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DEVELOPMENT BANK OF SOUTHERN AFRICA
Building Africa's Prosperity

VOLUME 3 OF 3

THE CONTRACT

NEC 3 Engineering and Construction, Engineering and Construction Contract, April 2013 with Option B: Priced Contract with Bill of Quantities (including amendments).

TENDER NO. RFP189/2026

APPOINTMENT OF CONTRACTOR/S FOR THE REFURBISHMENT AND INSTALLATION OF PRESSURE REDUCING VALVES (PRVs) WITHIN THE ROODEPOORT, SOWETO AND ENNERDALE DEPOT REGIONS OF THE JOHANNESBURG WATER NETWORK

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Notes:

The Tender Document must be submitted as a whole. 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 : WORKS INFORMATION

C4 : SITE INFORMATION

PART 1: AGREEMENT AND CONTRACT DATA

1. **Contract 1 – APPOINTMENT OF CONTRACTOR/S FOR THE REFURBISHMENT AND INSTALLATION OF PRESSURE REDUCING VALVES (PRVs) WITHIN THE ROODEPOORT, SOWETO AND ENNERDALE DEPOT REGIONS OF THE JOHANNESBURG WATER NETWORK**
2. **NEC 3 Engineering and Construction Contract Option B:** Priced Contract with *Bill of Quantities* of April 2013 (including amendments).

Document reference	Title	No of pages
C1.1	Form of Offer and Acceptance	4
C1.2	Contract Data	1
	Part One – Data provided by the *Employer*	22
	Part Two – Data provided by the *Contractor*	2
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: **RFP189/2026 - APPOINTMENT OF CONTRACTOR/S FOR THE REFURBISHMENT AND INSTALLATION OF PRESSURE REDUCING VALVES (PRVs) WITHIN THE ROODEPOORT, SOWETO AND ENNERDALE DEPOT REGIONS OF THE JOHANNESBURG WATER NETWORK**
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 Contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

The offered total of the Prices exclusive of VAT is	**R**
Sub total	**R**
Value Added Tax @ **15%** is	**R**
The offered total of the amount due inclusive of VAT is[1]	**R**
(in words)	

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 or issue a conditional Letter of Acceptance subject to certain conditions which must be fulfilled prior to final acceptance and signing of the acceptance part of this form, whereupon the tenderer becomes or may become the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s) .....

Name(s) .....

Capacity .....

For the tenderer:

Name 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 Contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1: Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2: Pricing data
Part C3: Scope of work.
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 within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), or the date specified in the conditional Letter of Acceptance, whichever date is the earliest, contact the Employer's representative (whose details are given in the contract data or Letter of Acceptance) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data or Letter of Acceptance. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement and the Employer may in its sole discretion accept such repudiation and either appoint one of the other tenderers or cancel the tender and re-issue it.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now Contractor) within five days of the date of such receipt or the conditional Letter of Acceptance notifies the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature(s) .....

Name(s) .....

Capacity .....

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

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 and 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 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 addend 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) . . .

C1.2 CONTRACT DATA

Document reference	Title	No of pages
C1.2	Contract Data	
	Part One – Data provided by the *Employer*	22
	Part Two – Data provided by the *Contractor*	2
C1.3	Performance Guarantee	4
	Total number of pages	28

Part One - Data provided by the *Employer*

SANS

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

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option	
		B: Priced contract with Bills of Quantities
	dispute resolution Option	
		W1: Dispute resolution procedure
	and secondary Options	
		X2: Changes in the law
		X5: Sectional Completion
		X7: Delay damages
		X13: Performance Bond
		X16: Retention
		X18: Limitation of liability
		Z: *Additional conditions of contract*
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3) Option B	
10.1	**The *Employer* is:**	the Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the "**IDD**"), a juristic person reconstituted and

		incorporated in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997 (the "**DBSA**");
	Address:	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	Represented by:	**To be indicated at contracting**
	Tel No.	**To be indicated at contracting**
	Fax No.	**To be indicated at contracting**
10.1	**The *Project Manager* is:**	**To be indicated at contracting**
	Address:	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	Tel No.	**To be indicated at contracting**
	e-mail:	**To be indicated at contracting**
10.1	**The *Supervisor* is:**	**To be indicated at contracting**
	Address:	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	Tel No.	**To be indicated at contracting**
	Fax No.	**To be indicated at contracting**
	e-mail:	**To be indicated at contracting**
11.2(14)	The following matters will be included in the Risk Register	**(i) Compliance with tender requirements** **(ii) Personnel Clearance and Authorised Access to Site** **(iii) Work performance and quality of targeted enterprises subcontracted by the *Contractor*** **(iv) Community liaison;**

		(v) Matters notified as early warnings; **(vi) Decisions resulting from risk reduction meetings;** **(vii) Site conditions at individual PRV installations (chamber condition, actual pipe sizes and structural stability) differing materially from the Employer's action lists and the drawings once verified on site;** **(viii) Long lead times for i2O/advanced pressure-modulating controllers and PMZ critical-point GSM loggers, being the principal critical-path item;** **(ix) Vandalism, theft or bypassing of PRV installations during construction and after handover;** **(x) Coordination between the depot-level contractors and the Employer's WCWDM/technical metering function on SCADA and telemetry integration;** **(xi) Compression of the programme (including shortened site verification or procurement) and the consistency of the programme with the 9-month completion date;** **(xii) Planned network shut-downs (up to two per week per depot) disrupting water supply or generating community complaints, and failure to complete cut-ins within a single shut-down;** **(xiii) Unknown or incorrectly located existing services and the need to relocate services, as covered by provisional sums; and** **(xiv) Health, safety and security risks of night-time and off-peak work where instructed.**
11.2(15)	The *boundaries of the site* are	**As per the locations indicated.**
11.2(16)	The Site Information is in	Part 4: Site Information

11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.	
12.2	The *law of the contract* is the law of	the Republic of South Africa	
13.1	The *language of this contract* is	English	
13.3	The *period for reply* is	3 days	
2	**The *Contractor's* main responsibilities**	Supply, installation, refurbishment and commissioning of Pressure Reducing Valve (PRV) installations and associated civil, mechanical and instrumentation works at 31 sites in the Roodepoort, Soweto and Ennerdale depot regions of the Johannesburg Water network, as per the Works Information	
3	**Time**		
11.2(3)	The *completion date* for the whole of the *works* is	9 (nine) months from site hand over date.	
30.1	The *access dates* are	**Part of the site** **[•]TBC** **[O]**	**Date**
30.3	The *key dates* and *conditions* to be met are	*condition* to be met	*key date*
		[O]Site establishment	**[O]TBC**
		[O]Completion	**[O]TBC**
31.1	The *Contractor* is to submit a first programme for acceptance within	**1 week** of the Contract Date.	
31.2	The *starting date* is	**within seven (7) days from the date the construction work permit is issued in terms of the Construction Regulations 2014**	
32.2	The *Contractor* submits revised programmes at intervals no longer than	**1** week	
4	**Testing and Defects**		

42.2	The *defects date* is	52 weeks after [Completion of the whole of the *works*]
43.2	The *defect correction period* is	5 days
5	**Payment**	
50.1	The *assessment interval* is	One month, the assessment date being the **20th** of each month
51.1	The *currency of this contract* is the	South African Rand
51.2	The period within which payments are made is	4 weeks from receipt of tax invoice
51.4	The *interest rate* is	zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands.
6	**Compensation events**	
60.1(13)	The place where weather is to be recorded is	At the site working area
	The *weather measurements* to be recorded for each calendar month are:	• the cumulative rainfall (mm); • the number of days with rainfall of more than 10mm; • the number of days with minimum air temperature less than 0 degrees Celsius; • the number of days with snow lying at **+2** hours GMT; • and these measurements:
	The *weather measurements* are supplied by	***Contractor* and verified with closest weather station to site.**
	The weather data are the records of the past *weather measurements* for each calendar month which were recorded at	**On the various sites as part 4**
60.1(13)	**Where no recorded data are available:-** assumed values for the ten year return *weather*	• the cumulative rainfall (mm); • the number of days with rainfall of more than

	data for each *weather measurement* for each calendar month are:	10mm; • the number of days with minimum air temperature less than 0 degrees Celsius; • the number of days with snow lying at **+2** hours GMT; • and these measurements:
60.1(19)	An event which stops the *Contractor* completing the *works* by the date shown on the Accepted Programme	
8	**Risks and insurance**	
80.1	These are additional *Employer's* risks	**N/A**
84.1	The *Contractor* provides these additional insurances:	1. SASRIA insurance is required. The *Contractor* effects and maintains a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association (SASRIA), covering the *works*, Plant and Materials for not less than the full replacement value (the total of the Prices plus 10%), from the starting date until the Defects Certificate is issued. 2. Public liability insurance is required. The *Contractor* effects and maintains public liability insurance for not less than the minimum limit of indemnity stated below in respect of clause 84.2 (R10 million) for any one event, with a deductible in an amount that the *Contractor* deems appropriate. 3. Contract works insurance is required. The *Contractor* effects and maintains contract works (contractors' all risks) insurance in the joint names of the *Employer* and the *Contractor* against loss of or damage to the *works*, Plant and Materials for not less than the total of the Prices plus 10%, from the starting date until the Defects Certificate is issued. 4. Professional indemnity insurance is required only if and to the extent that the Project Manager accepts the Contractor's design of any part of the works (other than temporary works), including any alternative design. Where required, the Contractor maintains professional indemnity insurance with a limit of indemnity of not less than R10,000,000 for any one claim and in the

