



INVITATION TO TENDER

FOR

**ASSESSMENT OF HAZARDOUS
SUBSTANCES AT NALUBAALE AND
KIIRA HYDRO POWER STATIONS**

2018/2019

(REF: RTO/ 413688)

1 Introduction

Eskom Uganda Limited (EUL) is a wholly owned subsidiary of Eskom Enterprises SOC Limited of South Africa and is a limited liability company in Uganda, operating and maintaining Nalubaale and Kiira power stations on the River Nile at Jinja - Uganda. Eskom Uganda Limited took over the operation and maintenance of the two power stations on a 20 year Concession and Assignment Agreement, commencing on 1 April 2003. The Uganda Electricity and Generation Company Limited remains the owner of the asset. All the electricity generated is sold to Uganda Electricity Transmission Company Limited (UETCL), the authorized single bulk buyer, who in turn sells it to UMEME and other distributors, who in turn distribute it to the local consumers throughout the country.

Starting in 1949, the Owen Falls Hydroelectric Scheme was developed over the Owen Falls on the River Nile near the Town of Jinja in Uganda. The first two turbines, No 1 and No 2, were commissioned in April 1954, and the last two turbines No 9 and No 10, were commissioned in 1966/1967. The original capacities of the turbines were 15MW each and these were re-furbished and uprated to 18MW each between 1990 and 1998. The name of Owen Fall hydroelectric station was eventually changed to Nalubaale Power Station.

Subsequently the Kiira Power Station (formerly called Owen Falls Extension) was designed, constructed and commissioned in the 1990's and 2000's. It comprises of 5 units of 40MW each, giving a total capacity of 200 MW.

The operations of Eskom Uganda Ltd are governed by the privatization agreements. These include the Power Purchase Agreement (PPA) which prescribes the terms governing the sale and purchase of power, the Concession and Assignment Agreement (CAA) which prescribes the terms and conditions of the concession granted by UEGCL to Eskom Uganda Limited, the Support Agreement (SA) which prescribes the terms and conditions relating to the provision of support from the Government of Uganda to Eskom Uganda Limited, and the Generation License (GL) which allows Eskom Uganda Limited to generate and sale of hydroelectricity power as prescribed in the Electricity Act 1999. A 20 year Generation License was issued to Eskom Uganda Limited by Electricity Regulatory Authority (ERA).

The plant (herein after called the 'complex') in the concession agreement comprises of the Nalubaale and Kiira hydroelectric power generation stations each consisting of a dam, power house, generating

units, power transformers, other ancillary equipment and facilities and the land upon which these facilities are situated, all located at Jinja, Uganda near the head of the River Nile.

In addition, it also contains a high voltage substation (the “Jinja Substation”) connecting the power generators to Uganda’s transmission grid system and administrative offices serving both stations.

1.1 Background to the Hazardous Substances Assessment

Some of EUL’s activities have the potential to use, emit or produce hazardous substances/materials/chemicals or waste which may be harmful to the environment and human health.

EUL implements an Integrated Safety, Health Environment and Quality Management System which focuses on prevention of pollution, legal compliance and continual improvement of the business operations. Within the defined scope of its environmental management system, EUL has determined the significant environmental aspects of its activities that it can control and those that it can influence, and their associated environmental impacts, considering a life cycle perspective.

The Concession and Assignment Agreement (CAA) which mandates EUL to operate and maintain the complex is due to end in 2023.

The CAA clause 2.6 (e) requires that: Not later than four years prior to the end of the natural Term (and not earlier than 90 (ninety) days prior to that date, the EUL shall provide to UEGCL an inspection report by a reputable environmental consulting firm selected by the EUL and reasonably satisfactory to UEGCL, certifying that, as of the date of the report, no hazardous materials (i) are present on, in or under the Complex, (ii) are leaking from any of Complex, or (iii) if such firm cannot so certify due to the presence of hazardous materials on, in or under, or hazardous materials are leaking from, the Complex, the report shall identify the hazardous materials present and the extent of the contamination in reasonable detail and the estimated costs to effectively remediate such contamination, and provide a remedial response plan (which, if required to enable UEGCL to sell or lease the Complex to a third party, shall be approved by the Relevant Authority) and covering such other environmental matters as UEGCL shall reasonably request in writing not later than 90 (ninety) days prior to the due date of such report or at any time prior to the end of the Term of CAA.

The consulting firm’s report shall be updated with respect to all matters required to be included therein two years prior to the end of the Term, and again upon the surrender of possession of the Complex. The consulting firm’s report shall include a remedial response plan if determined necessary

Project scope and deliverables:

The CAA accordingly requires that EUL contracts a reputable environmental consulting firm to inspect the complex for the presence or absence of hazardous materials, assess the extent of the contamination, if any, in reasonable detail, develop estimated costs to effectively remediate such contamination, if any and provide a remedial response plan, if necessary. The inspection report on the assessment of hazardous substances in the complex is expected to be submitted by the consultant before the end of March 2019.

Similar environment assessments (audits) of the complex have been conducted by registered environmental consultants in 2010, 2014 and 2018 to determine EUL's compliance to environmental legislations. This particular assessment will be limited to only hazardous substances.

2 Definitions and Abbreviations

2.1 Definitions

"Analysis" - the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions to determine the level or other characteristics or its effect on any segments of the environment;

"Asset Owner" - the owner of the hydro power plants, (Uganda Electricity generation Company Limited).

"Baseline" - the reference against which the current condition of the plant must be assessed, and against which a remediation plan must be developed. The reference consists of the relevant documentation, national and international standards or best practices.

"Chemical" - a chemical substance in any form whether by itself or in a mixture or preparation whether manufactured or derived from nature and for the purpose of this study, includes industrial chemicals, pesticides, fertilisers and drugs;

"Consultant" – An independent consulting environmental firm, or company, of international repute appointed by Employer, for the purposes of carrying out the Assessment on Hazardous Substances within the complex against a defined *Baseline*.

“Concession and Assignment Agreement (CAA)” - a formal concession agreement entered into between the Asset owner of Nalubaale and Kiira hydro power plants and the Employer, whereby the Employer would manage, operate and maintain Nalubaale and Kiira hydro power plants on a twenty year concession basis. The details of the concession agreement will be made available after the appointment of the consultant.

“Employer” – Eskom Uganda Limited, a limited liability company established under the Laws of Uganda, with its registered office located in Kampala, Uganda.

“Environment” - the physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment as defined by the National Environment Act Cap. 153.

“Environmental monitoring” - the continuous determination of actual and potential effects of any activity or phenomenon on the environment, whether short term or long term;

“Hazardous substance” - any chemical, waste, gas, medicine, drug, plant, animal or micro-organism which is injurious to human health or the environment as defined by the National Environment Act Cap. 153.

2.2 Abbreviations

“CAA” – Concession and Assignment Agreement

“EUL” - Eskom Uganda Limited

“HSA” – Hazardous Substances Assessment

“KPS” – Kiira Power Station

“NPS” - Nalubaale Power Station

3 Condition of Tender

This invitation to tender is open to any environmental consulting firm/company with extensive experience in:

- (i) conducting comprehensive, independent technical assessments on environmental pollution, chemical and hazardous materials,
- (ii) developing environmental remediation plans, and
- (iii) developing costs estimates of remedial action plans.

3.1 Objective(s)

The main objective of the study is to identify existing hazardous substances/materials present in the complex, (if any), determine the extent of contamination, if detected, in reasonable detail, assess the current management of the hazardous materials, provide a remedial response plan, if necessary, and develop costs estimate to effectively remediate such contamination in order to maintain, restore or enhance the health, stability and reliability of the environment which the power stations form part.

3.2 Scope of works

The scope of works is divided into 2 phases, A, and B.

Phase A shall commence after contract award, and it is the main phase intended to allow the Consultant to conduct an independent comprehensive study and analysis on the complex with respect to the hazardous substances. The result of phase A study will form a detailed inspection report which will serve as a basis for the subsequent phase B, which will be conducted two years later. The detailed inspection report will be preceded by an inception report. Phase B shall majorly necessitate conducting a site review/follow up and updating the original report, where need be, with respect to any hazardous substances identified, after the initial study or any environmental changes thereby.

The specific Terms of reference describing the scope of the hazardous materials assessment shall consist of, but not limited to the following:

PHASE A:

1. Inspect thoroughly the premises of EUL i.e. NPS and KPS (herein referred to as ‘the complex’) and provide a reasonably satisfactory inspection report certifying that, as of the date of the report, no hazardous materials/substances;
 - a) Are present on, in or under the Complex.
 - b) Are leaking from any part of Complex.

2. If the inspection reveals that hazardous materials are present on, in, under, or are leaking from, the Complex;
 - a) The report shall identify the hazardous materials present and the extent of the contamination in reasonable detail. This will include but not limited to the chemical and common names of the material, the exact location it was sighted, the source and possible cause of the pollutant, its physical, chemical and biological properties, the amount of the substance identified, its potential or existing actual impact on the environment and/or human health. The significance of the hazardous substances identified, their qualities and extent of contamination shall only be judged against applicable environmental legislation.

 - b) The report shall detail a remedial response plan and the estimated costs to effectively remediate such contamination with respect to every hazardous material identified. The remedial plan and the costing thereof should be comprehensive with $\pm 10\%$ variance from the accurate cost.
 - i. The remedial plan shall also take into consideration any other hazardous materials likely to be used at the complex in the future.

 - ii. The remedial plan shall take into consideration all possibilities in the hierarchy of controls such as elimination of the hazardous substances identified, if any, substitution, PPE etc.

 - iii. Such plan shall propose appropriate methods of storage, usage, waste storage and disposal of both hazardous substances present, if any, and those anticipated to be present within the complex in the future.

- iv. The remedial plan shall contain an environmental monitoring plan to that effect for every hazardous substance identified, if any.
3. The consultant shall establish and report on what the identified chemicals, if any, are used for within the complex and how they are currently being stored or disposed of, and in what quantities.
4. The consultant shall identify improvement opportunities in the current management of the hazardous materials and provide technical support towards operationalizing the remedial plan and closure of actions therein, if any.
5. The study shall cover the entire complex which includes both Nalubaale and Kiira Power Stations with the associated infrastructure such as substations, switch yards, administration buildings, compounds, dam structures, the intakes and tailraces, soil, air, water and vegetation.
6. The consultant may carry out measurements of the various aspects of the environment which may inform the presence or absence of such hazardous materials as are being considered in the study. Such measurements may include but not be limited to water quality, hazardous waste generation, soil quality, air quality monitoring, changes in fauna and flora which might have been brought about by the existence of hazardous substances being studied.
7. The consultant may conduct an inventory of hazardous materials and hazardous waste present in the stores or elsewhere within the complex, if any.
8. The consultant may also review documents and records such as may be deemed necessary to obtain the required information relating to purchase, storage, usage, discharge and disposal of hazardous substances/materials. Such records may include but not be limited to Purchase orders, storage inventory records, waste transfer notes and inventory records, soil, air and water quality monitoring records.

9. The assessment may be conducted both during day and night time accordingly as the consultant shall consider sufficient and shall apply adequate and appropriate methodologies that are relevant to the scope of the study.

10. The study shall take into consideration both national and international regulations on hazardous materials, including ozone depleting substances and other regulated substances.

11. The consultant shall state the standards, guidelines or legal instruments against which the findings of the study and the conclusions thereof are being evaluated.

4.0 KPIs

The key deliverables will include the following:

No	Activity	Time frame
1	Submit inception report to EUL	15 days from award of contract
2	Submit draft inspection report for the assessment to EUL	30 days from acceptance of the inception report
4	Submit final inspection report to EUL	15 days from acceptance of the draft report
TOTAL TIME		60 Days

NB. The final inspection report must be submitted by the consultant not later than 15th April 2019.

PHASE B:

Phase B shall use the approved Inspection Report from Phase A as a basis. This phase will be basically a follow up exercise where the consultant shall be required to:

1. Conduct an independent, objective technical review/follow up of the condition and state of the complex two years after the initial study (Phase B) to ascertain whether;
 - i) More chemicals/hazardous substances are present in, under, on or flowing from any parts of the complex or an increase in their quantities, state and composition.
 - ii) More environmental pollution resulting from either presence of additional hazardous substances or the increase in their quantities has occurred since the time of the report of Phase A.
 - iii) The appropriate measures proposed during phase A by the consultant are in place i.e. storage, substitution, elimination, disposal, usage, and establish by how much, in the opinion of the consultant, has EUL implemented the measures suggested during phase A.

2. Update the original inspection report from phase A to include any such changes as may be detected during the review at phase B. The updates shall be made in the whole inspection report including the remedial response plan.

3. While the observed environmental changes at phase B, if any, shall be incorporated in the original report to form an updated report, a mini-review-report containing a list of any such environmental changes, additional pollutants/chemicals/hazardous substances or a change in their quantity, state and composition, if any, shall be produced separately by the environmental consulting firm. This follow up report shall be submitted by the consultant and approved by EUL prior to incorporating the changes in the initial report from phase A.

4.1 KPIs

The key deliverables will include the following:

No	Activity	Time frame
1	Submit the mini review report to EUL	30 days from commencement of the review
2	Submit draft updated inspection report for the assessment to EUL	15 days from acceptance of the mini review report
4	Submit final updated inspection report to EUL	15 days from acceptance of the draft inspection report
TOTAL TIME		60 Days

NB. This follow up exercise (phase B) shall commence by not later than 1st November 2020 and the final report must be submitted by not later than 28th February 2021.

5.0 Baseline Documentation

The baseline consists of the following documentation:

5.1 Name of document

- Concession and Assignment Agreement (only relevant clauses have been referred to in the Tender)
- 2010, 2014 and 2018 Environmental Audit reports.
- Water quality monitoring reports
- Hazardous waste transfer and disposal records
- Hazardous substances inventory records in the main stores
- Procurement records such as LPOs for chemicals/hazardous materials, if any.
- NEMA and ERA inspection reports

- NEMA Environment and Social Management Plan (ESMP)

6.0 Composition of Consultant's Technical Team

The Consultant shall develop and submit an organogram showing the structure of the technical team that will execute the scope. The consultant's technical team must be competent and registered environmental practitioners. This organogram shall be contained in the Inception report. The technical team shall be competent in the following areas:

- Environmental management
- Industrial chemistry
- Waste management
- Pollution expert/Pollution management
- Occupational Safety, health and sanitation
- Air quality, biodiversity and soil assessment

7.0 Requirements for the Inception Report

The Inception Report shall, as a minimum include the following:

- The approach/methodology for assessing hazardous substance and how the Consultant will execute the scope.
- The legal instruments which shall be used in the study to arrive at the conclusions thereof.
- Recommendations of any refinements or amendments to the proposed scope of work in order to achieve compliance with the terms of the CAA.
- Proposed organogram showing key personnel, reporting relationships and how the Consultant will manage the scope. Identification of responsible persons and experts.
- Proposed detailed program of the services in Gantt chart format. Detailed programme shall comply with key dates as stated in the bid document.
- Guidelines and criteria for preparation of the cost estimate for the remediation plan, and accuracy and details of cost estimates.

8.0 Costing

The cost estimates for the remediation plan shall be compiled by qualified environmental economists in liaison with the rest of the specialists. Such remediation plan shall be comprehensive with $\pm 10\%$ variance from the accurate cost.

NB. Bidders are required to cost for each phase separately and the employer reserves the right not to proceed with the consultant to the second phase of this assignment.

The costing for the remediation response plan (if any) shall be comprehensive with $\pm 10\%$ variance from accurate cost.

