DBSA
DEVELOPMENT BANK OF SOUTHERN AFRICA
Building Africa's Prosperity

VOLUME 3 OF 3

THE CONTRACT

DEVELOPMENT BANK OF SOUTHERN AFRICA

TENDER NO. RFP194/2026

APPOINTMENT OF CONTRACTOR FOR THE PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING BURNT HOSTEL MAKAULA SENIOR SECONDARY SCHOOL IN EASTERN CAPE PROVINCE FOR THE EASTERN CAPE DEPARTMENT OF EDUCATION

Implementing Agent:	**Project Manager**
Development Bank of Southern Africa Limited **1258 Lever Road** **Midrand Johannesburg** **Gauteng** **1685** **Contact: 011 313 3911** **As per Tender Notice and Invitation**	**Thembekile Fono - Construction Project Manager** **1258 Lever Road** **Midrand Johannesburg** **Gauteng** **1685** **Contact: 011 313 3911** **As per Tender Notice and Invitation**

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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:

Document Reference	Title	Page
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THE CONTRACT

C1 : AGREEMENT AND CONTRACT DATA

C2 : PRICING DATA

C3 : SCOPE OF WORK

C4 : SITE INFORMATION

PART 1: AGREEMENT AND CONTRACT DATA

JBCC Principal Building Agreement (Edition 4.1 Code 2101 of March 2005) issued by the Joint Building Contracts Committee Inc. (including amendments).

Document reference	Title	No of pages
C1.1	Form of Offer and Acceptance	4
C1.2	Contract Data	1
C1.2.1	Conditions of Contract	5
C1.2.2	Contract Specific Data	6
C1.3	Construction Guarantee	4
	Total number of pages	20

C1.1 FORM OF OFFER AND ACCEPTANCE

C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: **TENDER No: RFP194/2026 – DESCRIPTION: APPOINTMENT OF CONTRACTOR FOR THE UPGRADE, ADDITIONS ON BURNT BUILDING AT MAKAULA SENIOR SECONDARY SCHOOL UNDER ALFRED NZO DISTRICT FOR EASTERN CAPE DEPARTMENT OF EDUCATION**
The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the service provider under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS:

Rand .....

..... (in words);

R ..... (in figures).

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the service provider in the conditions of contract identified in the contract data.

Signature .....

Name .....

Capacity .....

For the tenderer

Name of Tenderer .....

Address of Tenderer) .....

Name of witness .....

Signature of witness ..... Date .....

C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)

C1.1.2 Acceptance

By signing this part of this form of offer and acceptance, the Employer identified below accepts the tenderer's offer. In consideration thereof, the Employer shall pay the service provider the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1: Agreements and contract data, (which includes this agreement)
Part C2: Pricing data
Part C3: Scope of work.
Part C4: Site information

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

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representatives of both parties.

The Tenderer shall deliver the security in terms of Clause 14 of the JBCC 2005 within the period stated in the contract Data, and he shall, immediately after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contract the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data, within 14 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

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

Signature . . . . . .

Name . . . . . .

Capacity . . . . . .

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

Name of witness . . . . . .

Signature of witness . . . . Date . . . . . .

Schedule of Deviations

The extent of deviations from the Tender documents issued by the Employer prior to the Tender closing date is limited to those permitted in terms of the Tender Data and the Conditions of Tender.
A Tenderer's covering letter will not necessarily be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid becomes the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

Any 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 cover letter must be referenced here if applicable, or it will not be valid as part of this submission).
Any change or addition to the Tender documents arising from the above agreements and recorded here shall also be incorporated in to the final draft of the Contract.

1 Subject . . . . . .
Details . . . . . .
. . . . . .
. . . . . .
2 Subject . . . . . .
Details . . . . . .
. . . . . .
. . . . . .
3 Subject . . . . . .
Details . . . . . .
. . . . . .
. . . . . .
4 Subject . . . . . .
Details . . . . . .
. . . . . .
. . . . . .
5 Subject . . . . . .
Details . . . . . .
. . . . . .
. . . . . .

By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of Deviations as the only deviations from the amendments to the documents listed in the Tender Data and 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	1
C1.2.1	Conditions of Contract	5
C1.2.2	Contract Specific Data	6
C1.3	Construction Guarantee	4
	Total number of pages	16

C1.2.1 CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract are clauses 1 to 41 of the **JBCC PRINCIPAL BUILDING AGREEMENT, EDITION 4.1 CODE2101 MARCH 2005** published by the Joint Building Contracts Committee.

Copies of these conditions of contract may be obtained from the Association of South African Quantity Surveyors (011-3154140), Master Builders Association (011-205-9000; 057-3526269) South African Association of Consulting Engineers (011-4632022) or South African Institute of Architects (051-4474909; 011-4860684; 053-8312003;)

The JBCC Principal Building Agreement makes several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the JBCC Principal Building Agreement.

Each item of data given below is cross-referenced to the clause in the JBCC Principal Building Agreement to which it mainly applies.

The Conditions of Contract make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Specific Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Conditions of Contract or the Special Conditions of Contract.

The Contract Specific Data, General and Special Conditions of Contract shall have precedence over the Drawings, Scope of Work and Standardised Specifications in the interpretation of any ambiguity or inconsistency.

SPECIAL CONDITIONS OF CONTRACT

1. GENERAL

These Special Conditions of Contract (SCC) form an integral part of the Contract. The Special Conditions of Contract shall amplify, modify or supersede, as the case may be, the Conditions of Contract of JBCC 2005 to the extent specified below, and shall take precedence and shall govern in the interpretation of any ambiguity or inconsistency between it and the Conditions of Contract.

The clauses of the Special Conditions hereafter are numbered “SCC” followed in each case by the number of the applicable clause or sub clause in the JBCC 2005, and the applicable heading, or (where a new special condition that has no relation to the existing clauses is introduced) by a number that follows after the last clause number in the Conditions, and an appropriate heading.

The Forms included in the JBCC Edition 4.1, Code 2101, March 2005 (“JBCC2005”), are replaced with the Forms included in this Tender Document.

2. AMENDMENTS TO THE JBCC 2005 CONDITIONS OF CONTRACT

SCC 1.1 Definitions and Interpretation

Add the definition of “contractor insolvency event” after ”works completion”:

Contractor Insolvency Event means, and is considered to occur if:

(i) 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;

(ii) 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;

(iii) the **contractor** makes an application to court for business rescue supervision or for its winding-up (whether provisionally or finally);

(iv) a court of competent jurisdiction grants an order winding-up Contractor (whether provisionally or finally) or makes an order placing the Contractor under business rescue supervision;

(v) 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 liquidation (whether provisionally or finally) 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

(vi) a resolution is passed by:

a) the shareholders of the Contractor for the winding-up of the Contractor, whether by way of a members’ or creditors’ voluntary winding-up; or

b) the board of the Contractor for the Contractor to voluntarily begin business rescue proceedings and place himself under business rescue supervision.

“**Other Project Contractors**” means the various contractors, consultants, tradespersons or other persons engaged in the Works from time to time other than the contractor and any subcontractor appointed by the contractor.

“**Recognised Best Practice**” means the skill, care and diligence of a contractor seeking in good faith to perform his contractual obligations and in so doing and in the general conduct of his undertakings observing and/or exercising the degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced contractor in relation to his practices, methods, techniques, specifications and/or standards (whether in respect of engineering, construction, performance, safety, workmanship, equipment, components or otherwise) engaged in the same type of undertaking under the same or similar circumstances and conditions to the Works.