		aggregate, from the date the design is accepted until three (3) years after Completion of the whole of the works, and provides evidence of the policy before the design is accepted.
84.1	The *Employer* provides these insurances from the Insurance Table:	None
84.1	The *Employer* provides these additional insurances:	Nil
84.2	Insurance against loss of or damage to the works, Plant and Materials, without limitation on the number of claims	Insured sum is the total of the Prices plus 10%
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is	**R10 million with cross liability and no limit on number of events or claims**
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is	**As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the *Contractor's* common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).**
DATA FOR MAIN OPTION CLAUSES		
Option B	**Option B: Priced Contract with *Bill of Quantities***	The *method of measurement* is SANS 1200 Standardized Specifications for Civil Engineering Construction, amended as stated in the preambles to the Bill of Quantities. Terms in italics are identified elsewhere in this Contract Data.
W1	**Data for Option W1**	
W1.1	The *Adjudicator* is (Name)	to be appointed as needed, see W1.2(3) below
W1.2(3)	The *Adjudicator nominating body* is:	The Party, which raises the dispute, shall select three adjudicators from the panel of adjudicators published by the South African Institution of Civil Engineering

		and/or Association of Arbitrators Southern Africa depending upon the technical or legal issues and nature of the dispute, determine their hourly fees and confirm that these adjudicators are available to adjudicate the dispute in question. The other Party shall then select, within seven (7) days, one of the three (3) nominated adjudicators to act as the adjudicator; failing which the chairperson for the time being of the Association of Arbitrators Southern Africa shall nominate an adjudicator on request from either party.
W1.4(2)	The *tribunal* is:	Arbitration, arbitrator to be appointed as required.
W1.4(5)	The *arbitration procedure* is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators Southern Africa or its successor body.
	The place where arbitration is to be held is	South Africa, Johannesburg
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	the Chairman for the time being or his nominee of the Association of Arbitrators Southern Africa or its successor body on application of either party.
DATA FOR SECONDARY OPTION CLAUSES		
X2	**Changes in the law**	
		Notwithstanding anything contained in this clause or this agreement, a "change in law" does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged
X5	**Sectional Completion**	
		Each section of the *works* is one of the sites described in Appendix I to the Works Information. The *completion date* for each section is the date stated by the *Contractor* in Contract Data Part Two, read with the returnable Schedule of Sections and

		Section Completion Dates, which forms part of this contract on acceptance of the tender. If the two are inconsistent, the date in Contract Data Part Two prevails. No section *completion date* may be later than the *completion date* for the whole of the *works*. If the *Contractor* has not stated a *completion date* for a section, or has stated a date later than the *completion date* for the whole of the *works*, the *completion date* for that section is the *completion date* for the whole of the *works*. The *Contractor* shows each section and its *completion date* on each programme submitted for acceptance, and the sequence of sections shown on the Accepted Programme is consistent with these dates. Acceptance of a programme does not change a section *completion date*. Section *completion dates* are subject to any agreement recorded under clause Z16, any revision accepted under clause Z15 and any change arising from a compensation event.
X7	**Delay damages**	
	Delay damages for Completion of the whole of the *works* are	R9,384.00 (nine thousand three hundred and eighty-four rand) per calendar day (excluding VAT), up to a maximum of 10% (ten percent) of the total of the Prices. Thereafter, the E*mployer* shall have a right during the identified delay period to intervene and accelerate the work or appoint a third party to assist or complete the works to reach practical completion at the planned period. The cost of the appointed third party work shall be borne by the *Contractor*.
X13	**Performance Bond**	
	The amount of the performance bond is	being an on-demand **Guarantee** issued by a registered entity approved by the *Employer* – fixed at ten percent (10%) of the total of the Prices at the Contract Date, reducing to five percent (5%) on the date of issue of the certificate of Completion and expiring on the later of the date of issue of the Defects Certificate and the date when the last notified Defect has been remedied or accepted.
X16	**Retention**	
	The *retention free* amount is	**R0.00 (nil)**

	The *retention percentage* is	**10%**
X18	**Limitation of liability**	
	The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to:	**Nil**
	For any one event, the *Contractor*'s liability to the *Employer* for loss of or damage to the *Employer*'s property is limited to:	**Cost for loss or damage incurred by the *Employer***
	The *Contractor*'s liability for Defects due to his design which are not listed on the Defects Certificate is limited to	**cost of the repair or reinstatement of property to original standard.**
	The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	**total of the Prices at the Contract Date**
	The *end of liability date* is	**For latent defects 52 weeks** after the Completion of the whole of the *works*.
X20	**Key Performance Indicators (not used with Option 12)**	**Not Applicable**
	The *incentive schedule* for Key Performance Indicators is in	**NA**
	A report of performance against each Key Performance Indicator is provided at intervals of	**N/A**

PART A – Additional Definitions

Clause	**Amendment**
11.2 **Identified and defined terms**	Add the following new definition as clause 11.2(32): "Baseline Risk Assessment means the baseline risk assessment contemplated in regulation 5(1)(a) of the Construction Regulations." Add the following new definition as clause 11.2(33):

"Construction Agent means an "agent" as per the Construction Regulations which means a competent person who acts as a representative for a client ("client" in this regard being the *Employer*); the agent contemplated herein: (i) manages the health and safety on a construction project for the client; (ii) is registered with a statutory body (being the South African Council for Project and Construction Management Professions or any other statutory body approved by the chief inspector); and (iii) is qualified to perform the functions required by the Construction Regulations";

Add the following new definition as clause 11.2(34):

"Construction Safety Officer means the construction safety officer as defined in the Construction Regulations."

Add the following new definition as clause 11.2(35):

"Construction Regulations means the Construction Regulations as defined in clause 27.4.2 below"

Add the following new definition as clause 11.2(36):

"A Contractor Insolvency Event means and is considered to occur if:

- the *Contractor* commits an act which, if committed by an individual, would constitute an act of insolvency within the meaning of Sections 8 or 9(3)(a)(v) of the Insolvency Act 24 of 1936, as amended, or any equivalent legislation in any jurisdiction to which it is subject;
- the *Contractor* begins negotiations or takes any other step with a view to generally deferring, re-scheduling or otherwise re-adjusting all or a material part of its indebtedness or proposes or makes a general scheme, arrangement, assignment, or composition with or for the benefit of its creditors or a moratorium is proposed or agreed in respect of or affecting all or a material part of its indebtedness;
- the *Contractor* makes an application to court for business rescue supervision or for its winding-up (whether provisionally or finally);
- a court of competent jurisdiction grants an order winding-up the *Contractor* (whether provisionally or finally) or makes an order placing the *Contractor* under business rescue supervision;
- an application or other legal process (including the filing of any document commencing judicial process) is issued seeking an order for the winding-up of the

	Contractor (whether provisionally or finally) or placing the *Contractor* under business rescue supervision, except for so long as such application or other legal process is being contested in good faith and by appropriate means or except for the bona fide purpose of reconstruction, amalgamation, reorganisation, merger or consolidation; or
	• a resolution is passed by:
	  • the shareholders of the *Contractor* for the winding-up of the *Contractor*, whether by way of a members' or creditors' voluntary winding-up; or
	  • the board of the *Contractor* for the *Contractor* to voluntarily begin business rescue proceedings and place himself under business rescue supervision."
	Add the following new definition as clause 11.2(37)*:*
	"Temporary Works is all temporary works of every kind required on site for the execution and Completion of the *works* and the remedying of any defects."
	Add the following new definition as clause 11.2(38)*:*
	"Intellectual Property" means (a) any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know-how, business methods, trade secrets and confidential business information, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off; (b) applications for registration and the right to apply for registration for any of these rights; (c) all other intellectual property rights and similar forms of protection; existing anywhere in the world; and (d) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof**,**

PART B - Amendments and additions to Existing Core and Optional Clauses	
Clause	**Amendment**
12 **Interpretation and the law**	
12.5	Added the following clauses after clause 12.4 "Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties*,* the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver

	of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing."
12.6	Words denoting persons or parties shall include individuals and any organisation having legal capacity.
12.7	In this contract, except where the context requires otherwise: • provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and; "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
12.8	• The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the conditions of contract. Any word or expression defined in any clause in the Z clauses, unless the application of the word or expression is specifically limited to the clause in question, bears the meaning prescribed to the word or expression throughout the Z clauses.
12.9	Week means a continuous period of 7 days. If the day for payment of any amount due by the *Employer* or *Contractor* in terms of this contract should fall on a Saturday, Sunday or official public holiday in the Republic of South Africa, the relevant day of payment is/are the next ordinary business day in the Republic of South Africa.
12.10	Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
12.11	If any provision of this contract, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provision is not in any way affected or impaired thereby and the parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
12.12	Unless otherwise specifically recorded in this contract, termination of this contract for any cause does not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination. Similarly, the termination of this contract does not release a party from any obligation which, by its nature, is intended to survive such termination.
Using the *Contractor*'s design	
22.1	**Delete core clause 22.1 in its entirety and replace it with the following clauses:** The *Contractor* carries out, and is responsible for construction of the works.

