



VOLUME 3 OF 3

THE CONTRACT

TENDER No. RFP 022/2021

APPOINTMENT OF A SERVICE PROVIDER FOR THE SUPPLY AND DELIVERY OF CONSTRUCTION MATERIAL TO TAMBOERSKLOOF MILITARY SITE LOCATED IN THE WESTERN CAPE PROVINCE



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Notes:

The Tender Document must be submitted. All forms must be properly completed as required and the document shall not be taken apart or altered in any way whatsoever.

All forms must be duly completed in **black ink** as required.

The list of returnable documents, which consists of forms and schedules to be completed and company specific certificates and information pages to be attached, comprise the following:

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THE CONTRACT

- C1 : AGREEMENT AND CONTRACT DATA**
- C2 : PRICING DATA**
- C3 : PURCHASERS GOOD INFORMATION**
- C4 : SITE INFORMATION**

PART 1: AGREEMENT AND CONTRACT DATA

The applicable contract NEC3 Supply Contract (SC) April 2013 revision

Document reference	Title	No of pages
C1.1	Form of Offer and Acceptance	5
C1.2	Contract Data	9
C1.2.1	Conditions of Contract	10
C1.2.2	Contract Specific Data	5
C1.3	Performance Guarantee	4
	Total number of pages	33

C1.1 FORM OF OFFER AND ACCEPTANCE

C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter a contract for the procurement of: **TENDER No RFP 022/2021: APPOINTMENT OF A SERVICE PROVIDER FOR THE SUPPLY AND DELIVERY OF CONSTRUCTION MATERIAL TO TAMBOERSKLOOF MILITARY SITE LOCATED IN THE WESTERN CAPE PROVINCE**

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the service provider 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.

THE OFFERED TOTAL, INCLUSIVE OF VALUE ADDED TAX IS

Rand
..... (in words).

R (in figures).

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 to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the service provider in the conditions of contract identified in the contract data.

Signature

Name

Capacity

For the tenderer

Name of Tenderer

Address of Tenderer)

Name of witness

Signature of witness Date

C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)

C1.1.2 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 service provider 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 agreement)
- Part C2: Pricing data
- Part C3: Scope of work.
- Part C4: Site information

and the schedules, forms, drawing and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

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 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 Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representatives of both parties.

The Tenderer shall deliver the security in terms of Option X13 and X14 of the NEC3 SC Supply contract within the period stated in the contract Data or within the period stipulated in the conditional Letter of Acceptance, whichever date is the earliest, and he shall, immediately after 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 other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data, within 14 days of the date on which this Agreement comes into effect, if not supplied earlier in accordance with the conditional Letter of Acceptance. 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, unless stated differently in the contract conditions, comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now Contractor) within five days of the date of such receipt notified the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract within parties.

Signature

Name

Capacity

for the

Employer **Development Bank of Southern Africa Limited**
1258 Lever Road, Headway Hill,
Midrand, Gauteng Province

Name of witness

Signature of witness Date

Schedule of Deviations

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 Tender Data and the Conditions of Tender.

A Tenderer's covering letter will not necessarily be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid becomes the subject of agreements reached during the process of offer and acceptance; the outcome of such agreement shall be recorded here. **(Any cover letter must be referenced here if applicable, or it will not be valid as part of this submission).**

Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the Tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.

Any change or addition to the Tender documents arising from the above agreements and recorded here shall also be incorporated in to the final draft of the Contract.

1 Subject

Details

2 Subject

Details

3 Subject

Details

4 Subject

Details

5 Subject

Details

By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of Deviations as the only deviations from the amendments to the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, as well as any confirmation, clarification or change 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 Agreement shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the Tenderer:

Signature(s)

Name(s)

Capacity

Name of Tenderer

Address of Tenderer

.....

Name of witness

Signature of witness Date

For the Employer:

Signature(s)

Name(s)

Capacity

Name of Employer: **Development Bank of Southern Africa Limited**

Address of Employer 1258 Lever Road, Headway Hill, Midrand, Gauteng Province

Name of witness

Signature of witness Date

C1.2 CONTRACT DATA

Document reference	Title	No of pages
C1.2	Contract Data	1
C1.2.1	Conditions of Contract	16
C1.2.2	Contract Specific Data	2
C1.3	Performance Guarantee	4
	Total number of pages	23

C1.2.1 CONDITIONS OF CONTRACT

SPECIAL CONDITIONS OF CONTRACT – Z-CLAUSES

1. GENERAL

The Special Conditions of Contract (Z-clauses) form an integral part of the Contract. The Z-clauses shall amplify, modify, or supersede the NEC3 SC Core and Secondary Option Clauses to the extent specified below, and shall take precedence and shall govern.

The clauses of the Z-Clauses hereafter are numbered “Z” followed in each case by a number and an appropriate heading.

The Data Forms included in the NEC3 SC are replaced with the Data Forms included in this Contract Project Document.