SCC 1.5 The following new paragraphs are added after clause 1.5.6:

1.5.7 References to any party to this agreement include its successors or permitted assigns;

1.5.8 References to the contractor include the obligations of its personnel;

1.5.9 References to “month” shall be to a calendar month;

1.5.10 References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

1.5.11 References containing terms such as “best endeavours" when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to fulfil the obligation at the earliest possible time, including doing all that a reasonable and prudent owner or provider of design and construction services in comparable circumstances would do.

1.5.12 If a definition imposes substantive rights and obligations on a party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;

1.5.13 Where any word is defined within the context of any particular clause in this agreement, that word, unless it is clear from the clause in question that that word has limited application only to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that word has not been defined in clause 1.1;

1.5.14 Words defined in this agreement shall bear the same meanings in any annexes or schedules to this agreement unless the annexes or schedules contain their own definitions of such words;

1.5.15 Where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a working day, in which event the last day shall be the next succeeding working day;

1.5.16 Words and abbreviations that have well known technical or trade meanings are used in the agreement in accordance with such recognized meanings;

1.5.17 The rule of construction that if general words or terms are used in association with specific words or terms that are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;

1.5.18 The rule of construction that the agreement shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of this agreement shall not apply.”

SCC 1.10 Add the following new Clause:

“SCC 1.10 The copyright in all **contract documents**, **contract drawings** and records (irrespective of who prepared any of the aforesaid) related in any manner to the **works** shall vest in the **employer** and the **contractor** shall not furnish any information in connection with the **works** to any person or organization without the prior written approval of the **employer** to this effect other than subcontractors appointed for purposes of this **agreement**.”

SCC 1.11 Add the following new Clause:

Any provision in this agreement that is or may become illegal, invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such prohibition or unenforceability in such jurisdiction and shall be treated as severed from the balance of this agreement in such jurisdiction, without invalidating the remaining provisions of this agreement in such jurisdiction or affecting it in any other jurisdiction.

SCC 2.0 Move clauses 2.1, 2.2 and 2.3 after the following new clauses as clause 2.5,2.6 and 2.7 respectively.

SCC 2.1 . Whereas the **employer** is a Schedule 2 public entity and development finance institution with a statutory mandate to support government departments and municipalities in infrastructure development, project preparation, and capacity building, set out in the Public Finance Management Act, 1999 (Act No. 1 of 1999) ("the PFMA") as amended from time to time.

SCC 2.2 Whereas **employer** has been appointed by the Client to act as a development and implementation support agent for the Client, **employer** is entering into this **agreement** in its capacity as the implementing agent and accordingly It is supporting the Client with the implementation of the **works** planning, procurement and execution as contemplated in this **agreement**.

SCC 2.3 Whereas, the **employer** has been identified and appointed by the Client as the implementing agent for the purpose of implementing the **works**.

SCC 2.4 In so far as it is necessary for the **employer** to perform its functions as implementing agent, the Client has granted, assigned and / or delegated to the **employer** authority necessary to carry out the procurement, programme management and implementation functions of these **works** as contemplated in this **agreement** and any further related works thereto.

SCC 3.5 Delete sub-clause 3.5

SCC 3.7 Replace the second sentence starting in line 2 with the following:

"The **contractor** shall keep a copy of all drawings, schedules, unpriced **bills of quantities/lump sum document, contract instructions,** minutes of site and other meetings, health and safety files as specified in the scope of work, risk register, claims and variation order register, labour records and subcontractors contracts on the **site** to which the **employer, principal agent** and **agents** shall have access at all times. The **employer** has the right to call for such further information from the **contractor** it deems necessary in the event it carries out any investigation or audit into potential fraud, corruption, fronting, health and safety incidents or verifying information the **contractor** has to supply to the **employer** in terms of this agreement. The Contractor shall ensure a similar right for the Employer with its subcontractors.

SCC 3.10 In sub-clause 3.10 in the first line replace "**principal agent"** with "**employer"**

~~SCC 4 Clauses 4.1, 4.2 and 4.3 are deleted and replaced or amended as follows:~~

~~"4.1 The contractor shall be responsible for the design of the works, including for any temporary works. The contractor shall be responsible for the primary coordination of design elements. All designs must be submitted to the Principal Agent and Employer for approval prior to construction of the works.~~

~~4.2 The contractor shall be responsible for any design of works undertaken by any subcontractor, including nominated or selected subcontractor.~~

~~4.3 in second line delete the word "selected"~~

SCC 7 COMPLIANCE WITH LAWS AND REGULATIONS

Add the following:

"7.3 The Occupational Health and Safety Act No. 85 of 1993 and the Construction Regulations 2014 will in all respects be applicable to this contract. All obligations in respect of health and safety requirements of the Contractor are set out in the Scope of Work"

7.3.1 Contractor's liability as mandatory

"Notwithstanding any actions which the **employer** may take, the **contractor** accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures imposed by the Occupational Health and Safety Act, 1993 (Act 85 of 1993), and all its regulations, including the Construction Regulations, 2014, for which the **contractor** is liable as mandatory. By entering into this **agreement** it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act and will enter into the mandatory agreement as set out in the Scope of Work. This clause will be sufficient to establish the mandatory obligations of the **contractor** in the event the parties fail to execute the aforesaid mandatory agreement."

SCC 8 amend clause 8 by adding the following new clauses after clause 8.7:

8.8 The **contractor** acknowledges that the **employer** concluded or will conclude contracts with **other project contractors** that will have access to the **site** in which the works are conducted by the **contractor**. As such, it may be necessary for **other project contractors**, their employees and the **employer's** personnel to work in or about, or pass materials and equipment through the **site**.

a) employer's personnel,

b) other project contractors, and

c) the service providers

who may be employed in the execution on or near the site (and other places, if any, as may be specified under the agreement as forming part of the site) of any work not included in the **agreement**. Services for these personnel and **other project contractors** may include the use of temporary works or access arrangements which are the responsibility of the **contractor**.

8.9 The **contractor** shall be responsible for his construction activities on the **site**, and shall, as specified in the **agreement** or as instructed by the **principal agent**:

(i) integrate and co-ordinate the programme and the **works** with the programme for the **works** and the work of **other project contractors** in such a way that no unreasonable interference with, or disruption, delay or hindrance to, the work of such **other project contractors** is caused, and

(ii) confer with the **principal agent** where the works interface with the work of the **other project contractors** and shall, as specified in the **agreement** or as instructed by **the principal agent**, execute the **works** such that these interfaces are matched.

8.10 If the **contractor** suffers (or will suffer) delay and/or incurs (or will incur) cost as a result

of any instruction referred to above, the contractor shall give notice to the **principal agent** in terms of clause 29.2.8 and shall be entitled subject to clause 29 to:

a revision to the date for **practical completion** with or without costs (depending on the contractors claim), if completion is or will be delayed.

8.11 After receiving the notice in terms of clause 29.2.8, the **principal agent** and/or **employer** shall proceed in accordance with clause 29.7 to agree or determine the claim.

8.12 The **contractor** shall provide all information required for providing suitable access for its plant and any necessary equipment to the place on the **site** where the plant is to be erected and for making necessary installations or connections to the plant where the works adjoin the works of **other project contractors** (whether such installations and/or connections are to be made by the **contractor** or by **other project contractors**).

8.13 If, under the **agreement**, the employer is required to give to the **contractor** possession of any foundation, structure, plant or means of access in accordance, the **contractor** shall submit such documents to the **principal agent** promptly to allow the **principal agent** to coordinate the **other project contractors**. .