22.2	The *Contractor* shall execute and complete the works in accordance with the contract and shall remedy any defects in the works. When completed, the works shall be fit for the purposes for which the works are intended. .
22.3	The *Contractor* warrants that it has the experience and capability necessary for the construction of the works.
26 Subcontracting	
26.1	**Core clause 26.1 to be amended as follows:** The *Contractor* does not subcontract the whole or any part of the works without the written consent of the *Employer*, which consent shall be the sole discretion of the *Employer*. If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*. For the avoidance of doubt, the *Contractor* shall be responsible for the acts or defaults of any of its subcontractors, its agents or employees, as if they were the acts or defaults of the *Contractor*.
26.3	**Core clause 26.3 to be amended as follows:** The *Contractor* submits the conditions of contract for each subcontract to the *Project Manager* and may redact all commercially sensitive information.
26.4	**Add a new core clause 26.4 as follows:** The *Contractor* shall procure from the Subcontractor all consents required in order to ensure that all the rights and obligations the *Contractor* may have under the subcontracts can be ceded and delegated to the *Employer*.

26.5	**Add a new core clause 26.5 as follows:**
	• If the *Contractor* does not make payment of any amount due and payable by him to a Subcontractor ("the Subcontractor Debt") and the *Project Manager* considers that the Subcontractor Debt adversely impacts on the progress of the Works or the obligations of the *Contractor* under the contract, *Project Manager* shall request evidence of payment to the Subcontractor. In the absence of such evidence, the *Employer* may (at its own discretion) pay the Subcontractor Debt directly to the Subcontractor concerned in which event such payment is, for all purposes under the contract, regarded as a payment made on behalf of the *Contractor* and at the request of and with the approval and consent of the *Contractor*, as a payment towards the Prices.
	  • All adverse effects as a result of or arising from the Subcontractor Debt does not entitle the *Contractor* to any cost or time under this agreement.
	
	  • The *Employer* is indemnified from any direct or indirect damages arising from the *Project Manager* making payment directly to Subcontractors, of the Subcontractor Debt.
	
	Payment to the Subcontractor is conducted in terms of core clause 50.2 of the contract.

26.6	**Add a new core clause 26.6 as follows:** All adverse effects as a result of or arising from the Subcontractor debt does not result in a compensation event.
27 **Health, safety and the environment**	
27.4	Clause 27.4 is deleted in its entirety and replaced with the following: **Health and Safety specification**
27.4.1	The *Contractor* takes all reasonable steps and precautions to assess the Site, consider and receive all relevant information on the Site and health and safety related to the *works*, maintain the health and safety of persons in and about the execution of the *works*.
27.4.2	The *Contractor* acknowledges that the Occupational Health and Safety Act No. 85 of 1993 and the regulations promulgated therein ("the Act"); and the Construction Regulations 2014 promulgated under the Act, Edition 24 (latest edition), including the Code of Practice: Managing exposure to SARS-CoV-2 in the workplace will in all respects be applicable to this contract and the *works*.
27.4.3	The *Employer* appoints the *Contractor* as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014) for the Site.
27.4.4	Accordingly, the *Contractor* is responsible for all duties of the "Principal Contractor" as defined and provided for under the Act and the Construction Regulations 2014 including but not limited to those obligations defined and provided for in Annexures A, B and C and all required Regulations and Standards applicable to the work of this contract.
27.4.5.1	The *Contractor* shall appoint a *Registered Competent Person as per Legislation requirements.*
27.4.6	The *Contractor* confirms that it has received sufficient information about the Site and the *works* in order to: • comply with the provisions of the Act and the Construction Regulations 2014, • comply with the provisions of this clause; • adhere to the *Employer*'s health and safety baseline specification, baseline risk assessment and SHEQ Policy as set out in Annexures A, B and C; • be properly appointed in accordance with Section 37(2) of the Act as contemplated in clause27.4.3;

	• and to prepare a site-specific Baseline Risk Assessment.
27.4.7	The *Contractor* acknowledges that the *Project Manager* acts as the *Employer's* "Implementing Agent" in respect of all obligations which the *Employer* has as "Client" in the Construction Regulations 2014 and the Act.
27.4.8	Without limitation, the *Contractor*:
27.4.8.1	notwithstanding any actions which the *Employer* may take, accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures imposed by the Act, all its regulations (including the Construction Regulations), and Annexures A, B and C. 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;
27.4.8.2	acknowledges and confirms that the Prices includes a sufficient amount for proper compliance with the Construction Regulations 2014, all applicable health and safety laws, regulations, rules, guidelines, procedures and all obligations imposed by this contract and Annexures A, B and C and generally for the proper maintenance of health and safety in and about the execution of *works*;
27.4.8.3	undertakes, in and about the execution of the *works*, to comply with all applicable health and safety laws, regulations, rules, guidelines and procedures otherwise provided for under this contract and shall ensure that all sub-contractors, employees and Others under the *Contractor's* direction and control, likewise observe and comply with the foregoing; and
27.4.8.4	indemnifies the *Employer* against any loss, damage or claim suffered by the *Employer* due to a failure to comply with any provision of this clause 27.4 by the *Contractor*.
27.4.8.5	acknowledges and confirms that a registered Construction Health and Safety Officer will be appointed by the *Contractor* for the Project and that the Prices includes enough for the appointment of such
27.4.9	The *Contractor* shall accept full responsibility and liability to comply with the Act, the Construction Regulations and Annexures A, B and C for the construction of the Temporary *Works* and those parts of the Permanent *Works* which the *Contractor* is responsible to in terms of this contract;
27.4.10	The *Employer* retains a right to inspect, review, obtain copies of all documents regarding, attend and participate in all meetings regarding; all inquiries, audits and reports conducted under this contract including but not limited to those that are conducted in accordance with:
27.4.10.1	Annexures A, B and C of this contract; and
27.4.10.2	Section 31 and/or 32 of the Act, its regulations and the Construction Regulations following any incident involving the *Contractor* and/or sub-contractor and/or their employees.

27.4.11	The *Contractor* shall notify the *Project Manager* and copy in the *Employer* in writing of all inquiries, audits, reports, investigations, complaints or criminal charges which may arise pursuant to *works* performed under this contract.
27.4.12	The *Employer* and the *Project Manager* shall, at all times during construction and for a period of 5 (five) years after Completion, have the right to access and inspect any part of the Site/ *works* and all documents, reports, designs, specifications whatsoever that are prepared pursuant to any clause of this contract.
27.4.13	The *Contractor* liaises with the *Employer* and the *Project Manager* regarding all issues related to this clause 27, and in particular, complies with all reasonable requests from the *Project Manager* to (i) attend any meetings and/or (ii) provides any documents, audits and reports; required by the *Employer* or *Project Manager*.
27.4.14	The *Contractor* complies with the Baseline Risk Assessment provided by the *Employer*. Notwithstanding the foregoing, the *Contractor* prepares its own Baseline Risk Assessment and complies with it where such Baseline Risk Assessment provides additional risks to those noted by the *Employer* or the *Project Manager*.
5 Payment	
51 Payment	
51.2	Amend this clause by deleting the second and the third sentences of the clauses and replace them with the following: If a certified payment is late by more than 8 weeks, interest is paid on the late payment. Interest is assessed from 4 weeks after the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
	Amend this clause by adding the following clauses at the end of the clause.
51.5	Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
51.6	If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice.
51.7	The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*'s VAT number on each invoice the *Contractor* submits for payment.
6 Compensation Events	

61 Notifying compensation events	
61.3	*Delete the second bullet point in core clause 61.3 which reads "the Project Manager has not notified the event to the Contractor".,* *Amend the last paragraph of the core clause 61.3 to read* *"If the Contractor does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date.".*
62.3	*Add to core clause 62.3,* *"The Project Manager's reply which is an acceptance of a quotation for a compensation event may require the due authority of the Employer."*
62.5	*Add to core clause 62.5,* *"The Project Manager notifies the Contractor if the Employer's authority is required and includes in his notification any extension to the period within which he is required to reply to the Contractor's quotation.*
9 Termination	
91.1	Amend this clause by the addition of the following at the end of the second main bullet point, fourth sub-bullet point, after the words "against it": "or the *Contractor* commits a *Contractor Insolvency Event* (R5),"
91.2	Amend this clause sub-bullet point two (R12) to read as follows: "*not provided an on-demand performance bond or guarantee which this contract requires and/or failed to renew on-demand performance bond or guarantee upon expiry (R12)".*
91.3	Amend this clause by adding the following at the end of the clause: • "failed to effect any of the required insurances(R22); • failed to provide a satisfactory recovery plan pursuant to Clause 37 (*The Contractor's recovery plan*) (R23); or • failed to comply with the provision of Clause Z3 (*Broad Based Black Economic Empowerment*) (R24). and for terminating for R22 to R24 the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply."
91.8	Add a new core clause 91.8 as follows:

	The *Employer* terminates if the *Contractor* reaches 10 % of the delayed damages amount being the maximum amount. (R25). When terminating for R25 - the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply.
9.0	Insert the following new clause 9.4
9.4 Termination for convenience	The *Employer* is entitled to terminate the contract, at any time for the *Employer's* convenience, by giving notice of such termination to the *Contractor*. The termination shall take effect 28 days after the later of the dates on which the *Contractor* receives this notice or the *Employer* returns the performance bond and all monies held in retention, unless there are outstanding calls/claims thereon in which event, and if applicable, the *Employer* returns the performance bond and all monies held in retention promptly after the last of the outstanding calls/claims have been met. The *Employer* does not terminate the Contract under this sub-clause in order to execute the *works* himself or to arrange for the *works* to be executed by another contractor.
Option X2: Changes in the Law	
X2.2	Amend this clause by the addition of the following new clause: Notwithstanding anything contained in this clause or this agreement, a "change in law" does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged
Option X13: Performance Bond	is required by the Employer.
X13.1	The amount of the Performance Bond is 10% of the contract Price
X13.2	The *Contractor* ensures that the on-demand performance bond is valid and enforceable until the *Contractor* has Provided the Works and remedied any and all *defects* therein. If the terms of the performance bond specifies its expiry date, then the *Contractor* extends the validity of the performance bond 28 days prior to such an expiry date, such that the performance bond lapses at the later of: • the date of issue of the Defects Certificate; or • the date when the last *defect* notified has been remedied or accepted in accordance with this contract.
X13.3	The *Employer* may make a claim under the performance bond, for amounts to which the *Employer* is entitled under the contract in the event of:

	• failure by the *Contractor* to extend the validity of the performance bond as described in the preceding paragraph, in which event the *Employer* may claim the full amount of the performance bond, • failure by the *Contractor* to pay the *Employer* an amount due, as either agreed with the *Contractor* or assessed by the *Project Manager* (or otherwise determined) in accordance with the provisions of this contract, within 28 days after this agreement, assessment or determination, • failure by the *Contractor* to remedy a default within 28 days after receiving the *Employer's* notice requiring the default to be remedied, or • the occurrence of any one of the following termination reasons: R1 to R15, R18 and R22 to R24.
X13.4	The *Employer* indemnifies and hold the *Contractor* harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the performance bond to the extent to which the *Employer* is not entitled to make the claim.
X13.5	Step Down The performance bond reduces by half its value on the date of issue of the Certificate of Completion. The performance bond expires/lapses on the later of: • the date of issue of the Defects Certificate; or • the date when the last *defect* notified has been remedied or accepted in accordance with this contract.
X15.1	Delete clause X15.1 in its entirety and replace with the following sentence: "*The Contractor is liable for Defects in the works. The Contractor's works must be fit for its intended purpose*."
PART C – Additional Clauses (entitled Z-Clauses)	
Z1	**Cession delegation and assignment**
Z1.1	The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.*
Z1.2	Notwithstanding the above, the *Employer* may, on written notice to the *Contractor,* cede and delegate its rights and obligations under this contract to a Related Party or a Client of the *Employer*. For the purpose hereof

Z1.2.1	a "Client" means the employer and includes its successors in title and permitted assignees under this agreement;
Z1.2.2	a "related party" means any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the employer and includes any other "Organ of State" as defined in section 239 of the Constitution of the Republic of South Africa, 1996 and any entity or Organ of State for whom the employer carries out the works or acts as an implementing agent; and
Z1.2.3	"Control" means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity's assets), and/or the right or ability to direct or otherwise control the entity or the votes attaching to the majority of the entity's equity and "controlled" or "under common control" shall have a similar meaning.
Z2	**Joint ventures**
Z2.1	If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
Z2.2	Unless already notified to the *Employer*, the persons or organisations notify the *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
Z2.3	The *Contractor* does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.
Z2.4	The *Employer* may request the replacement of a member of the joint venture, consortium or unincorporated grouping where such person or organisation is not performing and causing a potential termination in terms of core clause 9, provided the *Employer* consent to a replacement member in writing.
Z3	**Broad Based Black Economic Empowerment, Construction Industry Development Board grading and the valid and active Tax Compliance Status Pin issued by SARS.**
Z3.1	The *Contractor* warrants that it will:
Z3.1.1	comply with all laws including the *Broad Based Black Economic Empowerment Act 53 of 2003*, its regulations and Codes of Good Practice; and the *Preferential Procurement Policy Framework Act 5 of 2000* and all its regulations;
Z3.1.2	maintain or improve (i) the BEE rating stated in its BEE certificate (ii) the **contractor's** Construction Industry Development Board grading, and (iii) its valid and active Tax Compliance Status Pin issued by SARS submitted at tender stage; and

Z3.1.3	not conduct any Fronting practices as defined in the Codes of Good Practice.
Z4	**Change of Broad Based Black Economic Empowerment (B-BBEE) status**
Z4.1	Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor*'s B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
Z4.2	The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.
Z4.3	Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor*'s obligation to Provide the Works.
Z4.4	Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.
Z5	**Ethics**
Z5.1	For the purposes of this Z-clause, the following definitions apply: **Affected Party** means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends, **Coercive Action** means impairing or harming, or threatening to impair or harm, directly or indirectly, an Affected Party or the property of an Affected Party, to influence the actions of an Affected Party, **Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, **Committing Party** means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees, **Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party, **Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

	Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and **Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.
Z5.2	A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof
Z5.3	The *Employer* may terminate the *Contractor's* obligation to Provide the Works if a Committing Party has taken a Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Works for this reason. If the *Employer* terminates the *Contractor's* obligation to Provide the Works for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.
Z5.4	A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.
Z5.5	Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as a Prohibited Action such as an inducement or reward for the award or in execution of this contract, including Fronting as referenced in Sub-Clause Z3.1.3, constitutes grounds for terminating the *Contractor*'s obligation to Provide the Works or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
Z5.6	Such Prohibited Action include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from an approved vendor data base of the *Employer* as a consequence of such Prohibited Action.
Z6	**Confidentiality**
Z6.1	Both Parties agree that in the course of the contract they shall exchange information between them and that they wish to protect the confidentiality of such information. Accordingly, for this clause, the "Discloser" shall mean the Party disclosing Information and the "Recipient" shall mean the Party receiving Information. "Information" shall mean all commercial, financial, technical, operational or other information appertaining to the *works* and arising out of or in relation to the Contract (including without limitation all data, know-how, calculations, designs, drawings,

	methods, processes, systems, explanations, demonstrations etc.) as have been or may be disclosed or otherwise made available by the Discloser to the Recipient or to any person on the Recipient's behalf or to which the Recipient or any person on the Recipient's behalf has been granted access to (any such disclosure, availability or granting of access being referred to in this Agreement as "disclosure"), but shall exclude any such information which: (a) prior to disclosure was in the possession of the Recipient, as evidenced by the written records of the Recipient, and which the Recipient was entitled to use; or (b) at the time of disclosure the Information is in the public domain other than by reason of a breach of duty or of this Contract; or (c) after disclosure is received by the Recipient in good faith from a third party who is under no obligation of confidence in relation thereto or becomes generally available to third parties by publication or otherwise, other than by reason of a breach of duty or of this Agreement; or (d) the Discloser is compelled to disclose by virtue of a court order or tribunal
Z6.2	Any disclosure of Information shall be solely for the purpose of the performance of the Contract and the Work and the Recipient shall not use nor permit nor cause others to use Information for any other purpose without the prior written consent of the *Employer*.
Z6.3	The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information noted in the clause above. Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by such Others.
Z6.4	If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as confidential until notified otherwise by the *Project Manager*.
Z6.5	In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
Z6.6	The taking of images (whether photographs, video footage or otherwise) of the *works and/or services* or any portion thereof, in the course of Providing the Services/Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
Z9	***Employer's* limitation of liability**

Z9.1	The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	The *Contractor*'s entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer*'s liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.
Z10	**Employer's Step-in Rights and Additional Remedies**
Z10.1	In the event the *Contractor* and/or his Subcontractor:
Z10.1.1	fails to carry out any obligation under the contract and the Works Information and fails to make good such failure and remedy it despite being requested to do so by the *Project Manager*, within the period of reply, in accordance with notices under Sub-Clause 16.1 (Early Warning) and/or Sub-Clause 13.1 (Communications), or
Z10.1.2	commits a breach of the Contract which reasonably places the project at risk of non-completion by the Completion Date, or non-Completion; or
Z10.1.3	commits a material breach of contract,
	the *Employer* may, without prejudice to its other rights in clause 9 (Termination), powers and remedies under the contract or in law, be entitled to step-in and take over the *works*, and on the account of the *Contractor* and at the *Contractor's* risk, to (i) make good the failure and remedy it, or complete the *works* himself, or (ii) call upon other contractors to make good the failure and remedy it or complete the *works*, or (iii) to call upon other contractors to partner with the *Contractor* to make good the failure and remedy it, or complete the *works*. Further, notwithstanding anything contained in this contract, where the *Employer* has "stepped-in" the *Contractor* shall remain responsible as if the *works* were executed by the *Contractor* for the *works* up to the Completion Date.
Z10.2	The *Contractor* shall co-operate with the *Employer* and facilitate and permit the use of all required Contractor's Equipment, Goods, information, materials and other matter (including Contractor's Documents and all other drawings, CAD files, technical data, models, plans, designs, diagrams, evaluations, details, specifications, schedules, reports, calculation results, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the *Contractor* under the contract or otherwise for and/or in connection with the *works*) and shall generally do all reasonable things required by the *Project Manager* to achieve this end; provided that where the foregoing constitute proprietary information, the *Contractor's* obligation hereunder shall be limited to furnishing *works* specific information in a form capable of being disclosed to third parties or providing assistance to third parties without requiring the *Contractor* to disclose non *works*-specific source codes or other proprietary information.
Z10.3	Any information, materials and other matter made available by the *Contractor* under this Sub-Clause Z10 shall be used solely and exclusively for the purpose of making good and remedying the *Contractor's* failure and shall thereafter be returned to the *Contractor*. Any such information, materials and other matter which is made available by the *Employer* to

	other persons as contemplated in this Sub-Clause Z10 shall be made available strictly in accordance with the foregoing and subject to a confidentiality undertaking.
Z11	**Employer Procured Materials and Goods**
Z11.1	The *Employer* is entitled but not obliged to procure materials and goods on behalf of the *Contractor* upon *Contractor's* request.
Z11.2	Should the *Employer* exercise this right, or should the *Employer* accept the *Contractor's* request, the *Contractor* shall:
Z11.2.1	issue to the *Project Manager* a list of all materials and goods the *Contractor* requires;
Z11.2.2	state in the list, the time within which such materials and goods must be provided;
Z11.2.3	take delivery of such materials and goods provided by the *Employer*;
Z11.2.4	the *Contractor* and *Project Manager* shall ensure that the correct quantity of material is delivered and confirmed as delivered to Site, respectively prior to payment.
Z11.3	The *Contractor* shall be responsible for and takes the risk on all materials and goods despite the *Employer* procuring such materials and goods The *Contractor indemnifies and holds the Employer harmless* against all losses/damages and/or costs arising from any damage, loss or theft of such materials and goods.
Z11.4	The *Contractor* shall not be entitled to a compensation event (extension of time and costs) for the late delivery of any materials and goods procured by the *Employer*.
Z11.5	The cost(s) of all materials and goods procured by the *Employer* on behalf of the *Contractor* in accordance clause Z11 shall be deducted from the next payment certificate due to the *Contractor.*
Z11.6	The *Contractor* acknowledges that all *Employer* supplied materials and goods remain the property of the *Employer.*
Z12	**Contractor Undertaking re CIDB and Tax Certificates**
Z12.1	The *Contractor* shall ensure that all certificates, clearances and the like, including specifically any certificates required to be obtained by the *Contractor* for purposes of the contract in terms of the Construction Industry Development Board and the Value Added Tax Act, no 89 of 1991, remain in full force and effect up until the Completion Date.
Z12.2	Failure by the *Contractor* to notify the *Employer* of the expiry of any requisite certificate may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. In addition to the *Employer's* right to terminate, should any requisite certificate that the *Contractor* is required to obtain expire or be null and void

	for any reason whatsoever, the *Employer* may withhold any payments due to the *Contractor* until such time as the *Contractor* provides the *Employer* and / or *Project Manager* with a valid and / or updated certificate, as the case may be.
Z13	**Right To Audit**
Z13.1	The *Employer* shall be entitled to, within 2 (two) Business Days of the giving of notice to the *Contractor* to such effect, conduct an audit of all relevant books, records, systems, processes, procedures and documents of the *Contractor* in order to verify compliance by the *Contractor* with its obligations in terms of this contract and/or to assess any entitlement or claimed entitlement of the *Contractor* under this Contract or to investigate any allegations with regard to possible criminal activities or breach of the *Employer's* policies or procedures.
Z13.2	The *Contractor* shall co-operate and render all assistance requested by the *Employer* relating to such audit. In addition, the *Contractor* shall provide the *Employer* with access to all such books, records, systems, data and documents of the *Contractor* that are relevant to this Contract, the *Contractor's* obligations under this Contract and/or any entitlement or claimed entitlement of the *Contractor* under this contract and to any premises, shareholders, partners, members, subcontractors and Personnel of the *Contractor* for the purposes of conducting such audit. The *Employer* shall have the right to take copies of any records and information the *Employer* reasonably require to assist in connection with any such audit.
Z13.3	The *Contractor* shall maintain all data, records and documentation relating to this Contract and keep full and proper records in connection with providing the Works and all matters related thereto (whether contained in documents or in electronic format) for the period of this Contract, and for a period of at least 5 (five) years after termination or completion of all of the Works (as the case may be).
Z13.4	The *Contractor* shall ensure that the rights in this clause Z13 also apply to any subcontractors and that the *Employer* be afforded the same auditing rights by the subcontractors.
Z13.5	The *Employer* shall keep all information obtained in terms of this clause Z13 confidential and not disclose it to any third party. In the event that the *Employer* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Employer*, to the extent permitted by law prior to disclosure, notifies the *Contractor* so that an appropriate protection order and/or any other action can be taken, if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Employer* 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.
Z14	**Intellectual Property**
Z14.1	Subject to each Party retaining title to its own Intellectual Property prior to the contract date, title to, copyright in and other Intellectual Property rights in any documents or other property created by the *Contractor* for or in connection with the Works vests in the *Employer* on

	creation and the *Contractor* hereby cedes and assigns all such rights to the *Employer* with effect from the date of creation vesting such Intellectual Property in the *Employer*.
Z14.2	The *Employer* grants the *Contractor* a revocable license to use the Intellectual Property for the purposes of Providing the Works for the contract period.
Z14.3	Unless otherwise agreed by the Parties, the *Contractor* grants to the *Employer* a non-exclusive, perpetual, irrevocable, royalty free license to use any of the *Contractor's* Intellectual Rights, obtained prior to this contact, in connection with the Works and this contract.
Z14.4	All Intellectual Property created, enhanced or improvement arising from Providing the Works or from or in connection to the contract exclusively vests in the *Employer*.
Z14.5	If the *Employer* is prevented from receiving the Works or any part thereof as a result of any actual or alleged infringement of Intellectual Property rights, the *Contractor* must, at its cost, take all reasonable steps necessary to procure for the *Employer* the right to receive the Works or the relevant part thereof for its intended purpose.
Z14.6	Modification or replacement of the Works If the Contractor fails to procure the necessary rights in accordance with this clause within a reasonable time, the Employer may direct the Contractor, at the Contractor's cost, to promptly (i) amend the Works or the relevant part thereof to avoid the infringement of Intellectual Property rights; or (ii) replace the Works or the relevant part thereof with Works that do not infringe Intellectual Property rights.
Z15	**Revised sequence of sections**
Z15.1	After the Contract Date the Contractor may submit to the Project Manager for acceptance a proposal to revise the sequence in which sections of the works are completed, together with a revised programme and revised section completion dates.
Z15.2	A reason for not accepting the proposal is that it does not allow the works to be Completed by the completion date for the whole of the works, conflicts with planned network shutdowns or the Employer's network operations, or does not comply with the Works Information.
Z15.3	An accepted proposal is not a compensation event. The Prices, the completion date for the whole of the works and the rates of delay damages (if any) are not changed, and the revised section completion dates replace those in the Contract Data from the date of acceptance.
Z16	**Post-award confirmation of sections and delay damages**
Z16.1	**Before the Contract Date the Employer may negotiate with the successful tenderer, and record in the Schedule of Deviations to the Form of Offer and Acceptance, (a) the grouping of sites into sections, (b) the section completion dates and (c) the rates of**

	delay damages for each section and for the whole of the works, provided that the negotiated terms do not change the Prices or the scope of the works and do not materially alter the basis on which tenders were evaluated.
Z16.2	**If no agreement is recorded before the Contract Date, the sections, section completion dates and delay damages stated in the Contract Data (as completed by the Contractor in Contract Data Part Two) apply.**
Z17	**Targeted Enterprise Development**
Z17.1	The Contractor achieves a minimum Contract Participation Goal (CPG) of 5% of the total project value in accordance with the cidb Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts (Gazette Notice No 36190 of 25 February 2013) and develops the targeted enterprises in two developmental areas agreed with the Project Manager.
Z17.2	The lead partner or main Contractor dedicates a minimum of 5% of the total project value to providing developmental support to the targeted subcontractor or joint venture partner. This amount is [in addition to / included in] the CPG referred to in clause Z17.1.
Z17.3	Within [two (2) weeks] of the Contract Date, the Contractor appoints an Enterprise Development Coordinator, who (a) develops a project specific Enterprise Development plan to improve the targeted enterprise's performance in the identified developmental areas and allocates resources to monitor progress in relation to improved performance, and (b) submits to the Project Manager a monthly enterprise development report (Performa ED 105 P) which documents all mentoring activities that have taken place during that month and the progress made in improving the targeted enterprise's performance in the agreed developmental areas, countersigned by the targeted enterprise.
Z17.4	The Enterprise Development Coordinator has (a) a minimum of 5 years' experience in the construction industry at managerial level as a Site Agent, Contracts Manager, Site Manager, Construction Manager, Business Development Manager or Enterprise Development Manager, (b) a minimum of 2 years' experience in training and development in building or construction, and (c) a National Diploma or B Degree in the Built Environment or Business Management. These competencies are a condition of contract and are not assessed during evaluation.
Z17.5	If the Contractor does not comply with clauses Z17.1 to Z17.4, the Project Manager may withhold from the amount due an amount equal to [the value of the shortfall against the CPG and the developmental support requirement] until the Contractor has remedied the failure. Any amount not remedied by Completion is retained by the Employer.
Z17.6	A failure by the Contractor to comply with this clause Z17 is a substantial failure to comply with his obligations for the purposes of core clause 91.2 (reason R11).
Z17.7	Compliance with this clause Z17 and any action taken by the Employer or the Project Manager under it is not a compensation event.