C1.2 CONTRACT DATA

Part one - Data provided by the *Purchaser*

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

**Statements given in all
contracts**

1 General

- The *conditions of contract* are the core clauses and the clauses for Options of the NEC3 Supply Contract April 2013.
- The *goods* are

CONSTRUCTION MATERIALS

- The *services* are

**SUPPLY AND DELIVERY OF CONSTRUCTION MATERIAL TO
TAMBOERSKLOOF SITE IN CAPE TOWN ONLY FOR A PERIOD OF 12
MONTHS**

- The *Purchaser* is
Name

The Development Bank of Southern Africa, a state-owned entity of the
Government of South Africa

Address: 1258 Lever Road
Halfway House
Midrand
1685

- The *Supply Manager* is

Name: Zipho Moselakgomo

Address 1258 Lever Road
Halfway House
Midrand
1685

- The *Adjudicator* is

Will be mutually agreed on by both Parties once a dispute arises. The parties submit a maximum of three nominations to agree on the Adjudicator.

If the Parties do not agree on the Adjudicator, the Adjudicator will be appointed by the **Association of Arbitrators of Southern Africa**

- The Goods Information is in

Part 3: Scope of Work including all documentation drawings that it refers including applicable standards

- The Supply Requirements as part of the Goods Information is in

Annexure A to the Contract data

- The *language of this contract* is
English
- The *law of the contract* is the law of
Republic of South Africa
- The *period for reply* is
One (1) week (s).

- The *Adjudicator nominating body* is

Arbitrators of Southern Africa

- The *tribunal* is
Arbitration
- The person or organisation who will choose an arbitrator is the Chairman of the **Association of Arbitrators of Southern Africa**
 - if the Parties cannot agree a choice or
 - if the *arbitration procedure* does not state who selects an arbitrator is.

- The following matters will be included in the Risk Register

- (1) Late delivery affecting Purchaser's deliver obligation
- (2) Defective equipment or goods
- (3) Noncompliance with Health and Safety Regulations including instructions implementing COVID-19 directives
- (4)

3 Time

- The *starting date* is
One (1) week from date of appointment

The *Supplier* submits revised programmes at intervals no longer than
Two (2) weeks.

4 Testing and Defects

- The *defects date* is **Fifty-Two (52)** weeks after Delivery.
- The *defect correction period* is **One (1)** week(s) except that:
 - The *defect correction period* is **One (1)** weeks
 - The *defect correction period* for major defect is **Two (2)** weeks.
- The *defect access period* is **Two (2)** days

5 Payment

- The *currency of this contract* is the

South African Rand (ZAR)
- The *assessment interval* is **Three (3)** weeks (not more than five).
- The *interest rate* is **0 %** per annum above the Prime rate of the average of the four main banks otherwise **Standard Bank** (Purchaser's Bank) rate is applicable.

8 Risks, liabilities, indemnities and insurance

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract for any one event is
 - **Whatever the Supplier deems necessary in addition to what is required by law for anyone event with cross liability so that the insurance applies to the parties separately.**

.....
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract for any one event is
 - **As prescribed by the compensation for Occupational injuries and diseases Act No 130 of 1993 and the Supplier's common law liability for people falling outside the scope of the Act with the limit of indemnity of not less than R500 000 (Five Hundred Thousand Rand).**
- The *Supplier's* liability to the *Purchaser* for indirect or consequential loss including loss of profit, revenue and goodwill is limited to
The Total of the Prices
- For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to
 - **The Purchaser's existing and surrounding property in the care custody and control of the Supplier the amount of the deductible required by insurer from the Purchaser.**
- The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to
 - **The Total of the Prices**

The *Supplier's* total liability to the *Purchaser* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to

 - **The Total of the Prices**
- The *end of liability date* is **five (5)** years after Delivery of the whole of the *goods* and *services*.

Data for Option Clauses

X2 Change in the law

A change in the law is a compensation event occurs after the Contract Date

X7 Delay damages (but if no Option X5 also used)

3% of the total order prices per day up to the maximum of 15% of the order

X14 Advance Payment/Deposit

The advance payment or deposit is made either after Contract Date and receipt of an advance payment bond or after Contract date, receipt of purchase order and when Supplier receives the advance payment bond. The advance payment is **fifty per centum (50%)** of the total order refundable when Supplier delays performance.

Applicable Z clauses

Z1	Cession and Delegation of Rights
Z1.1	Neither party hereto may cede and delegate any of its rights and obligations (including liabilities) under this Agreement to any person without the written consent of the other.
Z1.2	Notwithstanding the above, the <i>Purchaser</i> may on written notice to the Supplier 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 or to its client on whose behalf it acts as an Implementing Agent.
Z2	Joint ventures
Z2.1	If the <i>Supplier</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the <i>Purchaser</i> for the performance of this contract.
Z2.2	Unless already notified to the <i>Purchaser</i> , the persons or organisations notify the <i>Service Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Supplier</i> on their behalf.