8.14 If any part of the **works** depends for its proper execution or result, upon the work of the **other project contractors**, the contractor shall promptly report in writing to **the principal agent** any defects therein, or delays in the performance thereof that interfere with the proper execution of the **contractor's works**. Copies of drawings, specifications and other information relating to **other project contractors'** contracts, which are reasonably required by the **contractor**, will be furnished to the **contractor** on request, for its information in this regard.

8.15 The **employer** and the **principal agent** shall not be obliged to provide any access, information, materials, documents or instructions, nor shall the **contractor** be entitled to require access to the works of **other project contractors** earlier than that specified in the **agreement** or, if not specified, earlier than the date communicated by the **principal agent**, as the case may be.

8.16 The **principal agent** shall take such steps in his discretion deems reasonable or necessary, to facilitate that the **other project contractors** cooperate with the contractor and integrate and co-ordinate their work with the works as necessary and in such a way that no unreasonable interference with, or unreasonable disruption, delay or hindrance is caused, either directly or indirectly to the contractor in the execution of the works at site.

SCC 11 Amend sub-clause 11.2

Amend the first reference to "**employer**" with "**contractor**"

~~**SCC 14**~~

~~**14.A.1**~~

~~An advance payment is an interest free loan, not exceeding ten percent (10%) of the **contract sum,** unless agreed by the **employer,** for items that may require upfront disbursement by the~~

~~**contractor**~~.

~~**14.A.2**~~

~~Should the **contractor** require an advance payment, the **contractor** shall make a formal request for consideration by the **employer** for payment of an advance payment. The **contractor** shall, with its formal request submit reasonable justification for the requirement of an advance payment supported by relevant documentation and the payment timelines of the advance payment to the **contractor**. In addition, the **contractor** is required to submit with its formal request, a written proposal to the **employer** regarding the amortisation of the advance payment. Only once the **employer** accepts the **contractor's** reasonable justification for the advance payment, the payment timelines and the amortisation proposal, the **employer** shall pay the advance payment. Such acceptance shall be communicated formally by the **employer** to the **contractor**.~~

~~The precondition for the payment of the advance payment by the **employer** to the **contractor** is the provision of a valid unconditional / on-demand **advanced payment guarantee**.~~

Amend sub-clause 14.1

Retain sub-clause 14.1 but amend to read: "The **employer** shall have the right to choose the **security** to be provided in terms of 14.3 or 14.4 as stated in the **schedule**. The **contractor** shall provide the **security** required or chosen by the **employer** in the **schedule** substantially in the format prescribed in the tender documents that the **contractor** submitted a tender offer. The required **security** shall be provided in the time period prescribed by the **employer** in the conditional letter of acceptance of the **contractor's** tender offer.

Amend sub-clause 14.3

Retain clause 14.3 but in the last line of sub-clause 14.3.1 replace "twelve point five (12.5%)" with "ten (10%)".

Amend sub-clause 14.4

Retain clause 14.4 but in the last line of sub-clause 14.4.1 replace "seven point five (7.5%)" with "ten (10%)".

Retain clause 14.4.2 but in the last line of sub-clause 14.4.2 replace JBCC Construction Guarantee for with DBSA proforma construction guarantee issued with the tender documents.

Retain clause 14.5.2 but in the last line of sub-clause 14.5.2 replace JBCC Advance Payment Guarantee form with DBSA proforma advance payment guarantee issued with the tender documents.

Add sub-clause 14.7(a) before clause 14.7:

The **construction guarantee** provided by the **contractor** shall remain valid for the term of the **agreement** . In case of extensions, the **security** must also be extended or replaced by another **construction guarantee** of the same value, with an effective term equal to the term

of extension. If the **contractor** fails to keep a valid security for the duration of the agreement, the **principal agent** shall deduct an amount of 10% from each **interim payment certificate** and withhold the amount until the **contracto**r provides a valid **construction guarantee**. Once the **contractor** provides the valid **construction guarantee**, the **principal agent** will then release the amount held from each **payment certificate** in the next payment certificate.

Notwithstanding the aforesaid, the **employer** reserves the right to cancel the **agreement** if the **contractor** fails to submit a valid **construction guarantee**, acceptable to the **employer**, within twenty eight (28) days of the **principal agent** request.

Retain sub-clause 14.7 but amend 14.7.1 as follows:

Hand over the site to the **contractor** and withhold payment from the **contractor** until the amount withheld is equal to ten percent (10%) of the **contract sum**. The amount to be withheld in each **payment certificate** is to be decided at the sole discretion of the **employer** and accepted by the **contractor**. To the extent that the **contractor** ought to have provided a variable **construction guarantee** then such amount shall be adjusted to five (5%) of the **contract sum** on the achievement of **practical completion** in terms of 24.0 and to zero (0%) in the **final payment certificate** in terms of 34.8. To the extent that the **contractor** ought to have provided a fixed **construction guarantee** then such amount shall be adjusted to zero (0%) in the **final payment certificate** in terms of 34.8.

Add sub-clause 14.9

"A payment reduction of ten (10%) of the value of each **payment certificate** up to a maximum of five (5%) of the **contract sum** will be applied until **practical completion.** At **practical completion** the amount withheld will be reduced to five (5%), which amount will reduce to nil (0%) when the **final account** is issued. The **employer** reserves the right to use retention money to correct defects where **contractor** fails to correct, fails or refuses to pay service provides or its subcontractors.

SCC 15.1.1 Amend sub-clause 15.1

In sub-clause 15.1 replace **"principal agent"** with **"employer"**

15.A Add new clause 15.A CONTRACTOR'S PROGRAMME to read as follows:

15.A.1 Immediately on award of the contract and prior to commencement on **site** of any **works**, the **contractor** shall meet with the **principal agent** to prepare a working programme covering the first month of the **construction period**.

15.A.2 During the first month of the **construction period** the **contractor** shall, with the assistance of the **principal agent**, prepare a programme for the **works** together with a schedule of outstanding construction information in sufficient detail to ensure control of the execution of the **works** and to enable the **principal agent** to plan for and assess the progress of the **works** and timeously provide the necessary contract instructions.

The first programme shall be drawn in accordance with the dates in the **agreement** for possession, completion, and **practical completion**. The programme and the schedule shall be updated and modified by the **contractor** with the assistance of the **principal agent**

whenever actual progress is not in accordance with the current programme and in any event whenever required by the **principal agent**.

15.A.3 The **contractor** shall, when each such programme is prepared, cooperate with the **principal agent**, and provide all information required by the **agreement** or otherwise required by the **principal agent** to ensure that the programme:

15.A.3.1 represents the **contractor's** plans realistically and practically

15.A.3.2 takes into account **other project contractors** schedule and programmes

15.A.3.3 can be compiled in the manner required by the **principal agent** and can be processed on the **principal agent**'s systems

15.A.4 Although the programme is prepared with the assistance of and may be approved **by principal agent** the **contractor** acknowledges that the programme shall, in each instance, have been prepared by the **principal agent** on the basis of information provided by the **contractor** and the **contractor** remains solely responsible for (i) the accuracy, sufficiency and completeness of such information and (ii) satisfying itself that each programme is correct and appropriately reflects the execution (actual and as planned, as appropriate) at the time of its preparation. The programme shall not serve to release or relieve the c**ontractor** from any of his obligations or responsibilities under this **agreement** and without limitation the fact that a **contractor** delay event or late practical completion may be reflected or provided for in the programme shall not serve as a concession to any time or cost related entitlement or to excuse the **contractor** from its obligations and responsibilities under this **agreement**. The **contractor** acknowledges in this regard that the programme serves as a planning and project management tool rather than an instrument to demonstrate or justify any entitlement.