C1.2 CONTRACT DATA (Continued)

Part two – Data provided by the *Contractor*

A condition of contract is that:

a. The contractor shall achieve in the performance of the contract the **Contract Skills Development Goal** (established in the **cidb Standard for Developing Skills through Infrastructure Contracts, published in Gazette Notice No 43495 of 3 July 2020**.

b. The contractor shall achieve in the performance of the contract the **Contract Participation Goals** (CPG) relating to the engagement of targeted enterprises as established in the **cidb Standard for Indirect Targeting for Enterprise Development through Construction works Contracts Gazette Notice No 36190 of 25 February 2013**.

Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)[2] in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 152 to 154 of the ECC3 Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [ ] appears, data is required to be inserted relevant to the option selected. Click on the form field ***once*** and type in the data. Otherwise complete by hand and in ink.

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

Statements given in all contracts

- The *Contractor* is
  Name . . . . . .
  Address . . . . . .

. . . .

- The *direct fee percentage* is. . . . . %.
- The *subcontracted fee percentage* is. . . . . %.
- The *working areas* are the Site and . . . . . .

- The key people are

  (1) Name . . . . . .
  Job . . . . . .
  Responsibilities . . . . . .
  . . . . . .
  Qualifications . . . . . .
  Experience . . . . . .
  . . . . . .
  (2) Name . . . . . .
  Job . . . . . .
  Responsibilities . . . . . .
  . . . . . .
  Qualifications . . . . . .
  . . . .
  Experience . . . . . .
  . . . .
  . . . . . .

- The following matters will be included in the Risk Register (note as above with data by *Employer* this is risks identified at tender stage)

  . . . . . .
  . . . . . .
  . . . . . .
  . . . . . .

Optional statements

If the *Contractor* is to provide Works Information for his design

- The Works Information for the *Contractor*'s design is in

  . . . . . .
  . . . . . .
  . . . . . .
  . . . . . .
  . . . . . .
  . . . . . .

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is. . . . . .
- **If Option X5 is used:** the *completion date* for each section of the *works* is as stated by the *Contractor* in the returnable Schedule of Sections and Section Completion Dates (Schedule [•]), each date being no later than the *completion date* for the whole of the *works*.

If the *Contractor* is to decide the *completion date* for the whole of the *works*

- The *completion date* for the whole of the *works* is. . . . . ..

Data for the Shorter Schedule of Cost Components

- **The *bill of quantities* is** . . . . . .
- **The tendered total of the Prices is**. . . . . .
- **The percentage for people overheads is** . . . . . **%.**
- **The published list of Equipment is the last edition of the list published by** . . . . . .
- **The percentage for adjustment for Equipment in the published list is** . . . . . **% (state plus or minus).**
- **The rates for other Equipment are**

Equipment	size or capacity	rate
. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .

- **The hourly rates for Defined Cost of design outside the Working Areas are**

category of employee	hourly rate
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .

- **The percentage for design overheads is** . . . . . **%.**
- **The percentage for profit is**. . . . . **%.**
- **The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are**

. . . . . .
. . . . . .
. . . . . .
. . . . . .

C1.3 PERFORMANCE BOND

Pro-Forma NEC3 ECC Variable Performance Bond for Works and Maintenance – Demand Guarantee

To: *Employer*

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*] **[O] Financial Services Board Registration number [O]** ***NB: Guarantees submitted must be issued by either an insurance company duly registered in terms of the Short-Term Insurance Act, 1998 (Act 53 of 1998) or by a bank duly registered in terms of the Banks Act, 1990 (Act 94 of 1990) No alterations or amendments of the wording of the pro-forma will be accepted unless approved prior to it been issued by the Employer.***

1.1.1 "Guarantor's Address" - means **[●]**; [*Drafting Note:* Guarantor*'s physical address to be inserted*]

1.1.2 "Contract" - means the written agreement entered into between *Employer* and the *Contractor* on or about **[●] [●]** 200**[●]** (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*]

1.1.3 "*Contractor*" - means **[●]** a **[●]** registered in accordance with the laws of **[●]** with registration number **[●]**; [*Drafting Note: Name and details of Contractor to be inserted*]

1.1.4 "*Employer*" - means The Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the "IDD"), being a development finance institution reconstituted and incorporated as a juristic person in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997;

1.1.5 "Expiry Date" – means the date of issue of the Defects Certificate or such later date as may be determined by the application of clause 3.3;

1.1.6 "this Guarantee" - means this Performance Bond;

1.1.7 "Guaranteed Sum" - means the sum of **[● - figure]** (**[● - words]**) as reduced from time to time as provided for in paragraph 3 below; [*Drafting Note: Maximum aggregate Guarantee amount to be inserted not exceeding 10% of the contract sum*]

1.1.8 "Project Manager" - means **[●]** a **[●]** registered in accordance with the laws of **[●]** with registration number **[●]**; and

1.1.9 a "recovery statement", an "interim payment certificate", a "Payment Certificate", a "Certificate(s) of Completion" or "Defect Certificate" shall mean any such certificate as issued by the Project Manager;

1.2 words and expressions defined in the Contract shall, unless otherwise defined in this Guarantee or otherwise required by the context of this Guarantee, have the same meanings in this Guarantee as those ascribed to them in 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 *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 *Employer*, on written demand from *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. The Guarantor's liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:

3.1 Maximum Guaranteed Sum (not exceeding 10% of the contract sum) in the amount of:

[● – amount in figures] ([● – amount in words]),

from and including the date of issue of this Guarantee and up to and including the Completion Date.

3.2 Reducing the Guaranteed Sum (not exceeding 5.0% of the contract sum) in the amount of:

[● – amount in figures] ([● – amount in words]),

from and including the day after the Completion Date up to and including the date of the issue of the Defects Certificate.

3.3 Reducing the Guaranteed Sum (not exceeding 0% of the contract sum) in the amount of:

R nil

from and including the day after the date of the issue of the Defect Certificate, where after this Guarantee for Construction shall expire. Where the final payment certificate reflects payment due to the *Employer* this Guarantee shall expire upon payment of the full amount certified. The Guarantor's liability limits set out in paragraphs 3.1 to 3.3 shall apply in respect of any claim received by the Guarantor during the Security validity.

4. A demand for payment under this Guarantee shall be made in writing at the Guarantor's address and shall:

4.1 confirm the "Guaranteed Sum" at the time of the demand;

4.2 state the amount claimed ("the Demand Amount"); and

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

4.3.1 in regard to sums certified, shall state the Demand Amount to be the amount so certified and shall:

4.3.1.1 state that such first written demand notice issued by *Employer* to the Guarantor at the Guarantor's Address, with a copy to the *Contractor*, records that a period of seven (7) calendar days has elapsed since the issue of the first written demand notice in terms of paragraph 4.3.1.2 and that the sum certified has not been paid to date. *Employer* herewith calls up this Guarantee and demands payment of the sum certified from the Guarantor;

4.3.1.2 be accompanied by a copy of a preceding first written demand notice issued by *Employer* to the *Contractor* stating that payment of a sum certified by the Project Manager in an interim or final payment certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, *Employer* intends to call upon the Guarantor to make payment in terms of paragraph 4.3.1.1;

4.3.1.3 and

4.3.1.4 shall be accompanied by a copy of the applicable payment certificate which entitles *Employer* to receive payment in terms of the Contract of the sum certified;

4.3.2 where the Demand Amount is for the Guaranteed Sum or the full outstanding balance thereof, *Employer* shall deliver a first written demand notice to the Guarantor at the Guarantor's Address calling up this Guarantee stating that:

4.3.2.1 the Contract has been terminated due to the *Contractor*'s default and that the Guarantee is called up in terms of this sub-paragraph. This demand shall enclose a copy of the notice of termination; or

4.3.2.2 a provisional sequestration or liquidation court order has been granted against the *Contractor* and that the Guarantee is called up in terms of this sub-paragraph. The demand notice shall enclose a copy of the court order.

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;

6. *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.

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

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

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

8.2 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 *Employer* and the *Contractor*.

9. This Guarantee:

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

9.2 is, save as provided for in 7 above, personal to *Employer* and is neither negotiable nor transferable;

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

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

9.5 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.