Z2.3	The <i>Supplier</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Purchaser</i> having been given to the <i>Supplier</i> in writing.
Z3	Change of Broad Based Black Economic Empowerment (B-BBEE) status
Z3.1	Where a change in the <i>Supplier's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Supplier's</i> B-BBEE status, the <i>Supplier</i> notifies the <i>Purchaser</i> within seven days of the change.
Z3.2	The <i>Supplier</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Service Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Service Manager</i> .
Z3.3	Where, as a result, the <i>Supplier's</i> B-BBEE status has decreased since the Contract Date the <i>Purchaser</i> may either re-negotiate this contract or alternatively, terminate the <i>Suppliers'</i> obligation to Provide the Works.
Z3.4	Failure by the <i>Supplier</i> to notify the <i>Purchaser</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Purchaser</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.
Z4	Ethics
Z4.1	<p>The <i>Purchaser</i> is committed to the highest standard of ethical behaviour and expects the same from all <i>Suppliers</i>.</p> <p>Any offer, payment, consideration, or benefit of any kind made by the <i>Supplier</i>, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the <i>Supplier's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Supplier</i> (including civil or criminal action).</p>
Z4.2	<p>The <i>Purchaser</i> may terminate the <i>Supplier's</i> obligation to Provide the Works if the <i>Supplier</i> (or any member of the <i>Supplier</i> where the <i>Supplier</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.</p> <p>Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the <i>Purchaser</i> or other people or organisations and including in circumstances where the</p>

	<i>Supplier</i> or any such member is removed from the an approved vendor data base of the <i>Purchaser</i> as a consequence of such practice.
Z4.3	Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.
Z5	Confidentiality
Z5.1	The <i>Supplier</i> 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 <i>Supplier</i> , enters the public domain or to information which was already in the possession of the <i>Supplier</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Supplier</i> disclose information to Others in terms of clause 25.1, the <i>Supplier</i> ensures that the provisions of this clause are complied with by the recipient.
Z5.2	If the <i>Supplier</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Service Manager</i> .
Z5.3	In the event that the <i>Supplier</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Supplier</i> , to the extent permitted by law prior to disclosure, notifies the <i>Purchaser</i> so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. If such protective order is not, or cannot, be obtained, then the <i>Supplier</i> 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.
Z5.4	The taking of images (whether photographs, video footage or otherwise) of the <i>works</i> or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the <i>Service Manager</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z5.5	The <i>Supplier</i> ensures that all his Sub-Suppliers abide by the undertakings in this clause.
Z6	Waiver and estoppel: Add to core clause 12.3:

Z6.1	Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Service Manager</i> , the <i>Supervisor</i> , or the <i>Adjudicator</i> 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.
Z7	Health, safety and the environment: Add to core clause 27.4
Z7.1	<p>The Supplier shall ensure that it complies with all relevant health and safety measures set out in the Goods Information in regard to the novel COVID-19 virus, which is not exclusive of any other health and safety regulations, laws, by-laws and ordinances published by the Government of South Africa in the Government Gazette, applicable to the Supplier and/or the Goods provided by the Supplier.</p> <p>The Occupational Health and Safety Act No. 85 of 1993, Construction Regulations 2014, Section 27(2) of the Disaster Management Act, 2002 Regulations and COVID-19 Consolidated Directions on Occupational Health and Safety in certain workplaces, will in all respects be applicable to this contract.</p>
Z7.2	<p>The Supplier 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 Supplier:</p> <p>accepts that the Purchaser appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 as the Principal Contractor (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations 2014”) for the Site.</p> <ul style="list-style-type: none"> warrants that the total of the Prices as at the Contract Date includes enough for proper compliance with the Occupational Health and Safety Act (85 of 1993), Construction Regulations 2014, Section 27(2) of the Disaster Management Act 2002, COVID-19 Consolidated Directions on Occupational Health and Safety in certain workplace, all applicable health & safety bylaws 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 Occupational Health and Safety Act (85 of 1993), Construction Regulations 2014, Section 27(2) of the Disaster Management Act 2002, COVID-19 Consolidated Directions on Occupational Health and Safety in certain workplaces, and with all applicable health & safety bylaws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensure that his Sub Suppliers, employees and others under the Supplier’s direction and control, likewise observe and comply with the foregoing.
Z7.3	The Supplier, 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 Sub Suppliers, employees and others under the Supplier’s direction and control, likewise observe and comply with the foregoing.

Z7.4	<p>Supplier's liability as mandatory</p> <p>Notwithstanding any actions which the Purchaser may take, the Supplier accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements, and procedures imposed by the Occupational Health and Safety Act, 1993 (Act 85 of 1993), and all its regulations, Section 27(2) of the Disaster Management Act, 2002 Regulations and COVID-19 Consolidated Direction on Occupational Health and Safety in certain workplaces for which he is liable as mandatory. By entering into this Contract, it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act.</p>
Z7.5	
Z7.6	<p>Supplier to notify Purchaser of any Incident</p> <p>The Purchaser retains an interest in all inquiries conducted under this Contract in terms of Section 31 and/or 32 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and its Regulations, Section 27(2) of the Disaster Management Act, 2002 Regulations and COVID-19 Consolidated Direction on Occupational Health and Safety in certain workplaces, following any incident involving the Supplier and/or Sub-Supplier and/or their employees. The Supplier shall notify the Purchaser in writing of all investigations, complaints or criminal charges which may arise pursuant to work performed under this Contract in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and Regulations.</p>
Z7.7	<p>In carrying out his obligation mandatory to the Purchaser for this contract in terms of Section 37(2) of the Occupational Health & Safety Act No. 85 of 1993, the Supplier ensures that he complies with the Act when Providing the Works or using Plant, Materials or Equipment. The Supplier indemnifies the Purchaser against loss and damage to property, death of, or injury to, a person and claims, proceedings, compensation and costs arising from the Supplier's transgression of the Act, except to the extent that the Purchaser caused the transgression.</p>
Z8	Provision of a Tax Invoice and interest. Add to core clause 51
Z8.1	<p>Within one week of receiving a payment certificate from the Service Manager in terms of core clause 51.1, the Supplier provides the Purchaser with a tax invoice in accordance with the Employer's procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.</p>
Z8.2	<p>If the Supplier does not provide a tax invoice in the form and by the time required by this contract, the time by when the Purchaser 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</p>

	Purchaser in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
Z8.3	The Supplier (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.
Z8.4	Tax Invoice The Supplier ensures that the requirement in terms of Section 20(4)(C) of the Value Added Tax Act, no 89 of 1991 (as amended by the Revenue Laws Amendment Act 45 of 2003), that the VAT registration number of the recipient of the tax invoice, appears on the said tax invoice in order for the invoice to fully comply with the requirements of a valid invoice for VAT purposes as contained in the said Section 20(4)(C), is adhered to. The Purchaser requires adherence by the Supplier to this requirement as from 1 June 2004. No payment will be made on tax invoices not fully meeting the requirement
Z9	Notifying compensation events
Z9.1	Delete from the last sentence in core clause 61.3, "unless the Service Manager should have notified the event to the Supplier but did not".
Z10	Employer's limitation of liability
Z10.1	The Purchase's liability to the Supplier for the Supplier's indirect or consequential loss is limited to R0.00 (zero Rand)
Z10.2	The Supplier's entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the Employer's liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.
Z11	Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z11.1	or had a judicial management or business rescue order granted against it (R8).
Z12	Addition to secondary Option X7 (or Options X5 and X7 used together) Delay damages (if applicable in this contract)
Z12.1	If the amount due for the Supplier's payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the Purchaser may terminate the Supplier'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.
Z13	Assessing the amount of work which the Contract Data states the Supplier will do himself
Z13.1	The prices for the work done by the Supplier himself are the lump sums and the product of the quantity multiplied by the unit rates agreed to and included in the pricing schedule associated with this contract.
Z13.2	The cost of people includes amounts for meeting the requirements of law and if applicable for pension provisions.
Z13.3	The amount for Equipment includes amounts paid for hired Equipment and an amount for the use of Equipment owned by the Supplier which is the amount the Supplier would have paid if the Equipment had been hired.
Z13.4	The assessment includes risk allowances for costs and time matters which are at the Supplier's risk under this contract. The assessment is not revised if the forecast upon which it is based is shown by later recorded information to have been wrong.
Z13.5	The effects of compensation events upon the prices for work done by the Supplier himself are assessed by forecasting the effect of a compensation event upon the cost arrived at in terms of Z13.1 to Z13.3 above or if the event has already occurred, the assessment is based on the cost due to the event which the Supplier has incurred.

Z13.6	The provisions of Z14.4 above apply also to compensation events involving changes to the prices for work done by the Supplier himself.
Z14	Time
Z14.1	<p>Amend this clause by inserting the following as clause 37.1</p> <p>Recovery Plan</p> <p>37.1 Where actual progress on Site is not in accordance with the most current programme or where the <i>Purchaser</i> or <i>Service Manager</i> is of the opinion, at any time during the execution of the <i>works</i>, that the <i>Supplier</i> will not achieve Completion on the date stated in the most current programme, the <i>Supplier</i> shall prepare a recovery plan within 14 days of receipt of an instruction from the <i>Purchaser</i> or <i>Service Manager</i> requesting such recovery plan detailing:</p> <ul style="list-style-type: none"> the Supplier's plan to ensure that the works will achieve Completion on the date stated in the most current programme; all additional resources which will be employed by the Supplier in order to ensure that the Supplier achieves Completion on the date stated in the most current programme; <p>any other information which may be required by the Purchaser or Service Manager to ascertain that the Supplier will achieve Completion on the date stated in the most current programme.</p>
Z15	Payment
Z15.1	<p>Amend clause 50</p> <p>Clause 50 amended by addition of the following clause</p> <p>Materials and goods stored off site are not included in the amount authorised for payment</p>
Z15.2	<p>Payment 51 – amend the clause by adding the following clauses at the end of the clause:</p> <p>51.5 Within one week of receiving a payment certificate from the <i>Service Manager</i> in terms of core clause 51.1, the <i>Supplier</i> provides the <i>Purchaser</i> with a tax invoice in accordance with the <i>Employer's</i> procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.</p>

