in Option B for payment for materials on Site before incorporation into the *works*. If secondary Option X14 Advanced payment has not been used then the tendering contractor may obtain the same effect by inserting appropriate items in the method related charges where the *method of measurement* allows, or alternatively making allowance in the rates of the *bill of quantities* for the financing of Plant and Materials until they are incorporated in the *works.*

When compensation events arise, the default position is that the Bill of Quantities is not used to calculate the cost effect of the event. Defined Cost and the resulting Fee is used and Defined Cost includes all components of cost which the *Contractor* is likely to incur, including so called P & G items. Rates and lump sums from the Bill of Quantities, or from any other source, may be used instead of Defined Cost and the Fee only if the *Contractor* and *Project Manager* agree. If they are unable to agree, then Defined Cost plus Fee is used.

# Measurement and payment

## Symbols

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

[add or delete as required]

|  |  |
| --- | --- |
| **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 |
| m2 | square metre |
| m2-pass | square metre pass |
| m3 | cubic metre |
| m3-km | cubic metre-kilometre |
| MN | meganewton |
| MN.m | meganewton-metre |
| MPa | megapascal |
| No. | number |
| sum | Lump sum |
| t | tonne (1000kg) |

## General assumptions

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

### 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.

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

### 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.

### 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.

## Departures from the *method of measurement*

Only use this section if the statement for Option B in the Contract Data, “The method of measurement is \_\_\_\_\_\_\_\_ amended as follows” refers the reader to this section rather than include the amendments within the Contract Data statement. Otherwise delete this heading. In any case delete this note when complied with.

## 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.

C2.2 the *bill of quantities*

Use this page as a summary page or as a cover page to the *bill of quantities*.

Part 3: Scope of Work

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

C3.1: Employer’s works Information

**C3.1 Works Information**

The Works should be executed in total to Employer’s discretion, as per designs and in accordance with the relevant specifications and Employer standards.

The Contractor must provide labour, plant, transport and equipment necessary to perform the works as detailed on the approved bill of quantities and design (Project Jacket).

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 Eskom 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.

All works completed to be handed over to the Employer according to the Eskom’s Handing Over Documentation: Major Reticulation Distribution Minor Distribution and Electrification, 240-75884058, latest revision. It’s the contractor’s responsibility to ensure that all stages of the works completed comply with this standard and is handed over accordingly to be energised and maintained by the Employer. No deviations from any requirements will be accepted.

NB. The final payment will not be paid until the contractor has submitted approved “As Built Drawings” and completed and approved Handing Over Documentation.

**The scope of works might include activities as set out below:**

**LV Reticulation**

* All LV networks constructed to be according to the approved design and according to Eskom Distribution Standard, Parts 2 (Earthing Standard), 17 (Metering Standard), 22 (Cable Standard), 23 (Data Standard) and associated parts, technical bulletins and instructions.
* All LV equipment / materials to be Eskom approved and comply with the specifications as set out in the Eskom Distribution Standard, Part 9, Buyers Guide and associated parts, technical bulletins and instructions.

**Service Connections**

* All service connections to be done according to the approved design. No deviations will be accepted.
* All service connections to comply with Eskom Distribution Standard, Parts 8 (Services Standard), 23 (Metering Standard) and associated parts, technical bulletins and instructions
* All materials to be Eskom approved and comply with the specifications as set out in the Eskom Distribution Standard, Part 9, Buyers Guide and associated parts, technical bulletins and instructions
* No customer to be connected if not indicated with a service connection cable on an approved design drawing.
* All houses to be numbered with the stand number as indicated on the approved SG Drawing