9.0 SAFETY & SECURITY REQUIREMENTS

9.1 General Safety Requirements

- All Tenderers' personnel shall be equipped with protective gear.
- The Tenderer shall provide a safety policy and a health & safety management plan.
- All Tenderers' personnel shall be subjected to a site-specific safety induction lasting the first day of mobilization to site.
- The Tenderer and its personnel shall comply with the local safety policy.
- Work shall be executed in compliance to the provisions of Eskom Uganda Limited Plant Safety Regulations and the EUL lifesaving rules.

9.2 Risk management Requirements

- The Tenderer shall provide project risk mitigation plan and associated method statements.

9.3 Security Requirements

- A week after notification award, the Tenderer shall provide copies of Identity documents of personnel to be employed. On the basis of these documents, access Identification badges shall be provided to be used for daily access to site, without which access shall be denied.
- The Tenderer's personnel shall be subjected to normal access procedure as local employees to include spot checks.

10.0 FINANCIAL REQUIREMENTS

10.1 ELIGIBILITY CRITERIA

EUL is seeking for a firm that will demonstrate responsiveness to the requirements.

To be eligible to participate in the bidding process, you are required to meet the following criteria:

1. Have the legal capacity to enter into a contract;
2. Demonstrated competencies in carrying out the Hazardous Substances Assessment.

3. Not be insolvent, in receivership, bankrupt or being wound up or subject to legal proceedings for any of these circumstances;
4. Not have had your business activities suspended;
5. Not to have a conflict of interest in relation to this procurement requirement;
6. Have ability to understand NEMA Regulations and other applicable legislation.
7. Have the ability to deliver the project as per the agreed Terms of Reference.

10.2 Documents Evidencing Eligibility: Bidders shall submit the following documents:

1. Company Registration Certificate (attach).
2. Memorandum or Articles of Association (attach).
3. Attach Audited financial statements for last three years.
4. Tax Registration Certificate/VAT (attach copy).
5. Professional indemnity. Willing to obtain a professional indemnity (PI) cover for the firm.

11.0 Receipt and return of tender.

11.1 Acknowledgement of tender.

The tenderer should acknowledge to the electronic Mail address tenders@eskom.co.ug whether or not they intend to submit a completed tender, within 7 days of the issue of the tender documents.

11.2 Presentation Of tender

- The tender should be addressed to:
 - **The Procurement Manager**
 - **Eskom Uganda Limited**
 - **Nalubaale Power station**
 - **Jinja – Uganda**

The financial and technical proposals shall be separated and submitted as two copies (one original and one copy). These shall be sealed in separate envelopes (one for technical proposals only and the other for financial proposals only) clearly marked “**(CONSULTANCY SERVICES FOR HAZARDOUS SUBSTANCE ASSESSMENT AT NALUBAALE AND KIIRA POWER STATION-JINJA REF: RTO/ 413688)** and shall be hand delivered or sent by email (Upon request); registered at the Procurement Office (Room 6 – Nalubaale Power Station -Eskom Jinja Offices) not later than **15:00HRS on 11th February 2019**

It is EUL policy to open tenders promptly on the closing date. Late tenders may be rejected.

It is EUL policy to open **Tenders** promptly on the submission date (financial proposals will be opened at a later date after the technical evaluation results are ready) and only Technically qualified vendors will be invited to attend the opening of their financial proposals in the presence of the bidder’s representatives who choose to attend.

Late tenders WILL be rejected.

The evaluation criteria will consider all the aspects included in the conditions for tender, your commercial terms and the price charged for services. Eskom reserves the right to accept or reject a tender on each item separately, or as a whole, and to waive any irregularities in a tender.

All costs associated with the provision of the service shall be shown separately in the tender.

Eskom Uganda Limited is not bound to accept the lowest bidder or any bid.

Cost of tender preparation.

EUL is not responsible for any expenses or losses incurred by the Tenderer in the preparation of this Tender.

Documents to be submitted by the tenderer.

The Tenderer shall submit the following schedules in order, fully completed.

1. Form of Tender
2. Technical Specifications
3. Technical Schedules
4. Delivery Schedules
5. Price Schedules
6. Manpower Schedules
7. List of Subcontractors
8. Bill of Quantities (where included)
9. Day-work Rates.

10. Experience list for similar work with verifiable contacts.

Alternatives.

The Tenderer may submit, in addition to the base Tender, an alternative proposal which differs in whole or in part from that specified and which offers to provide additional economic, financial or technical merits. Such an alternative offer will be given consideration provided it is submitted with full particulars, including specifications and proposed methodology to enable a complete evaluation to be made.

Delivery terms

Works shall be executed as per the bills of quantities. Such works shall be approved by EUL's representative.

Delivery times

Tenderer shall state the best guaranteed delivery period that can be achieved.

Inspection of site – MANDATORY

A **mandatory** site visit by the Tenderers must be made prior to submission of the Tender. The site visit is scheduled for **11.00 am on 31st January 2019**

Tender validity period

Unless otherwise stated, tenders shall be valid for **120 days** from the closing date for receipt of tenders.

Price base

Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the **Bid documents**. A bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected. However, if in accordance with the **Bids Documents**, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

Currency

The contract currency shall be Uganda Shillings (UGX)

Country of origin (Not Applicable)

Tenderers should indicate clearly the country of origin of all items being tendered and shall submit proof of the same (certificate of origin) upon delivery of the items.

Contractor safety regulations

The Tenderer should clearly indicate his intention to comply with EUL Plant Safety Regulations. Available on request.

Contractor environmental regulations

The Tenderer should clearly indicate his intention to comply with EUL Environmental policy and associated legislation. Available on request.

Industrial relations

The Tenderer shall be familiar with labor relations in Uganda. The Tenderer shall fully acquaint himself with the trend and type of labor payment, negotiation procedures and Site Agreements including but not limited to any relevant Registered Agreements and all applicable legislation in Uganda. In respect of major projects in Uganda, it is highly recommended that the Tenderer contact the Uganda's Employers Federation who where possible, shall advise generally on such projects and on labor conditions pertaining to Uganda, whether in the form of basic increases in labor rates, subsistence allowances, travelling allowances, industrial relations allowances, payments in lieu of notice allowances, productivity or incentive bonuses, shift allowances or any other matters concerning the employment of labor which could affect the orderly progress of the Works. The Tenderer acknowledges that the price quoted in his Tender is inclusive of all costs and expenses associated with complying with the terms of this Clause not only for himself but for all of his sub-contractors, agents and/or employees. The Tenderer shall ensure that any necessary specialist staff from subcontractors or equipment supplies for erection, checking of erection, putting plant in service and/or commissioning is available as required."

Completion times

The shortest completion time of the Project is critical. Tenderers are requested to outline how they propose to complete in the shortest time. The Tenderer shall point out if the completion time quoted is being achieved by normal working practices and clearly indicate the implications on price and completion time for premium working practices.

Site

The work detailed in this Specification is to be carried at Nalubaale Power Station, Jinja, Uganda. The station is on the Nile river and it is located 80 KM from Kampala.

During site visits, the Tenderer shall be accompanied by authorized Personnel.

The costs of visiting the site shall be at the Tenderers own expense.

The Tenderer and any of its personnel or agents will be granted permission by the Purchaser to enter upon its premises and lands or the purpose of such inspection, but only upon the express conditions that the Tenderer, its personnel or agents, will release and indemnify the Purchaser and its personnel and agents from and against all liability in respect of, and will be responsible for personnel injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, cost and expense, however caused, which but for the express of such permission would not have arisen.

A submission which fails to address each of the submission requirements above may be deemed non-responsive and will not be further considered.

12.0 Rejection of Bids

- Eskom Uganda reserves the right in its sole discretion to reject any or all bids submitted in whole or in part, without incurring any cost or liability whatsoever. All bids will be reviewed for completeness of the submission requirements.
- If a bidder fails to meet a submission requirement of this Terms Of Reference (TOR), or if it is incomplete or contains irregularities, the proposal may be rejected.
- A deviation is material to the extent that a bid is not in substantial accord with these TOR requirements.
- Immaterial deviation may cause a bid to be rejected. Eskom Uganda may or may not waive an immaterial deviation or defects in the proposal. Eskom Uganda waiver of immaterial deviation or defect shall in no way modifies the TOR or excuse a bidder from full compliance to the TOR requirements.
- A bid may be rejected where it is determined not to meet Eskom Uganda Limited's requirements, not responsive enough, not competitive or where the cost is not reasonable.
- Eskom Uganda Ltd is not bound to consider the lowest or any bid presented.
- A bid containing false or misleading statements may be rejected if in Eskom Uganda's opinion the information was intended to mislead the company regarding a requirement of the TOR.

13.0 Questions/Clarifications

Questions regarding the TOR may be addressed in writing to the Procurement officer at tenders@eskom.co.ug. All questions must be submitted not later than 7 days prior to the final date of submission of the proposal.

14.0 Addenda

Eskom Uganda may modify the TOR prior to the date fixed by posting, mailing, emailing or faxing an addendum to the bidders known to be interested in submitting their tender documents.

15.0 Contracting Requirements

Upon selection of the prospective bidder, the terms set forth with in this TOR will be included in the definitive contract containing additional covenant and other provisions as may be mutually acceptable.

16.0 Interference

Any effort by the tenderer to influence EUL or his representatives in the process of examination, clarification, evaluation and comparison of Tenders and in decisions concerning the Award of Contract may result in the rejection of that Tender.

17.0 Corrupt practices

Eskom Uganda Ltd.'s policy requires that its staff, as well as Bidders and Providers, observe the highest standards of ethics during procurement and the execution of contracts. In pursuit of this policy, EUL has established as follows:

(a) Defined, for the purposes of this provision, the terms set forth below as follows:

- **“corrupt practice”** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value, to influence the action of a staff member in the procurement process or in contract execution; and
- **“fraudulent practice”** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- **“collusive practice”** is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

- “**coercive practice**” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(b) Will reject a recommendation for award if it determines that the Bidder recommended for award has engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract;

(c) Will suspend a Provider from engaging in any EUL procurement proceeding for a stated period of time, if it at any time determines that the potential provider or bidder has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

18.0 Correction of errors

Tenders determined to be substantially responsive will be checked for any material errors in computation as follows:

- Where there is a discrepancy between amounts in figures and words the amount in words will govern;
- Where there is a discrepancy between the unit price & the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern, unless, in the opinion of the purchasers representative, there is a gross arithmetical error in the unit price, in which event, the extended amount as quoted will govern;
- The amount stated in the Form of Tender will be adjusted by the Purchaser in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer;
- A Tenderer not accepting the correction of errors as outlined will have his tender rejected.

Appendix 1

Excerpt from the Concession and Assignment Agreement:

Clause 2.6(e) Not later than four years prior to the end of the natural Term (and not earlier than 90 (ninety) days prior to that date) or, if this Agreement is terminated earlier pursuant to Clause 3.4, prior to any such termination, upon the surrender of possession of the Complex at any time, the Company shall provide to UEGCL an inspection report by a reputable environmental consulting firm selected by the Company and reasonably satisfactory to UEGCL certifying that, as of the date of the report, no hazardous materials;

- (i) are present on, in or under the Complex,
- (ii) are leaking from any of Complex, or
- (iii) if such firm cannot so certify due to the presence of hazardous materials on, in or under, or hazardous materials are leaking from, the Complex, the report shall identify the hazardous materials present and the extent of the contamination in reasonable detail and the estimated costs to effectively remediate such contamination, and provide a remedial response plan (which, if required to enable UEGCL to sell or lease the Complex to a third party, shall be approved by the Relevant Authority) and covering such other environmental matters as UEGCL shall reasonably request in writing not later than 90 (ninety) days prior to the due date of such report or at any time prior to the end of the Term if this Agreement is terminated earlier and the Company has sufficient time to reasonably comply with any such request.

The consulting firm's report shall be updated with respect to all matters required to be included therein two years prior to the end of the Term, and again upon the surrender of possession of the Complex.