	<p>51.6 If the <i>Supplier</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Purchaser</i> is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice.</p> <p>51.7 The <i>Supplier</i> (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 <i>Employer's</i> VAT number on each invoice he submits for payment.</p>
Z16	The Service Manager and Supervisor's authority
Z16.1	<p>The Purchaser is an organ of state and must follow certain governance protocols as provided for in legislation, government instruction or its mandate. To ensure compliance with the governance protocols the authority of the Service Manager and Supervisor is limited and in the following they must obtain prior approval from the Employer:</p> <ul style="list-style-type: none"> • change of scope of work having a cost and/or time impact; • acceptance of Sub Suppliers or subcontracting contract conditions; • giving any instruction having a cost and/or time impact; or • Acceptance of a compensation event having a cost and/or time impact. • Any cumulative effect or compensation above 20% require National Treasury approval and will not be executed without written approval from National Treasury. • Increases above the contract from 0-9.99% will require written approval of the IDD Group Executive, and above 10-19.99% require the DBSA Chief Executive Officers written approval. • Any compensation above the initial accepted forecast without written approval will be at the risk and account of the management Supplier.
Z16.2	The Service Manager or Supervisor may extent any period for reply or any other response required within a prescribed time limit in this contract, by written notice of not less than three (3) days, by up to twenty-eight (28) days to obtain the necessary authority regarding the matter under consideration.
Z16.3	The Purchaser may, having stated his reason, instruct the Supplier to remove an employee. The Supplier then arranges that, after one day, the employee has no further connection with the work included in this contract.
Z17	Access to Manufacturing Plant and Records
Z17.1	The Supplier allows the Service Manager or Purchaser access at any time within working hours the manufacturing facility, plant or place, to inspect the accounts and records which it is required to keep. This includes the verification of forecast and inspection of other records. The Supplier shall obtain the same rights and obligations from Sub-Suppliers to the benefit of the Employer.
Z18	Environmental
Z18.1	The Supplier ensures that all goods, services and works supplied in terms of this contract conform to all applicable environmental legislation and to the Purchaser's environmental specifications.

Z19	Price adjustment for inflation
Z19.1	<p>Amend option X1</p> <p>Option X1 amended by adding option X1 to be used with option F</p> <p>The base date for indices is the actual 12th month in the final contract document</p> <p>The proportions used to calculate the Price Adjustment Factor are:</p> <hr/> <p>The indices are those prepared by SEIFSA (after the contract date)</p>
Z 20	Spare and replacement parts
Z20.1	<p>The <i>Supplier</i> makes available for purchase the spares and replacement parts stated in the Goods Information and needed by the <i>Purchaser</i> to maintain the <i>goods</i> during its <i>designed working life</i>. Unless otherwise agreed between the Parties, the purchase price of the spares and replacement parts is the <i>Supplier's</i> costs applicable at the time of purchase to which the percentages for overheads and profit stated in the Contract Data are applied.</p>

C1.2.2 CONTRACT DATA

Part two - Data provided by the *Supplier*

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

Statements given in all contracts

- The *Supplier* is

Name

Address

.....

- The following matters will be included in the Risk Register

.....

.....

.....

.....

- The *percentage for overheads and profit* added to the Defined Cost is

..... %.

- The *price schedule* is in

- The tendered total of the Prices is (in words)

.....

Optional statements

If the *Supplier* is to provide Goods Information for his design

- The Goods Information for the *Supplier's* design is in

.....

.....

If the *Supplier* restricts access by the *Supply Manager* and Others to work being done for this contract

- The restrictions to access for the *Supply Manager* and Others to work being done for this contract are

.....

.....

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is

If the *Supplier* is to state, the *delivery date* of the goods and services.

- The *delivery date* of the goods and services is

goods and services

delivery date

.....

C 1.3 FORMS OF SECURITIES

Pro-Forma NEC3 SC Performance Bond this must be same as vol 2 pro-forma.

To: The Development Bank of Southern Africa Limited

Dear Sirs

Reference No. [●] *[Drafting Note: Guarantor/Bank reference number to be inserted]*

Performance Bond: *[Drafting Note: Name of Contractor to be inserted]*

Employer: Contract Reference - [●] *[Drafting Note: Contract reference number to be inserted]*