**2 Acceptance of Eskom SHEQ Policies and Procedures**

**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 to 25 as indicated**

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Unique Identifier** | **Revision** | **Document Title** |
| **1** | **32 - 727** | **0** | **Safety, Health, Environment and Quality (SHEQ) Policy 32-727** |
| **2** | **Eskom Life Saving Rules** | **1** | **Eskom Life Saving Rules 240-62196227** |
| **3** | **Construction Reg 3** |  | **Notification of Construction Work to Department of Labour** |
| **4** | **Construction Reg 4 & 5** |  | **Appointment letters for Client representative, Principal Contractor & Contractor** |
| **5** | **OHS Act** | **1** | **Written agreement on OHS Act Section 37(2) & Standard Clause** |
| **6** | **34 - 1063** | **0** | **Expanded Public Works Report 34-1063.** |
| **7** | [**DST 34-961**](http://tescod.eskom.co.za/Standard/DST_34-961.pdf) | **0** | **Legal appointments and authorizations** |
| **8** | 1. **Contractor Performance Evaluation** | **Master** |  |
| **9** | 1. **Supplier Contract Quality Requirements** | **Master** |  |
| **10** | 1. **Hard Hat Specifications OHS 01/12/** | **Master** |  |
| **111** | 1. **Identifying, Analysing, Documenting and Observing Tasks according to Criticality.** | **Rev 1** |  |
| **12** | 1. **Vehicle Safety** | **Rev 0** |  |

**Acknowledgement by *Contractor***

**I/We, …………………………………………** do hereby acknowledge having read and understood the above annexed documents from 1 to 25 in Section 1.3.2 of this contract.

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

Signed at: ……………………………………… on the ……………….. day of ………………………….20………

**Note: Please return the above pages with the other tender returnables to the Eskom office that issued this enquiry after complying with the abo**

## Management meetings

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

|  |  |  |  |
| --- | --- | --- | --- |
| Title and purpose | Approximate time & interval | Location | Attendance by: |
| Risk register and compensation events | \_As and when it requires\_\_ | TBC | All relevant stakeholders |
| Overall contract progress and feedback | As and when it requires | TBC | All relevant stakeholders |

Meetings of a specialist nature may be convened as specified elsewhere in this Works Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *works*. Records of these meetings shall be submitted to the *Project 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.

## Documentation control

All correspondence is to be addressed to the *Project Manager* with a chronological numbering system.

## Health and safety risk management

The Contractor shall control his activities and processes in accordance with the Occupational Health & Safety Act, No. 85 of 1993 and Safety, Health, Environment and Quality Policy, EPC32-727 and Requirements of the SHE specification. The *Contractor* shall comply with the health and safety requirements contained in Section 1.3.2 of this Works Information.

The Contractors Project SHEQ File to be updated on a continuous basis. The Contractor is to ensure that all relevant documentation and authorisations are contained in the file pertaining to the project. Upon completion of the project, the Contractor is to convert all documentation contained in the SHEQ file into electronic format and save it as a PDF File. The file name should contain the name of the Contractor and the project. The file should then be saved onto a disk or removal storage device and handed over to the Project Coordinator or Project Manager upon completion of the project

Contract manhour must be submitted at the end of each month. Late submission or not submitting at all may lead to your payment not being processed.



## Environmental constraints and management

The *Contractor* shall control his activities and processes in accordance with Environmental Requirements for the Procurement of Assets, Goods and Services. The Eskom Environmental Management Plan provides the aspects and impacts that will require management and must be followed strictly. The *Contractor* is to prepare a site/factory specific separate EMP for all environmental concerns that might arise and any changes to the approved plan shall be reported and be approved by the *Eskom Environmental Representative* and *Project Manager* prior to the commencement of work.

In addition, the *Contractor* is required to ensure that all goods, services or works supplied in terms of this *Works Information* also conform to all applicable environment legislation(s), Safety, Health, Environment and Quality Policy, EPC32-727; SHE Requirements for the Eskom Commercial Process, ST32-726; (and additional requirements). The *Contractor* shall comply with the environmental criteria and constraints stated in Section 1.3.2.

When required, the *Contractor* must ensure that all *Subcontractors*’ EMP comply with legal and other requirements and also includes all the environmental risks associated with the scope of work. The *Main (Principal)* *Contractor* shall define the specific risks applicable to the *Subcontractor*’s scope of work or supply of kiosks.

The *Contractor* is to send a flash report for any environmental incidents that have occurred on site as soon as possible or within 24 hours to the *Eskom Environmental Representative* and *Project Manager* clearly stating any impact to the environment.

No environmental records shall be destroyed or discarded by the *Contractor*. Eskom as the *Employer* and the *Contractor* shall agree that the *Contractor* retains certain environmental records. Waste generated during the course of the project must be disposed at a registered site and the *Contractor* shall retain records of disposal.

Deviations from these requirements will be regarded as a non-conformance. Should there be concerns regarding environmental performance and non-conformance to environmental requirements, management engagements and interventions will be introduced to determine a means to addressing the shortfalls. Once these interventions have been explored and exhausted, then the *Eskom Supplier Disciplinary Process* will be followed.

The cost to the Contractor to obtain permits should it become necessary to cut a protected tree, ensure that waste is disposed of on a permitted, legal waste site and all relevant costs payable to dumping site as well as safe storage of all equipment which will be removed and replaced from site which will be transported upon instruction to the nearest designated disposal site within the Free State Operating Unit.

## Quality assurance requirements

Specify minimum requirements for the *Contractor*’s Quality Plan and Work Procedures or provide the *Employer*’s Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the *working areas*. Indicate how the *Contractor*’s QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.

## Programming constraints

A comprehensive and fully detailed programme is to be submitted within the seven (7) days after the introductory meeting and should indicate all milestones and critical dates. This programme must first be approved by the *Project Manager* and must be updated on an as and when required basis by the *Project Manager*.

**The following dates shall be clearly reflected on the programme:**

* Starting and completion dates for all activities as well as relevant key dates for hold or witness points. All relevant significant activities shall be shown in order to monitor the progress in the factory/workshop.
* The programme shall also reflect a 2-week period for inspection and correcting of Defects before the completion date.

Updated programmes must be available at all meetings reflecting progress to date and the date when delivery will take place through the use of task orders.

Format of the program

* The *Contractor* shall submit his construction program in terms of the conditions of contract.
* The *Contractor* is to submit a revised programme for acceptance at each site meeting.
* This program shall be in the form of an approved Gantt Chart containing the following information:
* 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.
* 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.
* A column showing the daily tempo of all the construction activities must be indicated next to the activity on the programme.
* Project expenditure on a monthly basis for the entire duration of the contract.
* The following project phases and activities are minimum requirements for the programme:
* 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
* Planned outages to be included in the programme
* *Contractor*s float to be included in the programme
* The Contract Program will be on display in the *Contractor*s *Site* Offices and will be updated weekly. In addition to the maintaining of this programme, the *Contractor* will report progress to the *Project Manager* at each site meeting or at request of the *Project Manager*.
* 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 *Project Manager* 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 *Project Manager*.
* Acceptance of any program by the *Project Manager* shall have no contractual status other than an indication that the *Project Manager* 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 *Project Manager* 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.

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

The *Contractor* is to submit an organogram showing all key people involved in the contract 7 days after contract award. All key personnel must be appointed in writing, must be current for the specific site and area of work and must be kept on file.

## Invoicing and payment

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 showing the amount due for payment equal to that stated in the *Project Manager’s* payment certificate.

The *Contractor* shall address the tax invoice to Eskom Holdings SOC Ltd and include on each invoice the following information:

* Name and address of the *Contractor* and the *Project 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)

On approval of the invoice the signed original Tax invoice and Completion certificate must be submitted to the Employers Agent for processing. All enquiries regarding payment must be followed up with the Employers Agent. It is preferred that only one invoice is submitted for each Purchase Order issued. If the scope of work is such that the work is longer than one month a progress payment may be submitted on the completion of . The contractor should only include the work for one purchase order on an invoice.

The Contractor must ensure that his invoice is according to the exact work completed on site. No work may be claimed that has not been completed. If work is claimed which is not complete this will be seen as a fraudulent claim which may lead to termination of the contract.

The Contractor will submit his claim on the assessment day as per the NEC Payment Certificate format attached to this contract with supporting Bill of Quantities. The Contract Number must be clearly visible on the Tax Invoice. The Employer will assess Payment certificates on actual work completed. Any possible issues regarding the claim will be addressed by the Employer to the Contractor.   
  
On acceptance of the Payment Certificate by the Employer the Contractor submits his invoice as agreed upon with the Employer. Payment will take place as per the Eskom Procurement's Invoice Payment Processes.

## Records of Defined Cost, payments & assessments of compensation events to be kept by the *Contractor*

In order to substantiate the Defined Cost of compensation events, the Employer may require the Contractor to keep records of amounts paid by him for people employed by the Contractor, Plant and Materials, work subcontracted by the Contractor and Equipment. A site diary will be required.

## As-built drawings, operating manuals and maintenance schedules

Use this section to describe these requirements. Pay particular attention to when and in what form they are required. Consideration should be given to obtaining operating manuals and maintenance schedules before Completion of the whole of the *works* when there is still considerable financial incentive for the *Contractor* to do so.

# Procurement

There is a cross reference from the definition of Disallowed Cost in Options C D and E to the Works Information regarding procurement procedures. This part of the Works Information MUST include any such procedures to be able to administer this procedure. Options A & B may also require constraints on procurement procedures.

## 

## People

### Minimum requirements of people employed on the Site

Specify any constraints relating to people employed to Provide the Works; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

### BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

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

If the ASGI-SA requirements are to be included in this contract specify constraints which *Contractor* must comply with after contract award in regard to any ASGI-SA requirements. The ASGI-SA Compliance Schedule completed in the returnable tender schedules is reproduced here. If ASGI-SA does not apply, delete this paragraph.

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

.

*[Insert the agreed ASGI-SA Compliance Schedule here]*

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

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

## Subcontracting

### Preferred subcontractors

ECC does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or suppliers the *Contractor* is required to enter into subcontracts with. This is usually only required where Plant and Materials need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

### Subcontract documentation, and assessment of subcontract tenders

Specify any constraints on how the *Contractor* is to prepare subcontract documentation, whether use of the NEC system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

### Limitations on subcontracting

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

### Attendance on subcontractors

State requirements for attendance on Subcontractors, if any

# Construction

## 

## Completion, testing, commissioning and correction of Defects

### Work to be done by the Completion Date

This is mandatory. Core clause 11.2(2) defines Completion as when the *Contractor* has done all the work which the Works Information states he is to do by the Completion Date. Rather than list all work to be done by the Completion Date, state that all work is to be done by the Completion Date except for [●]. For example:

On or before the Completion Date the *Contractor* shall have done everything required to Provide the Works except for the work listed below which may be done after the Completion Date but in any case before the dates stated. The *Project Manager* cannot certify Completion until all the work except that listed below has been done and is also free of Defects which would have, in his opinion, prevented the *Employer* from using the *works* and Others from doing their work.

|  |  |  |
| --- | --- | --- |
|  | **Item of work** | **To be completed by** |
|  | As built drawings of | Within       days after Completion |
|  | Performance testing of the *works* in use as specified in paragraph       of this Works Information. | See performance testing requirements. |
|  |  |  |

# List of drawings

## Drawings issued by the *Employer*

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

Note: Some drawings may contain both Works Information and Site Information.

|  |  |  |
| --- | --- | --- |
| **Drawing number** | **Revision** | **Title** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Part 4: Site Information

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

Part 4: Site Information

Core clause 11.2(16) states

“Site Information is information which

* describes the Site and its surroundings and
* is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

# General description

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract.

# Existing buildings, structures, and plant & machinery on the Site

All relevant descriptions will be specified in the Project Specific Agreement for any project executed in terms of this contract

# Subsoil information

All relevant information will be specified in the Project Specific Agreement for any project executed in terms of this contract.

# Hidden services

All relevant information will be specified in the Project Specific Agreement for any project executed in terms of this contract

# Other reports and publicly available information

All relevant information will be specified in the Project Specific Agreement for any project executed in terms of this contract

1. This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*. [↑](#footnote-ref-2)
2. Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-3)