15.A.5 The **contractor** acknowledges that documentation will not be available in complete detail at the commencement stage. However, the **contractor**, in conjunction with the **principal agent**, shall progressively plan the works on provisional information, to an agreed level of detail relating to the level of detailed information available and with sufficient scope to include future detail without disrupting the basic logic initially approved by the **principal agent**. The quantities contained in the Bills of Quantities are provisional and shall be utilized as a guide only for the drawing up of the programme. Where assumptions are made in regard to programming aspects, such assumptions of the **contractor** shall be arrived at in conjunction with and be subject to the approval of the **principal agent**, and suitably recorded in the programme.

15.A.6 The c**ontractor** and the **principal agent** shall, at regular intervals not exceeding twenty-one (21) calendar days, assess the state of progress of the **works** relative to the current programme. Such assessment shall include the recording of actual commencement and completion dates for each activity. Agreed assessments shall constitute the official record of the progress at such point in time.

SCC 19 Delete clause 19 in its entirety and replace it with the following:

19.1 The **contractor** does not cede, delegate or assign any of its rights or obligations to any person.

19.2 Notwithstanding the above, the **employe**r may, on written notice to the **contractor**, cede and delegate, handover, its rights and obligations under this contract to a Related Party or a Client of the **employer**. On cession the Client becomes the employer and takes full responsibility. For the purpose hereof the above clause:

19.2.1 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, ("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); and

Client means the owner, funder and or sponsor of the project and or programme managed in terms of the MOA between the Client and DBSA.

SCC 21 Replace sub-clause 21.1.2 to 21.1.4 and 21.2 to 21.6 with the following:

"The contractor and principal agent shall appoint a selected subcontractor in accordance with the provisions of the Scope of Work."

SCC 23 Amend clause 23

Add sub-clause 23.3

"The **contractor** may not subcontract the whole of the work without the written instruction or approval of the **employer**. In such event the **employer** may require the **contractor** to cede the contract to the subcontractor."

Add sub-clause 23.4

"The subcontractors appointed by the **contractor** to comply with the developmental and transformation requirements from the **employer** in terms of applicable legislation, including but not limited to the Preferential Procurement Policy Framework Act, 5 of 2000, and regulation thereto, will be domestic subcontractors for purposes of this **agreement**, and sub-clauses 23.1 and 23.2 will apply accordingly.

Add new clause 23.5

The **contractor** shall submit the **agreements** and the supporting documents to subcontracting **agreements** for each of its domestic subcontractors to the **principal agent** and the **employer** at least 30 (thirty) days prior to such domestic subcontractor commencing with the works on site, failing which the **contractor** shall be in breach of the contract. The **contractor** may redact all commercially sensitive information from these **agreements.**

"supporting documents to subcontracting agreements" means the following:
Certified Copy of valid B-BBEE Certificate/ Affidavit;
Copy of valid/ active CIDB registration in the case of construction work.;
Copy of valid/ active registration to application regulatory institutions (where stipulated) in the case of professional services work;

A valid and active Tax Compliance Status Pin issued by South African Revenue Services.
Submission of National Treasury Central Supplier Database (CSD) Summary Report.

Add New Clause 23.6

The **principal agent** shall, at its own discretion, request invoices indicating amounts due and payable to subcontractors and proof of payment of any amounts due and payable to subcontractors.

Add New Clause 23.7
Contractor's failure to pay subcontractors

If the **contractor** fails to make payment of any amount due and payable to a subcontractor ("**the Subcontractor Debt**") and the **principal agent** considers that the **Subcontractor Debt** has an adverse impact(s) on the progress of the works or the obligations of the **contractor** under the agreement, the **principal agent** may 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. Such payment is, for all purposes under the agreement, 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 contract sum. As such, payment to the **contractor** shall be less the payment to the **subcontractor**.

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 **principal agent** making payment directly to subcontractors, of the **Subcontractor Debt.**

SCC 30.1 Replace reference to "36.3" at end of sentence with "36.0"

SCC 31.9# Sub-clause 31.9# is hereby amended by the substitution of the words "twenty-one (21) **calendar days"** in the first line by the words "thirty (30) **calendar days".**

Add new clause 39A Cancellation by the Employer- For any reason.

SCC 39A Notwithstanding any clause to the contrary, on cancellation of this **agreement** by the **employer**, or for any reason whatsoever, the **contractor** shall on written instruction by the **principal agent** or the **employer**, discontinue with the **works** on a stated date and withdraw itself from the **site**. The **contractor** shall not be entitled to refuse to withdraw from the site on the grounds of any lien or right of retention or on the grounds of any other right whatsoever.

SCC 39B 39B1 The parties expressly agree and acknowledge that the **works** herein concerned are subject to and dependent on the availability of budget from the Client. To this end, the **employer** as implementing agent shall exercise its best endeavors to ensure that throughout the performance of this **agreement** that the budget necessary to execute the **works** is properly forecasted and, to the extent reasonably possible, made available. However, should the Client notify the **employer** in writing, that it does not possess the necessary budget for the financial year to continue the execution of the **works**, The parties agree that:

39B1.1 The **employer** shall be entitled to, on written notice, not less than 14 (fourteen) business days terminate the **agreement**.

39B1.2It is agreed that should this **agreement** be terminated as per the aforementioned clause, the **contractor** shall be paid for all **works** and or deliverables attended to prior to the date of termination, or as agreed by the parties, as contemplated in the aforementioned notice.

39B1.3 It is hereby accepted that the parties shall have no further claim against one another for any further sums, losses or damages arising from the termination of this **agreement** in terms of the aforementioned clause.

SCC 31.12 # **Dele**te "Payment shall be subject to the **employer** giving the **contractor** a **tax** invoice for the amount due."

SCC 34.13 Delete the words in sub-clause 34.13 "subject to the **employer** giving the **contractor** a **tax** invoice for the amount due"

SCC 40.0 Retention of clause in respect of dispute settlement to be retained in its original form not applying the state clause amendments.

SCC 41.0 Clause 41 State Substitutions is amended as set out below with reference to sub-clause 41.1 or the original clause number stated therein.

In sub-clause 41.1.3 the definition for **CONSTRUCTION PERIOD** is amended to read:

CONSTRUCTION PERIOD means the period commencing on the date the **contractor** takes possession of the site to the date the certificate of practical completion is issued**.**

clause 39.2 to be amended as follows:

delete the third sentence and replace with the following:

"The **employer** shall pay the **contractor** all amounts due in terms of the contract for work completed at the date of termination or cancellation in terms of this clause 39.2, including retention money after deducting any amounts due to the **employer.** The **employer** will also return any **security** still valid to the **contractor** after such cancellation."

Clauses 39.2.1 to 39.2.3 no clause

C1.2.2 CONTRACT SPECIFIC DATA

Part One - Data provided by the *Employer*

42.1.1 The Employer is the **Development Bank of Southern Africa Limited**

The address of the Employer is:

Address (physical): 1258 Lever Road, Headway Hill, Midrand, 1685

Address (postal): P.O. Box 1234, Halfway House, Midrand, 1685

Telephone: (011) 313 3911

Facsimile: (011) 313 3086

42.1.2 The Principal Agent: ***(Only to be inserted at contracting)***

Telephone: ***Only to be inserted at contracting)***

Facsimile: ***(Only to be inserted at contracting)***

Electronic mail: ***(Only to be inserted at contracting)***

Address (physical): ***(Only to be inserted at contracting)***

Address (postal): ***(Only to be inserted at contracting)***

42.2.1 The Works to be carried out by the Contractor under this Contract comprise mainly the following:

Project Description	Scope
ALTERATIONS AND ADDITIONS TO THE EXISTING MAKAULA SENIOR SECONDARY SCHOOL IN THE EASTERN CAPE PROVINCE FOR THE EASTERN CAPE DEPARTMENT OF EDUCATION	The works will consist of the complete Alteration and additions construction of burnt Hostel at Makaula Senior Secondary School, including electrical, mechanical, site works and other subsidiary works

Building Work

- Undertake repairs and refurbishment of existing building infrastructure, including the safe demolitions and removal of condemned walls where necessary.
- All the buildings consist mainly of brick wall structures on concrete raft foundations, profiled sheet iron roof covering with colored finish on one side on timber roof structure.
- The buildings are finished internally mainly with facebrick, plaster and paint, with some ti and externally with facebrick work and plaster and paint panels, suspended and screwec ceilings, vinyl sheet and porcelain tile flooring.

Electrical Installation

- Electrical Supply
- Electricity Centre and Main Distribution
- Power Distribution Services
- Earthing and Bonding
- Lightning Protection
- Interior Lighting,
- Stage lighting
- Exterior Lighting,
- Wireways and Channels,

Mechanical Installation & Maintenance

- Air Conditioning Installation
- Fire Protection Installation
- LPG Installation
- Wet services Installation Hot and cold water
- Drainage

- Site reticulation

The aforesaid information serves only as a guide to Bidders,

42.2.2 Refer document C4 – Site Information C

42.2.3 The Works or installations to be undertaken by direct contractors comprises

Complete construction works. ***Not applicable***

42.2.4 The Employer is an organ of State

- The interest rate as determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No 1 of 1999) will apply.
- Lateral support insurance is not to be affected by the contractor
- Payment will be made for materials and goods
- Extended defects liability period will apply to the following elements: ***Not applicable***

42.2.5 Possession of the site is to be given within **three days** of the contractor providing the employer with construction guarantees in accordance with the provisions of 14.0 and the Contract has been signed by both parties.

42.2.6 The period for the commencement of the works after the contractor takes possession of the site is **7 working days**.

Completion:

For the works as a whole:

The date for practical completion shall be **Three (3) months** from the Site Handover. Specific completion dates will be advised at project kick-off.

The penalty for the **works** without **sections** shall be calculated as follows **1,75c per R100 of the contract value, excluding VAT per calendar day**

Thereafter, the **employer** 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**. The **employer** may at its own discretion terminate this **agreement** if the **contractor's** penalties reach the maximum of 10% of the contract sum.

42.2.9 The law applicable to the agreement shall be that of the Republic of South Africa.

42.3.1 Contract works insurance is to be affected by the **contractor** for a sum not less than the contract sum plus **10%.**

The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA)

42.3.3 Public liability insurance to be affected by the contractor for the sum of **R5 000 000.00** (five million rand) per event without a limit on a number of events with a deductible in an amount that the contractor deems appropriate.

42.3.4 Lateral Support insurance: Deemed Not Applicable

42.4.1 A waiver of the contractor's lien or right of continuing possession is required.

42.4.2 One copy of the construction documents is to be supplied to the contractor free of charge.

42.4.5 JBCC Engineering General Conditions are not to be included in the contract document.

42.4.6 CPAP shall only be applicable to works that progress to later than twelve (12) months from commencement date. Where the period is prolonged beyond the first twelve months due to the delay or non- performance by the employer, the CPAP shall be applicable; however where the period is extended due contractor's failure to perform or delay caused by the contractor CPAP shall not be applicable. The contract value is to be adjusted using CPAP indices. The base month to be used to calculate CPAP is tender closing date. The value of the certificates issued shall be adjusted in accordance with the JBCC Contract Price Adjustment Schedules, from the thirteenth month of the works.

42.5.4 **The preliminaries amounts shall be paid in terms of Option A and the contractor shall not have the right to select Option B.**

31.3 The issue of interim payment certificates shall be done no later than the **20th** of each month.

29.1.1 The contractor shall allow **eleven (11) working days** during the contract period per **6 months** for the adverse effect of weather conditions and shall not be entitled to a revision of the date for Practical Completion for delays suffered by adverse weather conditions.

14.5 The employer **will not** provide advanced payments against an advanced payment guarantee

14.2 and 14.4 The construction guarantee is to be a fixed construction guarantee. It is and shall be **10%** of the contract sum until practical completion and 5% until final completion.

40.0 Dispute resolution shall be by adjudication. If a dispute is unresolved by adjudication the dispute shall be finally settled by an arbitrator to be agreed between the parties.

C1.2 CONTRACT DATA (Continued)

Part Two – Data provided by the *Contractor*

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

Statements given in all contracts

- The *Contractor* is

  Clause 42.5.1: Name . . . . . .
  . . . . . .
  The legal name of the Contractor.

  Clause 42.5.1 [1.2]: Address . . . . . .
  . . . . . .
  . . . . . .
  The physical address, postal address, e-mail address and/or fax number where the Contractor will receive notices.

C1.3 CONSTRUCTION GUARANTEE

Pro-Forma JBCC Fixed On Demand Performance Guarantee

To: The Development Bank of Southern Africa Limited

Dear Sirs

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

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

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

1. In this Guarantee

1.1 The following words and expressions have the following meanings:

1.1.1 "Guarantor" - means **[●]**, **[●]** Branch, (Registration No. **[●]**); [*Drafting Note: Name of* Guarantor *to be inserted*] **[•] Financial Services Board Registration number**

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

1.1.3 "Contract" - means the written agreement entered into between the Employer and the Contractor on or about **[●] [●]** 201**[●]** (Contract Reference No. **[●]**), as amended, varied, restated, novated or substituted from time to time; [*Drafting Note: signature date and Contract reference number to be inserted*]

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

1.1.5 "Employer" - means The Development Bank of Southern Africa Limited, a juristic person in terms of section 2 of The Development Bank of Southern Africa Act,13 of 1997;

1.1.6 "Expiry Date" - means the *date* when the certificate of final completion is issued for the whole of the works;

1.1.7 "this Guarantee" - means this document;

1.1.8 "This Guaranteed Sum" – means, subject to clause 4, the sum of **[● - figure]** (**[● - words]**) [Drafting Note: Maximum aggregate Guarantee amount (not exceeding 10.0% of the total of the Prices as at the Contract Date) to be inserted] which amount will reduce with 50% when the Practical Completion certificate is issued until Final Completion.

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

2. At the instance of the Contractor, the Guarantor hereby confirms that we hold the Guaranteed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. This Guarantee:

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

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

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

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

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

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

Signed at _____ Date _____

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

Guarantor Signatory 1: _____ Guarantor Signatory 2: _____

Name: _____ Name: _____

Capacity of Guarantor Capacity of Guarantor

Signatory 1: _____ Signatory 2: _____

Witness: _____ Witness: _____

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

_____ _____

Guarantor's seal or stamp _____

PART 2: PRICING DATA

JBCC Principal Building Agreement, Edition 4.1 Code2101 March 2005, issued by the Joint Building Contracts Committee Inc. (including amendments).

Document reference	Title	No of pages
C2.1	Pricing Instructions	2
C2.2	Bill of Quantities	1
C.2.3	Amendments, Qualifications and Alternatives by Tenderer	1
	Total number of pages	4

C2.1 PRICING INSTRUCTIONS

1. The Bills of Quantities have been drawn up in accordance with the Standard System of Measuring Building Work (as amended) published and issued by the Association of South African Quantity Surveyors (Sixth Edition (Revised)), 1999. Where applicable the:
    a) civil engineering work has been drawn up in accordance with the provisions of the latest edition of SABS 1200 Standardized Specifications for Civil Engineering Works.
    b) electrical work has been drawn up in accordance with the provisions of the Model Bills of Quantities for Electrical Work, published by the South African Association of Quantity Surveyors, (July 2005).
2. The agreement is based on the JBCC Series 2000 Principal Building Agreement, prepared by the Joint Building Contracts Committee, Edition 4.1, March 2005. The additions, deletions and alterations to the JBCC Principal Building Agreement as well as the contract specific variables are as stated in the Contract Data. Only the headings and clause numbers for which allowance must be made in the Bills of Quantities are recited.
3. Preliminary and general 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. Only the headings and clause numbers for which allowance must be made in the Bills of Quantities are recited.
4. It will be assumed that prices included in the Bills of Quantities 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. The drawings listed in the Scope of Works used for the setting up of these Bills of Quantities are kept by the Principal Agent or Engineer and can be viewed at any time during office hours up until the completion of the works.
6. 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.
7. Where any item is not relevant to this specific contract, such item is marked N/A (signifying “not applicable”)
8. The Contract Data and the standard form of contract referenced therein must be studied for the full extent and meaning of each and every clause set out in Section 1 (Preliminaries) of the Bills of Quantities.
9. The Bills of Quantities is not intended for the ordering of materials. Any ordering of materials, based on the Bills of Quantities, is at the Contractor’s risk.
10. The amount of the Preliminaries to be included in each monthly payment certificate shall be assessed as an amount prorated to the value of the work duly executed in the same ratio as the preliminaries bears to the total of prices excluding any contingency sum, the amount for the

Preliminaries and any amount in respect of contract price adjustment provided for in the contract.

11. Where the initial contract period is extended, the monthly charge shall be calculated on the basis as set out in 10 but taking into account the revised period for completing the works.
12. The amount or items of the Preliminaries shall be adjusted to take account of the theoretical financial effect which changes in time or value (or both) have on this section. Such adjustments shall be based on adjustments in the following categories as recorded in the Bills of Quantities:
    a) an amount which is not to be varied, namely Fixed (F)
    b) an amount which is to be varied in proportion to the contract value, namely Value Related (V); and
    c) an amount which is to be varied in proportion to the contract period as compared to the initial construction period excluding revisions to the construction period for which no adjustment to the contractor is not entitled to in terms of the contract, namely Time Related (T).
13. Where no provision is made in the Bills of Quantities to indicate which of the three categories will apply or where no selection is made, the adjustments shall be based on the following breakdown:
    a) 10 percent is Fixed;
    b) 15 percent is Value Related
    c) 75 percent is Time Related.
14. The adjustment of the Preliminaries shall apply notwithstanding the actual employment of resources in the execution of the works. The contract value used for the adjustment of the Preliminaries shall exclude any contingency sum, the amount for the Preliminaries and any amount in respect of contract price adjustment provided for in the contract. Adjustments in respect of any staged or sectional completion shall be prorated to the value of each section.

C2.2 BILL OF QUANTITIES

Use this page as a cover page to the *Contractor*'s *Bill of Quantities.*

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 C2.2 and warrant that the documents submitted are true and accurate.

_____ _____

(Signature) (Date)

BILL OF QUANTITIES FOR MAKAULA SENIOR SECONDARY SCHOOL

~~C2.3 AMENDMENTS, QUALIFICATIONS AND ALTERNATIVES BY TENDERER~~

~~Subject to condition stated in Tender Data:~~

~~Use this page as a cover page to the *Amendments, Qualifications and Alternatives by Tenderer*~~

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	Project Specifications	12
C3.2	Particular Specifications *	1
C3.3	Drawings (list of all drawings)	4
*	Refer to Addendum A & B for additional pages	
	Total number of pages	18

C3.1 PROJECT SPECIFICATIONS

1. DESCRIPTION OF THE WORKS

1.1. Employer's objectives

The Employer's objectives are to deliver public infrastructure using labour-intensive methods where possible as required by the Expanded Public Works Programme (EPWP) to provide temporary employment opportunities to local unemployed people and to provide training or skills development to these locally employed workers. The contractor shall provide necessary employment opportunities to qualifying individuals as and when required to comply with the job creation requirements to the satisfaction of the Employer. The contractor shall provide monthly records of EPWP employment created to the Employer.

1.2. Overview of the works

The Eastern Cape Department of Education has an objective to provide sustainable public infrastructure that meets the demands, improve accessibility and improve the quality of life.

1.3. Extent of the works

The Works to be carried out by the Contractor under this Contract comprise mainly the following:

Project Description	Scope
ALTERATIONS AND ADDITIONS TO THE EXISTING MAKAULA SENIOR SECONDARY SCHOOL BURNT HOSTEL IN EASTERN CAPE PROVINCE FOR THE EASTER CAPE DEPARTMENT OF EDUCATION	The works will consist of the complete alterations and additions of the burnt Hostel at MAKAULA Senior Secondary School, including electrical, mechanical, site works and other subsidiary works

Building Work

- Undertake repairs and refurbishment of existing building Hostel infrastructure, including the safe demolition and removal of condemned walls.
- All the buildings consist mainly of brick wall structures on concrete raft foundations, profiled sheet iron roof covering with colored finish on one side on timber roof structure.
- The buildings are finished internally mainly with plastered walls, plaster and paint, with some tiling and externally with facebrick work and plaster and paint panels, suspended and screwed up ceilings, vinyl sheet and porcelain tile flooring

Electrical Installation

- Electrical Supply
- Electricity Centre and Main Distribution
- Power Distribution Services
- Earthing and Bonding
- Lightning Protection
- Interior Lighting,
- Stage lighting
- Exterior Lighting,
- Wireways and Channels,

Mechanical Installation & Maintenance

- Air Conditioning Installation
- Fire Protection Installation
- LPG Installation
- Wet services Installation Hot and cold water
- Drainage
- Site reticulation

The aforesaid information serves only as a guide to Bidders,

Services

Before any work commences, the Contractor shall contact all private owners or public authorities controlling services so that they may, either protect, move or relocate any service as required, or confirm that all such work has been completed.

Payment will not be made for any inconvenience caused to the Contractor in regard to any services crossing the site or any authority working on or relocating any such services, nor will any delays caused by such work or relocation be accepted as a basis for claiming an extension of time for completing the works.

All known existing services and those services which require relocation and protection, are shown on the services plans. The Contractor's attention is drawn to the fact that such services information is based on information supplied by others, and the accuracy and completeness of this information has not been confirmed. The Contractor will therefore be required to proceed with extreme caution

in order to avoid damage to existing services. Before commencing any work in the vicinity of services, the Contractor shall contact the relevant service authorities for assistance in locating the exact position of the services and where necessary the Contractor shall accurately locate the services by careful hand excavation.

In general, the Engineer may call upon the Contractor to re-excavate trenches previously dug and backfilled by others where in the opinion of the Engineer such work is necessary to ensure the stability of any other works over such trenches. This in no way relieves the Contractor of his responsibilities in terms of the works.

Accommodation of Traffic

The Contractor is to liaise with the Eastern Cape Provincial Department of Roads & Transport with regards to any temporary road closures as required during this contract.

Accommodation of traffic during construction shall be undertaken to the requirements and details provided by the Engineer.

Coordination with Other contractors

~~Other contractors, who are engaged in the construction of similar works, could be working within the sites of the Contractor. The Contractor will be required to provide all necessary assistance to them, and to liaise with them in respect of their programme in order to avoid any delays to either contract. See clause 5.6.6 of the Contract Data.~~

Setting Out of Works

Whilst surveys have been carried out of the site, and the designs based on such surveys, it is the responsibility of the Contractor to recheck all the benchmarks and protect the benchmarks from damage at the start of the contract. It is the Contractor's responsibility to set out the Works and any discrepancies in the design or setting out shall be identified and brought to the attention of the Engineer promptly so they can be corrected before any abortive expenditure is incurred.

Location of the works

The Works to be constructed are in the area as stated below. Refer to C4 - Site information for locality map.

a. Occupational Health and Safety

The contractor needs to comply with the following legal requirements:

- Occupational Health and Safety Act, 85 of 1993 (latest edition) and the Construction Regulations, 2014;
- Annexure A - DBSA Occupational Health and Safety Baseline specification
- Annexure B - DBSA Baseline Risk Assessment
- Annexure C - Safety, Health, Environment and Quality Policy.

2. DRAWINGS

Refer to C3.3 for applicable drawing list.

3. PROCUREMENT

3.1. Preferential procurement procedures

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

4. CONSTRUCTION

4.1. Applicable SANS 2001 standards for construction works.

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

1) SANS 2001BE1 – Earthworks
2) SANS 2001BS1 - Site Clearance
3) SANS 2001CC2 - Concrete works
4) SANS 2001CG1 - Glazing works
5) SANS 2001CM1 - Masonry works.
6) SANS 2001CS1- Structural steel works
7) SANS 2001CT2 – Structural timber works
8) SANS 2001DP1 - Earthworks for buried pipelines and prefabricated culverts
9) SANS 2001DP2 – Medium pressure pipes
10) SANS 2001DP3 – Cable ducts
11) SANS 2001DP4 – Sewers
12) SANS 2001DP5 – Storm water drainage
13) SANS 2001DP6 – Belowground water installations
14) SANS 2001EM1 – Cement plaster

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

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

4.2. Applicable national and international standards

- Standardized Specifications for Civil Engineering Construction SANS 1200
- Construction and Management Requirements for Works Contracts SANS1921-1
- Targeted Construction Procurement SANS1914-4 4.
- South African Schools Act, 1996 (Act NO.84 of 1996) *Regulations Relating to Minimum Uniform Norms and Standards For Public School Infrastructure.*
- SANS 10400 - The application of the National Building Regulations.
- SANS 10400 Part X – Environmental Sustainability.
- SANS 10400 Part XA – Energy Usage in Buildings DSS3

4.3. Local Employment Generation

4.3.1 The DBSA has identified job creation and access to procurement opportunities by Start-ups, Small and Micro Enterprises (SMMEs) as an essential requirement towards building an economically viable country.
For subcontract work, 20% of the value of the work must be sub-contracted linked with a clear plan of how the contractor will capacitate the sub-contractor to advance.
Where SMMEs are sufficiently resourced, 10% of the value of the work must be subcontracted. Where SMMEs are insufficient resources to execute the proposed works as a complete package the Contractor may conclude contracts on a management/labour basis in which event a minimum of 5% of the value the works is to be subcontracted. The onus is on the Contractor to prove to the employer that no fully fledged SMMES are active in the area of the project.

4.3.2 General Labour minimum targets
It is mandatory that tenderers/bidders employ the minimum stipulated personnel on the contracts for the local community where the project is being implemented. This employment is outside the existing employees of the tenderers/bidders .
For the general labour force, the minimum number of people to be employed for the duration of the Project will be calculated from the formula below.

$$Number\ of\ Employees = 4 * [\frac{(Contract\ Value\ in\ Rand)}{R1{,}000{,}000}$$

4.3.3 Tenderers are to also note that it is an explicit condition of this tender that all unskilled labourers on the project are to be employed from the local community. The Contractor is therefore expected in general to maximise the involvement of the local community.
Take note that the local labour employed must not be paid lower than the minimum approved Municipal rates in that district or area.

4.3.4 The Contractor shall be required to submit employment data monthly to the Project Manager.

Should the contractor at Works Completion, be in default by non-attainment of the above mentioned labour intensive targets, the Employer shall have the right to, without prejudice of any other rights, apply a penalty of **not exceeding 5% of the contract sum**.

4.3.5 Regarding procurement of materials, local is hereby defined as the province in which the project(s) is/are located which is Eastern Cape.
The minimum target for materials sourced locally is 20% of the contract value

SIGNATURE: _____ DATE: _____
(Authorised Person)

4.5 Specific provisions pertaining to SANS 1914-4

4.6 Definitions

Targeted enterprise:

An enterprise which has its sole office of head office located within the Target Area

Targeted labour:

Unemployed persons who are employed as local labour on the project.

4.7 Certification by recognized bodies

Not Applicable

4.8 Plant and materials provided by the employer

Not Applicable

4.9 Services and facilities provided by the employer

Not Applicable

4.10 Plant and equipment

The plant and equipment used on the site shall not be inferior to that described in the Schedule of Plant and Equipment.

5. MANAGEMENT

1.1. SANS 1921 standards

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

The abovementioned South African National Standards make several references to the Specification Data for data, provisions and variations that make these standards applicable to this

contract. The Specification Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and these standards.

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

The associated Specification Data is as follows:

SANS 1921-1, Construction and management requirements for works contracts – Part 1: General engineering and construction works	
Clause	**Specification data**
Essential data	
4.1.7	There are no requirements for drawings, information and calculations for which the contractor is responsible
4.2.1	The responsibility strategy assigned to the contractor for the works is A.
4.2.2	The structural engineer is: **TBC**
4.3.1	The planning, programme and method statements are to comply with the following: 1) Program to be submitted in Microsoft Project format 2) Gantt chart to indicate critical path and progress 3) Gantt chart to be updated before monthly site meeting
4.3.3	The notice period for inspection is 2 Days
4.9.3	The trees and shrubs which are not to be disturbed are to be identified on site. Where possible, the disturbance of trees should be avoided.
4.14.3	The office accommodation, equipment, accommodation for site meetings and other facilities for use by the employer and his agents are: 1) **Site office** which shall be used for site meetings and for the contractor's use. Such an office shall comprise a minimum of 20m^2 in area and 3 m high, be ventilated, have good lamination, must be reasonably sound proof, and have a hard floor construction. It shall be furnished with a desk on which drawings can be rolled open and on which there is sufficient writing space and sufficient temporary chairs or benches to accommodate all persons present at site meetings. (**Minimum 15-seater)** 2) The following facilities will be supplied to the employer's representatives: - 15 Hardhats for employer's representatives visiting the site - 15 Safety (High visibility) jackets for employer representatives visiting the site - 15 sets of safety Goggles

	- 15 sets of earplugs (when applicable)
4.14.5	The Contractor is required to provide latrine and ablution facilities for the exclusive use of the professional team and client
4.14.6	The requirements for the provision and erection of separate sign boards for consultants and subcontractors are: 1) See Bill of Quantities.
4.17.1	The requirements for the termination, diversion or maintenance of existing services are: 1) See Civil Drawings
4.17.3	Services which are known to exist on the site are: 1) Water network. 2) Electricity reticulation, sub-surface and over head 3) Sewer Network
4.17.4	The requirements for detection apparatus are: 1) Communication with Department of Health officials.

Additional clauses

1 Site meetings and procedures

The Employer's Representative and the Contractor shall hold meetings relating to the progress of the works at regular intervals and at other such times as may be necessary. The Contractor shall attend all site meetings and shall ensure that all persons under his jurisdiction are notified timeously of all site meetings should the Employer's Representative require their attendance at such meetings.

Contractor's company director responsible for the project will be required to attend at least one progress or technical meeting per month.

The Contractor shall keep on site a set of minutes of all site meetings, daily records of resources (people and equipment employed), a site instruction book, a complete set of contracts working drawings and a copy of the procurement document and make these available at all reasonable times to all persons concerned with the contract.

2 Water and electricity

The Employer does not warrant that any water supply or electricity supply that may exist is adequate for the proper execution of the works. The responsibility strategies in terms of the tabulation below that will apply to the contract is:

a) water : A

b) electricity: A

Service	**Option**		
	A **Contractor responsibility**	**B** **Employer responsibility**	**C**
Water	The Contractor is to provide, and remove and make good upon completion, all the necessary temporary plumbing connections and purchase water from the local authority for the works at his own cost.	The Contractor shall make, and upon completion remove, all the necessary connections to the Employer's water supply at designated points and make use of water free of charge for construction purposes only.	The Contractor shall make, and upon completion remove, all the necessary connections and water meters to the Employer's water supply at designated points and be responsible for costs associated with all water consumed.
Electricity	The Contractor is to provide, and remove and make good upon completion, all the necessary temporary electrical connections and installations and purchase electricity from the local authority / ESKOM for the works at his own cost.	The Contractor shall make, and upon completion remove, all the necessary electrical connections to the Employer's electrical supply at designated points and make use of electricity free of charge for construction purposes only.	The Contractor shall make, and upon completion remove, all the necessary connections and meters to the Employer's electrical supply and be responsible for costs associated with all electricity consumed.

The following temporary services is the responsibility and will be supplied by the contractor:

- Security
- Sewer services in the form of temporary toilets
- Waste disposal facility

SANS 1921-5, Construction and management requirements for works contracts – Part 5: Earthworks activities which are to be performed by hand.

Clause	**Specification Data**
Essential Data:	
5.1	The depth of trenches which are to be excavated by hand is 700mm.
Additional clauses:	
1	**Stone pitching and rubble concrete masonry**

	All stone required for stone pitching and rubble concrete masonry, whether grouted or dry, shall be collected, loaded, off loaded and placed by hand. Sand and stone shall be hauled to its point of placement by means of wheelbarrows where the haul distance is not greater than 150m. Grout shall be mixed and placed by hand.
2	**Manufactured Elements** Elements manufactured or designed by the Contractor, such as manhole rings and cover slabs, precast concrete planks and pipes, masonry units and edge beams shall not individually, have a mass of more than 320kg. In addition, the items shall be large enough so that four workers can conveniently and simultaneously acquire a proper hand hold on them.
SANS 1921-6, Construction and management requirements for works contracts – Part 6: HIV/AIDS awareness.	
4.2.1(a)	A qualified service provider is a service provider that is one that is accredited or provisionally accredited training service provider in the HIV/AIDS field. A list of accredited service providers can be obtained from the Construction SETA (CETA) (tell 011-265 5900), Health and Welfare SETA (HWSETA) (011-622 6852) or on the Health and Welfare SETA website: www.hwseta.org.za.
4.2.1(a)	The HIV/AIDS awareness programme is to be repeated at four-month intervals throughout the duration of the contract. (Four times in total, including the initial one at the start of the contract.)
Additional clauses	
	The duration of each workshop is not to be less than 2 ½ hours.

a. Recording of weather

The Contractor shall erect an effective rainfall gauge on the site and record the daily rainfall figures in a book. Such book shall be handed to the employer's representative for his signature no later than 1 days after rain that is considered to justify an extension of time occurs.

b. Unauthorised persons

The Contractor shall always keep unauthorized persons from the works. Under no circumstances may any person except guards be allowed to sleep on the building site.

c. Management meetings

A Schedule of meetings will be agreed with the client and contractor.

d. Daily records

The Contractor is instructed to keep a set of signed off daily diaries with specific detail relating to contract and EPWP requirements.

e. Payment certificates

Payment Certificates will be done as per Clause 31.0 of the JBCC Principal Building Agreement Edition 4.1 March 2005. Payments will not be processed unless all the required job creation statistics and all supporting information are attached to the claim for payment.

f. Job statistics/targeted labour

The contractor must provide monthly statistics to the DBSA indicating the number of new jobs created through this contract. This statistic **must be provided with each monthly payment certificate** using the electronic prescribed format, which will be provided by the Project Manager of this project to the successful bidder.

5.7.1 Training of targeted labour (non-accredited training)

a) The Contractor shall provide all the necessary on-the-job training to targeted labour to enable such labour to master the basic work techniques required to undertake the work in accordance with the requirements of the contract in a manner that does not compromise worker health and safety.

b) The contractor shall be responsible for scheduling the training of workers and shall take all reasonable steps to ensure that each beneficiary is provided with a minimum of six (6) days of formal training if he/she is employed for 3 months or less and a minimum of ten (10) days if he/she is employed for 4 months or more.

c) The Contractor shall do nothing to dissuade targeted labour from participating in training programmes.

d) Proof of compliance with all the requirements must be provided by the Contractor to the Employer prior to submission of the final payment certificate.

5.7.2 Employment of local labour

a) It is the intention that this Contract should make maximum use of the local labour force that is presently under-employed. To this end the Contractor shall limit the utilisation on the Contract of non-local employees to that of key personnel only and to employ and train local labour to the extent necessary for the execution and completion of this Contract.

b) The Contractor shall fill in the form entitled Key Personnel in the Forms to be completed by the Bidder. The data stated on the above-mentioned form will be strictly monitored during the Contract period and any deviations there from shall be subject to the prior approval of the Principal Agent, which approval shall not be unreasonably withheld.

c) The employment of casual labour will be done in co-operation with community leaders and local structures. The bidder shall ensure that all remuneration paid to employees is in line with the relevant sectorial determination in terms of the Basic Conditions of Employment Act, No 75 of 1997, as determined by the Department of Labour.

C3.2 PARTICULAR SPECIFICATIONS

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

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

C3.3 DRAWINGS

List of applicable Drawings for Makaula Senior Secondary School are attached to the tender:

0. Architectural Drawings

1. Structural and Civil Drawings
2. Electrical Drawings (Annexure L)
3. Mechanical Drawings (Annexure N)

PART 4: SITE INFORMATION

Document reference	Title	No of pages
	This cover page	1
C4.1	*Site Location – Map*	1
	Total number of pages	1

C4.1 SITE LOCATION

MAKAULA SENIOR SECONDARY SCHOOL

The site is located under the Mzimvubu Local Municipality in the Alfred Nzo District in the Eastern Cape Province as shown in the picture below. The site coordinates are 30°55'S 28.59'E -30°9002'.28.933"S.



ITEM	CLUSTER ONE SCHOOL NAMES	LATITUDE	LONGITUDE
1	MAKAULA SENIOR SECONDAY SCHOOL	-30 833532	28 9328045