1. In this Guarantee

1.1 The following words and expressions have the following meanings:

- 1.1.1 "Guarantor" - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Guarantor to be inserted]* [●] **Financial Services Board Registration number**
- 1.1.2 "Guarantor's Address" - means [●]; *[Drafting Note: Guarantor's physical address to be inserted]*
- 1.1.3 "Contract" - means the written agreement entered into between the Employer and the Contractor on or about [●] [●] 201[●] (Contract Reference No. [●]), as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: signature date and Contract reference number to be inserted]*
- 1.1.4 "Contractor" - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; *[Drafting Note: Name and details of Contractor to be inserted]*
- 1.1.5 "Employer" - means The Development Bank of Southern Africa Limited, a juristic person in terms of section 2 of The Development Bank of Southern Africa Limited Act, 13 of 1979;
- 1.1.6 "Expiry Date" - means the [●] day of [●] *[Drafting Note: This date should align with the date of final completion]*.
- 1.1.7 "this Guarantee" - means this document;
- 1.1.8 "Guaranteed Sum" – means, subject to clause 4, the sum of [● - figure] ([● - words]) *[Drafting Note: Maximum aggregate Guarantee amount (not exceeding 10.0% of the total of the Prices as at the Contract Date) to be inserted]* which amount will reduce with 50% when the Practical Completion certificate is issued until Final Completion.

1.2 Words or expressions capitalised shall bear the same meaning as assigned to them under the Contract albeit that the Contract itself, and any terms as defined therein, are merely referenced for convenience and not to create an accessory obligation.

2. At the instance of the Contractor, the Guarantor hereby confirms that we hold the Guaranteed Sum at the disposal of the Employer, as security for the proper performance by the Contractor of all of his obligations in terms of and arising from the Contract, and hereby irrevocably and unconditionally both agree and undertake to pay to the Employer, on written demand from the Employer envisaged in paragraph 3 below and received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.

3. A demand for payment under this Guarantee shall be made in writing at the Guarantor's address or by email to the following email [.....insert..] and shall:

3.1 state the amount claimed ("the Demand Amount");

3.2 state that the Demand Amount is payable to the Employer in the circumstances contemplated in the Contract:

4. The Guaranteed Sum may be reduced from time to time upon receipt by the Guarantor of the Employer's written certificate certifying the amount of such reduction and the Contractor's entitlement thereto under the Contract.

5. Notwithstanding the reference herein to the Contract the Guarantor acknowledges that:

5.1 the liability of the Guarantor in terms hereof is as principal and not as surety and the Guarantor's obligation/s to make payment:

5.1.1 is and shall be absolute and unconditional in all circumstances; and

5.1.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever;

5.2 the Employer shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting the Guarantor's liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract or termination of the Contract.

5.3 should the Employer cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then the Employer shall be entitled to cede to such third party the rights of the Employer under this Guarantee on written notification to the Guarantor of such cession.

6. The Guarantor's obligations in terms of this Guarantee:

6.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

6.2 shall not be discharged and compliance with any demand for payment received by the Guarantor in terms hereof shall not be delayed, by the fact that a dispute may exist between the Employer and the Contractor.

7. This Guarantee:

7.1 shall expire on the Expiry Date until which time it is irrevocable;

7.2 is, save as provided for in 5.3 above, personal to the Employer and is neither negotiable nor transferable;

7.3 shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

7.4 shall be regarded as a liquid document for, firstly, the purpose of demonstrating and/or determining the amount due by the Guarantor to the Employer and, secondly, **obtaining** any court order; and

7.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

8. The Guarantor chooses the *domicilium citandi et executandi* for all purposes in connection with this Guarantee at the Guarantor's Address.

Signed at _____ Date _____

For and behalf of the Guarantor, which signatories by appending their signatures warrant that they are authorised to bind the Guarantor as above stated:

Guarantor Signatory 1: _____ Guarantor Signatory 2: _____

Name: _____ Name: _____

Capacity of Guarantor
Signatory 1: _____ Capacity of Guarantor
Signatory 2: _____

Witness: _____ Witness: _____
(Printed Name of Witness) (Printed name of witness)

Guarantor's seal or stamp _____

PART 2: PRICING DATA

NEC3 Supply Contract (SC) April 2013 revision

Document reference	Title	No of pages
C2.1	Pricing Instructions	2
C2.2	Pricing Schedule	270
C2.3	Pricing Assumptions: Supply Contract	1
C2.4	First forecast of Total Defined Cost-plus Fee	1
	Total number of pages	274

C2.1 PRICING INSTRUCTIONS

1. The Pricing Schedule is provided as a guide to Tenderers to price this Supply Contract (NEC3 SC Supply Contract) to determine the first Forecast of the Total Defined Cost-plus Fee and to use when subcontracting to ensure price certainty. The Tenderers must determine or ensure that the Pricing Schedule is complete and provide for all items to be priced for this contract. If an item is not separately priced, then it will be accepted that its price element is included in the other items for that part of the works. The Pricing Schedules have been drawn up in accordance with the Standard System of Measuring Building Work (as amended) published and issued by the Association of South African Quantity Surveyors (Sixth Edition (Revised)), 1999. Where applicable the:
 - a) Civil engineering work has been drawn up in accordance with the provisions of the latest edition of SABS 1200 Standardized Specifications for Civil Engineering Works.
 - b) Electrical work has been drawn up in accordance with the provisions of the Model Pricing Schedule for Electrical Work, published by the South African Association of Quantity Surveyors, (July 2005).
 - c) Where included in the Pricing Schedule, detailed pricing must be done for Health and Safety and broken down into pricing elements by the tenderer for all items that will be required in respect of training, equipment, signage and whatever the tenderer deems necessary.
2. The agreement is based on the NEC3 SC Supply Contract. The additions, deletions and alterations to the NEC3 SC Supply Contract as well as the contract specific variables are as stated in the Contract Data and Z-Clauses. It will be assumed that prices included in the Pricing Schedule are based on Acts, Ordinances, Regulations, By-laws, International Standards and National Standards that were published as provided for in the amended X2 before the closing date for tenders. (Refer to www.stanza.org.za or www.iso.org for information on standards).
3. The drawings listed in the Scope of Works used for the setting up of these Pricing Schedules are kept by the Project Manager or Supervisor and can be viewed at any time during office hours up until the completion of the works but any omissions in the Pricing Schedule will not be a compensation event.
4. Reference to any trademark, name, patent, design, type, specific origin, or producer is purely to establish a standard for requirements. Products or articles of an equivalent standard may be substituted.

C2.2 PRICING SCHEDULE

Use this page as a cover page to the *Supplier's Pricing Schedule as used in support of arriving at the first Forecast of the Total of the Defined Cost, which must be submitted as supporting documentation with any other pricing documents the Tenderers used to arrive at the first Forecast of the Total Defined Cost-plus Fee. The Pricing Schedule will also be used going forward to inform future forecasts and shall be used to price subcontracts.*

- 1) Tenderers are to ensure that adequate provision for the health and safety measures that have been made and provided as required by the Department of Labour.
- 2) The PDF/ original format *Pricing Schedule* must be populated by hand in black ink and will be the document used for evaluation purposes and if tenderer is successful this Pricing Schedule will be balanced in conjunction with the Project Manager and then applied for forecasting and subcontracting where applicable.
- 3) Tenderers are also required to electronically populate the Excel format and add to the required Flash Drive with your submission. This will be used to support verification of pricing errors.
- 4) Delivery location will be within the identified District. Transportation costs will then cover location anywhere within the identified District.
- 5) If it is possible to do a first forecast at award stage, this could be included here. The purpose of this would be to provide a budget for the Employer's operational requirements.
- 6) After contract award, forecasts are provided at the intervals stated in the Contract Data.
- 7) The forecast would be broken down into the total of the prices for work which the Contractor is to do himself.

C2.3 PRICING ASSUMPTIONS: SUPPLY CONTRACT

How work is priced and assessed for payment

Clause 11 in NEC3 Supply Contract states:

**Identified and
defined terms**

11
11.2

Defined Cost 52
52.1

All the Supplier's costs which are not included in the Defined Cost are treated as included in the percentage for overheads and profit. Defined Cost includes only amounts calculated at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

The Price Schedule 53
53.1

Information in the Price Schedule is not Goods Information.

- payment to the Purchaser as a result of the Subcontractor failing to meet a key date,
- the correction of Defects after Completion,
- payment to Others,

I, _____ of _____,
(Authorised Signatory) (Company Name)

Hereby acknowledge having read, understood and agree to requirements as set out in C2.1 to C2.3 and warrant that the documents submitted are true and accurate.

(Signature)

(Date)

PART 3: PURCHASERS GOOD INFORMATION

Document reference	Title	No of pages
	This cover page	1
C3.1	Project Specifications	11
C3.2	Particular Specifications	1
	Total number of pages	13

C3.1 PROJECT SPECIFICATIONS

1. DESCRIPTION OF THE WORKS

1.1. Employer's objectives

The Employer's objective is to procure construction materials and deliver to site only at Tamboerskloof Military Site in the Western Cape Province.

1.2. Overview of the works

The Department of Defence (DoD) has an objective to provide sustainable Defence infrastructure that meets their demands.

1.3. Extent of the works

The scope of work required for the Service Provider is as detailed below (Refer to the BOQ for detailed specifications of work to be done):

High Level Activities to be undertaken by the Service Provider

- Supply and Deliver Construction Material as per the BOQ
- Oversee the delivery and offloading of material on site.
- Conduct Delivery Risk Assessment.
- Quality Control and Management
- Coordination & Reporting.
- Compilation & Submission of Delivery Plan/s.
- Based on the above and any required activity, take liability for the delivery of materials
- Close programme

Temporary Works and Traffic Accommodation

As the deliveries will be within a built-up urban area, the Supplier will be required to carry out all necessary safety protocols to maintain the flow of traffic and to ensure that pedestrian and vehicular access is maintained to local residential buildings and businesses.

1.4. Location of the works

The deliveries will be done at Tamboerskloof Military Base, Cape Town in the Western Cape Province.

