

# MATATIELE LOCAL MUNICIPALITY PROVINCE OF THE EASTERN CAPE



**MATATIELE**  
LEKALEKALE

102 Main Street  
Matatiele  
PO Box 15  
Matatiele, 4730  
Tel: 019 237 3130  
Fax: 019 237 3611

## POTE 40: APPOINTMENT OF A TURNKEY CONTRACTOR FOR CONSTRUCTION OF 40 HOUSING UNITS IN MATATIELE LOCAL MUNICIPALITY

**BID No.: MATAT/2022/2023-179**

### Matatiele Bidder

.....  
**Total of the prices exclusive of value added tax: R .....**  
**Bid Amount in Words.....**  
.....

**BIDDER'S CLOSES AT THE OFFICES OF: MATATIELE LOCAL MUNICIPALITY AT 10H00 ON 21 THE  
FEBRUARY 2023**

Documents are to be delivered by hand in the tender box as no faxed copies will be acceptable; the box is situated at 'Reception' of MATATIELE Municipality, New Budget and Treasury Offices, Mountain View, MATATIELE.

**NO LATE SUBMISSION WILL BE CONSIDERED**

Issued and by:  
MATATIELE LOCAL MUNICIPALITY  
102 MAIN STREET  
MATATIELE  
4730

1. CHECKLIST
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3. AUTHORITY TO SIGN A BID
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# 1. CHECKLIST

PLEASE ENSURE THAT THE FOLLOWING FORMS HAVE BEEN DULY COMPLETED AND SIGNED AND THAT ALL DOCUMENTS AS REQUESTED, ARE ATTACHED TO THE TENDER DOCUMENT:

MBD 1 Invitation to tender?	Yes		No	
Authority to Sign a Bid Is the form duly completed and is a certified copy of the resolution attached?	Yes		No	
Tax Clearance Certificate Is an ORIGINAL and VALID Tax Clearance Certificate attached?	Yes		No	
MBD 4 (Declaration of Interest) Is the form duly completed and signed?	Yes		No	
MBD 5 - DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)	Yes		No	
MBD 6.1 (Preference Points claim form for purchases/services) Is the form duly completed and signed? Is a CERTIFIED copy of the B-BBEE Certificate or the original B-BBEE Certificate attached?	Yes		No	
MBD 8 (Declaration of Past Supply Chain Practices) Is the form duly completed and signed?	Yes		No	
MBD 9 (Certificate of Independent Bid Determination) Is the form duly completed and signed?	Yes		No	
SCHEDULE A – CONFIRMATION OF REGISTRATION OF TENDERER ON MATATIELE SUPPLIER DATABASE AND NATIONAL TREASURY DATABASE				
SCHEDULE B – TENDERER'S PAST EXPERIENCE				
1 MBD 7.1 (Contract form – Goods) Is the form duly completed and signed?	2 Yes	3	4 No	5

6 SIGNATURE	7	8 NAME	9
10 CAPACITY	11	12 DATE	13
14 NAME OF FIRM	15		

**Matatiele Local Municipality  
 BID NOTICE**

Bidders are hereby invited to submit their tenders for the following priority Turn-Key capital RDP Housing projects:

Bid Number	Project Name	Advert Date	Old Briefing Date	New Briefing date	New Closing Date
MATAT/2022/2023-177	Mehloloaneng – 898 (491)	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	27 February 2023 @10h00
MATAT/2022/2023-178	Maluti – 200	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	27 February 2023@10h00
MATAT/2022/2023-179	Pote – 40	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	21 February 2023@10h00
MATAT/2022/2023-180	Tsitsong – 200	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	27 February 2023@10h00

**MANDATORY DOCUMENTS AS LISTED IN THE TENDER TO BE SUBMITTED,  
 FAILURE TO DO SO WILL RESULT IN THE BID BEING DEEMED TO BE NON-RESPONSIVE**

Matatiele Local Municipality Supply Chain Management policy will apply. A confirmation from SARS with a verification PIN, Proof of Central Supplier Database (CSD) registration- a full updated report (printed within three months of the tender advert), Completion of MBD 4-9 and its Annexures in full. Prices quoted must be firm and must be exclusive of VAT. Original Certified I.D. Copies of Managing Directors / Owners. Letter from the bank confirming available funds or no less than a Category C. Tender documents will be available on the e-tender portal. Joint Ventures will only be accepted if all necessary requirements as per tender document are met.

**Transactions in the excess of R10 million (VAT included). All companies which are required by law is required to prepare annual financial statements for auditing, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.**

**EVALUATION CRITERIA**

Only competent bidders who are competent in the advertised work and who have exceeded the minimum functionality threshold will be two phases Phase 1= **Functionality=100 Points** and Phase 2= is 80/20 and 90/10 for Mehloloaneng – (491) in line with the Preferential Procurement Policy Framework Act (PPPFA) of November 2022. Only bidders who obtain 80 points as a minimum functionality threshold will be evaluated further on 80/20 and 90/10 for Mehloloaneng.

Tenderers will be awarded points on the following basis:



<b>1. Tender Price</b>	<b>80 points</b>
<b>2. HDI – Equity ownership</b>	<b>6 points</b>
<b>3. Youth-Enterprises 0-45 years (MLM)</b>	<b>6 points</b>
<b>3. Women – Equity ownership</b>	<b>4 points</b>
<b>4. Disability – Equity ownership</b>	<b>2 point</b>
<b>5. Rural Enterprises (MLM)</b>	<b>2 points</b>
<b>TOTAL</b>	<b>100 points</b>

**OBTAINING OF TENDER DOCUMENTS:**

Bid Documents will be available at the Municipal Website and BTO Offices for a non – refundable tender fee of R1000 payables in the Municipal bank account (Ned Bank 1011292106 branch code 198765, name of company and bid no as reference) (Failure to attached proof of purchase will lead disqualification) are also available from Municipal website as from 07 February 2023. To obtain tender documents please login to [www.matatiele.gov.za](http://www.matatiele.gov.za) or email [mngcobo@matatiele.gov.za](mailto:mngcobo@matatiele.gov.za).

Site briefing is compulsory. Only Technical Managers or Directors of respective companies are to fill in and sign the compulsory attendance register at the site briefing and will not be permitted to sign on behalf of more than one company. The Matatiele Local Municipality reserves the right not to appoint a contractor on highest points scored. Value for money, past experience and functionality will be the key determinants of appointment. All tenders must be deposited in the tender box situated **at the Matatiele Local Municipality, Matatiele, Eastern Cape 4730** reception area not later than 10h00 noon as per provided closing dates, where they will be opened in public. All tenders must be clearly marked “Name of the project indicated above”. *The Municipality will not make any award to a person or persons working for the state, or failing to possess relevant credentials as stipulated in the tender requirements. Each Bid must be submitted separately*

All SCM enquiries relating to this bid must be directed to Z.C Matolo, e-mail: [zmatolo@matatiele.gov.za](mailto:zmatolo@matatiele.gov.za) during office hours (07h30 – 16h00) weekdays. All Technical enquiries relating to this bid must be directed to Ms T Matela, e-mail: [tmatela@matatiele.gov.za](mailto:tmatela@matatiele.gov.za) during office hours

**Mr L.Matiwane**  
Municipal Manager



### 3. AUTHORITY TO SIGN

- **SOLE PROPRIETOR (SINGLE OWNER BUSINESS) AND NATURAL PERSON**

1.1. I, \_\_\_\_\_, the undersigned, hereby confirm that I am the sole owner of the business trading as \_\_\_\_\_

OR

1.2. I, \_\_\_\_\_, the undersigned, hereby confirm that I am submitting this tender in my capacity as natural person.

SIGNATURE:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

### 2 COMPANIES AND CLOSE CORPORATIONS

2.5 If a Bidder is a **COMPANY**, a certified copy of the resolution by the board of directors, duly signed, authorising the person who signs this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the company **must be submitted with this bid**, that is, before the closing time and date of the bid

2.6 In the case of a **CLOSE CORPORATION (CC)** submitting a bid, a **resolution by its members**, authorizing a member or other official of the corporation to sign the documents on their behalf, **shall be included with the bid**.

#### PARTICULARS OF RESOLUTION BY BOARD OF DIRECTORS OF THE COMPANY/MEMBERS OF THE CC

Date Resolution was taken	
Resolution signed by (name and surname)	
Capacity	
Name and surname of delegated Authorised Signatory	
Capacity	
Specimen Signature	

Full name and surname of ALL Director(s) / Member (s)			
1.		2.	
3.		4.	
5.		6.	
7.		8.	
9.		10.	

Is a <b>CERTIFIED COPY</b> of the resolution attached?	YES		NO	
--------------------------------------------------------	-----	--	----	--

SIGNED ON BEHALF OF COMPANY / CC:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

**3. PARTNERSHIP**

We, the undersigned partners in the business trading as \_\_\_\_\_ hereby authorize Mr/Ms \_\_\_\_\_ to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid and /or contract for and on behalf of the abovementioned partnership.

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner		Signature	
SIGNED ON BEHALF OF PARTNERSHIP:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

**8 CONSORTIUM**

We, the undersigned consortium partners, hereby authorize \_\_\_\_\_ (Name of entity) to act as lead consortium partner and further authorize Mr./Ms. \_\_\_\_\_

To sign this offer as well as any contract resulting from this tender and any other documents and correspondence in connection with this tender and / or contract for and on behalf of the consortium.

The following particulars in respect of each consortium member must be provided and signed by each member:

Full Name of Consortium Member	Role of Consortium Member	% Participation	Signature
SIGNED ON BEHALF OF PARTNERSHIP:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

# MBD 1 – MATATIELE LOCAL MUNICIPALITY

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE</b> (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)			
BID NUMBER:	MATAT/2021/2022-179	CLOSING DATE:	21 FEBRUARY 2023
		CLOSING TIME:	10H00
DESCRIPTION	<b>POTE 40: APPOINTMENT OF A TURNKEY CONTRACTOR FOR CONSTRUCTION OF 40 HOUSING UNITS IN MATATIELE LOCAL MUNICIPALITY</b>		
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>			

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX  
SITUATED AT (STREET ADDRESS)

MATATIELE LOCAL MUNICIPALITY

MOUNTAIN VIEW OFFICES (BTO)

MATATIELE

4730

### SUPPLIER INFORMATION

NAME OF BIDDER				
POSTAL ADDRESS				
STREET ADDRESS				
TELEPHONE NUMBER	CODE		NUMBER	
CELLPHONE NUMBER				
FACSIMILE NUMBER	CODE		NUMBER	
E-MAIL ADDRESS				
VAT REGISTRATION NUMBER				
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes
	<input type="checkbox"/> No			<input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**



15.1.1.1	<b>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	15.1.1.2	<b>ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
15.1.1.3	TOTAL NUMBER OF ITEMS OFFERED		15.1.1.4	TOTAL BID PRICE	R
15.1.1.5	SIGNATURE OF BIDDER	.....	15.1.1.6	DATE	
15.1.1.7	CAPACITY UNDER WHICH THIS BID IS SIGNED	.....			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>			<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>		
DEPARTMENT	SCM UNIT	DEPARTMENT	EDP		
CONTACT PERSON	MR. Z.C Matolo	CONTACT PERSON	Ms. T Matela		
TELEPHONE NUMBER	039 737 8100	TELEPHONE NUMBER	039 737 8168		
FACSIMILE NUMBER	039 737 3611	FACSIMILE NUMBER	039 737 3611		
E-MAIL ADDRESS	zmatoloi@matatiel.gov.za	E-MAIL ADDRESS	tmatela@matatiele.gov.za		

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

**1. BID SUBMISSION:**

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR ONLINE**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

**2. TAX COMPLIANCE REQUIREMENTS**

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

- 3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?  YES  NO
- 3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?  YES  NO
- 3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?  YES  NO
- 3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?  YES  NO
- 3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?  YES  NO

**IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.**

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.  
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

DATE:

.....

# TAX CLEARANCE REQUIREMENTS

IT IS A CONDITION OF BIDDING THAT -

1. The taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with the Receiver of Revenue to meet his / her tax obligations.
2. The attached form "Application for Tax Clearance Certificate (in respect of bidders)", must be completed in all respects and submitted to the Receiver of Revenue where the bidder is registered for tax purposes. The Receiver of Revenue will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of twelve (12) months from date of issue.
3. In bids where Consortia / Joint Ventures / Sub-contractors are involved each party must submit a separate Tax Clearance Certificate. Copies of the Application for Tax Clearance Certificates are available at a ny Receiver ' s Office.

## APPLICATION FOR TAX CLEARANCE CERTIFICATE (IN RESPECT OF BIDDERS)

1. Name of taxpayer / bidder: .....

2. Trade name: .....

3. Identification number: 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

4. Company / Close Corporation registration number: 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

5. Income tax reference number: 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

6. VAT registration number (if applicable): 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

7. PAYE employer's registration number (if applicable): 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Signature of contact person requiring Tax Clearance Certificate: .....

Name: .....

Telephone number: Code:..... Number: .....

Address: .....  
.....  
.....

DATE: 20 \_\_\_\_ / \_\_\_\_ / \_\_\_\_

PLEASE NOTE THAT THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE (SARS) WILL NOT EXERCISE HIS DISCRETIONARY POWERS IN FAVOUR OF ANY PERSON WITH REGARD TO ANY INTEREST, PENALTIES AND / OR ADDITIONAL TAX LEVIABLE DUE TO THE LATE- OR UNDERPAYMENT OF TAXES, DUTIES OR LEVIES OR THE RENDITION RETURNS BY ANY PERSON AS A RESULT OF ANY SYSTEM NOT BEING YEAR 2000 COMPLIANT.

[MBD 2

# **MBD 4 – MATATIELE LOCAL MUNICIPALITY**

## **MBD 4**

### **DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number: .....

3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>):.....

3.4 Company Registration Number: .....

3.5 Tax Reference Number:.....

3.6 VAT Registration Number: .....

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars. ....

.....

<sup>1</sup>MSCM Regulations: "in the service of the state" means to be –

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

<sup>2</sup> Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? ..... **YES / NO**

3.9.1 If yes, furnish particulars.....  
.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? ..... **YES / NO**

3.10.1 If yes, furnish particulars.  
.....  
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars  
.....  
.....

**2.1.2**

3.12 Are any of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.  
.....  
.....

3.13 Are any spouse, child or parent of the company’s directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.  
.....  
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:  
.....  
.....

16 4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

.....  
**Name of Bidder**

# MBD 6.1 – MATATIELE LOCAL MUNICIPALITY

MBD 6.1

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

### 1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 **To be completed by the organ of state**  
*(delete whichever is not applicable for this tender).*
- a) The applicable preference point system for this tender is the 90/10 preference point system.
  - b) The applicable preference point system for this tender is the 80/20 preference point system.
  - c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.
- 1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:
- (a) Price; and
  - (b) Specific Goals.
- 1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	
SPECIFIC GOALS	
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>



- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 \mathbf{Ps} = \mathbf{80} \left( \mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left( \mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right)
 \end{array}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

#### 3.2.1. POINTS AWARDED FOR PRICE

A maximum of 80 or 90 points is allocated for price on the following basis:

$$Ps = 80 \left( 1 + \frac{Pt - Pmax}{Pmax} \right) \text{ or } Ps = 90 \left( 1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

#### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to

- the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
- (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution, if deemed necessary.

	.....
	<b>SIGNATURE(S) OF TENDERER(S)</b>
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....
	.....
	.....

## DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011 and the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

### 1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

- x is the imported content in Rand  
y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as required in paragraph 4.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial\\_development/ip.jsp](http://www.thedti.gov.za/industrial_development/ip.jsp) at no cost.**

1.6. A bid may be disqualified if –

- (a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and
- (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

## 2. Definitions

- 2.1. **“bid”** includes written price quotations, advertised competitive bids or proposals;
- 2.2. **“bid price”** price offered by the bidder, excluding value added tax (VAT);
- 2.3. **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.4. **“designated sector”** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;
- 2.5. **“duly sign”** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
- 2.6. **“imported content”** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are exclusive of the costs abroad (this includes labour and intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
- 2.7. **“local content”** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 2.8. **“stipulated minimum threshold”** means that portion of local production and content as determined by the Department of Trade and Industry; and
- 2.9. **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.

## 3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by the SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za).

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

5.1. If yes, provide the following particulars:

- (a) Full name of auditor: .....
- (b) Practice number: .....
- (c) Telephone and cell number: .....
- (d) Email address: .....

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the Accounting Officer / Accounting Authority provide directives in this regard.

**LOCAL CONTENT DECLARATION**  
**(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO.** .....

**ISSUED BY:** (Procurement Authority / Name of Municipality / Municipal Entity):  
.....

NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp). Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names),  
do hereby declare, in my capacity as .....  
of .....(name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
  - (ii) the declaration templates have been audited and certified to be correct.

(c)The local content percentages (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C;

Bid price, excluding VAT (y)

R



Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.**

(d) I accept that the Procurement Authority / Municipality /Municipal Entity has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Municipal / Municipal Entity imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## Annex C

### Local Content Declaration - Summary Schedule

- (C1) Tender No. \_\_\_\_\_
- (C2) Tender description: \_\_\_\_\_
- (C3) Designated product(s) \_\_\_\_\_
- (C4) Tender Authority: \_\_\_\_\_
- (C5) Tendering Entity name: \_\_\_\_\_
- (C6) Tender Exchange Rate: \_\_\_\_\_
- (C7) Specified local content % \_\_\_\_\_

**Note:** VAT to be excluded from all calculations

Pula  EU  GBP

Tender item no's	List of items	Calculation of local content						Tender summary			
		Tender price - each (excl VAT)	Exempted imported value	Tender value net of exempted imported content	Imported value	Local value	Local content % (per item)	Tender Qty	Total tender value	Total exempted imported content	Total Imported content
(C8)	(C9)	(C10)	(C11)	(C12)	(C13)	(C14)	(C15)	(C16)	(C17)	(C18)	(C19)

Signature of tenderer from Annex B \_\_\_\_\_

(C20) Total tender value \_\_\_\_\_  
 (C21) Total Exempt imported content \_\_\_\_\_  
 (C22) Total Tender value net of exempt imported content \_\_\_\_\_  
 (C23) Total Imported content \_\_\_\_\_  
 (C24) Total local content \_\_\_\_\_  
 (C25) Average local content % of tender \_\_\_\_\_

Date: \_\_\_\_\_

**Annex D**

SATS 1286.2011

**Imported Content Declaration - Supporting Schedule to Annex C**

Tender No.:		<b>Note: VAT to be excluded from all calculations</b>
Tender description:		
Designated Products:		
Tender Authority:		
Tendering Entity name:		
Tender Exchange Rate:	Pula <input type="text"/> EU <input type="text"/> R 9,00 <span style="margin-left: 20px;">GBP <input type="text"/> R 12,00</span>	

**A. Exempted imported content**

Tender item no's	Description of imported content	Local supplier	Overseas Supplier	Calculation of imported content						Summary	
				Foreign currency value as per Commercial Invoice	Tender Exchange Rate	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Tender Qty	Exempted imported value
(D7)	(D8)	(D9)	(D10)	(D11)	(D12)	(D13)	(D14)	(D15)	(D16)	(D17)	(D18)
										<b>(D19) Total exempt imported value</b>	
										R 0	

This total must correspond with Annex C - C 21

**B. Imported directly by the Tenderer**

Tender item no's	Description of imported content	Unit of measure	Overseas Supplier	Calculation of imported content						Summary	
				Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of Imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Tender Qty	Total imported value
(D20)	(D21)	(D22)	(D23)	(D24)	(D25)	(D26)	(D27)	(D28)	(D29)	(D30)	(D31)
										<b>(D32) Total imported value by tenderer</b>	
										R 0	

**C. Imported by a 3rd party and supplied to the Tenderer**

Description of imported content	Unit of measure	Local supplier	Overseas Supplier	Calculation of imported content						Summary	
				Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Quantity imported	Total imported value
(D33)	(D34)	(D35)	(D36)	(D37)	(D38)	(D39)	(D40)	(D41)	(D42)	(D43)	(D44)
										<b>(D45) Total imported value by 3rd party</b>	
										R 0	

**D. Other foreign currency payments**

Type of payment	Local supplier making the payment	Overseas beneficiary	Calculation of foreign currency payments		Summary of payments
			Foreign currency value paid	Tender Rate of Exchange	
(D46)	(D47)	(D48)	(D49)	(D50)	Local value of payments
					(D51)

**(D52) Total of foreign currency payments declared by tenderer and/or 3rd party**

**(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above**

R 0  
This total must correspond with Annex C - C 23

Date:

Signature of tenderer from Annex B:

## Annex E

**Local Content Declaration - Supporting Schedule to Annex C**

(E1)	Tender No.	
(E2)	Tender description:	
(E3)	Designated products:	
(E4)	Tender Authority:	
(E5)	Tendering Entity name:	

Note: VAT to be excluded from all calculations

Local Products (Goods, Services and Works)	Description of items purchased	Local suppliers	Value
	(E6)	(E7)	(E8)
<b>(E9) Total local products (Goods, Services and Works)</b>			R 0
(E10) <b>Manpower costs</b>	(Tenderer's manpower cost)		R 0
(E11) <b>Factory overheads</b>	(Rental, depreciation & amortisation, utility costs, consumables etc.)		R 0
(E12) <b>Administration overheads and mark-up</b>	(Marketing, insurance, financing, interest etc.)		R 0
<b>(E13) Total local content</b>			R 0
This total must correspond with Annex C - C24			

**Signature of tenderer from Annex B**

---

**Date:**

---

# MBD 7.1 – MATATIELE LOCAL MUNICIPALITY

## CONTRACT FORM - PURCHASE OF GOODS/WORKS

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

### PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to (name of institution).....in accordance with the requirements and specifications stipulated in bid number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Technical Specification(s);
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - Declaration of interest;
    - Declaration of bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2.	.....

# MBD 8 – MATATIELE LOCAL MUNICIPALITY

## DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a. abused the municipality's supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as a company or person prohibited from doing business with the public sector?  <b>(Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <b>(To access this Register enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445).</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		

Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

### CERTIFICATION

I, THE UNDERSIGNED (FULL NAME) .....  
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS  
 DECLARATION FORM TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME  
 SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

# **MBD 9 – MATATIELE LOCAL MUNICIPALITY**

## **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.



## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

in response to the invitation for the bid made by:

---

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<sup>3</sup> **Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**11. SCHEDULE A –  
CONFIRMATION OF REGISTRATION OF TENDERER ON NATIONAL TREASURY DATABASE**

<b>TENDERER NAME</b>	<b>NATIONAL TREASURY DATABASE REGISTRATION NUMBER</b>

A tenderer who is not registered on the National Treasury Database ( CSD) is not precluded from submitting a tender; however such tenderer must be registered on the database prior to the finalisation of the evaluation of the tender in order for its bid to be considered responsive.

It is the responsibility of a tenderer to ensure that this requirement is complied with. In the case of Joint Ventures and Consortia, this requirement will apply to each party to the Joint Venture or Consortium.

Note:

**TENDERER'S SIGNATURE:** .....

**12. CERTIFICATE FOR PAYMENT OF MUNICIPAL SERVICES**

**DECLARATION IN TERMS OF CLAUSE 112(1) OF THE MUNICIPAL FINANCE MANAGEMENT ACT (NO.56 OF 2003) - (To be signed in the presence of a Commissioner of Oaths)**

I, \_\_\_\_\_, \_\_\_\_\_ (full name and ID no.), hereby acknowledge that according to SCM Regulation 38(1)(d)(i), the Municipality may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the Tenderer or any of its directors/members/partners to the Matatiele Local Municipality, or to any other municipality or municipal entity, are in arrears for more than 3 (three) months.

I declare that I am duly authorised to act on behalf of \_\_\_\_\_ (name of the firm) and hereby declare, that to the best of my personal knowledge, neither the firm nor any director/member/partner of said firm is in arrears on any of its municipal accounts with any municipality in the Republic of South Africa, for a period longer than 3 (three) months.

I further hereby certify that the information set out in this schedule and/or attachment(s) hereto is true and correct. The Tenderer acknowledges that failure to properly and truthfully complete this schedule may result in the tender being disqualified, and/or in the event that the tenderer is successful, the cancellation of the contract.

PHYSICAL BUSINESS ADDRESS(ES) OF THE TENDERER	MUNICIPAL ACCOUNT NUMBER

**FURTHER DETAILS OF THE BIDDER'S Director / Shareholder / Partners, etc.:**

Director / Shareholder / partner	Physical address of the Business	Municipal Account number(s)	Physical residential address of the Director / shareholder / partner	Municipal Account number(s)

**NB: Please attach certified copy(ies) of ID document(s)**  
**If the entity or any of its Directors/Shareholders/Partners, etc. rents/leases premises, a copy of the rental/lease agreement must be submitted with this tender.**

<b>Signature</b>	<b>Position</b>	<b>Date</b>

**COMMISSIONER OF OATHS**

Signed and sworn to before me at \_\_\_\_\_, on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

by the Deponent, who has acknowledged that he/she knows and understands the contents of this Affidavit, it is true and correct to the best of his/her knowledge and that he/she has no objection to taking the prescribed oath, and that the prescribed oath will be binding on his/her conscience.

**COMMISSIONER OF OATHS:-**

Position: \_\_\_\_\_

Address: \_\_\_\_\_

**Apply official stamp of authority on this page:**



**MATATIELE**

LOCAL MUNICIPALITY

### **O. Ethics Commitment for Suppliers of the Matatiele Local Municipality**

**In our dealings with the Matatiele Local Municipality we commit to uphold high standards of ethics. Among other things this means:**

- We will be honest and deal in good faith;
- We will not try to improperly influence any municipal official or decision;
- We will avoid all conflicts of interest;
- We will not engage in any form of corruption (e.g. paying bribes, giving kickbacks);
- We will not give gifts to municipal officials or councillors;
- We will not be involved in collusion with other service providers (i.e. price-fixing);
- We will ensure that all information we submit to the municipality is accurate and truthful (e.g. we will not engage in BBBEE fronting).
- We will inform the Municipality of any unethical behaviour which we become aware of in the procurement process, either related to other suppliers or to municipal officials.\*
- We will, through all our dealings, contribute to building a positive ethical culture in the Matatiele Local Municipality.

This is our commitment to help build an ethical community.

Name of Company: \_\_\_\_\_

Name of authorised person: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\* If you wish to report unethical conduct you can contact or \*If you are aware of any fraud/ corruption within the municipality. These may be reported anonymously, to The Acting Municipal manager: [LMatiwane@matatiele.gov.za](mailto:LMatiwane@matatiele.gov.za)



**MATATIELE**  
LOCAL MUNICIPALITY

302 Main Street,  
Matatiele  
P.O. Box 35,  
Matatiele, 4730  
Tel: 019 737 3135  
Fax: 019 737 3611

**TENDER REF: MATAT/2022/2023-179**  
**POTE 40: APPOINTMENT OF A TURNKEY CONTRACTOR FOR**  
**CONSTRUCTION OF 40 HOUSING UNITS IN MATATIELE**  
**LOCAL MUNICIPALITY**

## 1. PROJECT BACKGROUND

The Matatiele Municipality is engaged to improve and accelerate delivery of RDP houses in the greater Municipal area and to fast track the implementation of these projects. The Municipality will be appointing a suitable Turnkey Contractor in RDP houses with a verifiable track record and experience as well as being in possession of a CIDB grading of no less than a 5GB to undertake 3 project phases such as

- 1.1 Inception,
- 1.2 Planning & Design
- 1.3 Implementation and Close Out.

Detailed information on the phases of the project are put on the content of this document. The project total scope is 40 units under Matatiele Local Municipality in the Alfred Nzo District.

## 2. TENDER NOTICE

**Bidders are hereby invited to submit their tenders for the following priority Turn-Key capital RDP Housing projects:**

Bid Number	Project Name	Advert Date	Old Briefing Date	New Briefing date	New Closing Date
MATAT/2022/2023-177	POTE – 898 (40)	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	27 February 2023 @10h00
MATAT/2022/2023-179	Pote – 40	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	27 February 2023@10h00
MATAT/2022/2023-179	Pote – 40	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	21 February 2023@10h00
MATAT/2022/2023-180	Tsitsong – 40	27 January 2023	07 February 2023	08 February 2023 @ 102 Min Street Matatiele @ 10h00	27 February 2023@10h00

**MANDATORY DOCUMENTS AS LISTED IN THE TENDER TO BE SUBMITTED, FAILURE TO DO SO WILL RESULT IN THE BID BEING DEEMED TO BE NON-RESPONSIVE**

Matatiele Local Municipality Supply Chain Management policy will apply. A confirmation from SARS with a verification PIN, Proof of Central Supplier Database (CSD) registration- a full updated report (printed within three months of the tender advert), Completion of MBD 4-9 and its Annexures in full. Prices quoted must be firm and must be exclusive of VAT. Original Certified I.D. Copies of Managing Directors / Owners. Letter from the bank confirming available funds or

no less than a Category C. Tender documents will be available on the e-tender portal. Joint Ventures will only be accepted if all necessary requirements as per tender document are met.

Transactions in the excess of R10 million (VAT included). All companies which are required by law is required to prepare annual financial statements for auditing, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

## **EVALUATION CRITERIA**

Only competent bidders who are competent in the advertised work and who have exceeded the minimum functionality threshold will be two phases Phase 1= Functionality=100 Points and Phase 2= is 80/20– (40) in line with the Preferential Procurement Policy Framework Act (PPPFA) of November 2022. Only bidders who obtain 80 points as a minimum functionality threshold will be evaluated further on 80/20.

**Tenderers will be awarded points on the following basis:**

<b>1. Tender Price</b>	<b>80 points</b>
<b>2. HDI – Equity ownership</b>	<b>6 points</b>
<b>3. Youth-Enterprises 0-45 years (MLM)</b>	<b>6 points</b>
<b>3. Women – Equity ownership</b>	<b>4 point</b>
<b>4. Disability – Equity ownership</b>	<b>2 point</b>
<b>5. RURAL Enterprises(MLM)</b>	<b>2 points</b>

## **OBTAINING OF TENDER DOCUMENTS:**

Bid Documents will be available at the Municipal Website and BTO Offices for a non – refundable tender fee of R1000 payables in the Municipal bank account (Ned Bank 1011292106 branch code 198765, name of company and bid no as reference) (Failure to attached proof of purchase will lead disqualification) are also available from Municipal website as from 07 February 2023. To obtain tender documents please login to [www.matatiele.gov.za](http://www.matatiele.gov.za) or email [nngcobo@matatiele.gov.za](mailto:nngcobo@matatiele.gov.za).

Site briefing is compulsory. Only Technical Managers or Directors of respective companies are to fill in and sign the compulsory attendance register at the site briefing and will not be permitted to sign on behalf of more than one company. The Matatiele Local Municipality reserves the right not to appoint a contractor on highest points scored. Value for money, past experience and functionality will be the key determinants of appointment. All tenders must be deposited in the tender box situated at the Matatiele Local Municipality, Matatiele, Eastern Cape 4730 reception



area not later than 10h00 noon as per provided closing dates, where they will be opened in public. All tenders must be clearly marked "Name of the project indicated above". The Municipality will not make any award to a person or persons working for the state, or failing to possess relevant credentials as stipulated in the tender requirements. Each Bid must be submitted separately.

All SCM enquiries relating to this bid must be directed to Z.C Matolo, e-mail: [zmatolo@matatiele.gov.za](mailto:zmatolo@matatiele.gov.za) during office hours (07h30 – 16h00) weekdays. All Technical enquiries relating to this bid must be directed to Ms T Matela, e-mail: [tmatela@matatiele.gov.za](mailto:tmatela@matatiele.gov.za) during office hours

### 3. COLLECTION OF BID DOCUMENTS

Bid documents will be available from the 7th of February 2023 on the Municipal website ([www.matatiele.gov.za](http://www.matatiele.gov.za)) or emailed to registered bidders.

### 4. SUBMISSION OF BID PROPOSALS

4.1 Bid proposals must be deposited in a Bid Box at the BTO, Mountain View Offices of the Matatiele Municipality, Matatiele, 4730.

4.2 Bid proposals must be submitted in one (1) envelope clearly marked as follows:

4.2.1 TENDER REF AS REFERENCED IN THE TABLE ABOVE.

4.3 Faxed, emailed or couriered bid proposals will not be accepted. The Bids will be opened in public.

### 5. BID VALIDITY

5.1 This bid will be valid for sixty (90) days after the closing date.

### 6. PROJECT LOCATION

The Project Area is approximately located 87 kilometers (87km) from Matatiele Town. The village is demarcated under Ward 07 of Matatiele Local Municipality that comprises of a number of rural villages covering a radius of Five to ten kilometers (5-10km) at a glance. There are two accessible roads into the area.

Co-ordinate of center of site:

30°21'21.39"S

28°37'3.73"E

## 7. PROJECT DESCRIPTION

**TABLE 1**

NO.	AREA	LOCAL MUNICIPALITY	DISTRICT MUNICIPALITY	No OF WATER TANKS	No. OF VIPs	NO. OF UNITS
1.	POTE	MATATIELE	ALFRED NZO	40	40	40
	<b>TOTAL</b>					<b>40</b>

## 8. SCOPE OF WORKS

There will be one (1) contractor to be appointed for this project as detailed in tables below. The work is organized into three (3) distinct phases as follows:

### 9. PHASE ONE (1) – INCEPTION

This phase involves the assessing of the available information and getting familiar with the scope of work and the project area, identifying risks and constraints and devise plans to mitigate these. No variation orders will be permitted on this project.

- 9.1.1 A detailed Project Implementation Plan (PiP) and final cash flow for the entire project running concurrently with the required time line will have to be prepared and signed.
  - 9.1.2 A detailed cash flow report (i.e. showing costs throughout the project). Budget projected costs will have to be drawn up and made available in respect of project and submitted to HSS (Finance).
  - 9.1.3 Although the beneficiary process may be done, there is still a need for physical verification on beneficiary registration/administration against Housing Subsidy System (HSS). If not a beneficiary list will have to be compiled by the Turnkey Contractor.
  - 9.1.4 The successful contractor will have to perform the following main tasks during this phase:
    - 9.1.4.1 Review all data provided by the Municipality and the identified outstanding information to be included in the project implementation plan and price bill;
-

- 9.1.4.2 Review the project scope and visit the site to get familiar with all the details of the project and the possible geographical and logistical challenges. Any risks to the project have to be identified and mitigating measures devised; must consider the terrain and have to cost it in the Price Bill and Final Form of Offer. No variation orders will be considered.
- 9.1.4.3 Project planning and the provision of an accurate detailed project implementation plan detailing all activities until project closeout (including risks and mitigation measures);
- 9.1.4.4 Stakeholder engagement through on-going interaction with the Local Municipality and public participation (through Social Facilitation);
- 9.1.4.5 Conduct social facilitation (a process which will run throughout the entire project). Once a month combined social compact and technical meetings to be arranged and held on site; and
- 9.1.4.6 Project Cash Flow will have to be prepared and submitted with the Project Implementation Plan clearly indicating the anticipated start and finish period of each phase.
- 9.1.4.7 A maximum of 60 days only to be allowed for Phase 1 and 2 from date of appointment letter, after which Phase 3 has to be activated. Failure to adhere to this time line could mean immediate termination in terms of the JBCC.
- 9.1.4.8 Obtain letter of exemption in respect of Environmental Impact Assessment from relevant authorities;
- 9.1.4.9 Compile Occupational Health and Safety Plan.

## **9.2 PHASE TWO (2) – PLANNING AND DESIGN**

This phase involves the continuation of social facilitation, beneficiary registration/administration, obtaining of letter of exemption in respect of Environmental Impact Assessment (EIA), compilation of Occupational Health & Safety Plan, reviewal of the available geo-technical investigation report (if available), Foundation Design, house plans, submission of details of competent person and builder to National Home Builders Registration Council (NHBRC) as well as NHBRC enrolment (if not yet done).

9.2.1 The successful contractor will have to perform the following main tasks during this phase:

9.2.1.1 Continuation of the social facilitation;

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- 9.2.1.2 Review existing Geotechnical Investigation to comply with GFHS2 including Groundwater Protocol Investigation; GPS and Map the entire development area. Accurate co-ordinates of each house to be listed and presented with the map to be submitted to the NHBRC.
- 9.2.1.3 Submit house designs to destitute needs and ensure that they comply with Municipality's minimum requirements and standards;
- 9.2.1.4 Obtain community, Municipality, NHBRC and Local Authority approval of the designs;
- 9.2.1.5 Review existing foundation designs based on Geo-technical Conditions for NHBRC and Municipality's approval;
- 9.2.1.6 Prepare change of competent person and home builder enrolment documents and submit to Project Manager for NHBRC home enrolment;
- 9.2.1.7 Preparation of monthly progress reports detailing progress, challenges and mitigating measures; and
- 9.2.1.8 Any other activity, not listed above, required to render the project ready to commence construction. Site Establish etc. (Maximum 60 days).
- 9.2.1.9 All costing to attend to above needs to be factored in by the successful contractor. No additional funds will be made available.

### **9.3 PHASE THREE (3) – IMPLEMENTATION**

1.3.1 Construction of housing units

1.3.2 Tenant Management

1.3.3 Close out

1.3.4 Project management

The project team **MUST** comprise of the following professional disciplines

Town Planning Professional (South African Council of Planners (SACPLAN))

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Professional Land Surveyor South African Geomatics Council (SAGC)

Environmental Specialist (SACNASP)

Professional Civil Engineer – Engineering Council of South Africa (ECSA)

Professional Structural Engineer- Engineering Council of South Africa (ECSA)

Quantity Surveyor- South African Council for the Quantity Surveying (SACQSP)

Geotechnical Engineer South African Institute of Civil Engineers (SAICE)

Contractor- National Home Builders' Registration Council (NHBRC)

**NB: Registered Professional with relevant professional affiliation/bodies with valid registration certificates**

This phase entails the construction of the partial services (VIP and Water tanks with stand) and top structure, further social facilitation, Contracts administration and inspection (including Principal Agents/Engineer duties), Construction Monitoring Level 2 (as per Government Gazette No. 38324, Vol. 594), Occupational Health & Safety and Environmental Management exclusive of the applicable monitoring agents and Close Out.

9.3.1 The contractor will be responsible for the following during this stage:

9.3.1.1 Continuation with the social facilitation process;

9.3.1.2 Construction of the required infrastructure, including Ventilated Improved Pits (VIP's) toilet and water tank on stand;

9.3.1.3 Construction of forty square meter (**40m<sup>2</sup>**) top structures;

9.3.1.4 Monthly progress reporting;

9.3.1.5 Conduct fortnightly technical site meetings;

9.3.1.6 Contracts administration, inspection and certification of works (including Engineer duties), Construction Monitoring Level 2 (as per Government Gazette No. 38324, Vol. 594), Occupational Health & Safety, Environmental Management duties;

9.3.1.7 Further engagement with NHBRC to obtain Final Unit Reports (FURs) for all completed units;

9.3.1.8 Obtaining completion certificates ("Happy Letters") for all completed units;

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9.3.1.9 Handover of houses; and services; and Provide necessary reports on project completion for project close-out and commissioning.

9.3.1.10 Close out report.

## **10. MINIMUM SPECIFICATIONS**

### **10.1 GENERAL**

10.1.1 All works to be carried out in compliance with the department of Housing Generic Specifications (GFSH 1 to 11) and the Technical Guidelines as contained in the Housing Code and NHBRC Home Builders Manual and SANS 10400;

10.1.2 All Department of Labour and Expanded Public Works Program (EPWP) requirements should be met;

10.1.3 All works to be done in compliance with the current Occupational Health & Safety Regulations;

10.1.4 All works must also be done in compliance with all Environmental Regulations;

10.1.5 All relevant Local Authority requirements to be adhered to and relevant permission obtained; and

### **10.2 INFRASTRUCTURE**

In addition to the above, the minimum requirements for infrastructure will be in accordance with the following:

10.2.1 Guidelines for Human Settlements Planning and Design Vol. 1 & 2 (“Redbook”);

10.2.2 NHBRC Technical Requirements, SANS 10400 and

10.2.3 Municipality of Housing Generic Specification, GFSH 08;

### **10.3 VIP TOILETS:**

10.3.1 Must be designed to withstand all weather conditions;

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- 10.3.2 Top structure floor area must be a minimum of  $1\text{m}^2$ ; and a minimum internal height of 1.8m;
- 10.3.3 Walls must be prefabricated concrete walls that can be disassembled and reassembled with ease (panel sizes must allow assembly without mechanical assistance);
- 10.3.4 Top structure must be anchored to the floor;
- 10.3.5 Doors must be fully galvanized lockable and spring-loaded door;
- 10.3.6 Roof must be concrete slab;
- 10.3.7 Floors must be concrete;
- 10.3.8 100mm black ventilation pipe fixed to the back of the toilet top structure, extending minimum 40mm above the roof (to ventilate the pit);
- 10.3.9 Pan with toilet seat;
- 10.3.10 Pit to have a minimum volume of  $2.2\text{m}^3$  and to be lined; and
- 10.3.11 Pit to be sealed if dictated by the Groundwater Protocol investigation.

#### **10.4 WATER TANKS:**

- 10.4.1 Must be a minimum size of 2500 liters (SABS approved);
  - 10.4.2 Tanks to be seated on a plinth of minimum height of 0.5m;
  - 10.4.3 Tank stand must be designed to support the full tank as well as withstand all weather conditions;
  - 10.4.4 Gutters and downpipes provided to drain the entire roof into the tank and gutters must be fixed to the wall up to the water tank and must be designed to withstand all weather conditions while the tank is empty or full; and
  - 10.4.5 The designs must be provided in both hard and soft copy.
-

## **10.5 TOP STRUCTURE**

In addition to the specification already mentioned, the following are additional minimum requirements:

- 11.5.1 2011 revised National Building regulations; South African National Standards (SANS) 10400 XA Energy Usage in Buildings and therefore all work must comply with SANS 10400;
- 5.5.2 All external doors must be SABS approved hardwood such as meranti frame ledged button doors or similar approved doors
- 5.5.3 All door locks must be SABS approved with a minimum of five-year guarantee
- 5.5.4 SABS approved roof trusses to be used and Roof Covering to be approved chromadek colour impregnated sheets of no less than 0.5mm;
- 5.5.5 Smaller size windows and special low E clear and E opaque safety glass for all window types as prescribed;
- 5.5.6 Concrete aprons to be provide on all 4 sides with a minimum width of 1000mm including storm water management precautionary measures (as per NHBRC project enrolment requirement);
- 5.5.7 Fascia's and barge boards to be provided;
- 5.5.8 House to be plastered and painted both internally and externally;
- 5.5.9 Installation of a ceiling with the prescribed air gap for the entire dwelling.
- 5.5.10 Installation of a distribution board including plugs and lights to all living areas of the house. Eskom or the local authority to supply and install a pre-paid meter.

## **11. PROJECT DELIVERABLES**

### **11.1 GENERAL**

The scope of works detailed in Section 4 clearly describes the extent of what is expected from the contractor. Project deliverables can, however, be summarized as follows:

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- 11.1.1 Completing all inception, planning and design activities as normally required in the applicable standard scope of works, to render the project ready for construction; and
- 11.1.2 Completing the actual construction of engineering services and top structures as described in the scope of works, including providing FURs, Signed Inspection Certificates, "Happy Letters" and claims for milestone achieved.
- 11.1.3 The overall completion period of the contract cannot exceed 24 months.

**12. PROPOSAL FORMAT**

Bidders must submit (one) 1 sealed envelope of their proposal to fulfill the project deliverables described above:

- 12.1 **PROPOSAL ENVELOPE** is to contain a copy of document as well as **Financial and Technical Proposal which includes the complete BOQ / Pricing Bill and Final Form of Offer and additional required information as per tender document.**

**13. FINANCIAL SCHEDULE OF RATES**

The Average Construction Rate is firm and fixed, including total fees and expenses (**VAT zero rated**), in order to complete the project.

**TABLE 2: SCHEDULE OF RATES**

HOUSE TYPOLOGIES	SIZE	NO. OF UNITS
1. Normal House	40 m <sup>2</sup>	40

Bidders must ensure that they fill this document **with black ink (hand written)**, Failure to completely fill this document will result in your bid not to be considered.

The Financial schedule provided shall specify and state a firm and fixed price, including total fees and expenses (VAT zero rated), in order to complete the project. Payment, within 30 days, will only be made upon the completion and certification by the competent person of each milestone. Payment milestones are as follows: -

**TABLE 3**

NO.	ITEM	UNIT	QTY	RATE	AMOUNT
A	<b>INCEPTION (40 m<sup>2</sup> House)</b>				
1	Determine the availability of data, drawings, and plans relating to the project and review all data provided by the Municipality and Municipality and the identified outstanding information to be included in the project implementation plan (PiP). Communication and budget alignment with HSS.	NO.			
2	Beneficiary Registration and / or verification. GPS / Mapping of sites. Draw up and submit site and locality plan.	NO.			
3	Engagement with NHBRC. Inspect the site and advise on necessary surveys, analyses, tests and site or other investigations where such information will be required and review the project scope and visit the site to get familiar with all the details of the project and the possible geographical and logistical challenges. Any risks to the project must be identified and mitigating measures devised for next phase (planning and design).	NO.			
4	Compile Occupational Health and Safety Plan. Engagement with the Municipality of Environmental Affairs. (Exemption / EMPR Assessment to be drawn up)	NO.			
5	Register Project with Municipality of Labour: Alfred Nzo District. Site Establishment.	NO.			
6	Attend all project related meetings, Stakeholder engagement through on-going interaction with the Municipality, Local & District Municipality, and public participation (through Social	NO.			

	Facilitation) Conduct social facilitation (this process will run throughout the entire project);				
<b>SUB TOTAL</b>				<b>R</b>	<b>R</b>
<b>NO.</b>	<b>ITEM</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE</b>	<b>AMOUNT</b>
<b>B</b>	<b>PLANNING AND DESIGN (40 m<sup>2</sup> House)</b>				
1	a. <u>NHBRC Enrollment of Project and Competent Person (Consulting Engineer). Conduct Geotechnical investigation (including ground water protocol): report as per (GSFH2 compliance &amp; SANS 634) to suit destitute nature of the project</u>	NO.			
2	b. <u>NHBRC Enrollment of Project. Prepare the following 40 m<sup>2</sup> and 45 m<sup>2</sup> house design to comply with NHBRC and Municipality's minimum requirements including Norms &amp; Standards; - - Foundation, Top Structure, Water Harvesting and VIP. (To be accepted and signed off: Municipality and NHBRC)</u>	NO.			
3	c. <u>NHBRC Enrollment of Project. Issue construction documentation in accordance with the documentation schedule including in the case of structural engineering, reinforcing bending schedules and detailing and specification of structural steel sections and connections for preparation of change of home builder and competent person and submit to Project Manager for NHBRC project enrolment.</u>	NO.			
4	Preparation of monthly progress and technical reports detailing progress, challenges, and mitigating measures; health and safety and environmental issues to be	NO.			

	recorded. Ongoing to conclusion of project.				
<b>SUB TOTAL</b>				<b>R</b>	<b>R</b>
<b>NO.</b>	<b>ITEM</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE</b>	<b>AMOUNT</b>
<b>C</b>	<b>IMPLEMENTATION (40 m<sup>2</sup> House)</b>				
1	Foundation/ Slab – Normal – R,S,C,H	NO.	1		<b>Rate only</b>
2	Foundation/ Slab- Modified – H2	NO.			
3	Foundation/ slab – Stiffened – H3	NO.	1		<b>Rate only</b>
4	Wall plate	NO.			
5	Roof	NO.			
6	Completion	NO.			
7	Electricity: Internal reticulation.	NO.			
8	Water tank with stand	NO.			
9	VIP toilet	NO.			
10	Obtaining of FUR's from NHBRC, Happy letters and completion certificates.	NO.			
11	Construction Monitoring Level 2 & Certification of milestones (Consulting Engineer / CP).				
12	Conduct Close Out of Completed Project: Hand over to Municipality.				
<b>SUBTOTAL</b>				<b>R</b>	<b>R</b>
<b>TOTAL = SUM OF SUB TOTALS (A+B+C)</b>				<b>R</b>	<b>R</b>

**TABLE 4**

<b>2</b>	<b>PLANNING &amp; DESIGN INCEPTION (45 m<sup>2</sup> House for Disabled) RATE ONLY</b>				
2.1	Project and Home enrolment with NHBRC	NO.	1		
2.2	House Design	NO.	1		
2.3	Foundation Design	NO.	1		
2.4	Water tank and Stand Design	NO.	1		
2.5	VIP toilet and Design	NO.	1		
<b>SUB TOTAL</b>				<b>R</b>	<b>R</b>
<b>3</b>	<b>IMPLEMENTATION (45 m<sup>2</sup> House for Disabled) RATE ONLY</b>				
3.1	Foundation/ Slab – Normal – R, S, C, H	NO.	1		<b>Rate only</b>
3.2	Foundation/ Slab-Modified – H2	NO.	1		
3.3	Foundation/ slab – Stiffened – H3	NO.	1		<b>Rate only</b>
3.4	Wall plate	NO.	1		
3.5	Roof	NO.	1		
3.6	Completion	NO.	1		
3.7	Electricity tubing	NO.	1		
3.8	VIP toilet	NO.	1		
3.9	Close out Report	NO.	1		
<b>SUBTOTAL</b>				<b>R</b>	<b>R</b>
<b>TOTAL = SUM OF SUB TOTALS</b>				<b>R</b>	<b>R</b>

**NB:** “Where no Geo-technical investigation report or foundation designs are currently available, a site classification of H2 must be used for preliminary foundation design/ pricing purposes”

## 14. PAYMENT MILESTONES

Payment will only be made upon value created on site, approved and certified by competent person or Municipality for the completion of milestones (payment milestones) as follows:

**TABLE 5**

ITEM	MILESTONE	UNIT	NEW UNITS	Total
1	Inception	NO		
2	Planning & Designs	NO		
3.	Foundation	NO.		
4	Wall plate	NO.		
5	Roof	NO.		
6	Finishes	NO.		
7	Rainwater Goods	NO.		
8	VIP toilet	NO		
9	Completion / Hand over	NO.		

### 14.1.1 Risk assessment scorecard

14.1.1.1 The risk assessment score card will focus on the following risk factors.

RISK ASSESSMENT SCORECARD				
Risk level	Risk description	Item pricing in BOQ	Performance on previous project	Quality
4 Severe	- Risk that will have a severe impact on achieving desired results to the extent that one or more of its critical outcome objectives will not be achieved	Overall Turn-Key project items carried out with below satisfactory ability.	Project completed/not completed within <b>90 or more days past</b> the stipulated time frames. Project extension due to uncontrollable and controllable determinants. Resource	Project completed/not completed with outstanding compliance issues

			(Financial, Plant and human) poorly utilised.	
<b>3 - Major</b>	Risk that will have a significant impact on achieving desired results, to the extent that one or more stated outcome objectives will fall below acceptable levels.	Overall Turn-Key project items carried out with below satisfactory ability.	Project completed after <b>90 days past</b> the stipulated time frames. Project extension due to uncontrollable and controllable determinants. Resource (Financial, Plant and human) not effectively utilised	Project completed with partially resolved compliance issues
<b>2 - Moderate</b>	Risk that will have a Moderate impact on achieving desired results, to the extent that one or more stated outcomes objectives will fall below goals but above minimum acceptable levels	Overall turn-key project items carried out with reasonable ability, however necessary for improvement. Remains fairly risky to carry-out all objectives satisfactorily.	Project completed within 90 days past the stipulated time frames. Project extension due to uncontrollable determinants. Resource (Financial, Plant and human) effectively utilised.	Project completed with resolved minor compliance issues
<b>1 - Minor</b>	Risk has little or no impact on achieving outcome objectives	Overall turn-key project items carried out satisfactorily.	Project completed within the stipulated time frames. Resource (Financial, Plant and human) effectively utilised.	Project completed with no outstanding compliance issues
<b>0 - No risk</b>	Risk has no impact on achieving outcome objectives	All turn-key project items carried out satisfactorily. Highly recommended.	Project completed within the stipulated time frames. Resource (Financial, Plant and human) effectively utilised.	Project completed with no outstanding compliance issues

**15. PREVIOUS EXPERIENCE IN SIMILAR PROJECTS (to be submitted on a company profile)**

This refers to a list of previously completed projects of similar works in number of housing units / services, within the past (15) years. A certified copy of completion confirmation or a testimonial from the client on a letterhead and contact details to support the list must be attached.

Submitted:   
Not Submitted:

**COMPANY REGISTERED OFFICE**

Eastern Cape based contractor: (Tick )  
Matatiele Municipality:   
Alfred Nzo District,   
OR Tambo, Chris Hani, Sarah Baartman, Nelson Mandela,   
Joe Gqabi, Amathole and Buffalo City and other.   
Any other provinces.

This shall mean proof of physical address of office, Municipal Account for Rates not older than three months or any other valid proof from the local authority must be attached for assessment.

**ADDITIONAL INFORMATION RELEVANT TO SIMILAR PREVIOUS PROJECTS**

**A. CONSTRUCTION AWARDS**

Turn-key contractor to submit proof of any construction awards won.  
(i.e. Govan Mbeki, Master Builders etc.)

YES/NO

**B. DECLARE WHETHER THE COMPANY OR TURN-KEY SERVICE PROVIDER / TENDERER HAS PREVIOUSLY / CURRENTLY:**

- (i) Been declared insolvent.  YES/NO
- (ii) Been placed under administration.  YES/NO
- (iii) Been rehabilitated.  YES/NO

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_






I / We certify this information to be true and correct:

Name of Tenderer: \_\_\_\_\_

Signature: \_\_\_\_\_

Full Name of Signatory: \_\_\_\_\_

- Attach confirmation / reference letters by Municipality / Municipality.

15.1 The Municipality reserves the right not to appoint the highest points scorer if the tenderer has already been awarded another similar RDP housing project from the Municipality of Human Settlements (DOHS) or Municipality and has **not** achieved **90% completion of the awarded project** (signed performance reports to be provided and verified by DOHS or Municipal officials), indicate / list on attached schedule if tenderer is currently engaged in other RDP contracts.

15.2 Where the highest point scorer declines the appointment, the second highest point scorer will be considered, and if the second highest scorer declines the appointment the third highest point scorer will be considered and if the third highest points scorer declines the bid will be cancelled and re-advertised.

15.3 The Municipality will **not** negotiate a price higher than that quoted by the bidder.

15.4 The rate of **R175 000.00 per unit** will be utilized as the minimum market related price. No variation orders for additional funding will be permissible and the successful tenderer needs to factor in all adverse geotechnical, locality such as double handling etc. in the price offer.

**NB:** A sectional completion plan must be provided as a proposal by the contractor, agreed upon and approved by the Municipality. A written approval of the sectional completion plan must form part of the contract. All claims will only be paid as per certified value created on site.

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## 16. EVALUATION CRITERIA

### PHASE 1 FUNCTIONALITY

NO	CRITERION AND RISK ASSESSMENT BY MUNICIPALITY: FUNCTIONALITY EVALUATION	POINTS (ASSESSOR TO TICK)
1.	<b>PREVIOUS EXPERIENCE IN SIMILAR RDP TURN-KEY PROJECTS TO BE SUBMITTED BY CONTRACTOR</b>	<b>20</b>
1.1	Completed Minimum of Three Turn-Key projects with 500 or more housing units.	10
1.2	Completed Minimum of Three Turn-Key projects with between 300 and 500 housing units.	8
1.3	Completed Minimum of Two RDP projects between 150 and 300 housing units.	2
1.4	No completed project	0
	<b>Risk level: (For official purposes only)</b>	
	4 – Severe	
	3 – Major	
	2 – Moderate	
	1 – Minor	
	0 – No risk	
2.	<b>EXPERIENCE OF COMPANY IN RDP TURN-KEY PROJECTS</b>	<b>20</b>
2.1	Site Management experience of 15 years or more	10
2.2	Site Management experience of 10-14 years	7
2.3	Site Management experience of 2-9 years	3
3.	<b>EQUIPMENT RELEVANT FOR THE ASSIGNMENT</b>	<b>10</b>

3.1	Access to all of the following: 1. TLB; 2. Tipper Truck or Drop-side truck; 3. Compactor / Roller; Bakkie; and 5. Batch Plant or Concrete Mixer or commitment letter from a relevant / <u>applicable supplier</u> or <u>Lease agreement</u> or <u>certified copies of registration papers</u> . (To be submitted)	10
3.2	No access to any of the above indicated equipment.	0
4.	<b>Contractor's understanding of the execution of a successful Turn-Key RDP Project Methodology. Submit clear step by step Illustration / Flow Chart As Per (Phase:1, 2 &amp; 3)</b>	<b>35</b>
4.1	Accurate: 100% Reasonable: 50% Inaccurate: 0%	13 5 0
4.2	Submit a detailed and clear example of a Top Structure construction "Tick Sheet" normally issued to a Site Manager (controls).	12
4.3	Team Members: Human Resources: In respect of executing a successful Turn-key contract as required. <b>(Organogram to be submitted)</b> . Accurate: 100% Reasonable: 50% Inaccurate: 0%	3 2 0
<b>TOTAL</b>		<b>100</b>

**80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million.**

4.(1) The following formula will be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, exclusive of all applicable taxes:

Ps 80 1 min Where- Ps = Points scored for price of tender under consideration; Pt = Price of tender under consideration; and Pmin = Price of lowest acceptable tender. (2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender as stipulated on the notice to tender and tender document. (3) The points scored for the specific goal will be added to the points scored for price and the total will be rounded off to the nearest two decimal places. (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

<b>1. Tender Price</b>	<b>80 points</b>
<b>2. HDI – Equity ownership</b>	<b>6 points</b>
<b>3. Youth-Enterprises 0-45 years (MLM)</b>	<b>6 points</b>
<b>3. Women – Equity ownership</b>	<b>4 point</b>
<b>4. Disability – Equity ownership</b>	<b>2 point</b>
<b>5. Destitute Enterprises</b>	<b>2 points</b>

**90/10 preference point system for acquisition of goods or services with Rand value above R50 million.**

(1) The following formula must be used to calculate the points out 90 for price in respect of an invitation for tender with a Rand value above R50 million, exclusive of all applicable taxes: Where- Ps = Points scored for price of tender under consideration; Pt = Price of tender under consideration; and Pmin = Price of lowest acceptable tender. (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender. (3) The points scored for the specific goal will be added to the points scored for price and the total must be rounded off to the nearest two decimal places. (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

Tenderers will be awarded points on the following basis:

<b>1. Tender Price</b>	<b>90 points</b>
<b>2. HDI – Equity ownership</b>	<b>3 points</b>
<b>3. Youth-Enterprises 0-45 years (MLM)</b>	<b>3 points</b>

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<b>3. Women – Equity ownership</b>	<b>2 point</b>
<b>4. Disability – Equity ownership</b>	<b>1 point</b>
<b>5. Destitute Enterprises</b>	<b>1 point</b>
<b>TOTAL</b>	<b>100 points</b>

16.1 It is acknowledged that the contents of proposals submitted in response to this bid are confidential and shall not be released to parties other than the Municipality. Final selection and summary of evaluations will become part of the public record as distributed to the Municipal stakeholders. Only the name and address of the successful bidder will be released to the unsuccessful respondents after awarding is finalized.

16.2 The Municipality reserves the right to award more than one (multiple) contract/s to a Turnkey Contractor if it deems it to be in the best interest of the contracts and Municipality to achieve the objectives of efficient project delivery and value for money undisputed functionality, previous track record (to minimize risk to the Municipality as well as DOHS) and objectives of Local Economic Support.

16.3 The Local Municipality reserves the right to not appoint the highest scoring tenderer in consideration with objectives stipulated in item 9.8.

### **17. EVALUATION FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS.**

17.1 On local content designated items, only locally produced goods or services with a stipulated minimum threshold for local production and content of 100% will be considered.

17.2 The relevant designated sector: Steel and Plastic Products and Components. The minimum threshold for local production and content: 100%: - Reinforcing Bars (100%) Door and Window Frames (100%) Roof Trusses (100%) Joining Connection Components (100%) Damp Proof Course (100%), Damp Proof Membrane (100%) Ceiling (100%) Gutters (100%) and Water Tank (100%)

17.3 Exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.

17.4 Failure to indicate minimum percentage (%) or not meeting minimum percentage for local content will automatically invalidate the bid for further consideration.

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- 17.5 If the raw material or input to be used for a specific item is not available locally, bidders should obtain written authorization from the DTI should there be a need to import such raw material or input and a copy of this authorization letter must be submitted together with the bid document at the closing date and time.
- 17.6 Bidders must complete MBD 6.2 with Annexure C and it must be submitted with the bid at the closing date and time. Failure to submit will invalidate the bid.
- 17.7 The main contractor may not sub contract work to an extent that the local content and production is compromised. The conditions and rules applying to the main bidder on local production and content also apply to the sub-contractor(s).
- 17.8 For further information, bidders may contact the Steel products and components unit within DTI at 012 394 5157
- 17.9 Bids which have not scored the required minimum percentage of 100% for Local Production and content will be disqualified unless the bidder obtains exemption form DTI at this stage. Only qualifying bids will proceed to the evaluation on Price/B-BBEE status level of contribution.

## 18. OBJECTIVE CRITERIA

- 18.1 The municipality reserves the right not to appoint the highest scoring bidder, in a case where the bidder has quoted below the minimum market related price of **R175 000.00 per unit**. The market related price includes all extra ordinary development site conditions i.e. double handling, difficult terrain, scatterdness of sites, creation of access roads and all geo technical site conditions.
- 18.2 Risk analysis:
- 18.2.1 The Municipality has the right to conduct a risk analysis on shortlisted bidders including contractors site visit and conduction of loco inspection.
- 18.2.2 The risk assessment implies a systematic identification and judgement of potential risks levels to create a foundation decision making.
- 18.2.3 The risk analysis will be conducted on **previous completed projects**. Bidders must submit official letters / certificates of 100% satisfactory completion on official letterheads by representatives from either the Department of Human Settlements, Housing Agencies or the Municipality in support of "list completion".
- 18.2.4 Where bidders **fail** to supply performance report or a bidder has not undertaken a Turn-Key RDP project within the requested period, the tender will be deemed to be non-responsive. Previous track record is an important criteria in assessing functionality and risk mitigation.
-

18.2.5 Where client references are found to be unreachable or uncooperative to submitting performance reports (letters of completion of previous, similar Turn-key RDP projects), the Municipality will not allocate any points for non-submission.

18.2.6 Where performance reports (letters of completion) are found to be fraudulent or there's misrepresentation of information, the Municipality will eliminate the bidder from further evaluation or tendering, and risk being black listed.

## **19. LEGALITIES OF CONTRACT AND TENDER RULES**

### **19.1 GENERAL CONDITIONS OF CONTRACT-**

19.1.1 The JBCC shall apply

### **19.2 SPECIAL CONDITIONS OF BID**

19.2.1 Appointed turn-key contractors who implement the Municipalities' projects within the jurisdiction of the municipality, should procure goods within that local municipality and district provided these goods are compliant with minimum SABS standards or as laid down by the NHBRC and Engineers prerequisites. Where it is proven beyond reasonable doubt that these goods and material could not be found, the service provider must inform the client before proceeding outside the district jurisdiction.

19.2.2 Where possible the appointed contractor should source the following locally found commodities that are used in the construction of a house in accordance with the Municipality of Human Settlements' norms and standards of housing designs and specification: -

### **19.3 SPECIFIC CONDITIONS OF CONTRACT**

19.3.1 The Contractor will have to sign a valid contract agreement with the Municipality immediately upon approval of the award.

19.3.2 The successful tenderer shall subcontract a minimum of 15% of the contract value to designated legally qualifying groups i.e. small businesses of HDIs. The tenderer would assume 100% liability for all performances by the appointed sub-contractor.

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- 19.3.3 The Contractor will be liable for any recollection of missing data, as a result of poor completion of questionnaire by the appointed entity;
- 19.3.4 Copyright of the reports to be delivered by the bidder to the Municipality will vest upon the Municipality on acceptance of the final reports.
- 19.3.5 The contractor must have access to internet as basis of communication (email).
- 19.3.6 The contractor will furnish the Municipality with an invoice upon Completion of each milestone (along with other required supporting documentation) and relevant certification by the competent person and Municipal building inspector, and to be settled by the Municipality within the 30 calendar day period as determined by the MFMA Sec 65 (e)
- 19.3.7 Contractor will be required to attend an initial meeting organized by the Municipality to introduce the relevant project stakeholders.
- 19.3.8 A 90 day guarantee of workmanship after FUR at 10% of the amount of value created will be retained by the Municipality until final structural compliance inspection, after which this balance of amount will be released.

## **20. DOCUMENTS TO BE SUBMITTED by a JOINT VENTURE / CONSORTIUM**

- 20.1 The following documents **MUST** be submitted with the proposal and failure to submit will lead to elimination. In case of a Joint Venture/Consortium all parties are expected to submit individual documentation:
- 20.1.1 Signed Joint Venture/Consortium Agreement (where applicable) in terms of the Companies Act of 2013, and Limited Liabilities Act of 408, together with all applicable individual documentation as per listed items under item: , and certificates and track record and past experience as a Joint Venture in Turn-Key RDP Housing Developments. The Municipality has the responsibility in mitigating it's exposure, and individuals as members / directors of the Joint Venture as well as the JV Company will be held legally liable in the event of Non-Performance in terms of the JBCC.
- 20.1.2 Valid joint bank account details indicating signing powers, etc.
-

20.1.3 Valid National Home Builders Registration Council (NHBRC) Certificate;

20.1.4 Valid joint CIDB certificate of minimum category of 5GB.

20.1.5 Certificate of joint legal performance as well as financial responsibilities by all directors of the Joint Venture.

## 21. DURATION OF THE PROJECT

21.1 The duration of the project (Inception, Planning & Design and Implementation) is expected to be a maximum period of 12 months from the signing of the Funding Agreement. The signed Project Implementation Plan which will follow these strict time lines will be jointly agreed upon between the employer and service provider and certified by a Commissioner of Oaths. Failure to comply could mean immediate termination and a claim for damages against the contractor in terms of the JBCC.

**TABLE 9**

Item no.	Description	Duration (months)
1	Inception	
2	Planning and Design	
3	Implementation / Close Out	
<b>Total</b>		

## 22. COLLECTION OF BID DOCUMENTS

Bid documents will be available from the 7th of February 2023 on the Municipal website ([www.matatiele.gov.za](http://www.matatiele.gov.za)) or emailed to registered bidders.

## 23. SUBMISSION OF BID PROPOSALS

23.1 Bid proposals must be deposited in a Bid Box at the BTO, Mountain View Offices of the Matatiele Municipality, Matatiele, 4730.

23.2 Bid proposals must be submitted in one (1) envelope clearly marked as follows:

23.2.1 ----- EMERGENCY  
DESTITUTE HOUSING PROJECT – APPOINTMENT OF A TUN-KEY CONTRACTOR  
FOR MANAGEMENT AND CONSTRUCTION OF \_\_\_\_\_ UNITS IN MATATIELE  
LOCAL MUNICIPALITY

23.3 Faxed or emailed bid proposals will not be accepted. The Bid Proposal envelope may be opened in public on the closing day.

**24. BID VALIDITY**

24.1 This bid will be valid for sixty (90) days after the closing date.

**25. FINAL SUMMARY AND FORM OF OFFER**

<b>FINAL SUMMARY &amp; FORM OF OFFER (All exclusive)</b>			
<b>CONTRACT NUMBER DESTITUTE HOUSING PROJECT – APPOINTMENT OF A TURN-KEY CONTRACTOR FOR CONSTRUCTION OF _____ UNITS IN MATATIELE MUNICIPALITY (40m<sup>2</sup>)</b>			
<b>NO.</b>	<b>ITEM</b>	<b>RATE (per unit)</b>	<b>TOTAL</b>
A	INCEPTION		
B	PLANNING & DESIGN		
C	IMPLEMENTATION		
<b>TOTAL = A+B+C</b>			
<b>TOTAL ABOVE IN WORDS</b>			

SIGNED BY/ON BEHALF OF THE BIDDER

NAME

SIGNATURE

DATE

COMPANY STAMP

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**EMERGENCY DESTITUTE HOUSING PROJECT - APPOINTMENT OF A  
CONTRACTOR FOR CONSTRUCTION OF 40 UNITS IN MATATIELE MUNICIPALITY**

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**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

July 2010

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the



supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.

1.26 "Tort" means in breach of contract.

1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.

1.28 "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

**2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific goods, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

**4. Standards**

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

**5. Use of contract documents and information inspection**

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall

weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the supplier in accordance with the terms specified in the contract.

**11. Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified.

**12. Transportation**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified.

**13. Incidental Services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

**14. Spare parts**

14.1 As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;
- (b) in the event of termination of production of the spare parts:
  - (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

**15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused; of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

**16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated.

**17. Prices**

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.

**18. Variation orders**

18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

**19. Assignment**

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

**20. Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

**21. Delays in the supplier's performance**

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.

21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.

21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## 22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## 23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

**THE NATIONAL TREASURY: Republic of South Africa**

- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 . Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 . If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website



**24. Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

**25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Notwithstanding any reference to mediation and/or court proceedings herein,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

**28. Limitation of Liability**

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing language**

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

**30. Applicable law**

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified.

**31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.



32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

### 33. Transfer of contracts

33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser

### 34. Amendment of contracts

34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

### 35. Prohibition of restrictive practices

35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.

35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.

35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.





## PRINCIPAL BUILDING AGREEMENT

Project

Employer

Contractor

Contract Date

File Code

# The Joint Building Contracts Committee® - NPC Principal Building Agreement Edition 6.2 – May 2018

## JBCC®

The Joint Building Contracts Committee® NPC (JBCC®) is representative of building owners and developers, professional consultants and general and specialist contractors who contribute their knowledge and experience to the compilation of the JBCC® documents. The JBCC® documents portray the consensus view of the constituent members and are published in the interests of standardisation and good practice with an equitable distribution of contractual risk.

For more information about the JBCC®, frequently asked questions, where documents may be purchased as well as training courses visit [www.jbcc.co.za](http://www.jbcc.co.za). The JBCC® does not sell directly to users but may be contacted at [info@jbcc.co.za](mailto:info@jbcc.co.za)

## Principal Building Agreement structure

The agreement clauses follow the project execution sequence. The documents aim to set out clear, balanced and enforceable procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. The following additional documents form part of the suite of contract agreements

- The JBCC® Principal Building Agreement - Contract Data that incorporates specific employer and contractor requirements;
- The JBCC® General Preliminaries that generally covers all aspects of preliminaries for most types of projects;
- The JBCC® Nominated/Selected Subcontract Agreement that replicates the JBCC® Principal Building Agreement with common clauses retaining the same numbering; and
- A comprehensive set of certificate forms and support documents for use in the administration of the agreement

## Warning!

The JBCC® Principal Building Agreement Edition 6.2 has been coordinated with the JBCC® Nominated/Selected Subcontract Agreement Edition 6.2, the JBCC® General Preliminaries and the JBCC® certificate forms and support documents. Forms from previous editions are not compatible with the JBCC® Principal Building Agreement Edition 6.2

Persons entering into or preparing contracts using the JBCC® suite of contract agreements and support documents are warned of the dangers inherent in modifying any part of it

Experience has shown that changes drafted by others, including members of the building professions, often have unintended results that may be prejudicial to either, or both, parties

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## Actions by the parties / principal agent within a given time

Clause	Time period	Party	Purpose
2.4	1WD-7 CD	parties or principal agent	notices deemed to be received
6.4	5 WD	contractor > principal agent	non-performance of an agent i.t.o. this agreement
6.5	10 WD	employer	appoint another agent/contractor may object
10.6	10 WD notice	contractor > employer	failure to insure - notice - insure + recover expense
11.1	15 WD	contractor	provide guarantee for construction
11.2.1	20 WD	contractor	replace securities
11.5.1-2	15/20 WD	employer	provide / replace guarantee for payment
11.6	10 WD notice	contractor > employer	no security, contractor notice to suspend works
11.8	10 WD	parties	return original/replacement security forms
12.2.2	15 WD	contractor	submit priced document
12.2.6	15 WD	contractor	submit programme
14.4.2	15 WD guarantee	contractor > subcontractor	provide guarantee for payment to nominated subcontractor
14.5	5 WD proof payment	employer (principal agent)	pay nominated subcontractor on default by contractor
14.6	5 WD notice	contractor + subcontractor	termination of subcontractor appointment on default
15.4.2	15 WD guarantee	contractor > subcontractor	provide guarantee for payment to selected subcontractor
15.5	5 WD proof payment	employer (principal agent)	pay selected subcontractor on default by contractor
17.3	5 WD	contractor	proceed with a contract instruction, where practical
19.2.2	5 WD	contractor > principal agent	works ready for inspection
19.4	5+5 WD	contractor > principal agent	no 'list' > notice > deemed practically complete
19.6	5+agreed WD	principal agent > contractor	employer occupies portion of the works, list for completion, fix defects
21.3.1	10 WD	contractor	inspect before expiry of defects liability period
21.3.2	5 WD	contractor > principal agent	invite PA to inspect list for completion
21.5	5 WD notice	contractor > principal agent	inspect > list for final completion > certificate
21.6	10 WD notice	principal agent > contractor	no list for final completion > notice > complete
21.7.3	5 WD notice	principal agent > contractor	inspect > list for final completion > certificate
21.9	5+5 WD	contractor > principal agent	no list for final completion / deemed final completion
23.4.2*	20 WD notice	contractor > principal agent	notice of a possible delay, no details yet
23.5	40 WD claim	contractor > principal agent	delay ceased, details of delay and expenses
23.7	20 WD award	principal agent > contractor	assess claim - accept/reduce/reject
25.2	date [CD]	principal agent > contr/empl	issue payment certificate and support forms
25.10	14 CD payment	employer pay contractor	make payment from date of payment certificate
25.11	21 CD	contractor pay employer	make payment i.t.o. schedule from principal agent
25.13	7 CD payment	contractor pay subcontractor	pay subcontractors i.t.o. schedule from principal agent
25.14	5 WD notice	contractor > employer	no/partial payment > suspend etc
25.15	7 CD payment	principal agent > contractor	final payment certificate after acceptance of final account
26.5*	20 WD notice	contractor > principal agent	notice of possible expense and loss
26.6	40 WD claim	contractor > principal agent	substantiated claim
26.7	20 WD award	principal agent > contractor	assess claim = accept/reduce/reject
26.10	60 WD issue FA	principal agent > contractor	issue final account
26.11	30 WD accept FA	contractor > principal agent	accept final account
26.12	10 WD notice	contractor + principal agent	agree final account or deemed acceptance
27.2,9	5 WD notice	notice to contractor	remedy default before next recovery statement
28.1	10 WD notice	contractor > employer	list of defaults to be remedied > suspend works
28.2	notice	contractor > employer	suspension of works where defaults not remedied
29.2	10 WD	employer > contractor	intention to terminate if defaults not remedied
29.3	notice	employer > contractor	default not remedied, termination forthwith
29.14	notice	contractor > employer	intention to terminate if guarantee for payment not provided/maintained
29.15	10 WD notice	contractor > employer	intention to terminate if defaults not remedied
29.16	forthwith	contractor > employer	default not remedied, termination forthwith
29.17.1	forthwith	contractor > subcontractor	termination where PBA terminated
29.17.2	10 WD notice	contractor	remove construction equipment, temporary works, etc
29.21	10 WD	either party	intention to terminate > impossible to complete
29.24.3	10 WD	contractor	remove construction equipment
29.25.2	20 WD	principal agent	prepare status report
29.25.4	60 WD	principal agent	complete final account
30.2	10 WD	either party	disagreement not resolved > dispute
30.3	10 WD	aggrieved party	refer to adjudication
30.6.4	10 WD	aggrieved party	dissatisfied with adjudication
30.6.5	10 WD	aggrieved party	no adjudication/not accept adjudication ruling > arbitration

Abbreviations: WD = working days CD = calendar days, \*No notice forfeits the opportunity to claim

# PRINCIPAL BUILDING AGREEMENT

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# INTERPRETATION

## 1.0 DEFINITIONS and INTERPRETATION

### 1.1 Definitions

A word or phrase in bold type in this agreement shall have the meaning assigned to it in these definitions  
A word or phrase not in bold type shall be interpreted in the context of its usage

**AGENT:** An entity [CD] appointed by the **employer** to deal with specific aspects of the **works**

**AGREEMENT:** The completed JBCC® Principal Building Agreement and **JBCC® contract data**, the **contract drawings**, the **priced document** and any other documents reduced to writing and signed by the authorised representatives of the **parties**

**BILLS OF QUANTITIES:** The document drawn up in accordance with the measuring system [CD]

**BUDGETARY ALLOWANCE:** An amount included in the **contract sum** for work intended for execution by the **contractor**, the extent of which is identified but not detailed

**CALENDAR DAYS:** Twenty-four (24) hour days commencing at midnight (00:00) which include Saturdays, Sundays, proclaimed public holidays and recorded **contractor's** annual holiday periods [CD]

**CERTIFICATE OF FINAL COMPLETION:** A certificate issued by the **principal agent** to the **contractor** with a copy to the **employer** stating the date on which **final completion** of the **works**, or of a **section** thereof, was achieved

**CERTIFICATE OF PRACTICAL COMPLETION:** A certificate issued by the **principal agent** to the **contractor** with a copy to the **employer** stating the date on which **practical completion** of the **works**, or of a **section** thereof, was achieved

**COMPENSATORY INTEREST:** Interest due to the **contractor** at the ruling rate of **interest** on amounts certified after thirty-one (31) **calendar days** of the date of **practical completion**, compounded monthly until the date of payment

**CONSTRUCTION EQUIPMENT:** Equipment and/or plant provided by or belonging to the **contractor** and/or **subcontractors** and used during the **construction period**

**CONSTRUCTION INFORMATION:** All information issued by the **principal agent** and/or **agents** including this **agreement**, **specifications**, **drawings**, **schedules**, **notices** and **contract instructions** required for the execution of the **works**

**CONSTRUCTION PERIOD:** The period commencing on the intended date [CD] of possession of the **site** by the **contractor** and ending on the date of **practical completion**

**CONTRACT DATA:** The document listing the project specific information

[CD]: The notation used where project specific information is recorded in the **contract data**

**CONTRACT DRAWINGS:** The drawings listed [CD]

**CONTRACT INSTRUCTION:** A written instruction issued by or under the authority of the **principal agent** to the **contractor** that may include drawings, photographs and other **construction information**

**CONTRACT SUM:** The accepted tender amount inclusive of **tax** [CD], not subject to adjustment

**CONTRACT VALUE:** A monetary value initially equal to the **contract sum**, subject to adjustment in terms of this **agreement**

**CONTRACTOR:** The **party** [CD] contracting with the **employer** for the execution of the **works**

**DEFAULT INTEREST:** Interest at six (6) percentage points per annum above the ruling rate of **interest** where payment has not been received within the stipulated period, compounded monthly from the due date for payment until the date of payment

**DEFECT:** Any aspect of materials and workmanship forming part of the **works** that does not conform to the **agreement** and/or **construction information**

**DIRECT CONTRACTOR:** An entity appointed under separate agreement by the **employer** to do work on site prior to **practical completion** [CD]

**EMPLOYER:** The party [CD] contracting with the **contractor**

**FINAL ACCOUNT:** The document prepared by the **principal agent** that reflects the final **contract value** of the **works** at **final completion** or termination

**FINAL COMPLETION:** The stage of completion as certified by the **principal agent** where the **works**, or a **section** thereof, has been completed and is free of **defects**

**FINAL PAYMENT CERTIFICATE:** The certificate issued by the **principal agent** after the issue of the **certificate of final completion** and after the **final account** has been agreed

**FORCE MAJEURE:** An exceptional event or circumstance that:

- Could not have been reasonably foreseen
- Is beyond the control of the **parties**, and
- Could not reasonably have been avoided or overcome

Such an event may include but is not limited to:

- Acts of war (declared or not), invasion and/or hostile acts of foreign enemies
- Insurrection, rebellion, revolution, military or usurped power and terrorism
- Civil commotion, disorder, riots, strike, lockout by persons other than the **contractor's** employees or his **subcontractors**
- Sonic shock waves caused by aircraft or other aerial devices and ionising or radioactive contamination
- Explosive materials, except where attributable to the **contractor's** use of such technology
- Natural catastrophes including earthquakes, floods, hurricanes or volcanic activity

**FREE ISSUE:** **Materials and goods** provided at no cost to the **contractor** by the **employer** for inclusion in the **works** [CD]

**GUARANTEE FOR ADVANCE PAYMENT:** A **security** in terms of the **JBCC®** Guarantee for Advance Payment form, obtained by the **contractor** from an institution approved by the **employer**

**GUARANTEE FOR CONSTRUCTION:** A **security** in terms of the **JBCC®** Guarantee for Construction form, obtained by the **contractor** from an institution approved by the **employer** [CD]

**GUARANTEE FOR PAYMENT:** A **security** in terms of the **JBCC®** Guarantee for Payment form, obtained by the **employer** from an institution approved by the **contractor** [CD]

**INTEREST:** The bank rate applicable from time to time to registered banks borrowing money from the Central or Reserve Bank of the country [CD]. The ruling bank rate on the first **calendar day** of each month shall be used in calculating the interest due for such month

**JBCC®:** The Joint Building Contracts Committee® NPC

**LATENT DEFECT:** A **defect** that an inspection of the **works** by the **principal agent** and/or **agents** would not reasonably have revealed

**LAW:** The law of the country [CD]

**LIST FOR COMPLETION:** A list that may include marked up drawings and photographs issued by the **principal agent** where **practical completion** has been certified, listing **defects** and/or outstanding work to be completed

**LIST FOR FINAL COMPLETION:** A **list for completion** that may include marked up drawings and photographs issued by the **principal agent** after the inspection of the **works** for **final completion**, where **final completion** has not been achieved, listing **defects** and/or outstanding work to be completed to achieve **final completion**

**LIST FOR PRACTICAL COMPLETION:** A comprehensive and conclusive list that may include marked up drawings and photographs issued by the **principal agent** after the inspection of the **works** for **practical completion**, where **practical completion** has not been achieved, listing the **defects** and/or outstanding work to be completed to achieve **practical completion**

**MATERIALS AND GOODS:** Unfixed materials, goods and/or items fabricated for inclusion in the **works** whether stored on or off the **site** or in transit



**NOTICE:** A written communication, excluding social media, issued by either party, the principal agent and/or agents to the other party, the principal agent and/or agents to, inter alia, record an event, request outstanding construction information, or where suspension or resumption of the works and/or termination of this agreement is contemplated

**N/S SUBCONTRACT AGREEMENT:** The completed JBCC® Nominated/Selected Subcontract Agreement (NSSA) and JBCC® NSSA contract data, the subcontract drawings, the subcontract priced document and any other documents reduced to writing and signed by the authorised representatives of the contractor and of the subcontractor

**PARTY:** The employer or the contractor and 'parties' shall refer to both of them

**PAYMENT CERTIFICATE:** A certificate issued at regular agreed intervals [CD] by the principal agent to the parties certifying the amount due and payable in terms of the JBCC® Payment Certificate format

**PENALTY:** The stipulated amount per calendar day [CD] payable by the contractor to the employer where the date or the revised date for practical completion, whichever is the later, has not been met

**PRACTICAL COMPLETION:** The stage of completion as certified by the principal agent where the works, or a section thereof, has been completed and is free of patent defects other than minor defects identified in the list for completion and can be used for the intended purpose [CD]

**PRELIMINARIES:** The JBCC® General Preliminaries and/or the items listed in the preliminaries section of the priced document

**PRICED DOCUMENT:** The document incorporating quantities and/or rates used in the compilation of the contract sum such as bills of quantities, preliminaries and schedules of rates

**PRIME COST AMOUNT:** An amount included in the contract sum for the delivered cost of materials and goods obtained from a supplier as instructed by the principal agent

**PRINCIPAL AGENT:** The entity [CD] appointed by the employer with full authority and obligation to act in terms of this agreement

**PROGRAMME:** A diagrammatic representation of the planned execution of units of work or activities by the contractor and subcontractors indicating the dates for commencement and completion prepared and maintained by the contractor

**PROVISIONAL SUM:** An amount included in the contract sum for the supply and installation of work by a subcontractor

**RECOVERY STATEMENT:** The statement prepared and issued in conjunction with each payment certificate by the principal agent in terms of the JBCC® Recovery Statement format

**SECTION:** An identified portion of the works for which practical completion is required by a date earlier than that required for the works as a whole [CD]

**SECURITY:** A monetary guarantee [CD] provided by the employer to the contractor, or vice versa, in terms of this agreement from which either party may recover expense and loss in the event of default

**SITE:** The land or place where the works is to be executed [CD]

**STATUS REPORT:** A report compiled by the principal agent and/or agents in the event of termination of the agreement, or where the works has been suspended due to a force majeure event, or in the event of termination of a n/s subcontract agreement by the contractor, to record the state of completion or otherwise of the works or the n/s subcontract works. Such status report may include marked up drawings and photographs

**SUBCONTRACTOR:** A nominated or a selected subcontractor appointed in terms of the n/s subcontract agreement by the contractor in accordance with a contract instruction for the supply and installation of work for which a provisional sum has been included in the contract sum

**SUSPENSION:** The temporary cessation of the works by the contractor

**TAX:** Value-added tax, general sales tax or similar consumption tax applicable by law

**WORKING DAYS:** Calendar days which exclude Saturdays, Sundays, proclaimed public holidays and recorded contractor's annual holiday periods [CD]

**WORKS:** The extent of work to be executed by the **contractor** described in the **agreement** and **contract instructions**, which includes **free issue** and **materials and goods**. Work or installations to be executed by **direct contractors** and others responsible to the **employer** are excluded [CD]

## 1.2 Interpretation

- 1.2.1 In this document, unless inconsistent with the context, the words "accept, allow, appoint, approve, authorise, certify, decide, demand, designate, grant, inform, instruct, issue, list, **notice**, notify, object, record, reduce, refuse, request, state" and their derivatives require such acts to be in writing
- 1.2.2 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa and a person includes juristic or artificial persons
- 1.2.3 The headings of clauses are for information only and shall not be used in interpretation
- 1.2.4 Reference to a clause number written as clause [54.3.2] means that specific clause; or clause [54.3.2-4] means sub-clauses 2 to 4 inclusively; or clause [54.3.2 & 4] means sub-clauses 2 and 4 only
- 1.2.5 The word "deemed" shall be conclusive that something is fact, regardless of the objective truth

## 2.0 LAW, REGULATIONS AND NOTICES

- 2.1 The **contractor** shall comply with the **law** [CD], obtain permits, licences and approvals required and pay related charges for the execution of the **works** [17.1.4]. The **employer** shall comply with the **law** [CD], obtain permits, planning, building or similar permissions and pay charges for the **works** other than those which are the responsibility of the **contractor** [26.4.1]
- 2.2 All communication or **notices** between the **parties** shall be in the language of this **agreement** and in a format that can be read, copied and recorded
- 2.3 Legal processes arising out of or concerning this **agreement** may validly be delivered to and served on the **parties** at the physical address of the **parties** recorded in this **agreement**. Either **party** may, at any time, by **notice** to the other, change his physical address provided it is in the same country as the original address
- 2.4 **Notices** given in terms of this **agreement** shall be deemed to have been received where:
- 2.4.1 Delivered by hand - on the day of delivery
- 2.4.2 Sent by electronic mail, excluding social media - within one (1) **working day**
- 2.4.3 Sent by registered post - within seven (7) **calendar days** after posting

## 3.0 OFFER AND ACCEPTANCE

- 3.1 The objective of this **agreement** is the execution of and payment for the **works** for which there has been an offer by the **contractor** and an acceptance by the **employer**
- 3.2 The currency applicable to this **agreement** is as recorded [CD]
- 3.3 This **agreement** shall come into force on the date of acceptance by the **employer** and continue to be of force and effect until the end of the **latent defects** liability period [22.0] notwithstanding termination [29.0] or the certification of **final completion** [21.0] and final payment [25.0]
- 3.4 Should any provision of this **agreement** be unenforceable the **parties** shall act in good faith to agree alternative provisions in terms of this **agreement**
- 3.5 Failure or omission by a **party** to enforce any provision of this **agreement** shall not constitute a waiver of such provision or affect such **party's** rights to require the performance of such provision in the future

#### 4.0 CESSION AND ASSIGNMENT

- 4.1 Neither **party** shall cede rights or assign rights and obligations under this **agreement** without the prior written consent of the other **party**, which consent shall not be unreasonably withheld
- 4.2 The **contractor** shall not consent to a nominated **subcontractor** ceding rights or assigning rights and obligations under this **agreement** without obtaining the prior written consent of the **principal agent**
- 4.3 Notwithstanding the above, where a **party** cedes any right to any monies due or to become due under this **agreement** as security in favour of a financial institution, consent shall not be required provided **notice** of such cession is timeously given to the other **party**

#### 5.0 DOCUMENTS

- 5.1 Documents referred to in this **agreement** shall mean the current edition thereof with all amendments thereto as at the date of submission of the **contractor's** tender
- 5.2 The **parties** shall sign the original **agreement** and shall each be issued with a copy thereof by the **principal agent**. The original signed **agreement** shall be held by the **principal agent** [CD]
- 5.3 Persons authorised to act on behalf of the **parties** and/or **agents** appointed by the **employer** shall be identified in the **construction information**. Such authorised persons may be changed by **notice** to the other **party**
- 5.4 The **priced document** shall not be used as a specification of **materials and goods** or methods
- 5.5 The content of this **agreement** shall not be published or disclosed or used for any purpose other than that specified in this **agreement** by one **party** without the prior written consent of the other **party**
- 5.6 The **principal agent** and/or **agents** shall timeously provide the number of copies [CD] of drawings, un-priced **bills of quantities** and other **construction information** at no cost to the **contractor**

#### 6.0 EMPLOYER'S AGENTS

- 6.1 The **employer** warrants that the **principal agent** has full authority and obligation to act on behalf of and bind the **employer** in terms of this **agreement**. The **principal agent** has no authority to amend this **agreement**
- 6.2 The **employer** may appoint **agents** to deal with specific aspects of the **works** in terms of this **agreement** [CD]. The **principal agent** shall give **notice** to the **contractor** where such authority is delegated to **agents** to issue **contract instructions** and perform duties for specific aspects of the **works**. An **agent** appointed in terms of this clause shall not be entitled to subdelegate his authority without the prior written consent of the **employer** and **notice** to the **contractor**
- 6.3 The **principal agent** and/or **agents** shall declare any interest or involvement in the **works** other than a professional interest, where applicable [CD]
- 6.4 Where the **principal agent** fails to act in terms of this **agreement** and/or an **agent** fails to act in terms of delegated authority, the **contractor** shall give **notice** to the **principal agent**, with a copy to the **employer**, to rectify such default within five (5) **working days**. Where such default has not been rectified, the **contractor** may give **notice** to suspend the **works** [28.0]
- 6.5 Where the **principal agent** and/or an **agent** fails to act or is unable to act or ceases to be the **principal agent** or an **agent** in terms of this **agreement**, the **employer** shall appoint another **principal agent** and/or an **agent** within ten (10) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint a **principal agent** and/or an **agent** against whom the **contractor** makes reasonable objection within five (5) **working days** of receipt of **notice** of intention to make such an appointment
- 6.6 The **employer** shall not interfere with or prevent the **principal agent** and/or **agents** from exercising fair and reasonable judgement when performing their obligations in terms of this **agreement**

## 7.0 DESIGN RESPONSIBILITY

- 7.1 The **contractor** shall not be responsible for the design of the **works** other than the **contractor's** and **subcontractors'** temporary works. The **contractor** shall not be responsible for the coordination of design elements
- 7.2 Any design responsibility undertaken by a **subcontractor** shall not devolve on the **contractor**. All contractual or other rights the **contractor** has against such **subcontractor** arising from any design responsibility undertaken shall be ceded to the **employer** on the date of **final completion** or the date of termination of this agreement [9.2.3]
- 7.3 The **contractor** shall be responsible for the timeous submission of design documentation by a selected **subcontractor** for acceptance and coordination by the **principal agent** and/or **agents** [23.2.8]

## INSURANCES AND SECURITIES

### 8.0 WORKS RISK

- 8.1 The **contractor** shall take full responsibility for the **works** from the date on which possession of the **site** is given to the **contractor** and up to the date of issue of the **certificate of practical completion** or deemed achievement of **practical completion** for the **works** as a whole, or a **section** thereof. Thereafter responsibility for the **works** as a whole, or a **section** thereof, shall pass to the **employer**
- 8.2 The **contractor** shall make good physical loss and repair damage to the **works** caused by or arising from:
- 8.2.1 Any cause before the date of **practical completion** [19.0]
- 8.2.2 Any act or omission of the **contractor** in the course of any work carried out in pursuance of the **contractor's** obligations after the date of **practical completion**
- 8.3 The liability of the **contractor** in respect of any loss or damage shall include, but not be limited to:
- 8.3.1 The cost of making good such physical loss and repairing damage to the **works** including clearing away and removing all debris and any other costs to reinstate the **works**
- 8.3.2 The new replacement value of **free issue** [12.1.10]
- 8.3.3 The cost of additional professional services
- 8.4 Notwithstanding subclause 8.3, the limit of the **contractor's** liability shall not exceed the amount of the contract works insurance [10.1.1] [CD]
- 8.5 The **contractor** shall not be liable for the cost of making good physical loss and repairing damage to the **works** caused by or arising from:
- 8.5.1 The use or occupation of any part of the **works** by the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 8.5.2 An act or omission of the **employer**, the **employer's** employees and/or an **agent** and those for whose actions they are responsible
- 8.5.3 An act or omission by a **direct contractor**
- 8.5.4 The use or occupation of any part of the **works** by a **direct contractor**
- 8.5.5 The design of the **works** for which the **contractor** is not responsible [7.1]
- 8.5.6 A **defect** in **free issue** or **materials and goods** specified by trade name where the **contractor** has no right of substitution. The **contractor** hereby cedes any right of action to the **employer** that may exist against the supplier and/or manufacturer of such **free issue** and/or **materials and goods**
- 8.5.7 **Force majeure**



- 8.6 Where the **contractor** is not liable for the cost of making good physical loss or repairing damage [8.5] such making good and/or expense and/or loss shall be measured and valued and included in the **contract value** by the **principal agent** [17.1.10]
- 8.7 The **contractor** shall immediately give **notice** to the **principal agent** on becoming aware of physical loss or damage to the **works**

## 9.0 INDEMNITIES

- 9.1 The **contractor** indemnifies and holds harmless the **employer**, the **employer's** employees and/or **agents** from all claims or proceedings for damages, expense and/or loss including legal fees and expenses in respect of or arising from:
- 9.1.1 Death or bodily injury or illness of any person or physical loss or damage to any property other than the **works** arising out of or due to the execution of the **works** or presence on and/or occupation of the **site** by the **contractor**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.1.2 Non-compliance by the **contractor** with the **law**, regulation or bylaw of any local or other authority and the failure by the **contractor** to obtain any permit, licence or approval that the **contractor** is required to obtain in terms of this **agreement** [2.1]
- 9.1.3 Physical loss or damage to **construction equipment** or other property belonging to the **contractor** or the **contractor's subcontractors** but excluding **direct contractors'** equipment or property
- 9.2 The **employer** indemnifies and holds the **contractor** harmless from all claims or proceedings for damages, expense and/or loss, including legal fees and expenses, in respect of or arising from:
- 9.2.1 An act or omission of the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 9.2.2 An act or omission of a **direct contractor** [16.0]
- 9.2.3 Design of the **works** [7.2] where the **contractor** is not responsible for such design
- 9.2.4 The use or occupation of any part of the **works** by the **employer**, tenants, **direct contractors** or others authorised by the **employer**
- 9.2.5 Proceeding with the **works** on instruction from the **employer** without the **employer** obtaining the required permission under the **law** in terms of this **agreement** [2.1]
- 9.2.6 Interference with any servitude or other right not recorded in **construction information** issued to the **contractor** that is the unavoidable result of the execution of the **works** including the removal of or weakening of or interference with the support of land and property adjacent to or within the **site** unless resulting from any negligent act or omission by the **contractor** or his **subcontractors**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.2.7 Physical loss or damage to an existing structure and the contents thereof where this **agreement** is for alterations or additions to an existing structure. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.2.8 A defect in free issue
- 9.2.9 Physical loss or damage to the **works** where a **certificate of practical completion** has been issued [19.0] or **practical completion** has been deemed to have been achieved
- 9.2.10 Advance payments certified by the **principal agent** and paid by the **contractor** to **subcontractors** [27.1.8; 27.2.4]

## 10.0 INSURANCES

- 10.1 The **party** responsible shall effect and keep the respective insurances [CD] in force in the joint names of the **parties** from the date of possession of the **site** until the issue of the **certificate of practical completion** with an extension to cover the **contractor's** obligations after the date of **practical completion** [8.2.2]:
- 10.1.1 Contract works insurance [CD] for the **works** that shall make provision for **direct contractors** [CD], **free issue** [CD], **materials and goods**, professional fees, temporary works, clearing away and removing of all debris and any other costs to reinstate the **works** and where required, damage to **employer** owned surrounding property [CD] where not covered under the removal of lateral support insurance
- 10.1.2 Supplementary insurance [CD] for the **works** against loss or damage caused by civil commotion, riot, strike, labour disturbance and lockout to the extent not insured under the contract works insurance
- 10.1.3 Public liability insurance [CD] providing indemnity in respect of accidental death or injury to any person and accidental loss of or physical damage to tangible property, to remain in force until the date of **final completion**
- 10.1.4 Removal of lateral support insurance [CD] where the **employer** considers that the execution of the **works** could cause the removal of or weakening of or interference with the support of land or property adjacent to or within the **site** (also including **employer** owned surrounding property) and the consequences thereof. The **employer** shall appoint an **agent** to design and monitor appropriate support structures for use in excavations and/or in existing property that form part of the **works** and/or the **site**
- 10.1.5 Other insurances [CD]
- 10.2 Where **practical completion** in **sections** is required [20.0], or where the **works** is for alterations and additions, the **employer** shall effect and keep in force contract works insurance [10.1.1], supplementary insurance [10.1.2], public liability insurance [10.1.3] and where applicable, removal of lateral support insurance [10.1.4] and other insurances [10.1.5] in the joint names of the **parties** until the date of **final completion**
- 10.3 The **party** responsible for effecting insurances [10.1.1-5; 10.2] shall provide proof of the insurances effected to the other **party** before the commencement of the **construction period** and, where required, provide proof of extension or renewal of such insurances before their expiry. Upon request the **party** responsible for effecting insurances shall provide the other **party** with the entire policy wording of such insurances
- 10.4 The **contractor** shall be responsible for the deductible amounts [CD] other than where a claim against an insurance cover is due to default of the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 10.5 The **employer** may, at his expense, require the cover of the contract works insurance [10.1.1] to be increased. The **party** responsible for effecting insurances shall provide written proof of such adjustment
- 10.6 Where the **employer** fails to effect the required insurances within ten (10) **working days** after notice to do so the **contractor** may, on expiry of the notice period, suspend the **works** until such insurances have been effected [28.1.4]
- 10.7 Where this **agreement** is terminated [29.0] and the **contractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of an insurance claim shall vest solely in the **employer**. The **party** responsible for the insurances shall give **notice** to the insurer to clarify the status of the insurance cover and/or further insurance obligations applicable to the **works**, public liability insurance, supplementary insurance and removal of lateral support insurance
- 10.8 Any amounts not recovered from insurers shall be borne by the **employer** or **contractor** in accordance with their respective obligations under this **agreement**
- 10.9 The **party** responsible for effecting the insurances shall keep insurers informed of any relevant changes in respect of this **agreement**
- 10.10 The **parties** shall at their discretion effect insurances for aspects not insured such as **construction equipment** and work by **direct contractors** after **practical completion**

## 11.0 SECURITIES

- 11.1 The **contractor** shall provide to the **employer** a **guarantee for construction** within fifteen (15) **working days** of acceptance of the **contractor's** tender and choose:
- 11.1.1 A **guarantee for construction** – (variable) initially equal to ten per cent (10%) of the **contract sum** and keep such **security** valid and enforceable until the **final payment certificate** has been issued to the **contractor** [25.15]  
or ...
- 11.1.2 A **guarantee for construction** - (fixed) equal to five per cent (5%) of the **contract sum** and a payment reduction of five per cent (5%) of the value of each **payment certificate** up to a maximum of five per cent (5%) of the **contract sum** [25.3.3; 25.12]. The **contractor** shall keep such **security** valid and enforceable until the only or last **certificate of practical completion** has been issued
- 11.2 The **contractor** shall:
- 11.2.1 Maintain and/or replace a **guarantee for construction** - (variable or fixed) [11.1.1-2] at least twenty (20) **working days** before such **security** is due to expire
- 11.2.2 Provide a **guarantee for advance payment** where an advance payment is required. The **contractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.3]
- 11.3 The amount of the **guarantee for advance payment** shall be reduced by the amount repaid by the **contractor** as certified by the **principal agent in payment certificates**. If the advance payment is not repaid by the date a **certificate of practical completion** is issued or deemed achievement of **practical completion** or by the date of termination by the **employer** due to **contractor default** [29.9.3], the entire outstanding amount shall immediately become due and payable
- 11.4 Where the **contractor** fails to provide the specified **guarantee for construction** the **employer** may:
- 11.4.1 Hand over the **site** to the **contractor** and withhold an amount in interim **payment certificates** to the **contractor** until the total amount withheld is equal to ten per cent (10%) of the **contract sum**. The amount withheld shall be reduced at **practical completion** [19.0] to two and one half per cent (2.5%) of the **contract sum** and to zero per cent (0%) in the **final payment certificate** [25.9; 25.15]  
or ...
- 11.4.2 Terminate this **agreement** [29.1.1; 29.2]
- 11.5 The **employer** shall:
- 11.5.1 Provide to the **contractor** a **guarantee for payment** where required in the accepted tender [CD] within fifteen (15) **working days** of acceptance of the **contractor's** tender
- 11.5.2 Keep such **guarantee for payment** valid and enforceable in terms of the **security** form and/or provide a replacement **guarantee for payment** at least twenty (20) **working days** before such **security** is due to expire
- 11.6 Where the **employer** fails to provide the **guarantee for payment** [CD], or such **security** has expired, the **contractor** may, after giving ten (10) **working days notice**, where such default has not been remedied, forthwith suspend the **works** until such **security** has been provided [12.1.1; 28.1.1] or by further **notice** terminate this **agreement** [29.14.2; 29.15]
- 11.7 Where the **contract value** exceeds the **contract sum** by more than ten per cent (10%) the **guarantee for payment** shall be adjusted at the **employer's** expense. The **employer** shall provide written proof of such adjustment
- 11.8 The original or the replacement **security** form(s) shall be returned to the other **party** within ten (10) **working days** after the expiry date
- 11.9 Where a **party** makes an unjustified call on a **security**, the amount paid and **default interest** shall be paid to the other **party** [27.1.2; 27.1.5]
- 11.10 The **contractor** shall waive his lien or right of continuing possession of the **works** on receipt of a **guarantee for payment** from the **employer**

## EXECUTION

### 12.0 OBLIGATIONS OF THE PARTIES

- 12.1 The employer shall:
- 12.1.1 Provide a **guarantee for payment** [11.5], where applicable [CD]
  - 12.1.2 Record specific requirements [CD] where the existing premises will be in use and occupied during the execution of the **works** including restriction of working hours [CD]
  - 12.1.3 Record and describe relevant natural features and known services [CD] where the **contractor** shall be responsible for their preservation
  - 12.1.4 Define any restrictions to the **site** or areas that the **contractor** may not occupy [CD]
  - 12.1.5 Give possession of the **site** to the **contractor** on the agreed date [CD]
  - 12.1.6 Effect and keep in force insurances in the joint names of the **parties**, where the **employer** is responsible for providing insurances [CD]
  - 12.1.7 Make payments by the due date [25.10] [CD]
  - 12.1.8 Make advance payments, where required [CD]
  - 12.1.9 Permit reasonable access to the **works** by the **contractor** and/or **subcontractors** subsequent to **practical completion** to fulfil outstanding obligations [17.1.17; 19.7]
  - 12.1.10 Supply **free issue** [CD] to suit the **programme**
  - 12.1.11 Define the extent of work to be carried out by **direct contractors** [CD]
  - 12.1.12 Ensure that the **principal agent** and/or **agents** provide adequate **construction information** timeously to the **contractor**
  - 12.1.13 At the **employer's** discretion make direct payment where the **contractor** has failed to honour a n/s subcontract payment advice after **notice of default** by a **subcontractor** to the **principal agent**, the **employer** and the **contractor** [14.5 and/or 15.5]
- 12.2 The contractor shall:
- 12.2.1 Have inspected the **site** and any existing structures and be thoroughly acquainted with the conditions under which the **works** is to be executed including means of access and any matters which may influence the execution and/or the pricing of the **works**
  - 12.2.2 Within fifteen (15) **working days** of acceptance of the **contractor's** tender submit to the **principal agent** the **priced document** with items priced to include all costs, overheads and profit, extended and cast. Where the **priced document** contains errors or discrepancies and/or prices considered by the **principal agent** to be imbalanced or unreasonable the **principal agent** and the **contractor** shall adjust such prices without any change to the **contract sum**
  - 12.2.3 Provide a **guarantee for construction** [11.1; 11.2.1]
  - 12.2.4 Provide a **guarantee for advance payment** [11.2.2], where applicable [CD]
  - 12.2.5 Effect and keep in force insurances in the joint names of the **parties** where the **contractor** is responsible for providing insurances [10.0] [CD]
  - 12.2.6 Prepare and submit to the **principal agent** within fifteen (15) **working days** of receipt of **construction information** a **programme** for the **works** in sufficient detail to enable the **principal agent** to monitor the progress of the **works**
  - 12.2.7 On being given possession of the **site** commence the **works** and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the **works** to **practical completion** and to **final completion** [21.12]
  - 12.2.8 Provide everything necessary for the proper execution of the **works** in compliance with the **agreement**



- 12.2.9 Coordinate the **programme** with **subcontractors'** and **direct contractors' programmes**
- 12.2.10 Regularly update the **programme** to illustrate progress of the **works** and revise the **programme** where the **principal agent** has revised the date for **practical completion**
- 12.2.11 Regularly submit to the **principal agent** a progress report and a schedule of outstanding **construction information** to avoid delays to the **works**
- 12.2.12 Cooperate with the **principal agent** in the preparation of cash flow projections and the compilation of **payment certificates** [25.1]
- 12.2.13 Designate a competent person to continuously administer and control the **works** and to receive and implement **notices** and **contract instructions** on behalf of the **contractor**
- 12.2.14 Maintain daily records of categories of persons and **construction equipment** employed on the **works** and regularly provide copies to the **principal agent**
- 12.2.15 Keep on **site** a copy of all **construction information** required for execution of the **works** to which the **employer** and **principal agent** and/or **agents** shall have reasonable access
- 12.2.16 Allow the **employer** and **principal agent** and/or **agents** reasonable access to the **works**, workshops and other places where work is being prepared, executed and/or stored
- 12.2.17 Give **notice** forthwith to the **principal agent** and/or the **employer** where items of **free issue** have been received damaged prior to storage or, where on unpacking, are found not to be in good order before installing such items
- 12.2.18 Provide, maintain and remove on **practical completion** all temporary structures, **construction equipment** and notice boards
- 12.2.19 On achievement of **practical completion** hand over to the **principal agent** all information for the preparation of 'as built' documentation and applicable statutory and/or regulatory approval certificates as well as all operating and instruction manuals and the like
- 12.2.20 Cede to the **employer** on the date of issue of the **certificate of final completion** any guarantees, product warranties or indemnities pertaining to the **works**. This cession shall not prejudice any other rights that the **employer** may have [21.11]
- 12.2.21 Forthwith notify all **subcontractors** where a **certificate of practical completion** and/or a **certificate of final completion** has been issued by the **principal agent** for the **works**, or a **section** thereof
- 12.3 The **principal agent** and the **contractor** shall hold regular meetings to monitor progress of the **works** and to deal with technical and coordination matters. The **principal agent** shall record and timeously distribute the minutes of such meetings

## 13.0 SETTING OUT

- 13.1 The **principal agent** and/or an **agent** with delegated authority shall:
  - 13.1.1 Point out boundary pegs or beacons identifying the **site** and the datum level
  - 13.1.2 Define the setting out points and levels required for the execution of the **works**
- 13.2 The **contractor** shall:
  - 13.2.1 Be responsible for accurate setting out of the **works** notwithstanding checking by others
  - 13.2.2 Be responsible for the preservation and the reinstatement of boundary pegs, beacons and other survey information and, where disturbed or destroyed, replace such items at his expense
  - 13.2.3 Not be responsible for incorrect setting out if incorrect information was issued to the **contractor**. In such event the **contractor** may be entitled to a revision of the date for **practical completion** [23.2.5] and/or an adjustment of the **contract value** [26.0]
  - 13.2.4 Immediately suspend affected work to an appropriate extent where encroachments of adjoining structures occur and where undocumented services, natural features, articles of value or relics are uncovered on **site** and forthwith give **notice** to the **principal agent** who shall issue a **contract instruction** on how to proceed with the **works**. Any relics or other articles of value found on the **site** shall remain the property of the **employer**

## 14.0 NOMINATED SUBCONTRACTORS

- 14.1 The **principal agent** and/or **agents** shall:
- 14.1.1 Prepare tender documents in conformity with the **n/s subcontract agreement** and this **agreement** for work intended to be executed by a nominated **subcontractor**
  - 14.1.2 Call for tenders
  - 14.1.3 Scrutinise the received tenders for compliance with the tender documents in consultation with the **contractor**, where appointed
  - 14.1.4 Nominate a **subcontractor** and instruct the **contractor** [17.1.14] to appoint such **subcontractor** as a nominated **subcontractor** in terms of the **n/s subcontract agreement** and other tender requirements
  - 14.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted tender and that a **guarantee for advance payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]
- 14.2 The **contractor** may refuse to appoint such **subcontractor**:
- 14.2.1 Against whom the **contractor** makes a reasonable objection
  - 14.2.2 Who refuses or fails to enter into a **n/s subcontract agreement** and/or to comply with other **tender** requirements
  - 14.2.3 Who has failed to provide a required security [NSSA-CD]
- 14.3 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [14.2], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be nominated and appointed in accordance with a **contract instruction** issued by the **principal agent**
- 14.4 Where the **subcontractor** has complied with the tender requirements, in accordance with a **contract instruction** issued by the **principal agent** [17.1.14], the **contractor** shall:
- 14.4.1 Appoint the **subcontractor** as a nominated **subcontractor** and forward a copy of the signed **n/s subcontract agreement** to the **principal agent**
  - 14.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** of such appointment, where required in the **n/s subcontract agreement** [CD]
  - 14.4.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agents** by the date stated [NSSA-CD]
  - 14.4.4 Issue to each **subcontractor** (with a copy to the **principal agent**) a **JBCC® n/s subcontract payment advice** and a **JBCC® n/s subcontract recovery statement** to reconcile the amount due for payment with the amount stated in the **JBCC® n/s subcontract payment notification** issued by the **principal agent**
  - 14.4.5 Pay the **subcontractor** the amount certified by the date stated in the **JBCC® NSSA contract data** [25.13]
- 14.5 Where the **contractor** fails to provide proof of payment to the **subcontractor** within five (5) **working days** of a **notice** by the **principal agent**, the **employer** may instruct the **principal agent** to certify direct payment to the **subcontractor** and recover such amount from the **contractor** [27.2.7]
- 14.6 Where a nominated **subcontractor** has been declared insolvent, or where, after notification by the **contractor**, the **principal agent** agrees that a nominated **subcontractor** is in default of a material term of the **n/s subcontract agreement**, the **principal agent** shall instruct the **contractor** to give **notice** to the **subcontractor** to rectify such default. The **principal agent** shall instruct the **contractor** to terminate the **n/s subcontract agreement** should such default continue for five (5) **working days** after such **notice** [17.1.15]
- 14.7 Where a **n/s subcontract agreement** with a nominated **subcontractor** is terminated:
- 14.7.1 Due to default or insolvency of the **subcontractor** [23.2.10], or default of the **employer**, the **principal agent** and/or **agents** [23.2.11] any variation in the cost of completing such subcontract works shall be for the account of the **employer**
  - 14.7.2 Due to default or insolvency of the **contractor** any variation in the cost of completing such subcontract works shall be for the account of the **contractor**. The **employer** may recover expense and/or loss [27.2.8]

- 14.7.3 The **principal agent** shall instruct the **contractor** to appoint another nominated **subcontractor** [14.1.4] to complete the subcontract works
- 14.8 There shall be no privity of contract between the **employer** and a **subcontractor** appointed by the **contractor**

## 15.0 SELECTED SUBCONTRACTORS

- 15.1 The **principal agent** and/or **agents** shall:
- 15.1.1 Prepare tender documents in conformity with the **n/s subcontract agreement** and this agreement for work intended to be executed by a selected **subcontractor** in consultation with and to the reasonable approval of the **contractor**
- 15.1.2 Call for tenders from a list of tenderers agreed between the **contractor** and the **principal agent**
- 15.1.3 Scrutinise the received tenders for compliance with the tender documents in consultation with the **contractor**
- 15.1.4 In consultation with the **contractor**, choose the compliant tenderer to be appointed as a selected **subcontractor** in terms of the **n/s subcontract agreement**
- 15.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted tender and that a **guarantee for advance payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]
- 15.2 The **contractor** may refuse to appoint such **subcontractor**:
- 15.2.1 Who refuses or fails to enter into a **n/s subcontract agreement** and/or to comply with other tender requirements
- 15.2.2 Who has failed to provide a required security [NSSA-CD]
- 15.2.3 Against whom the **contractor** makes a reasonable objection where circumstances have changed
- 15.3 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [15.2], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be chosen in consultation with the **contractor** and appointed in accordance with a **contract instruction** issued by the **principal agent**
- 15.4 Where the **subcontractor** has complied with the tender requirements, in accordance with a **contract instruction** issued by the **principal agent** [17.1.14], the **contractor** shall:
- 15.4.1 Appoint the **subcontractor** as a selected **subcontractor** and forward a copy of the signed **n/s subcontract agreement** to the **principal agent**
- 15.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** of such appointment, where required in the **n/s subcontract agreement** [CD]
- 15.4.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agents** by the date stated [NSSA-CD]
- 15.4.4 Issue to each **subcontractor** (with a copy to the **principal agent**) a **JBCC® n/s subcontract payment advice** and a **JBCC® n/s subcontract recovery statement** to reconcile the amount due for payment with the amount stated in the **JBCC® n/s subcontract payment notification** issued by the **principal agent**
- 15.4.5 Pay the **subcontractor** the amount certified by the date stated in the **JBCC® NSSA contract data** [25.13]
- 15.5 Where the **contractor** fails to provide proof of payment to a **subcontractor** within five (5) **working days** of a **notice** by the **principal agent**, the **employer** may instruct the **principal agent** to certify direct payment to the **subcontractor** and recover such amount from the **contractor** [27.2.7]
- 15.6 Where the selected **subcontractor** is in default of a material term of the **n/s subcontract agreement**, the decision of whether or not to terminate the **n/s subcontract agreement** is that of the **contractor**
- 15.7 Where a **n/s subcontract agreement** with a selected **subcontractor** is terminated:

- 15.7.1 Due to default of the **employer**, the **principal agent** and/or **agents** any variation in the cost of completing such subcontract works shall be for the account of the **employer** [25.3.7]
- 15.7.2 Other than due to the default by the **employer**, the **principal agent** and/or **agents** any variation in the cost of completing the subcontract works shall be for the account of the **contractor** [25.3.7]
- 15.7.3 The **principal agent** shall instruct the **contractor** to appoint another selected **subcontractor** [15.1.4] to complete the subcontract works
- 15.8 There shall be no privity of contract between the **employer** and a **subcontractor** appointed by the **contractor**

## 16.0 DIRECT CONTRACTORS

- 16.1 The **contractor** shall:
  - 16.1.1 In accordance with a **contract instruction** [17.1.16] permit **direct contractors** [CD] to execute and/or install work as part of the **works**. Such access to the **works** shall not constitute deemed achievement of **practical completion** or occupation by the **employer** [19.6]
  - 16.1.2 Make reasonable allowance in the **programme** for such work or installation
  - 16.1.3 Be entitled to claim expense and/or loss caused by **direct contractors** [23.2.9; 27.1.7]
- 16.2 Payment of **direct contractors** shall be the responsibility of the **employer** outside this **agreement**
- 16.3 There shall be no privity of contract between the **contractor** and a **direct contractor** appointed by the **employer**

## 17.0 CONTRACT INSTRUCTIONS

- 17.1 The **principal agent** may issue **contract instructions** to the **contractor** regarding:
  - 17.1.1 Rectification of discrepancies, errors in description or quantity or omission of items in the **agreement** other than in the **JBCC®** Principal Building Agreement
  - 17.1.2 Alteration to design, standards or quantity of the **works** provided that such **contract instructions** shall not substantially change the scope of the **works**
  - 17.1.3 The **site** [13.0]
  - 17.1.4 Compliance with the **law**, regulations and bylaws [2.1]
  - 17.1.5 Provision and testing of samples of **materials and goods** and/or of finishes and assemblies of elements of the **works**
  - 17.1.6 Opening up of work for inspection, removal or re-execution [23.2.4; 26.4.2]
  - 17.1.7 Removal or re-execution of work
  - 17.1.8 Removal or substitution of any **materials and goods**
  - 17.1.9 Protection of the **works**
  - 17.1.10 Making good physical loss and repairing damage to the **works** [23.2.2]
  - 17.1.11 Rectification of **defects** [21.2]
  - 17.1.12 A **list for practical completion** specifying outstanding or defective work to be rectified to achieve **practical completion**, a **list for completion** and a **list for final completion** specifying outstanding or defective work to be rectified to achieve **final completion**
  - 17.1.13 Expenditure of **budgetary allowances**, **prime cost amounts** and **provisional sums**
  - 17.1.14 Appointment of a **subcontractor** [14.0; 15.0]



- 17.1.15 Termination of a nominated n/s subcontract agreement [14.6]
- 17.1.16 Work by direct contractors [16.0]
- 17.1.17 Access by others or previous contractors to remedy defective work
- 17.1.18 Removal from the site of any person employed on the works
- 17.1.19 Removal from the site of any person not engaged on or connected with the works
- 17.1.20 On suspension or termination, protection of the works, removal of construction equipment and surplus materials and goods [29.0]
- 17.2 The contractor shall comply with and duly execute all contract instructions
- 17.3 Should the contractor fail to proceed with a contract instruction with due diligence, the principal agent may give notice to the contractor to proceed within five (5) working days of receipt of such notice. Where the contractor remains in default, the employer may engage others to carry out such contract instruction and recover expense and/or loss incurred [27.2.3]
- 17.4 The contractor shall not be obliged to execute contract instructions for additional work issued after the certified or deemed date of practical completion
- 17.5 Oral instructions shall be of no force or effect

## COMPLETION

### 18.0 INTERIM COMPLETION

- 18.1 This clause applies only to the n/s subcontract agreement and is included to retain the same clause numbers between the two agreements

### 19.0 PRACTICAL COMPLETION

- 19.1 The principal agent shall:
  - 19.1.1 Inspect the works at appropriate intervals to give the contractor interpretations and direction on the standard of work and the state of completion of the works required of the contractor to achieve practical completion [CD]
  - 19.1.2 Issue a contract instruction [17.1] consequent on each such inspection, where necessary
- 19.2 The contractor shall:
  - 19.2.1 Inspect the works in advance of the anticipated date for practical completion to confirm that the standard of work required and the state of completion of the works for practical completion has been achieved
  - 19.2.2 Give at least five (5) working days notice to the principal agent of the anticipated date for the inspection for practical completion of the works to meet the anticipated date for practical completion
- 19.3 The principal agent shall inspect the works, or a section thereof, within the period stated [CD] and forthwith issue to the contractor:
  - 19.3.1 A comprehensive and conclusive list for practical completion [17.1.12] where the works has not reached practical completion specifying the defects to be rectified and work to be completed to achieve practical completion
  - 19.3.2 An updated list for practical completion limited to items on the list for practical completion that have not been attended to satisfactorily. The contractor shall repeat the procedure until all items on the list for practical completion have been attended to satisfactorily before the certificate of practical completion is issued by the principal agent

or ...

- 19.3.3 A **certificate of practical completion** with a copy to the **employer** stating the date on which **practical completion** of the **works**, or a **section** thereof, was achieved
- 19.3.4 A **list for completion** with a copy to the **employer**
- 19.4 Should the **principal agent** not issue a **list for practical completion** or the updated list within five (5) **working days** after the inspection period, or the **certificate of practical completion** [19.3], the **contractor** shall give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **practical completion** shall be deemed to have been achieved on the date of such **notice** and the **principal agent** shall issue the **certificate of practical completion** forthwith
- 19.5 On issue of the only or last **certificate of practical completion** the **employer** shall be entitled to possession of the **works** and the **site** subject to the **contractor's** lien or right of continuing possession of the **works** where this has not been waived. On issue of the **certificate of practical completion** for a **section**, the **employer** shall be entitled to possession of such **section**
- 19.6 Where the **employer** takes possession of the whole or a portion of the **works** by agreement with the **contractor**, **practical completion** shall be deemed to have occurred. The **principal agent** shall after inspection of the **works** [19.3] issue a **certificate of practical completion** to the **contractor** with a copy to the **employer** within five (5) **working days** of the date of possession of the whole or a portion of the **works** by the **employer** and the **list for completion** of items to be rectified and work to be completed within a period agreed between the **parties**
- 19.7 On issue of the **certificate of practical completion** of the **works**, or a **section** thereof, where the **principal agent** instructs that installation work is to be executed by others, the **employer** and/or **contractor** shall allow access for such installations

## 20.0 COMPLETION IN SECTIONS

- 20.1 Where completion in **sections** is required [CD] the terms and conditions applicable to the **works** as a whole shall apply to each **section**
- 20.2 The **principal agent** shall for each **section** issue:
- 20.2.1 A **certificate of practical completion** [19.3]
- 20.2.2 A **certificate of final completion** indicating where applicable, if it is for the last **section** to reach **final completion** [21.6.2]

## 21.0 DEFECTS LIABILITY PERIOD AND FINAL COMPLETION

- 21.1 The defects liability period for the **works** shall commence on the **calendar day** following the date of **practical completion** and end at midnight (00:00) ninety (90) **calendar days** from the date of **practical completion** [CD] or when work on the **list for completion** has been satisfactorily attended to [21.6], whichever is the later
- 21.2 Where **defects** become apparent during the defects liability period the **principal agent** may instruct the **contractor** [17.1.11] to progressively attend to such items, whilst at all times minimising inconvenience to the occupants
- 21.3 The **contractor** shall:
- 21.3.1 Inspect and forthwith rectify all items on the **list for completion** no later than ten (10) **working days** before the expiry of the defects liability period [19.3.4]
- 21.3.2 Give **notice** to the **principal agent** to inspect the **works** within five (5) **working days** of receipt of such **notice**
- 21.4 Where items on the **list for completion** have not been attended to the **principal agent** shall give **notice** to the **contractor** of such outstanding items. The process [21.3] shall be repeated until all items on the **list for completion** have been attended to

- 21.5 The **contractor** shall give **notice** to the **principal agent** when the outstanding items on the **list for completion** have been attended to. The **principal agent** shall inspect the **works** within five (5) **working days** of receipt of such **notice**
- 21.6 On the expiry of the ninety (90) **calendar days** defects liability period [21.1] or when all items on the **list for completion** have been attended to and on receipt of the **contractor's notice** to the **principal agent**, whichever is the later, the **principal agent** shall inspect the **works** and within ten (10) **working days** either:
- 21.6.1 Issue a **list for final completion** detailing all outstanding work or **defects** that must be attended to, or rectified to achieve **final completion**
- or ...
- 21.6.2 Issue the **certificate of final completion** to the **contractor** with a copy to the **employer**
- 21.7 Where the **principal agent** issues a **list for final completion**:
- 21.7.1 The **contractor** shall forthwith complete all outstanding work and rectify all the **defects**
- 21.7.2 The **contractor** shall give **notice** to the **principal agent** when all outstanding work has been completed and all the **defects** have been rectified
- 21.7.3 The **principal agent** shall, within five (5) **working days** of receipt of the **contractor's notice(s)** [21.7.2] give **notice** to the **contractor** either that the items on the **list for final completion** have been completed, or issue an updated **list for final completion** of the items not completed and of any further **defects** that have become evident since the last inspection
- 21.8 Where the **principal agent** gives **notice** to the **contractor** of items on the **list for final completion** or an updated **list for final completion** specifying all outstanding work to be completed and/or **defects** to be rectified to achieve **final completion** the process [21.7.2-3] shall be repeated until all items on the (updated) **list for final completion** have been completed. On completion of all items on the (updated) **list for final completion** the **principal agent** shall forthwith issue the **certificate of final completion** to the **contractor** with a copy to the **employer**
- 21.9 Where the **principal agent** has not issued the **list for final completion** or the updated list within five (5) **working days** after the inspection period [21.6], the **contractor** shall forthwith give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **final completion** shall be deemed to have been achieved on expiry of such **notice** period and the **principal agent** shall forthwith issue the **certificate of final completion**
- 21.10 Where a **subcontractor's** defects liability period extends beyond the **contractor's** defects liability period:
- 21.10.1 The **contractor's** obligations and liability concerning the **subcontractor's** **defects** shall end on the date of issue of the **certificate of final completion**
- 21.10.2 The remaining portion of the **subcontractor's** defects liability period shall be ceded to the **employer** on the date of issue of the **certificate of final completion**
- 21.11 Where the **contractor**, a **subcontractor** or a supplier is required to give a guarantee, warranty or indemnity, other than a **security** to the **contractor**, the rights and obligations under such guarantee, warranty or indemnity shall be ceded to the **employer** on the date of issue of the **certificate of final completion**. This cession shall not prejudice any other rights the **employer** may have [12.2.20]
- 21.12 A **certificate of final completion** shall be conclusive as to the sufficiency of the **works** and that the **contractor's** obligations [12.2.7] have been fulfilled other than for **latent defects**

## 22.0 LATENT DEFECTS LIABILITY PERIOD

- 22.1 The **latent defects** liability period for the **works** shall commence at the start of the **construction period** and end five (5) years from the certified date of **final completion**
- 22.2 The **contractor** shall make good all **latent defects** that appear up to the date of expiry of the **latent defects** liability period [3.3]
- 22.3 Where termination of this **agreement** occurs before the date of **final completion**, the **latent defects** liability period shall end:

22.3.1 Five (5) years from the date of termination [29.10] for the completed portion of the **works** only or ...

22.3.2 On the date of termination where execution of the **works** has become impossible due to circumstances beyond the control of either **party** [29.20], or on the date of termination by the **contractor** due to default by the **employer**, the **principal agent** and/or **agents** [29.17.3; 29.23]

## 23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

23.1 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** without an adjustment of the **contract value** for a delay to **practical completion** caused by one or more of the following events:

23.1.1 Adverse weather conditions

23.1.2 Inability to obtain **materials and goods** where the **contractor** has taken reasonable steps to avoid or reduce such a delay

23.1.3 Making good physical loss and repairing damage to the **works** [8.2] where such risk is beyond the reasonable control of the **parties**

23.1.4 Late supply of a **prime cost amount** item where the **contractor** has taken reasonable steps to avoid or reduce such delay

23.1.5 Exercise of statutory power by a body of state or public or local authority that directly affects the execution of the **works**

23.1.6 **Force majeure**

23.2 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** with an adjustment of the **contract value** [26.7] for a delay to **practical completion** caused by one or more of the following events:

23.2.1 Delayed possession of the **site** [12.1.5]

23.2.2 Making good physical loss and repairing damage to the **works** [8.5] where the **contractor** is not at risk

23.2.3 **Contract instructions** [17.1-2] not occasioned by the **contractor's** default

23.2.4 Opening up and testing of work and **materials and goods** where such work is in accordance with the **agreement** [17.1.6]

23.2.5 Late or incorrect issue of **construction information** [12.1.12; 13.2.3]

23.2.6 Late supply of **free issue, materials and goods** for which the **employer** is responsible [12.1.10]

23.2.7 Late appointment of a **subcontractor** in terms of the agreed **programme** where the **contractor** has taken reasonable steps to avoid or reduce such delay [14.4.1; 15.4.1]

23.2.8 Late acceptance by the **principal agent** and/or **agents** of a design undertaken by a selected **subcontractor** where the **contractor's** obligations have been met [7.3]

23.2.9 An act or omission by a nominated **subcontractor** [14.0] or a **direct contractor** [16.0]

23.2.10 Insolvency or termination of a nominated **subcontractor** [14.7.2]

23.2.11 **Suspension** or termination by a **subcontractor** due to default of the **employer**, the **principal agent** and/or **agents**

23.2.12 Execution of additional work for which the quantity in the **bills of quantities** is not sufficiently accurate

23.2.13 **Suspension of the works** [28.0]



- 23.3 Further circumstances for which the **contractor** may be entitled to a revision of the date for **practical completion** and an adjustment of the **contract value** are delays to **practical completion** due to any other cause beyond the **contractor's** reasonable control that could not have reasonably been anticipated and provided for. The **principal agent** shall adjust the **contract value** where such delay is due to the **employer** and/or **agents**
- 23.4 Should a listed circumstance occur [23.1-3] which could cause a delay to the date for **practical completion**, the **contractor** shall:
- 23.4.1 Take reasonable steps to avoid or reduce such delay
- 23.4.2 Within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of such delay, give **notice** to the **principal agent** of the intention to submit a claim for a revision to the date for **practical completion**, failing which the **contractor** shall forfeit such claim
- 23.5 The **contractor** shall submit a claim for the revision of the date for **practical completion** to the **principal agent** within forty (40) **working days**, or such extended period as the **principal agent** may allow, from when the **contractor** is able to quantify the delay in terms of the **programme**
- 23.6 Where the **contractor** submits a claim for a revision of the date for **practical completion** the claim shall in respect of each circumstance separately state:
- 23.6.1 The relevant clause [23.1-3] on which the **contractor** relies
- 23.6.2 The cause and effect of the delay on the current date for **practical completion**, where appropriate, illustrated by a change to the critical path on the current **programme**
- 23.6.3 The extension period claimed in **working days** and the calculation thereof
- 23.7 The **principal agent** shall, within twenty (20) **working days** of receipt of the claim, grant in full, reduce or refuse the **working days** claimed, and:
- 23.7.1 Determine the revised date for **practical completion** as a result of the **working days** granted
- 23.7.2 Identify each event and the reference clause for each revision granted or amended
- 23.7.3 Give reasons where such claim is refused or reduced
- 23.8 Where the **principal agent** fails to act within the period [23.7] such claim shall be deemed to be refused. The **contractor** may give **notice** of a disagreement [30.1] where the **principal agent** refuses a claim, alternatively reduces a claim, or fails to act

## 24.0 PENALTY FOR LATE OR NON-COMPLETION

- 24.1 Where the **contractor** fails to bring the **works**, or a **section** thereof, to **practical completion** by the date for **practical completion** [CD], or the revised date for **practical completion**, the **contractor** shall be liable to the **employer** for the **penalty** [CD]
- 24.2 Where the **employer** elects to levy such **penalty** the **employer**, or the **principal agent** on instruction from the **employer**, shall give **notice** thereof to the **contractor**. The **principal agent** shall determine the **penalty** due from the later of the date for **practical completion** [CD], or the revised date for **practical completion**, up to and including the earlier of:
- 24.2.1 The actual or deemed date of **practical completion** of the **works**, or a **section** thereof [23.7.1]
- 24.2.2 The date of termination [29.8]
- 24.3 The **principal agent** shall include the **penalty** in regular interim **payment certificates** from the date on which the **employer's** entitlement to **penalties** commences

## PAYMENT

### 25.0 PAYMENT

- 25.1 The **contractor** shall cooperate with and assist the **principal agent** in the preparation of cash flow statements and payment valuations by providing all required documents and quantified amounts of work duly executed. Where the **contractor** has not provided such information the **principal agent** shall make a fair estimate of the work executed
- 25.2 The **principal agent** shall regularly by the due date [CD] issue **payment certificates** to the **contractor** with a copy to the **employer** until and including the issue of the **final payment certificate**. A **payment certificate** may be for a nil or negative amount
- 25.3 Each **payment certificate** shall separately include:
- 25.3.1 A fair estimate of the value of work executed
  - 25.3.2 A fair estimate of the value of **materials and goods** [25.4; 25.5]
  - 25.3.3 **Security** adjustment [11.1.2; 11.4.1]
  - 25.3.4 Cost fluctuations, if applicable
  - 25.3.5 The gross amount certified
  - 25.3.6 The amount previously certified
  - 25.3.7 Amounts due to either **party** in the **recovery statement** [27.1]
  - 25.3.8 **Tax**
  - 25.3.9 Interest amounts included in the **recovery statement**
  - 25.3.10 Other non-taxable amounts
  - 25.3.11 The net amount certified due to the **contractor** or the **employer**
- 25.4 The value of **materials and goods** [25.3.2] (excluding **materials and goods off site** or in transit) shall be included in the amount certified only where:
- 25.4.1 Not prematurely delivered or offered for delivery in terms of the **programme**
  - 25.4.2 Stored and suitably protected against loss and damage
  - 25.4.3 Covered by insurances [10.0]
- 25.5 The value of **materials and goods** [25.3.2] stored off **site** and/or in transit shall be included in the amount certified only where covered by a **guarantee for advance payment** or such other **security** acceptable to the **employer**
- 25.6 **Materials and goods** when certified [25.4] and paid for shall become the property of the **employer** and shall not be removed without the written authority of the **principal agent**
- 25.7 The **principal agent** shall concurrently with each **payment certificate** issue:
- 25.7.1 To the **employer** and the **contractor** a **recovery statement** showing the amounts due to either **party** in the current **payment certificate**
  - 25.7.2 To the **contractor** a statement showing the amount certified for each **subcontractor**
  - 25.7.3 To each **subcontractor** a n/s subcontract payment notification showing the amount included in the **payment certificate** and its date of issue
  - 25.7.4 The determination of **default interest**
  - 25.7.5 The determination of **compensatory interest**

- 25.8 An interim **payment certificate** shall not be evidence that the **works and materials and goods** are in terms of the **agreement**
- 25.9 The **principal agent** shall certify one hundred per cent (100%) of the amount of the **final account** including adjustments [26.0; 27.0] in the **final payment certificate**
- 25.10 The **employer** shall pay the **contractor** the amount certified in an issued **payment certificate** within fourteen (14) **calendar days** of the date for issue of the **payment certificate** [CD] including **default interest** and/or **compensatory interest**
- 25.11 The **contractor** shall pay the **employer** the amount certified in an issued **payment certificate** within twenty-one (21) **calendar days** of the date of issue of the **payment certificate** [CD] including **default interest**
- 25.12 Where a **guarantee for construction** (fixed) and payment reduction [11.1.2] has been chosen the value of the **works** [26.0] and **materials and goods** [25.3.2] that exceeds the **contract sum** and any contract price adjustments (cost fluctuations) [25.3.4; 26.9.5] [CD] shall be certified in full. The value certified that does not exceed the **contract sum** shall be subject to the following percentage adjustments:
- 25.12.1 Ninety-five per cent (95%) of such value in interim **payment certificates** issued up to the date of **practical completion**
- 25.12.2 Ninety-seven and one half per cent (97.5%) of such value in interim **payment certificates** issued up to but excluding the **final payment certificate**
- 25.12.3 One hundred per cent (100%) of such value in the **final payment certificate**
- 25.13 The **contractor** shall pay all **subcontractors** within seven (7) **calendar days** of the due date for payment by the **employer** [CD] and on request provide proof thereof to the **principal agent** within seven (7) **calendar days** of a request to do so
- 25.14 Where the **employer** has made a partial or no payment of the amount due in an issued **payment certificate** by the due date or where the **principal agent** fails to issue a **payment certificate**, the **contractor** may give five (5) **working days notice** to comply, failing which the **contractor** may:
- 25.14.1 **Suspend the works** [28.1.3]
- 25.14.2 Exercise the lien or right of continuing possession of the **works** where this has not been waived
- 25.14.3 Call up the **guarantee for payment** [11.5]
- 25.15 The **principal agent** shall issue the **final payment certificate** to the **contractor** with a copy to the **employer** within seven (7) **calendar days** of acceptance of the **final account** by the **contractor**, but not before the issue of the **certificate of final completion**, other than on termination [26.11; 29.0]
- 25.16 Where the **contractor** disputes the correctness of the **final account** within the period allowed [26.12], the **principal agent** shall issue interim **payment certificates** to the **contractor** with a copy to the **employer** by the due date [CD] for the undisputed amount(s)
- 25.17 For the purposes of provisional sentence in relation to a **payment certificate** only, the **parties** consent to the jurisdiction of any court of law of the country [CD]

## 26.0 ADJUSTMENT OF THE CONTRACT VALUE AND FINAL ACCOUNT

- 26.1 The **principal agent** shall determine the value of adjustments to the **contract value** in cooperation with the **contractor** in the preparation of the **final account**. Where such adjustments require measurement on **site**, the **contractor** shall have the right to be present
- 26.2 Adjustments to the **contract value** resulting from a **contract instruction** [17.1] shall be determined as follows:
- 26.2.1 Work of a similar character executed under similar conditions shall be priced at the rates in the **priced document**
- 26.2.2 Work not of a similar character shall be priced at rates based on those in the **priced document** and adjusted to suit the changed circumstances
- 26.2.3 If the above methods do not apply, work shall be priced at rates based on the necessary use of labour, **construction equipment** and/or **materials and goods** for executing the work plus an allowance of ten per cent (10%) mark-up

- 26.2.4 Work omitted shall be valued at the rates in the **priced document**, but where the omission of such work alters the circumstances under which the remaining work is carried out, the value of the remaining work shall be determined by the above methods
- 26.3 Where work is identified as provisional in the **priced document** the **principal agent** shall omit such value from the **contract value** and add the value of work as executed to the **contract value**
- 26.4 Where the **contractor** has made payment for items not included in the **priced document** in accordance with a **contract instruction** with the approval of the **principal agent**, the actual amounts paid plus a ten per cent (10%) mark-up shall be added to the **contract value** limited to:
- 26.4.1 Charges by authorities [2.1]
- 26.4.2 The cost of opening up and testing [17.1.6], where the work is according to this **agreement**
- 26.4.3 The cost of insurances [10.0], where applicable [CD]
- 26.5 The **contractor** shall give **notice** to the **principal agent** within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of expense and/or loss for which provision was not required in the **contract sum** failing which such claim shall be forfeited
- 26.6 Following **notice** [26.5], the **contractor** shall submit a detailed and substantiated claim for the adjustment of the **contract value** to the **principal agent** within forty (40) **working days**, or such additional period as the **principal agent** may allow
- 26.7 The **principal agent** shall make a fair assessment of the claim [26.6] and adjust the **contract value** within twenty (20) **working days** of receipt of such details
- 26.8 Where the **principal agent** fails to act within such period [26.7] the claim shall be deemed to be refused. The **contractor** may give **notice** of a disagreement [30.1] where no assessment is received
- 26.9 The **principal agent** shall:
- 26.9.1 Omit **prime cost amounts** and **budgetary allowances** [17.1.13] from the **contract sum** and determine the actual value of such work to be added to the **contract value**
- 26.9.2 Omit **provisional sums** [17.1.13] from the **contract sum** and determine the actual value of such **subcontractors'** work to be added to the **contract value**
- 26.9.3 Prorate the **contractor's** allowances for profit and attendance on **provisional sums** and **prime cost amounts**, excluding any allowance for cost fluctuations
- 26.9.4 Adjust the **preliminaries** amounts in accordance with the method selected [CD]
- 26.9.5 Adjust the **contract value** to include contract price adjustments (cost fluctuations), if applicable [CD]
- 26.9.6 Rectify discrepancies, errors in description or quantity or omission of items in this **agreement** other than in the JBCC® **Principal Building Agreement** [17.1.1]
- 26.10 The **principal agent** shall prepare and issue the **final account** to the **contractor** within sixty (60) **working days** of the date of **practical completion**
- 26.11 The **contractor** shall accept the **final account** within thirty (30) **working days** of receipt thereof or give **notice** of non-acceptance with reasons failing which the **final account** shall be deemed to be accepted
- 26.12 Should the reasons for non-acceptance of the **final account** [26.11] not be resolved within ten (10) **working days** of the **notice** of non-acceptance, or within such extended period as the **principal agent** may allow on request from the **contractor**, the **contractor** may give **notice** of a disagreement
- 26.13 The **principal agent** shall issue the **final payment certificate** to the **contractor** within seven (7) **calendar days** of acceptance of the **final account**

## 27.0 RECOVERY OF EXPENSE AND/OR LOSS

- 27.1 The **principal agent** shall issue a **recovery statement** with each **payment certificate** to the parties with explanatory documentation to support the calculation of amounts due to:



## SUSPENSION AND TERMINATION

### 28.0 SUSPENSION BY THE CONTRACTOR

- 28.1 The **contractor** may give ten (10) **working days notice** to the **employer** and the **principal agent** of the intention to suspend the **works** where the **employer** or the **principal agent** has failed to:
- 28.1.1 Provide and/or maintain a **guarantee for payment**, where required [11.5-6]
- 28.1.2 Issue a **payment certificate** by the due date [25.2] [CD]
- 28.1.3 Make payment in full of an amount certified in an interim **payment certificate** by the due date [25.10] [CD]
- 28.1.4 Effect insurances [10.1.1-5; 10.2], where applicable [CD]
- 28.1.5 Appoint another **principal agent** and/or another **agent**, where applicable [6.5] or where an **agent** has failed to act in terms of delegated authority [6.4]
- 28.2 Where the **employer** has not remedied a default in terms of a **notice** the **contractor** may suspend execution of the **works** until such default has been remedied without prejudice to any rights the **contractor** may have
- 28.3 Where the **works** is suspended the **contractor** shall instruct each **subcontractor** to suspend the n/s subcontract works forthwith
- 28.4 Where the **works** has been suspended by the **contractor** [23.2.13] the **principal agent** shall revise the date for **practical completion** on resumption of the **works** with an adjustment of the **contract value**

### 29.0 TERMINATION

#### Termination by the employer

- 29.1 The **employer** may give **notice** of intention to terminate this **agreement** where the **contractor** has failed to:
- 29.1.1 Provide and maintain a **guarantee for construction** [CD]
- 29.1.2 Proceed with the **works** [12.2.7]
- 29.1.3 Comply timeously with a **contract instruction** [17.0]
- 29.2 Where the **employer** contemplates terminating this **agreement** the **employer** or the **principal agent** on instruction from the **employer** shall give **notice** thereof to the **contractor** of a specified default [29.1.1-3], to be remedied within ten (10) **working days** of the date of receipt of such **notice**
- 29.3 Where the **contractor** has not remedied a specified default within such period [29.2] the **employer** may forthwith give **notice** to the **contractor** of termination of this **agreement**
- 29.4 The **employer** may employ others to safeguard the **works**, complete the outstanding work and rectify defects in that portion of the **works** executed by the **contractor** [27.2.3]. The **contractor** shall be liable to the **employer** for such costs that shall be included in the **final account** [26.10]
- 29.5 The **employer** may use **materials and goods** and temporary structures on the **site** for which payment shall be included in the **final account**
- 29.6 Should the **contractor** default on removing temporary structures or **construction equipment** from the **site** the **employer**, without being responsible for any loss or damage, may have such items belonging to the **contractor** removed or sold. Resulting costs and/or income shall be included in the **final account**
- 29.7 The **employer**, on **notice** to the **contractor**, may recover damages from the **contractor** from the date of termination including, but not limited to, additional costs incurred in the completion of the remaining work [25.3.7; 27.1.3]
- 29.8 The **employer** may apply the **penalty** [24.0] up to the date of termination where the initial or revised date for **practical completion** has passed

- 29.9 The **employer** has the right of recovery against the **contractor**, where applicable, [CD] from:  
The **guarantee for construction** (variable) until the final payment has been made; or  
The **guarantee for construction** (fixed) until the date of **practical completion**; or  
The payment reduction until the final payment is made; or  
The **guarantee for advance payment** until the outstanding balance has been repaid to the **employer**
- 29.10 The **latent defects** liability period for the completed portion of the **works** shall end [22.3.1] five (5) years from the date of termination
- 29.11 Where this **agreement** is terminated, the **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.12 Termination of the **works** shall not prejudice any rights the **employer** may have
- 29.13 The right to terminate may not be exercised where the **employer** is in material breach of this **agreement**
- Termination by the contractor**
- 29.14 The **contractor** may give **notice** of intention to terminate this **agreement** where:
- 29.14.1 The **employer** has failed to provide and maintain a **guarantee for payment**, where applicable [CD]
- 29.14.2 The **employer** has failed to give possession of the **site** to the **contractor** [12.1.5]
- 29.14.3 The **employer** has failed to allow the **principal agent** and/or **agents** to exercise fair and reasonable judgement as contemplated by this **agreement** [6.6]
- 29.14.4 The **employer** has failed to effect insurances, where applicable [CD]
- 29.14.5 The **employer** has failed to pay the amount certified by the due date [25.10]
- 29.14.6 The **employer** has failed to appoint another **principal agent** and/or **agents**, where applicable [6.5]
- 29.14.7 The **principal agent** has failed to issue a **payment certificate** to the **contractor** by the due date [25.2]
- 29.15 Where the **contractor** contemplates terminating this **agreement**, the **contractor** shall give **notice** to the **employer** and/or the **principal agent** of a specified default [29.14.1-7], to be remedied within ten (10) **working days** of the date of receipt of such **notice**
- 29.16 Where a specified default has not been remedied within such period [29.15] the **contractor** may forthwith give **notice** to the **employer** and the **principal agent** of the termination of this **agreement**
- 29.17 Where this **agreement** is terminated by the **contractor**:
- 29.17.1 The **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.17.2 The **contractor** shall remove temporary structures, **construction equipment** and, on **notice**, surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **principal agent**
- 29.17.3 The **latent defects** liability period shall end on the date of termination [22.3.2]
- 29.17.4 The **contractor** may be entitled to recover damages [27.1.6]
- 29.17.5 The **guarantee for construction** shall expire on the date of termination
- 29.17.6 The **guarantee for advance payment**, where applicable [CD], shall expire on repayment of amounts due to the **employer**
- 29.17.7 The **guarantee for payment** [11.5-6], where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum or on the **security** expiry date, whichever is the earlier
- 29.18 Termination of the **works** shall not prejudice any rights the **contractor** may have
- 29.19 The right to terminate may not be exercised where the **contractor** is in material breach of this **agreement**

### Termination by either party

- 29.20 Either party may give notice of intention to terminate this agreement where:
- 29.20.1 The works is for alterations and/or additions to (an) existing building(s), or a new building, which has been substantially destroyed regardless of the cause other than by the party seeking termination
- 29.20.2 Progress of the works has ceased for a continuous period of ninety (90) calendar days, or an intermittent period totalling one hundred and twenty (120) calendar days as a result of a force majeure event or the exercise of statutory power by a body of state or public or local authority that directly affects the execution of the works
- 29.21 The party contemplating termination of this agreement shall give ten (10) working days notice to the other party. Where this agreement is terminated by either party:
- 29.21.1 The contractor shall forthwith give notice of termination of the n/s subcontract agreement to each subcontractor
- 29.21.2 The party responsible for insurance [CD] shall inform the insurer and the other party of the date of termination of the agreement
- 29.21.3 The guarantee for payment, where applicable [CD], shall expire on payment of the final payment certificate or on payment in full of the guaranteed sum or on the security expiry date, whichever is the earlier
- 29.21.4 The guarantee for construction shall expire on the date of termination
- 29.21.5 The guarantee for advance payment [11.2.2; 11.3], where applicable [CD], shall expire on repayment of amounts due to the employer
- 29.22 Neither party shall be liable to the other party for expense and/or loss resulting from the termination
- 29.23 The latent defects liability period for the works shall end on the date of termination [22.3.2]
- Termination procedure by the employer, the contractor or by the parties**
- 29.24 On termination of this agreement the contractor shall:
- 29.24.1 Cease work and ensure that the works is safe in terms of the law
- 29.24.2 Remain responsible for the works [8.1] until possession is relinquished to the employer
- 29.24.3 Remove temporary structures, construction equipment and, on notice from the principal agent, surplus materials and goods from the site within ten (10) working days, or such period agreed by the principal agent
- 29.25 On termination of this agreement the principal agent shall:
- 29.25.1 Prepare and hand over to the employer all compliance certificates, as built drawings and product warranties in conjunction with agents, the contractor and subcontractors
- 29.25.2 In consultation with the contractor where possible, compile and issue to the parties a status report recording completed and incomplete work on the date of termination of the works within twenty (20) working days of such date
- 29.25.3 Continue to certify the value of the work executed and materials and goods for payment by the employer or the contractor until the issue of the final payment certificate [25.15]
- 29.25.4 Prepare and issue the final account to the contractor within sixty (60) working days of the date of termination including the cost of materials and goods and those ordered before termination that the contractor is bound to accept and make payment for
- 29.26 Termination shall take effect after completion of the procedure [29.24.1]
- 29.27 The employer shall arrange appropriate insurances to suit the stage of completion of the works
- 29.28 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this agreement

## DISPUTE RESOLUTION

### 30.0 DISPUTE RESOLUTION

#### Settlement by the parties

- 30.1 Should any disagreement arise between the **employer** (or the **principal agent** or an **agent**) and the **contractor** arising out of or concerning the action or inaction of the **employer** (or the **principal agent** or an **agent**) or the **contractor**, or any other matter concerning this **agreement** (including the validity thereof), either **party** may give **notice** of a disagreement to the other. The **parties** shall attempt to resolve such disagreement between them and record such resolution in writing signed by them
- 30.2 Where the disagreement is not resolved within ten (10) **working days** of receipt of the **notice** of disagreement, the disagreement shall be deemed to be a dispute
- 30.3 The dispute shall be referred to adjudication within ten (10) **working days** of the expiry of the period [30.2] by means of a **notice** of adjudication by the **party** (the referring party) which gave the **notice** of disagreement
- 30.4 The **notice** of adjudication shall clearly define the scope of the dispute and the relief sought by adjudication
- 30.5 Failure to comply with the procedure described [30.3-4] shall cause the dispute to be resolved by arbitration and not by adjudication

#### Adjudication

- 30.6 Where a dispute is referred to adjudication:
- 30.6.1 The adjudicator shall be nominated by the nominating body [CD] and shall be deemed to have been appointed by the **parties**
- 30.6.2 The applicable rules shall be stated [CD] or shall be by agreement between the **parties** and the adjudicator, failing which the rules shall be determined by the adjudicator. Neither **party** shall be entitled to legal representation, unless otherwise agreed in writing by the **parties**
- 30.6.3 A determination given by the adjudicator shall be immediately binding upon and implemented by the **parties** notwithstanding that either **party** may give **notice** to refer the dispute to arbitration
- 30.6.4 Where the adjudicator has given a determination, either **party** may give notice of dissatisfaction to the other **party** and to the adjudicator within ten (10) **working days** of receipt of the determination, or an extended time period provided in the applicable rules for adjudication whereafter such dispute shall be referred to arbitration
- 30.6.5 Where the adjudicator has not given a determination within the time period allowed or extended time period provided in the applicable rules for adjudication either **party** may give **notice** to the other **party** and to the adjudicator that if such determination is not received within ten (10) **working days** of receipt of this **notice** his appointment is thereupon automatically terminated and such dispute shall be referred to further adjudication or arbitration, at the option of the referring **party**
- 30.6.6 The adjudicator shall not be eligible for subsequent appointment as the arbitrator

#### Arbitration

- 30.7 Where the dispute is referred to arbitration:
- 30.7.1 Arbitration shall not be construed as a review or appeal of an adjudicator's determination. Any determination by the adjudicator shall remain in force and continue to be implemented unless and until overturned by an arbitration award
- 30.7.2 The resolution of the dispute shall commence anew
- 30.7.3 The referring **party** in the adjudication shall be the claimant in the arbitration
- 30.7.4 The arbitrator shall be nominated by the nominating body [CD] and shall be deemed to have been appointed by the **parties**



- 30.7.5 The applicable rules shall be stated [CD] or shall be by agreement between the parties and the arbitrator, failing which the rules shall be determined by the arbitrator
- 30.7.6 The arbitrator shall have the authority to finally determine the dispute including the authority to make, open up and revise any certificates, opinion, decision, determination, requisition or notice relating to the dispute as if no such certificate, opinion, decision, determination, requisition or notice had been issued or given
- 30.7.7 The arbitrator's award shall be final and binding on the parties

#### Mediation

- 30.8 Notwithstanding the provisions relating to adjudication and arbitration the parties may, by agreement and at any time, refer a dispute to mediation, in which event:
- 30.8.1 The provisions relating to adjudication and/or arbitration shall be deemed to be suspended from the time of such agreement until notice by either party that they be resumed
- 30.8.2 The appointment of a mediator, the procedure, and the status of the outcome shall be agreed between the parties
- 30.8.3 Regardless of the outcome of a mediation the parties shall bear their own costs concerning the mediation and equally share the costs of the mediator and related expenses

#### General

- 30.9 The employer consents to the joining of any subcontractor with the contractor as a party to any proceedings
- 30.10 Where the parties fail to specify a body to nominate the adjudicator [30.6.1] or the arbitrator [30.7.4] the referring party shall have the right to choose a local recognised body to suggest one or more persons with appropriate skills to be appointed as an adjudicator or an arbitrator. Such nomination shall be binding on the parties
- 30.11 The parties shall continue to perform their obligations in terms of this agreement, notwithstanding any disagreement or dispute that exists between them
- 30.12 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this agreement

- 30.7.5 The applicable rules shall be stated [CD] or shall be by agreement between the **parties** and the arbitrator, failing which the rules shall be determined by the arbitrator
- 30.7.6 The arbitrator shall have the authority to finally determine the dispute including the authority to make, open up and revise any certificates, opinion, decision, determination, requisition or **notice** relating to the dispute as if no such certificate, opinion, decision, determination, requisition or **notice** had been issued or given
- 30.7.7 The arbitrator's award shall be final and binding on the **parties**

### **Mediation**

- 30.8 Notwithstanding the provisions relating to adjudication and arbitration the **parties** may, by agreement and at any time, refer a dispute to mediation, in which event:
- 30.8.1 The provisions relating to adjudication and/or arbitration shall be deemed to be suspended from the time of such agreement until **notice** by either **party** that they be resumed
- 30.8.2 The appointment of a mediator, the procedure, and the status of the outcome shall be agreed between the **parties**
- 30.8.3 Regardless of the outcome of a mediation the **parties** shall bear their own costs concerning the mediation and equally share the costs of the mediator and related expenses

### **General**

- 30.9 The **employer** consents to the joining of any **subcontractor** with the **contractor** as a party to any proceedings
- 30.10 Where the **parties** fail to specify a body to nominate the adjudicator [30.6.1] or the arbitrator [30.7.4] the referring **party** shall have the right to choose a local recognised body to suggest one or more persons with appropriate skills to be appointed as an adjudicator or an arbitrator. Such nomination shall be binding on the **parties**
- 30.11 The **parties** shall continue to perform their obligations in terms of this **agreement**, notwithstanding any disagreement or dispute that exists between them
- 30.12 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

## AGREEMENT

The **agreement** comprises the entire contract between the **parties**. No representations, terms, conditions or warranties not contained in this **agreement** shall be binding on the **parties**. No agreement or addendum varying, adding to, deleting or terminating this **agreement** including this clause shall be effective unless reduced to writing and signed by the duly authorised representatives of the **parties**

### The contracting parties

The parties	Employer	Contractor
Business name		
Business type		
Business registration		
Tax number (VAT/GST)		
Contact person		
Telephone		
Mobile number		
E-mail		
Address: Building name		
Address: Street		
Address: Suburb		
Address: City		
Address: P O Box		
Address: Post Office		
Address: Province		
Address: Country		
Project name		
Project location		
Currency		
Accepted contract sum including tax		
Accepted contract sum including tax in words		
Signed -- who by signature hereto warrants authority		
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of witness		