10. 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

Guarantor Signatory 1:_____ Guarantor Signatory 2:_____

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

Witness:_____
(Printed Name
of Witness)_____

Witness:_____
(Printed Name
of Witness)_____

Guarantor's seal or stamp

PART 2: PRICING DATA

NEC 3 Engineering and Construction Contract Option B: Priced Contract with *Bill of Quantities* of April 2013 (including amendments).

Document reference	Title	No of pages
C2.1	Pricing Assumptions: Option B	2
C2.2	Pricing Instructions	1
C2.3	The Bill of Quantities	2
C2.4	Amendments, Qualifications And Alternatives By Tenderer	1
	Total number of pages	6

C2.1 PRICING ASSUMPTIONS: OPTION B

1 How work is priced and assessed for payment

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

Identified and defined terms	11 11.2	(21) The Bill of Quantities is the bill of quantities as changed in accordance with this contract to accommodate the implemented compensation events and for accepted quotation events for acceleration. (22) Defined Cost is the cost of the components in the Shorter Schedule of the Cost components whether work is subcontracted or not excluding the cost of preparing quotation for compensation events. (28) The Price for Work Done to Date is the total of • the quantity of the work which the Contractor has completed for each item in the Bill of Quantities multiplied by the rate and • a proportion for each lump sum which is the proportion of the work covered by the item the *Contractor* has completed. Completed work is the work without Defects which would either delay or be covered by immediately following work. (31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.
Acceleration	36 36.3	When the Project Manager accepts a quotation for an acceleration, in which the initial delay arising from the Contractor's fault, then he does not change the Prices, the Completion Date and the Key Dates accordingly but accepts the acceleration at the *Contractors* cost. The Contactor will revise the programme for the Project Manager acceptance.
The Bill of Quantities	55 55.1	Information in the Bill of Quantities is not Works Information or Site Information.
Compensation events	60 60.4	A difference between the final total quantity of work done and the quantity stated for an item in the Bill of Quantities is a compensation event if • the difference does not result from a change to the Works Information • the difference causes the defined cost per unit of quantity to change and • the rate in the Bill of Quantities for the item multiplied by the final total quantity of work done is more than 0.5% of the total of the Prices at the Contract Date. If the Defined Cost per unit of quantity is reduced, the affected rate is reduced.
	60.5	A difference between the final total quantity of work done and the quantity for an item stated in the Bill of Quantities which delays Completion, or the meeting of the Condition stated for a Key Date is a compensation event.
	60.6	The Project Manager corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the method of measurement or are due to ambiguities or inconsistences. Each such correction is a compensation event which may lead to reduced Prices.

	60.7	In assessing a compensation event which results from a correction of an inconsistency between the Bill of Quantities and another document, the *Contractor* is assumed to have taken the Bill of Quantities as correct.
Assessing compensation events	63 63.10	If the effect of a compensation event is to reduce the total Defined Cost and the event is • a change to the Works Information or • a correction of an assumption stated by the Project Manager for assessing an earlier compensation event the Prices are reduced.
	63.13	Assessments for changed Prices for compensation events are in the form of changes to the Bill of Quantities. • For the whole or part of a compensation event for work not yet done and for which there is an item in the Bill of Quantities, the changes are a o A change rate, o A changed quantity or o A changed lump sum. • For the whole or a part of a compensation event for work not yet done and for which there is no item in the Bill of Quantities, the change is a new priced item which unless the Project Manager and the Contractor agree otherwise, is compiled in accordance with the method of measurement • For the whole or a part of a compensation event for work already done, the change is a new lump sum item. If the Project Manager and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.
Implementing compensation events	65 65.4	The changes to the Prices, the Completion Date and the Key Dates are included I the notification implementing a compensation event.

C2.2 PRICING INSTRUCTIONS

1 The Bill of Quantities has been prepared by the *Employer* in accordance with the method of measurement stated in the Contract Data and is to be priced by the tenderer.

2 The agreement is based on the NEC3 suite of documents, Option B. The additions, deletions and alterations to the NEC3 document as well as the contract specific variables are as stated in the Contract Data.

3 Preliminaries requirements are based on the various parts of SANS 1921, Construction and management requirements for works contracts. The additions, deletions and alterations to the various parts of SANS 1921 as well as the contract specific variables are as stated in the Specification Data in the Scope of Work.

4 It will be assumed that prices included in the Bill of Quantities (if any), are based on Acts, Ordinances, Regulations, By-laws, International Standards and National Standards that were published 28 days before the closing date for tenders. (Refer to www.stanza.org.za or www.iso.org for information on standards).

5 Reference to any particular 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.

6 The Bill of Quantities is not intended for the ordering of materials. Any ordering of materials, based on the Bill of Quantities, is at the *Contractor*'s risk.

7 Bill of Quantities and pricing to be submitted should be at a detailed level.

8 Items in the Bill of Quantities not priced by the tenderer are deemed to be covered by the other rates and lump sums in the Bill of Quantities. No additional payment will be made for items left unpriced by the tenderer.

9 The rates and lump sums in the Bill of Quantities are fixed for the duration of the contract and are not adjusted for fluctuations in foreign exchange or inflation. The final value of the works is determined by remeasurement in accordance with the Bill of Quantities and the method of measurement.

10 Bidders are required to make reference to the specifications for the full extent of the works required to be done under each of the trade activities listed in this Bill of Quantities

C2.3 THE BILL OF QUANTITIES

The following Bill of Quantities/Risk Register **provides information for pricing purposes as prepared by the PrQS**

1) Tenderers are to ensure that adequate provision for the health and safety measures have been and provided detailed breakdown in the *Bill of Quantities*, as required by the Department of Labour.

2) The PDF/ original format *Bill of Quantities* must be populated by hand in black ink and will be the document used for evaluation purposes.

3) Tenderers are also required to electronically populate the Excel format and add to the required electronic Drive with your submission. This will be used to support verification of pricing errors.

I, _____ of _____,

(Authorised Signatory) (Company Name)

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

_____ _____

(Signature) (Date)

C2.4 ~~AMENDMENTS, QUALIFICATIONS AND ALTERNATIVES BY TENDERER~~

- ~~Use this page as a cover page to the *Amendments, Qualifications and Alternatives by Tenderer.*~~
- ~~Unless otherwise stated in the tender data, amendments, qualifications and alternatives shall be recorded here~~

~~PAGE~~	~~CLAUSE OR ITEM~~	~~PROPOSAL~~
		_____

~~I,~~ _____ ~~of~~ _____~~;~~

~~(Authorised Signatory)~~ ~~(Company Name)~~

~~Hereby acknowledge having read, understood and agree to requirements as set out in C2.4 and warrant that the documents submitted are true and accurate.~~

_____ _____

~~(Signature)~~ ~~(Date)~~

PART 3: SCOPE OF WORK

NEC 3 Engineering and Construction Contract Option B: Priced Contract with *bill of quantities*

Document reference	Title	No of pages
	This cover page	1
C3.1	Employers Works Information	3
C3.2	Contractors Works Information	6
C3.3	Particular Specifications	1
C3.4	Drawings (site-specific PRV chamber and pipework drawings, Annexure to C3)	[●]
	Total number of pages	35

C3.1 EMPLOYERS WORKS INFORMATION

The following standards and any other relevant documentation pertaining thereto must be studied and all principles in this regard must be applied to all procurement documentation, practices and procedures.

Area	Reference
National Building Regulations (NRB)	SANS 10400 (SABS 0400)
Construction Work	Applicable SANS 2001 Standards for Construction Works
Lightning Protection	SANS 10200:1985.
Lightning Protection	SANS 61024 – Protection of structures against lightning.
Lightning Protection	SANS 62305 – Earthing and Lightning Protection.
Lightning Protection	SANS 10313:2008 Protection against lightning – Physical damage to structures and life Hazard.
Earthing and Grounding	SANS 10292:2001
Control and Monitoring System	R842: Government Gazette, 8 August 2008
Quality	*SANS 9001/150 9001 – Quality Management Standard*
Quality	*Standard for Quality Management Systems (ISO) 9001:2015*
Safety	*Occupational Health and Safety Act, Act Nr 85 of 1993 including the following Regulations:.*
Safety	*Pressure Equipment Regulations, 2009*
Safety	*Major Hazard Installation Regulations, 2001*
SANS 347:2012	*Categorization and conformity assessment criteria for all pressure equipment.*
Health	*National Norms and Standards relating to Environmental Health in terms of National Health Act, 2003 (Act Nr 61 of 2003)*
General	*Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2022.*

i. The *Contractor's* obligations in respect of the Contract Participation Goal, developmental support of targeted enterprises and the Enterprise Development Coordinator are set out in clause Z17 of the conditions of contract.

C3.2 CONTRACTORS WORKS INFORMATION

3.2 DESCRIPTION OF THE WORKS

3.2.1 Employer's objectives

The primary objective of the project is to restore and improve the pressure-reduction and pressure-management function of priority PRV installations across the Roodepoort, Soweto and Ennerdale depot regions, thereby reducing physical water losses and burst frequency, protecting installations from vandalism, and improving JW's ability to monitor and control network pressure in real time. This will be achieved by refurbishing or completing the identified PRV installations, installing tamper-resistant security fittings, and installing pressure management monitoring and control equipment (PMZ critical-point GSM loggers and advanced/i2O controllers).