1.5. Occupational Health And Safety

The service provider needs to comply with the following legal requirements:

- Occupational Health and Safety Act, 85 of 1993 and the Construction Regulations, 2014;
- Section 27(2) of the Disaster Management Act, 2002 Regulations as amended;
- Consolidated Directions on Occupational Health and Safety in certain workplaces
- Annexure A - DBSA Occupational Health and Safety Baseline specification and COVID-19 amendment;
- Annexure B - DBSA Baseline Risk Assessment and COVID-19 amendment;
- Annexure C - Safety, Health, Environment and Quality Policy.

2. PROCUREMENT

2.1. Preferential procurement procedures

The works shall be executed in accordance with the conditions attached to preferences granted in accordance with the referencing schedule.

3. CONSTRUCTION

3.1. Applicable SANS 2001 standards for construction works

The following parts of SANS 2001 Construction works standards and associated specification data are applicable to the works:

- 1) SANS 2001BE1
- 2) SANS 2001BS1
- 3) SANS 2001CC2
- 4) SANS 2001CG1
- 5) SANS 2001CM1
- 6) SANS 2001CS1
- 7) SANS 2001CT2
- 8) SANS 2001DP1
- 9) SANS 2001DP2
- 10) SANS 2001DP3
- 11) SANS 2001DP4

- 12) SANS 2001DP5
- 13) SANS 2001DP6
- 14) SANS 2001EM1

The abovementioned South African National Standards make several references to the Specification Data for data, provisions and variations that make these standards applicable to this contract. The Specification Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and these standards.

Each item of Specification Data given below is cross-referenced to the clause in the standard to which it mainly applies.

3.2. Applicable national and international standards

- Standardized Specifications for Civil Engineering Construction SANS 1200
- The National Building Regulations SABS0400
- Construction and Management Requirements for Works Contracts SANS1921-1
- Targeted Construction Procurement SANS1914-4

3.3. Certification by recognized bodies

Not Applicable

3.4. Plant and materials provided by the employer

Refer to the BOQ.

3.5. Services and facilities provided by the employer

Not Applicable

3.6. Plant and equipment

Not Applicable

4. Management

4.1. SANS 1921 standards

The SANS 1921 Construction works standards and associated specification data are applicable to the works:

The abovementioned South African National Standards make several references to the Specification Data for data, provisions and variations that make these standards applicable to this contract. The Specification Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and these standards.

Each item of Specification Data given below is cross-referenced to the clause in the standard to which it mainly applies.

The associated Specification Data is as follows:

SANS 1921-1, Construction and management requirements for works contracts – Part 1: General engineering and construction works

Clause	Specification data
Essential data	
4.3.3	The notice period for delivery is 3 Days
4.9.3	The trees and shrubs which are not to be disturbed are to be identified on site. Where possible, the disturbance of trees should be avoided.
4.17.1	The requirements for the termination, diversion or maintenance of existing services are: 1) none
4.17.3	Services which are known to exist on the site are: 1) Water network. 2) Electricity reticulation, sub-surface and over head 3) Sewer Network 4) Municipal roads

Additional clauses

- *Duration of the project is 12 months*

SANS 1921-6, Construction, and management requirements for works contracts – Part 6: HIV/AIDS awareness.

4.2.1(a)	A qualified service provider is a service provider that is one that is accredited or provisionally accredited training service provider in the HIV/AIDS field. A list of accredited service providers can be obtained from the Construction SETA (CETA) (tel 011-265 5900), Health and Welfare SETA (HWSETA) (011-622 6852) or on the Health and Welfare SETA website: www.hwseta.org.za .
4.2.1(a)	The HIV/AIDS awareness programme is to be repeated at four-month intervals throughout the duration of the contract. (Four times in total, including the initial one at the start of the contract.)

Additional clauses

	The duration of each workshop is not to be less than 2 ½ hours.
--	---

4.2. Management meetings

A Schedule of meetings will be agreed with the service provider.

4.3. Daily records

The Service Provider is instructed to keep a set of signed off daily diaries with specific detail relating to Contract Participating Goals (CPG) as provided for in 3 above.

4.4. Payment certificates

Payment Certificates will be done as per Clause 50.0 of the NEC3 ECC Supply Contract. Payments will not be processed unless all the required supporting information are attached to the claim for payment.

C3.2 PARTICULAR SPECIFICATIONS

In addition to the Standardized and Project Specifications the following Particular Specifications shall apply to this contract and are bound in hereafter.

PARTICULAR SPECIFICATION		PAGE NO.
POHS	: HEALTH AND SAFETY BASELINE SPECIFICATIONS & AMENDMENTS FOR COVID-19	Annexure A
B/RA	: BASELINE RISK ASSESSMENT & AMENDMENTS FOR COVID-19	Annexure B
SHEQ	: DBSA SHEQ POLICY	Annexure C

PART 4: SITE INFORMATION

Document reference	Title	No of pages
	This cover page	1
C4.1	<i>Information and Map</i>	1
C4.2	<i>Existing Buildings Occupied</i>	1
	Total number of pages	3

C4.1 INFORMATION AND MAP

The Works to be constructed are around jurisdiction as shown in the map below:

