

ITEM NO	CLARIFICATION FROM TENDERER	RESPONSE
001	We refer to the NEC3 Engineering and Construction Contract (April 2013) for the Drakensberg Blowdown Air Compressor Replacement Project, Contract No. [Insert Contract Number], and specifically to Part C2: Pricing Data, Option A (C2.1 – Pricing Assumptions). We wish to request clarification regarding the note under Clause 4: Preparing the Activity Schedule, which states: “The Price List is provided within the NEC3 document and must be used as-is. Tenderers are strictly prohibited from creating or submitting an alternative Price List. Only the Price List included in the NEC3 document may be completed and submitted. Any Tenderer who submits a Price List differing from the one contained in the NEC3 document will be disqualified from the tender process.” Our understanding of the NEC3 ECC Option A form of contract is that the Activity Schedule forms an integral part of the Contractor’s pricing and programme structure, and is intended to be prepared by the Contractor to: • Reflect the breakdown of the scope of work in accordance with the Contractor’s proposed execution methodology. • Enable clear linkage between the activities and the programme in accordance with Clause 31.4; and • Provide the basis for assessing the Price for Work Done to Date under Clause 11.2(27), where completed activities are certified for payment. The restriction stated in the above note appears to limit the Contractor’s ability to develop an Activity Schedule aligned with the intended construction sequence and methodology. This, in effect, prevents the Contractor from preparing a comprehensive and logically linked Activity Schedule as envisaged by Option A of the NEC3 ECC. We respectfully submit that this requirement, as currently worded, may create a practical and contractual inconsistency with the standard provisions of the NEC3 Option A mechanism, particularly with respect to: • The linkage between the Activity Schedule and the accepted programme (Clause 31.4); and • The principle that payment under Option A is made for completed activities, as opposed to a predefined Employer Price List more typical of an Option B arrangement. We therefore request Eskom’s confirmation or guidance on the following: • Whether the Contractor may propose an Activity Schedule that reflects the detailed breakdown of the works in accordance with our proposed programme, provided it remains consistent with the items listed in the Employer’s Price List; or Whether the intent is for the Contractor to adopt the Employer’s provided Price List verbatim, without modification or logical expansion for programme and payment alignment	The Contractor may propose an Activity Schedule that reflects the detailed breakdown of the works in accordance with their proposed programme, provided it remains consistent with the items listed in the Employer’s proposal. The original pricelist included in the NEC3 document is still required to be priced and submitted as is.