3.2.2 Overview of the works

The 30 PRV and one (1) system valves installations are distributed across three JW depot regions — Roodepoort (12 sites), Soweto (12 sites) and Ennerdale (7 sites) — and comprise a range of valve types, including Grove, Clayton, Baker, Rollseal, Singer, Premier, Hay-day, Phoenix and Seal PRVs, in diameters ranging from 100 mm to 400 mm. The table below summarises the distribution of installations by depot region and indicative scope category; the full site-by-site listing, including PRV type, size, location and expected works at each installation, is provided in the Bill of Quantities.

Depot Region	No. of Sites	Notes
Roodepoort	12	Includes new chamber construction at Brigatyn & Johan and Galena & Veronica Str, and chamber extension at Strubens Valley Makro PRV
Soweto	12	Includes 400 mm PRV/RSV installation at Usuthu & Mbetswa, Chiawelo, back-to-back 150 mm PRVs at Chris Hani & Nicolas, replacement of critical system valves at Orlando East Sofasonke and new 200 mm installation at Sagewood & Unity
Ennerdale	7	Includes new chamber construction at Orange Farm Ext 2 and Drieziek Ext 9, and Poortjie_A and Poortjie_B upgrades
Total	31	

Across the 31 sites, the predominant scope items are:

- complete or refurbished PRV installation with cast slab, ladder and Smartlock security fitting;
- construction or extension of chambers where the existing structure is inadequate or absent;
- replacement of reflux/reverse flow valves (RSVs);
- installation of i2O or advanced flow controllers; and,
- installation of two PRVs configured back-to-back at two sites with large upstream/downstream pressure differentials.

3.3 SCOPE OF WORK & WORK DONE

The scope of works is presented in two categories reflecting the nature of works required at each site: Scope Category A, comprising new/complete PRV installations, and Scope Category B, comprising refurbishment or partial upgrade of existing PRV installations. Both categories would be delivered concurrently, on a site-by-site basis, within each depot-level contract

3.3.1 Scope Category A — New / Complete PRV Installations

3.3.1.1 Civil and Chamber Works

- Site establishment and excavation for new or extended PRV chambers
- Construction of new below-ground chambers at sites where no adequate chamber currently exists (e.g. Brigatyn & Johan; Galena & Veronica Str; Bara Emergency Supply; Orange Farm Ext 2; Drieziek Ext 9)
- Extension of existing chambers to accommodate upgraded or additional PRVs/RSVs (e.g. Strubens Valley Makro PRV; Chris Hani & Nicolas; Poortjie_A)
- Casting of new concrete slabs over chambers
- Supply and installation of galvanised steel access ladders
- Supply and installation of tamper-resistant Smartlock security fittings to all chamber covers/hatches
- Reinstatement of surfaces, kerbing and road-reserve finishes disturbed by the works

3.3.1.2 Mechanical and Pipework

- Supply and installation of new PRVs (replace old Grove, Baker, Rollseal, Premier, Hay-day, Phoenix and Seal types, with 100 mm–400 mm Clayton/ Singer/ Bermad) in accordance with JW's standard installation details
- Supply and installation of System Isolation Valves where specified
- Pipework modifications and tie-ins to existing reticulation, including at sites requiring two PRVs configured back-to-back to manage large upstream/downstream pressure differentials (e.g. Chris Hani & Nicolas: U/S = 13 bar, D/S = 3.5 bar)

3.3.2 Scope Category B — Refurbishment of Existing PRV Installations

3.3.2.1 Mechanical and Valve Scope

- Repair, recommissioning or replacement of existing PRVs where bypassed, seized or otherwise non-operational
- Replacement of Isolation Valves at sites where these were never installed, have failed, or been removed (e.g. Weiller's Farm; Lufhureng Cnr Lekwa & Crocodile)
- Replacement of bypass PRV and insertion of meters where required (e.g. Mofolo South, Nancefield Moroka Rd — 100 mm and 150 mm Meistream meter inserts)
- Replacement of critical system valves at priority sites (e.g. Orlando East Sofasonke Valves)
- Installation of i2O / advanced pressure-modulating controllers and PMZ critical-point GSM loggers to enable remote pressure monitoring and control, including at sites where a controller is the primary intervention (e.g. Diepkloof Reservoir Supply, Chris Hani Rd; Usuthu & Mbetswa reservoir-service controllers)

3.3.2.2 Civil and Structural Scope

- Bracing and stabilisation of existing PRVs within chambers found to be structurally unstable (e.g. Impala & N12 Protea Industrial)
- Casting of new slabs and minor structural repairs to existing chambers
- Installation of Smartlock security fittings and replacement/repair of access ladders at existing installations
- Minor civil works associated with meter and RSV replacements within existing chambers

The detailed, site-by-site scope of works for all 31 listed installations — indicating which scope category and specific works apply at each site — is set out in Appendix I. Each site listed in Appendix I is a separate section of the *works* for the purposes of Option X5.

Mandatory Requirements and General Specifications

The drawings applicable to this contract are the site-specific PRV chamber, pipework and Smartlock manhole drawings (references JW-DBSA-001, JW-DBSA-001A, JW-DBSA-003 and JW-DBSA-004 series) attached as annexures, which form part of the Works Information. Chamber dimensions, depths, pipe materials and fitting sizes shown on the drawings are indicative and are to be verified on site by the *Contractor* and confirmed by the *Project Manager* before construction. The *Contractor* notifies the *Project Manager* of any discrepancy between the drawings, the Bill of Quantities and site conditions as an early warning. Where the drawings do not cover a site listed in Appendix I, the *Project Manager* issues the applicable drawing before work on that site starts.

In this section C3.2 the term client shall have the meaning ascribed to the term Employer in terms of this NEC3 ECC Option B Agreement,

Definition of pricing

- The Bidder / Supplier / Contractor must quote in full for the full construction works as described under the scope of works section
- The Bidder / Supplier / Contractor must price for connection of all services from the point at which the employer indicates such connection point during construction.
- The Bidder / Supplier / Contractor must price for all regulatory cost requirements including registration of project with Department of Labour, Municipalities, Eskom, and others related to the project.

Contract management

The bidder must price for all contract management responsibilities, construction health and safety requirements.

All costs must be in line with the applicable guidelines of respective Professional Councils at the time of RFP closing, and all personnel appointed must be in possession of active professional registration.

For commencement of works, all designs must be signed off by the respective professionals in line with SANS regulations.

Compliance to municipal bylaws – issuing of occupation certificate

The Bidder / Supplier / Contractor shall liaise with local municipalities to seek all permits for intended use within 1 week after appointment.

The Bidder / Supplier / Contractor shall develop and submit safety management plans to respective regulatory bodies within 1 week after appointment.

CONDITIONS OF BIDDING AND FORMS OF CONTRACT

- The bidder shall not have any claims for costs reimbursements should their bid not be successful.
- All bids received shall be deemed in whole that they have considered all

permutation for delivering the project / product is requested by the employer.

- The bidder must price the Bill of Quantities in full for ease of evaluation and work management. The bidder notifies the DBSA before the tender closing date of any discrepancy it detects in the Bill of Quantities.
- The bidder's works and specifications shall comply to all Legislations and Regulations associated to the construction industry
- The employer reserves the rights to renegotiate the prices and conditions offered by the bidder
- All bids shall be received as the stipulated date and time of bid submission
- The employer shall provide access to the site earmarked for development
- The employer shall not pay for any deposit prior to commencement of works by successful bidder
- All payments to the *Contractor* shall be made in accordance with the conditions of contract or, where sectional completion is applicable, the *Contractor* shall submit its claims after the works are certified as complete by the *Project Manager*.
- The successful bidder is expected to conclude and sign this NEC3 ECC Option B contract prior to commencement of the works
- Should both the bidder and employer not reach agreement with respect to content, context, and legal framework of the contract, the employer reserves the right to withdraw the appointment
- The Contract to be used for the construction of the works shall be NEC3 option B with a bill of quantities.

1.1. Occupational Health and Safety

The Contractor needs to comply with the following legal requirements:

- Occupational Health and Safety Act, 85 of 1993, Edition 24 (latest edition)
- Code of Practice: Managing exposure to SARS-CoV-2 in the workplace
- Annexure A - DBSA Occupational Health and Safety Baseline specification
- Annexure B - DBSA Baseline Risk Assessment;
- Annexure C – DBSA SHEQ Policy

C3.3 PARTICULAR SPECIFICATIONS

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

PARTICULAR SPECIFICATION	PAGE NO.
POHS: HEALTH AND SAFETY BASELINE SPECIFICATION	Annexure A
B/RA: BASELINE RISK ASSESSMENT	Annexure B
SHEQ: Policy	Annexure C

PART 4: SITE INFORMATION

Document reference	Title	No of pages
	This cover page	1
C4.1	*Locality Plan*	1
	Total number of pages	2

C4.1 LOCALITY PLAN

The work is located Johannesburg Water Depots Regions: Roodepoort, Soweto and Ennerdale

Area: Johannesburg

Region: Gauteng

Fig 1: