



<b>BID NO:</b>	WCGRB 042526
<b>BID DESCRIPTION:</b>	OFFICE REFURBISHMENT
<b>ADVERTISED DATE:</b>	12 JANUARY 2026
<b>COMPULSORY BRIEFING SESSION</b>	20 JANUARY 2026 TIME: 10:00 AM  ADDRESS: 24 FAIRWAY CLOSE PAROW 7500
<b>CLOSING DATE:</b>	2 FEBRUARY 2026
<b>VALIDITY PERIOD:</b>	60 DAYS (Calculated from Closing Date)



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## PART A INVITATION TO BID

### ZERO-TOLERANCE TO FRAUD, THEFT AND CORRUPTION (ANTI-FRAUD, THEFT AND CORRUPTION)

THE WCG IS COMMITTED TO GOVERN ETHICALLY AND TO COMPLY FULLY WITH ANTI-FRAUD, THEFT AND CORRUPTION LAWS AND TO CONTINUOUSLY CONDUCT ITSELF WITH INTEGRITY AND WITH PROPER REGARD FOR ETHICAL PRACTICES.

THE WCG HAS A ZERO TOLERANCE APPROACH TO ACTS OF FRAUD, THEFT AND CORRUPTION BY ITS OFFICIALS AND ANY SERVICE PROVIDER CONDUCTING BUSINESS WITH THE WCG.

THE WCG EXPECTS ALL ITS OFFICIALS AND ANYONE ACTING ON ITS BEHALF TO COMPLY WITH THESE PRINCIPLES TO ACT IN THE BEST INTEREST OF THE WCG AND THE PUBLIC AT ALL TIMES.

THE WCG IS COMMITTED TO PROTECTING PUBLIC REVENUE, EXPENDITURE, ASSETS AND REPUTATION FROM ANY ATTEMPT BY ANY PERSON TO GAIN FINANCIAL OR OTHER BENEFIT IN AN UNLAWFUL, DISHONEST OR UNETHICAL MANNER.

INCIDENTS AND SUSPICIOUS ACTIVITIES WILL BE THOROUGHLY INVESTIGATED AND WHERE CRIMINAL ACTIVITY IS CONFIRMED, RESPONSIBLE PARTIES WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE WESTERN CAPE GAMBLING AND RACING BOARD</b>					
BID NUMBER:	WCGRB 042526	CLOSING DATE:	2 FEBRUARY 2026	CLOSING TIME:	11:00
DESCRIPTION	OFFICE REFURBISHMENT				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
24 FAIRWAY CLOSE					
PAROW					
7500					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Santonia De Bruyn Laverne Sawall		CONTACT PERSON	Zoe Siwa	
TELEPHONE NUMBER	021 480 7400		TELEPHONE NUMBER	021 480 7400	
FACSIMILE NUMBER	n/a		FACSIMILE NUMBER	n/a	
E-MAIL ADDRESS	<a href="mailto:santonia@wcgrb.co.za">santonia@wcgrb.co.za</a> <a href="mailto:laverne@wcgrb.co.za">laverne@wcgrb.co.za</a>		E-MAIL ADDRESS	<a href="mailto:zoe@wcgrb.co.za">zoe@wcgrb.co.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		AND	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
IF YES, WAS THE CERTIFICATE ISSUED BY A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACREDITATION SYSTEM (SANAS)	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No				

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs & QSEs) MUST BE SUBMITTED TOGETHER WITH A COMPLETED 6.1 IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/ SERVICES/ WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
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**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>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 BELOW.</b>	

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. 1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b> 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. 1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (WCBD7).</b>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
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 TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING THROUGH THE WEBSITE WWW.SARS.GOV.ZA. 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE WITH TOGETHER WITH THE BID. 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE AND CSD NUMBER AS MENTIONED IN 2.3 ABOVE. 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED. 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."
<b>NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID</b>

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....  
 (Proof of authority must be submitted e.g. company resolution)

DATE: .....





## **TERMS OF REFERENCE**

### **1. PURPOSE**

- 1.1 The objective of this bid is to invite suitable and qualified service providers to submit proposals for the refurbishment of the Western Cape Gambling and Racing Board Offices.
- 1.2 **Site Information: Western Cape Gambling and Racing Board, 24 Fairway Close, Parow, 7500**
- 1.3 The Western Cape Gambling and Racing Board ("the Board") (WCGRB) which commenced its formal functioning in August 1997, is a statutory body charged with the licensing and regulation of the gambling industry in the Western Cape.
- 1.4 The Board exercises its duties in terms of the Western Cape Gambling and Racing Act 4 of 1996 ("the Act") and is a public entity as listed in Schedule 3 Part C of the Public Finance Management Act (PFMA).

### **2. LEGISLATIVE FRAMEWORK OF THE BID**

#### **2.1 Tax Legislation**

- a. Bidder(s) must be compliant when submitting a proposal to WCGRB and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).
- b. It is a condition of this bid that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations (evidence of such arrangements must accompany this bid).
- c. The Tax Compliance status requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- d. It is a requirement that bidders grant a written confirmation when submitting this bid that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status and by submitting this bid such confirmation is deemed to have been granted.
- e. Bidders are required to be registered on the Central Supplier Database and the WCGRB shall verify the bidder's tax compliance status through the Central Supplier Database except in the case of where arrangements have been made with SARS as depicted in 3.1(b) above.

- f. Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

## 2.2 Procurement Legislation

- a. The WCGRB has a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000), the Preferential Procurement Regulations 2022 and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

## 2.3 Technical Legislation and/or Standards

- a. Bidder(s) should be cognisant of the legislation and/or standards specifically applicable to the services.

## 3. TIMELINE OF THE BID PROCESS

- 3.1 The period of validity of tender and the withdrawal of offers, after the closing date and time is 60 days. The project timeframes of this bid are set out below:

ACTIVITY	DUE DATE
Advertisement of bid on Government e-Tender portal, CIDB I-Tender website and WCGRB website	12 January 2026
Compulsory briefing session	20 January 2026
Bid closing date	2 February 2026
Bid closing time	11H00 (11am)

- 3.2 All dates and times in this bid are South African standard time.
- 3.3 Any time or date in this bid is subject to change at the Board's discretion. The establishment of a time or date in this bid does not create an obligation on the part of WCGRB to take any action, or create any right in any way for any bidder to demand that any action be taken on the date established.
- 3.4 The bidder accepts that, if the Board extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

## 4. COMPULSARY SITE VISIT AND BRIEFING SESSION

- 4.1 **SERVICE PROVIDERS ARE REQUIRED TO ATTEND A COMPULSORY SITE INSPECTION AND BRIEFING SESSION AT 10:00 (10 AM) ON TUESDAY, 20 JANUARY 2026, AT THE WCGRB OFFICES SITUATED AT 24 FAIRWAY CLOSE, PAROW, 7500.**

- 4.2 **ALL SERVICE PROVIDERS INTENDING TO SUBMIT A PROPOSAL ARE REQUIRED TO ATTEND THE COMPULSORY BRIEFING SESSION. SERVICE PROVIDERS WHO FAIL TO ATTEND THIS BRIEFING SESSION WILL BE DISQUALIFIED AND THEIR BIDS WILL NOT BE CONSIDERED.**

## **5. CONTACT AND COMMUNICATION**

- 5.1 A nominated official of the bidder(s) can make enquiries in writing, to the delegated official, Zoe Siwa via email at [zoe@wcgrb.co.za](mailto:zoe@wcgrb.co.za).
- 5.2 The delegated official of WCGRB may communicate with Bidder(s) where clarity is sought in the bid proposal.
- 5.3 Any communication to an official or a person acting in an advisory capacity for WCGRB in respect of the bid between the closing date and the award of the bid by the Bidder(s) is prohibited.
- 5.4 All communication between the Bidder(s) and WCGRB must be done in writing and forwarded to [zoe@wcgrb.co.za](mailto:zoe@wcgrb.co.za).
- 5.5 Whilst all due care has been taken in connection with the preparation of this bid, WCGRB makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current or complete. WCGRB, and its employees/ officials and advisors will not be liable with respect to any information communicated, which may not be accurate, current or complete.
- 5.6 If Bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by WCGRB (other than minor clerical matters), the Bidder(s) must promptly notify WCGRB in writing of such discrepancy, ambiguity, error or inconsistency in order to afford WCGRB an opportunity to consider what corrective action is necessary (if any).
- 5.7 Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by WCGRB will, if possible, be corrected and provided to all Bidder(s) without attribution to the Bidder(s) who provided the written notice.
- 5.8 All persons (including Bidder(s)) obtaining or receiving the bid and any other information in connection with the Bid or the Tendering process must keep the contents of the Bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this Bid.

## 6. APPOINTED PROJECT TEAM CONTACT INFORMATION

- 6.1 The appointed **Project Manager and Architect** is **Derek Kock Architects**.

The firm's contact details are as follows:

38 Bloemhof Road  
Oakdale  
Bellville  
7530  
Tel – 021 910 2489

- 6.2 The appointed **Quantity Surveyor** is **Nicholson Nel Quantity Surveyors** (Pty) Ltd.

The firm's contact details are as follows:

Unit 1, Belfour Office Park  
C/o Edmnar & Rodgers Street  
Tygervally  
7550  
Tel – 021 110 0799

- 6.3 The appointed **Electrical HVAC and Fire Engineer** is **DSV Consulting Engineers**.

The firm's contact details are as follows:

Unit F8, Century Square  
Heron Crescent  
Century City  
7446  
Tel – 021 551 4303 021 914 7080  
E-mail – consult@dsv.co.za info@frontlinesafety.co.za

- 6.4 The appointed **Health and Safety Consultant** is **Frontline SHEQ**.

The firm's contact details are as follows:

41 Avery Road  
Hoheizen  
Cape Town  
7530  
Tel – 021 914 7080  
E-mail – info@frontlinesafety.co.za

## **7. LATE BIDS**

- 7.1 Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the Bidder(s).

## **8. COUNTER CONDITIONS**

- 8.1 Bidders' attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by Bidders or qualifying any Bid Conditions will result in the invalidation of such bids.

## **9. FRONTING**

- 9.1 Government supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Government condemn any form of fronting.
- 9.2 The Government, in ensuring that Bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the Bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid / contract and may also result in the restriction of the Bidder /contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies WCGRB may have against the Bidder / contractor concerned.

## **10. SUPPLIER DUE DILIGENCE**

- 10.1 WCGRB reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include requests for additional information.

## **11. DELIVERABLES**

- 11.1 Service providers are required to submit a comprehensive, itemised bid price for the refurbishment of the WCGRB Offices, prepared in accordance with the Bill of Quantities (refer to Annexure B).
- 11.2 **The following annexures forms part of the tender document:**
- Annexure A - Notes to Bidders
  - Annexure B – Bill of Quantities
  - Annexure C – Contract Data

- Annexure D - Returnable Schedules
- Annexure E – Form of tender
- Annexure F - Drawings
- Annexure G.1 - Health and Safety Specifications
- Annexure G.2 - Architect Specifications
- Annexure G.3 - Electrical and Fire Detection Specifications
- Annexure G.4 - Ventilation Specifications

## 12. ACCESS TO BID DOCUMENTS

- 12.1 Bid documents may be downloaded from the WCGRB website, the Government e-Tender Portal, and the CIDB iTender website.
- 12.2 The WCGRB documents are accessible at: [https://www.wcgrb.co.za/official\\_notices](https://www.wcgrb.co.za/official_notices).

## 13. SUBMISSION OF PROPOSALS

- 13.1 Bid documents may either be placed in the tender box (located on the front porch of 24 Fairway Close, Parow, 7500) **OR** hand-delivered at 24 Fairway Close, Parow, 7500 (Office Hours: 07H00 until 15H00 from Monday to Friday) **OR** couriered to 24 Fairway Close, Parow, 7500.
- 13.2 A Tender document must be in a sealed clearly marked packaging that has a bid number and bid description on the outside. Both the bid number and bid description must be on the packaging for the documents to be acceptable.
- 13.3 Bidders are advised to allow sufficient time for potential delays, such as traffic, flight schedules (if traveling to Parow from another city or country), and building access, as WCGRB, will not be held responsible for any such delays.
- 13.4 Bid documents will only be considered if received by WCGRB by the closing date and time, regardless of the method used to send or deliver such documents to WCGRB.
- 13.5 Bidders are requested to initial each page of the tender document on the top right-hand corner.
- 13.6 To facilitate the evaluation process, all proposals must reflect the following information. Failure to supply all or any part of the requested information **MAY RESULT** in a proposal being excluded from the evaluation process. Tender submission should follow the two-envelope system.
- 13.7 One hard copy of the proposal (**ENVELOPE A PLUS ENVELOPE B**) and one soft copy must be submitted in the following format:

### ENVELOPE “A” REQUIREMENTS:

- 13.8 **ENVELOPE A** must only include the following information:

a. **SECTION 1: The following documents must accompany the bid documents:**

- (i) Company registration documentation.
- (ii) Completed and duly signed Standard Bid Documents:
  - (a) Duly completed WCBD 1 (Invitation to Bid) clearly indicating the mandatory Central Supplier Database (CSD) registration number; the Western Cape Supplier Evidence Bank (WCSEB) registration number (if applicable); and the Tax Compliance Status (TCS) Pin;
  - (b) Tax Compliance Status Report / CSD Report (if available);
  - (c) Duly completed and valid WCBD 4 (Declaration of interests, Bidders past SCM Practices and Independent bid determination);
  - (d) Duly Completed and valid WCBD 6.1 (Preference points claim form);
  - (e) Duly completed and signed WCBD 7.1 (Contract form) (successful bidder); and
  - (f) General Conditions of Contract (for information purposes).
- (iii) Valid B-BBEE Certificate **OR** Sworn Affidavit (Failure to submit the document will not result in disqualification but no points will be allocated).
- (iv) Any other relevant statutory certification as specified in the Terms of Reference.

b. **SECTION 2:** Covering letter of the service provider.

c. **SECTION 3:** Submission of Mandatory Requirements.

d. **SECTION 4:** Submission of Functionality Criteria Requirements

**ENVELOPE B REQUIREMENTS:**

13.9 **ENVELOPE B** must only include the following information:

- a. **SECTION 1:** Detailed Cost Breakdown (inclusive of VAT) aligned to WCBD 3.3 – Pricing Schedule.

**EVALUATION CRITERIA:**

**14. EVALUATION CRITERIA**

- 14.1 The evaluation criteria will be in line with the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, 2022.
- 14.2 Evaluation of bids will be based on the 80 / 20 preferential point system wherein 80 represents price for the lowest bid and the 20 represents the B-BBEE status level of the contribution.

14.3 A four-stage evaluation process will be followed, that is:

- a. **ADMINISTRATIVE COMPLIANCE (Stage 1)**
- b. **MANDATORY REQUIREMENTS (Stage 2)**
- c. **FUNCTIONALITY CRITERIA (Stage 3) and;**
- d. **PRICE AND B-BBEE (Stage 4).**

**NB: BIDDERS WHO DO NOT MEET THE MINIMUM REQUIREMENTS IN EACH STAGE WILL NOT PROCEED TO THE NEXT STAGES.**

14.4 The bid which achieves the highest total points out of 100 after evaluation on Price and B-BBEE will be recommended for appointment as the preferred successful bidder.

**STAGE 1: ADMINISTRATIVE COMPLIANCE:**

14.5 Bidders will be evaluated on information submitted as per specification of the tender and overall completeness of the tender documents.

**STAGE 2: MANDATORY REQUIREMENTS**

14.6 Bidders are required to comply with the mandatory requirements below in order to proceed to Stage 3: Functionality Criteria Evaluation and Stage 4: Price and B-BBEE.

No.	I/We have attached to this document:	Tick if submitted	
		Yes	No
1	<b>Submission of Tender Document and Compliance document:</b> A completed and signed tender document including WCBD1, WCBD 3.3, WCBD 4, WCBD 6.1, WCBD 7.1		
2	<b>SARS Tax Compliance:</b> Tax Pin Certificate		
3	<b>Bank Rating / Good Standing Letter:</b> Bidders are required to attached a Bank Rating / Letter of Good Standing with financial institution. The letter should include: <ul style="list-style-type: none"><li>• The Tenderer's bank account name and number.</li><li>• A statement that engagements and accounts with the bank have always been properly and satisfactorily conducted; and</li><li>• The Tenderer has access to lines of credit with the bank, they have the resources to meet their commitments, and the bank considers the Tenderer a counterparty of good risk and good for business</li></ul>		



No.	I/We have attached to this document:	Tick if submitted	
		Yes	No
4	<p><b>Annual Financial Statements:</b> Bidders are required to submit audited / reviewed annual financial statements for the last three (3) financial years, in compliance with the requirements of the Companies Act.</p> <p>*Shortlisted tenderers will be subjected to a financial analysis that may result in disqualification should there be any material financial risks.</p>		
5	<p><b>Company/Entity Registration:</b> Provide proof of company or close corporation registration, along with a copy of the CM/CK certificates or any other relevant institutional registration documents.</p>		
6	<p><b>Board Resolution or Proxy:</b> Proof of Proxy/ Board Resolution</p>		
7	<p><b>Joint Venture Agreement: If applicable,</b> Tenderer who submitted a tender as a Joint Venture has included an acceptable Joint Venture agreement with his tender</p>		
8	<p><b>COIDA Compliance:</b> A valid COIDA - provide proof that it is in possession of a letter of good standing from the Compensation Fund or a licensed compensation insurer as contemplated in the Compensation for Occupational Injuries and Disease Act No. 130 of 1993.</p> <p>*The proof must be valid at the time of close of the Tender and a valid certificate must be produced at the time of award if the certificate expires between close of Tender and award.</p> <p>NOTE: The proof must be related to the built environment field.</p>		
9	<p><b>CIDB Registration:</b></p> <p>Only those tenderers who are registered with the CIDB or are capable of being so prior to the evaluation of submissions, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered, or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations, for a <b>GB</b> class of construction work, are eligible to have their tenders evaluated.</p> <p>The tenderer must be registered with the Construction Industry Development Board (CIDB) as a Grade <b>6GB</b> (General Building) contractor or higher.</p> <p>Proof of valid CIDB registration must be submitted with the tender.</p>		

No.	I/We have attached to this document:	Tick if submitted	
		Yes	No
	<p>Joint ventures are eligible to submit tenders provided that:</p> <ol style="list-style-type: none"> <li>1. every member of the joint venture is registered with the CIDB;</li> <li>2. the lead partner has a contractor grading designation in the <b>6GB</b> class of construction work; or not lower than one level below the required grading designation in the class of works construction works under considerations and possess the required recognition status.</li> <li>3. the combined contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a <b>6GB</b> class of construction work or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations.</li> </ol>		
10	<b>OHS Official Experience</b> – The OHS / Lead person must have an experience of at least five (5) years, submission of a CV is required.		
11	<p><b>Confirmation of a team</b> - The service provider must confirm provision of the personnel as part of the team:</p> <ul style="list-style-type: none"> <li>• Health and Safety Officer</li> <li>• Site Agent Project / Construction Leader</li> <li>• Foremen: General Works</li> <li>• Tiling/Carpet Artisan</li> <li>• ICT Specialist</li> <li>• Licensed/Professional Electrical (Sub) contractor</li> </ul>		
12	<p><b>Preliminary programme / Project plan</b></p> <p>As required in Annexure D, Schedule 2: Preliminary Programme, bidders are required to submit a preliminary programme, in the form of a bar chart (Gantt chart) or similar acceptable time/activity form reflecting the proposed sequence and tempo of the various activities and the quantities that will be carried out every week under each of the elements, comprising the work for this contract.</p> <p>The programme shall include the provision for inclement weather, information required from the project service provides and/or client as well as long-lead schedules. The programme should also indicate the point where the tenderer intends to commence work operations and the direction in which the work</p>		

No.	I/We have attached to this document:	Tick if submitted	
		Yes	No
	will proceed. The working hours shall be indicated. The tenderer shall also consider the additional requirements stated in the Project Specifications when drawing up the programme.		

- 14.7 In order to be considered for further evaluation under Functionality Criteria (Stage 3) and Price and B-BBEE (Stage 4), bidders must submit the supporting documentation as outlined in paragraph 13.8.
- 14.8 Bidders who fail to submit the required information will be disqualified from further evaluation.

### STAGE 3: FUNCTIONALITY CRITERIA EVALUATION

- 14.9 The following is the weighting awarded for each element, and the threshold score where applicable.

Evaluation element	Weighting	Threshold to proceed to Stage 4
Technical proposal (Functionality)	100	75 Points

#### TECHNICAL EVALUATION CRITERIA

##### Important notes to the bidder:

- The functionality of the bidder will be evaluated in six (6) sections
- The five sections give a total of 100
- The five sections are as follows
  - **Section 1:** Reference letters with a total score of **15**
  - **Section 2:** Relevant experience with a total score of **15**
  - **Section 3:** Business profile with a total score of **10**
  - **Section 4:** Methodology to be followed with a total score of **15**
  - **Section 5:** Local presence and responsiveness with a total score of **5**
  - **Section 6:** Capacity and relevant experience of the service provider team in the construction industry with a total score of **40**

Criteria	Maximum points available
<p><b>SECTION 1: REFERENCE LETTERS</b></p> <p><b>Service providers must submit reference letters on the client's official letterhead for completed projects where similar services were provided within the last five (5) years.</b></p> <p>Each reference letter must include the following information:</p> <ul style="list-style-type: none"> <li>• The duration of the contract;</li> <li>• Contact details of the authorised representative who signed the reference letter; and</li> <li>• Feedback on the quality of the services rendered.</li> </ul> <p><b>Each reference must be supported by the following documentation:</b></p> <p>1. Proof of appointment (e.g., appointment letter or contract); or contract completion certificates.</p> <p><b><u>Point allocation:</u></b></p> <ul style="list-style-type: none"> <li>• Four (4) or more valid reference letters: <b>15 points</b></li> <li>• Two (2) to three (3) valid reference letters: <b>10 points</b></li> <li>• One (1) valid reference letter: <b>5 points</b></li> </ul>	15

Criteria	Maximum points available
<ul style="list-style-type: none"> <li>• <b>Zero (0) points will be allocated</b> where:               <ul style="list-style-type: none"> <li>○ No reference letters are submitted; or</li> <li>○ The contact details provided for references are non-functional or cannot be verified.</li> </ul> </li> </ul>	
<p><b>SECTION 2: RELEVANT EXPERIENCE</b></p> <p>Bidders shall list, in Returnable Schedule 4: Schedule of Work Experience, details of <b>similar completed contracts</b> and <b>contracts currently being undertaken</b>. Only <u>completed contracts</u> will be considered for evaluation, but all submissions must demonstrate experience relevant to the refurbishment project.</p> <p><b>Point allocation:</b></p> <ul style="list-style-type: none"> <li>• 8 or more completed similar projects: <b>15 points</b></li> <li>• 5 – 7 completed similar projects: <b>10 points</b></li> <li>• 3 – 4 completed similar projects: <b>5 points</b></li> <li>• 1 – 2 completed similar projects: <b>1 point</b></li> <li>• 0 completed similar projects: <b>0 points</b></li> </ul>	<b>15</b>
<p><b>SECTION 3: BUSINESS PROFILE</b></p> <ul style="list-style-type: none"> <li>• Service providers must submit a proposal that explains the entity's background, operations, experience and number of years in operation.</li> <li>• The alignment of the entity's profile with the required services will be considered in the allocation of points.</li> </ul> <p><b>Point allocation:</b></p> <ul style="list-style-type: none"> <li>• <b>Excellent: 10 points</b> – The business profile is comprehensive, clearly demonstrates relevant experience, and aligns well with the required services.</li> <li>• <b>Fair: 5 points</b> – The business profile provides basic information but shows limited alignment with the required services.</li> <li>• <b>No Submission: 0 points</b> – No business profile is submitted.</li> </ul>	<b>10</b>
<p><b>SECTION 4: METHODOLOGY TO BE FOLLOWED</b></p> <ul style="list-style-type: none"> <li>• Service providers must submit a detailed methodology and approach outlining the project execution plan, including compliance with relevant regulations, safety measures, construction and refurbishment processes, quality assurance, risk management and strategies to ensure timely and efficient project delivery.</li> </ul>	<b>15</b>

Criteria	Maximum points available
<p><b>Point allocation:</b></p> <ul style="list-style-type: none"> <li>• <b>Excellent: 15 points</b> – The methodology is comprehensive, well-structured, demonstrates a clear understanding of the project and provides effective strategies for timely and efficient project delivery.</li> <li>• <b>Satisfactory: 10 points</b> – The methodology is adequate, addresses the key requirements, but may lack some detail or depth in execution strategies.</li> <li>• <b>Fair: 5 points</b> – The methodology is minimal or lacks clarity, detail, or alignment with project requirements.</li> <li>• <b>No Submission: 0 points</b> – No methodology is submitted.</li> </ul>	
<p><b>SECTION 5: LOCAL PRESENCE AND RESPONSIVENESS</b></p> <p>Bidders must demonstrate the ability to provide on-site supervision and respond to urgent site requirements within <b>24 hours</b> for the duration of the refurbishment project.</p> <p>Bidders are required to submit a mobilisation plan indicating:</p> <ul style="list-style-type: none"> <li>• Deployment of site personnel</li> <li>• On-site supervision arrangements</li> <li>• Expected response times to urgent requests</li> </ul> <p><b>Point allocation:</b></p> <ul style="list-style-type: none"> <li>• <b>Excellent: 5 points</b> - Comprehensive plan with clear deployment, supervision and contingencies.</li> <li>• <b>Good: 3 points</b> - Plan shows adequate supervision and response, minor gaps.</li> <li>• <b>Poor: 1 point</b> – Plan is vague or partially addresses requirements.</li> <li>• <b>No Submission: 0 points</b> - No plan submitted or does not meet minimum requirements.</li> </ul>	5
<p><b>SECTION 6: CAPACITY AND RELEVANT EXPERIENCE OF THE SERVICE PROVIDER TEAM IN THE CONSTRUCTION INDUSTRY</b></p> <p>Service providers must submit proof of qualifications and experience for key team members as follows:</p> <ul style="list-style-type: none"> <li>• <b>Health and Safety Officer (10 Points):</b> <ul style="list-style-type: none"> <li>○ CV with relevant qualifications as a SHE Officer (qualifications must be submitted).</li> <li>○ Proof of professional registration with the relevant associations (SACPCMP or SAIOSH).</li> <li>○ Minimum of 5 years post-training experience.</li> </ul> </li> </ul>	40

Criteria	Maximum points available
<ul style="list-style-type: none"> <li>○ Fully signed WCGRB OHS Specification Acknowledgement appended to the tender (refer to Annexure G1, page 39)</li> <li>• <b>Site Agent – Project / Construction (10 Points):</b> <ul style="list-style-type: none"> <li>○ Relevant qualification in the build environment field (qualifications must be submitted).</li> <li>○ CV indicating skills, knowledge and at least 5 years post-qualification experience.</li> </ul> </li> <li>• <b>Foreman – General Works (5 Points):</b> <ul style="list-style-type: none"> <li>○ Trade certificate in Bricklaying or related field in the build environment (qualifications must be submitted).</li> <li>○ CV indicating skills, knowledge and at least 5 years of experience.</li> </ul> </li> <li>• <b>Tiling / Carpet Artisan (5 Points):</b> <ul style="list-style-type: none"> <li>○ Relevant trade certificate (qualifications must be submitted).</li> <li>○ CV indicating skills, knowledge and at least 5 years of experience.</li> </ul> </li> <li>• <b>ICT Specialist (5 Points):</b> <ul style="list-style-type: none"> <li>○ Relevant trade certificate or qualification (qualifications must be submitted).</li> <li>○ CV indicating skills, knowledge and at least 5 years of experience.</li> </ul> </li> <li>• <b>Licensed Professional Electrical (Sub) Contractor (5 Points):</b> <ul style="list-style-type: none"> <li>○ Trade certificate for an Electrician in the built environment field (qualifications must be submitted).</li> <li>○ CV indicating skills, knowledge and at least 5 years of experience.</li> </ul> </li> </ul>	
<b>Point Allocation (Total: 40 Points)</b>	
<p>The 40 points for Capacity and Relevant Experience are allocated as follows:</p> <ul style="list-style-type: none"> <li>• <b>Health and Safety Officer:</b> 10 Points</li> <li>• <b>Site Agent – Project / Construction Leader:</b> 10 Points</li> <li>• <b>Foreman – General Works:</b> 5 Points</li> <li>• <b>Tiling / Carpet Artisan:</b> 5 Points</li> <li>• <b>ICT Specialist:</b> 5 Points</li> <li>• <b>Licensed / Professional Electrical (Sub) Contractor:</b> 5 Points</li> </ul> <p>Points will only be allocated where the required qualifications, proof of registration (where applicable), CVs and minimum experience as outlined above are submitted and meet the specified criteria.</p>	
<b>TOTAL POINTS</b>	<b>100</b>

- 14.10 To proceed to Stage 4 – Price and B-BBEE, bidders must obtain a minimum score of 75% in the functionality criteria. Bidders who fail to achieve the minimum score of 75% for functionality will be disqualified and not considered further.

#### **STAGE 4: PRICE AND B-BBEE**

- 14.11 Preference Points Evaluation: As the total quotation price is estimated to be less than R50 million, the responses will be evaluated on the 80/20 preference point system, whereby the bidder obtaining the highest number of total points will be awarded the contract.

Evaluation element	Weighting
PRICE	80
BBBEE	20
<b>Total</b>	<b>100</b>

#### **14.12 PRICE EVALUATION:**

- 1) A maximum of 80 points are allocated for the bid with the lowest price. Bid pricing must include 15% VAT.
- 2) If two or more bidders score equal total points in all respects, the award will be decided by drawing of lots.

#### **14.13 B-BBEE EVALUATION:**

- 1) A maximum of 20 points are allocated depending on the status level of contributor of the bidder.
- 2) Sworn Affidavits and BEE rating certificates are applicable and scoring will be done as per BBBEE Status Level of Contributor stipulated in the table below.

B-BBEE Contributor	Status Level of	Number of Points
	1	20
	2	18
	3	14
	4	12
	5	8
	6	6
	7	4
	8	2
	Non-compliant Contributor	0

- 3) B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:



- a) A duly completed Preference Point Claim Form: Standard Bidding Document (WCBBD 6.1); and
- b) B-BBEE Certificate or Sworn Affidavit.

#### 14.14 Joint Ventures, Consortiums and Trusts

- 1) A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 2) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 3) Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. WCGRB will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.
- 4) The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, who shall be given the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

#### 15. PRICING MODEL

- 15.1 Bid pricing must include a total price inclusive of VAT (where applicable) in line with pricing requirement as per the WCBBD 3.3 and Bill of Quantities.
- 15.2 Bidders must submit pricing for all items listed in the bill of quantities summarized below. Failure to provide pricing in the format specified will result in bid disqualification.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY
1.	1	Section 1: Preliminary	R
2.	1	Section 2: Builders work (Alterations)	R
3.	1	Section 3: Electrical Installation	R
4.	1	Section 4: Fire Detection Installation	R
5.	1	Section 5: Fire Protection Services	R
6.	1	Section 6: Ventilation and Air	R
7.	1	Section 7: Budgetary Allowances	R
<b>Sub Total</b>			<b>R</b>
<b>Value Added Tax (15%)</b>			<b>R</b>
<b>Total (BID PRICE IN RSA CURRENCY (ALL APPLICABLE TAXES INCLUDED))</b>			<b>R</b>

- 15.3 An Excel spreadsheet for the Bill of Quantities has been provided to assist bidders in completing the Pricing Schedule (WCBD 3.3).
- 15.4 **Bidders are solely responsible for ensuring that the hard copy Bill of Quantities is accurately and fully completed. Submission of the Excel spreadsheet may be included for convenience, but the Board will not accept any liability for errors, omissions or incorrect calculations in the Excel file.**

## **16. TIMEFRAMES**

- 16.1 The contract will be valid for a period of ten (10) months.

## **17. VICARIOUS LIABILITY**

- 17.1 The service provider shall be held responsible for the conduct of his/her employees and the conduct of his/her sub-contractor's employees for the full duration of the contract.

## **18. ABSENCE OF OBLIGATION**

- 18.1 No legal or other obligation shall arise between the service provider and the WCGRB until such time both parties have signed a formal contract or service level agreement or the award has formally been accepted by the service provider.

## **19. JOINT BUILDING CONTRACTS COMMITTEE AGREEMENT**

- 19.1 The successful service provider will be required to conclude a Joint Building Contracts Committee (JBCC) Principal Building Agreement with the WCGRB upon award or soon after. This JBCC will regulate the specific terms and conditions applicable to the services being procured by WCGRB.

## **20. CONTRACTUAL OBLIGATIONS**

- 20.1 In the case of the service provider using sub-contractors, the former will be responsible for ensuring delivery of services from any such sub-contractors and for making any payments to such sub-contractors.
- 20.2 The successful bidder will be subjected to performance evaluations in terms of measuring satisfactory performance. This will be discussed during feedback sessions, which will be scheduled by the Office of the Board.
- 20.3 Bidders are required to fully comply with the relevant SCM Legislative Framework as well as application of regulatory and prescripts. Bidders are also required to take all reasonable steps to protect information, in line with the provisions of the POPIA 4 of 2013.

## **21. RETENTION FEE**

- 21.1 The WCGRB shall retain ten percent (10%) of the Contract Sum as a retention fee.

- 21.2 The retention fee shall be released upon satisfactory completion of the refurbishment works, as determined by the WCGRB.

## **22. SPECIAL CONDITIONS OF THIS BID**

WCGRB reserves the right:

- 22.1 To award this tender to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000)
- 22.2 To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s).
- 22.3 To accept part of a tender rather than the whole tender.
- 22.4 To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid.
- 22.5 To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.
- 22.6 To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.

## **23. BRANDING**

- 23.1 Where the Terms of Reference / Scope of Work makes reference to a particular brand, trademark, name, patent, design, type, specific origin, or manufacturer, an equivalent may be submitted.

## **24. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

- 24.1 WCGRB reserves its right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of WCGRB or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity")
- a. engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid;
  - b. seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;

- c. makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of WCGRB's officers, directors, employees, advisors or other representatives;
- d. makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- e. accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;
- f. pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity;
- g. has in the past engaged in any matter referred to above; or
- h. has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

## **25. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- 25.1 The bidder should note that the terms of its Tender will be incorporated in the proposed contract by reference and that WCGRB relies upon the bidder's Tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.
- 25.2 It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by WCGRB against the bidder notwithstanding the conclusion of the Service Level Agreement between WCGRB and the bidder for the provision of the Service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

## **26. PREPARATION COSTS**

- 26.1 The Bidder will bear all its costs in preparing, submitting and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing WCGRB, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

## **27. INDEMNITY**

- 27.1 If a bidder breaches the conditions of this bid and, as a result of that breach, WCGRB incurs costs or damages (including, without limitation, the cost of any investigations,

procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds WCGRB harmless from any and all such costs which WCGRB may incur and for any damages or losses WCGRB may suffer.

## **28. PRECEDENCE**

- 28.1 This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

## **29. LIMITATION OF LIABILITY**

- 29.1 A bidder participates in this bid process entirely at its own risk and cost. WCGRB shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the Bidder's participation in this Bid process.

## **30. TAX COMPLIANCE**

- 30.1 No tender shall be awarded to a bidder who is not tax compliant. WCGRB reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent Tax Compliant Status Verification Certificate to WCGRB, or whose verification against the Central Supplier Database (CSD) proves non-compliant. WCGRB further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

## **31. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

- 31.1 No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. WCGRB reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

## **32. GOVERNING LAW**

- 32.1 South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

## **33. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

- 33.1 A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives), its sub-contractors (if any) and personnel

of its sub-contractors comply with all terms and conditions of this bid. In the event that WCGRB allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and WCGRB will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

#### **34. CONFIDENTIALITY**

- 34.1 Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with WCGRB's examination and evaluation of a Tender.
- 34.2 No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This bid and any other documents supplied by WCGRB remain proprietary to WCGRB and must be promptly returned to WCGRB upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived there from.
- 34.3 Throughout this bid process and thereafter, bidder(s) must secure WCGRB's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

#### **35. WCGRB PROPRIETARY INFORMATION**

- 35.1 Bidder will on their bid cover letter make declaration that they did not have access to any WCGRB proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidder(s).

#### **36. AVAILABILITY OF FUNDS**

- 36.1 Should funds no longer be available to pay for the execution of the responsibilities of this bid, the WCGRB may terminate the Agreement as per JBCC PBA Clause 29.20 or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.

#### **37. DISCLAIMER**

- 37.1 The Western Cape Gambling and Racing Board reserve the right to withdraw this Tender/Bid without prior notice.
- 37.1 **FAILURE TO ADHERE OR COMPLY WITH ANY OF THE PROVISIONS CONTAINED IN THIS TERMS OF REFERENCE (TOR) MAY RESULT IN A NON-RESPONSIVE BID UNLESS OTHERWISE STATED.**

- 37.2 This Tender/Bid, and any subsequent award, shall be governed by the Joint Building Contracts Committee (JBCC) Principal Building Agreement.
- 37.3 By submitting a response under this Tender/Bid, service providers accept all bid conditions as set out in this Terms of Reference.

### **38. PROTECTION OF PERSONAL INFORMATION**

- 38.1 A law, known as the Protection of Personal Information Act, 4 of 2013 (POPIA) provides that when one processes another's personal information, such collection, retention, dissemination and use of that person's personal information must be done in a lawful and transparent manner.
- 38.2 In order to give effect to this right, we are under a duty to provide you with a number of details pertaining to the processing of your personal information. These details are housed under the WCGRB **Processing Notices**, available and accessible on the WCGRB website, <https://www.wcgrb.co.za/notices/>, which **Processing Notices** we request you kindly download and read.

**PRICING SCHEDULE: FIRM PRICES**  
(Refurbishment of Office Accommodation)

**NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED**

NAME OF BIDDER:

.....

BID NO.: **WCGRB 042526**

CLOSING DATE: **2 February 2026**

CLOSING TIME: **11:00**

OFFER TO BE VALID FOR **60 DAYS** FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY
1.	1	Section 1: Preliminary	R
2.	1	Section 2: Builders work (Alterations)	R
3.	1	Section 3: Electrical Installation	R
4.	1	Section 4: Fire Detection Installation	R
5.	1	Section 5: Fire Protection Services	R
6.	1	Section 6: Ventilation and Air	R
7.	1	Section 7: Budgetary Allowances	R
<b>Sub Total</b>			<b>R</b>
<b>Value Added Tax (15%)</b>			<b>R</b>
<b>Total (BID PRICE IN RSA CURRENCY (ALL APPLICABLE TAXES INCLUDED))</b>			<b>R</b>



Does the offer comply with the specification(s)? **\*YES/NO**

- If not to specification, indicate deviation(s) .....

- Period required for delivery .....

\*Delivery: Firm/not firm

- Delivery basis .....

**Note:** All delivery costs must be included in the bid price, for delivery at the prescribed destination.

### **PRICING DECLARATION**

1. Having read through and examined the Bid Document, the Joint Building Contracts Committee (JBCC) Principal Building Agreement, the Terms of Reference, and all other Annexures to the Bid Document, we hereby agree to all conditions and confirm our price (including VAT), in accordance with the specified terms.
2. We undertake to hold this offer open for acceptance for a period of 60 days from closing of the bid.
3. We understand that the WCGRB are not bound to accept the lowest or any offer and that we must bear all costs which we have incurred in connection with preparing and submitting this bid.
4. We hereby undertake, for the period during which this bid remains open for acceptance, not to divulge to any persons, other than the persons to which the bid is submitted, any information relating to the submission of this bid or the details therein except where such is necessary for the submission of this bid.

**SIGNATURE:**

**PRINT NAME OF SIGNATORY:**

**FOR AND ON BEHALF OF:**

**CELL NO:**

**EMAIL:**



## PROVINCIAL GOVERNMENT WESTERN CAPE

### DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2019: Supply Chain Management (Goods and Services), Public Finance Management Act (PFMA) Supply Chain Management (SCM) Instruction No. 3 of 2021/2022 - SBD 4 Declaration of Interest, Section 4 (1)(b)(iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.
3. All prospective bidders intending to do business with the Institution must be registered on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) if they wish to do business with the Western Cape Government (WCG) via the electronic Procurement Solution (ePS).
4. The status of enterprises and persons listed on the National Treasury's Register for Tender Defaulters will be housed on the ePS. Institutions may not under any circumstances procure from enterprises and persons listed on the Database of Tender Defaulters.
5. The status of suppliers listed on the National Treasury's Database of Restricted Suppliers will be housed on the ePS; however, it remains incumbent on institutions to check the National Treasury Database of Restricted Suppliers before the conclusion of any procurement process. For suppliers listed as restricted, institutions must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.

#### 6. Definitions

**"bid"** means a bidder's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

**"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;

**If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701**

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**“business interest”** means -

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, or
- (d) includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

**“Consortium or Joint Venture”** 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;

**“Controlling interest”** means, the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise;

**“Corruption”**- General offences of corruption are defined in the Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) as:

Any person who directly or indirectly -

- (a) accepts or agrees or offers to accept an! gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person., in order to act personally or by influencing another person so to act, in a manner—
  - (i) that amounts to the-
    - (aa) illegal. dishonest. unauthorised. incomplete. or biased: or
    - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:
  - (ii) that amounts to-
    - (aa) the abuse of a position of authority;
    - (bb) a breach of trust; or
    - (cc) the violation of a legal duty or a set of rules;
  - (iii) designed to achieve an unjustified result; or
  - (iv) that amounts to any other unauthorised or improper inducement to do or 45 not to do anything. of the, is guilty of the offence of corruption.

**“CSD”** means the Central Supplier Database maintained by National Treasury;

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**“employee”**, in relation to –

- (a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and
- (b) a public entity, means a person employed by the public entity;

**“entity”** means any -

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

**“entity conducting business with the Institution”** means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province;

**“Family member”** means a person's -

- (a) spouse; or
- (b) child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

**“intermediary”** means a person through whom an interest is acquired, and includes a representative or agent or any other person who has been granted authority to act on behalf of another person;

**“Institution”** means –

a provincial department or provincial public entity listed in Schedule 3C of the Act;

**“Provincial Government Western Cape (PGWC)”** means

- (a) the Institution of the Western Cape, and
- (b) a provincial public entity;

**“RWOEE”** means -

Remunerative Work Outside of the Employee's Employment

**“spouse”** means a person's -

- (a) partner in marriage or civil union according to legislation;
- (b) partner in a customary union according to indigenous law; or
- (c) partner with whom he or she cohabits and who is publicly acknowledged by the person as his or her life partner or permanent companion.

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7. Regulation 13(c) of the Public Service Regulations (PSR) 2016, effective 1 February 2017, prohibits any employee from conducting business with an organ of state, or holding a directorship in a public or private company doing business with an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.
  - a) Therefore, by 31 January 2017 all employees who are conducting business with an organ of state should either have:
    - (i) resigned as an employee of the government institution or;
    - (ii) cease conducting business with an organ of state or;
    - (iii) resign as a director/shareholder/owner/member of an entity that conducts business with an organ of state.
8. Any legal person, or their family members, may make an offer or offers in terms of this invitation to bid. In view of potential conflict of interest, in the event that the resulting bid, or part thereof, be awarded to family members of persons employed by an organ of state, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the bidder is employed by the Institution.
9. The bid of any bidder may be disregarded if that bidder or any of its directors abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; disclosure is found not to be true and complete; or failed to perform on any previous contract.
10. 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). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.
11. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorises accounting officers and accounting authorities to:
  - a) disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b) cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
12. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.

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13. 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.

SECTION A DETAILS OF THE ENTITY		
	CSD Registration Number	MAAA
	Name of the Entity	
	Entity registration Number (where applicable)	
	Entity Type	
	Tax Reference Number	

Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons having a controlling interest with a right or entitlement to share in profits, revenue or assets of the entity should be disclosed in the Table A below.

TABLE A

FULL NAME	DESIGNATION (Where a director is a shareholder, both should be confirmed)	IDENTITY NUMBER	PERSONAL TAX REFERENCE NO.	PERCENTAGE INTEREST IN THE ENTITY

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**SECTION B: DECLARATION OF THE BIDDER'S INTEREST**

The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, seek to conduct business with the WCG, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA as prescribed by the Public Service Regulation 13(c).

Furthermore, an employee employed by an organ of state conducting remunerative work outside of the employee's employment should first obtain the necessary approval by the delegated authority (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.

<b>B1.</b>	Are any persons listed in Table A identified on the CSD as employees of an organ of state? <b>(If yes, refer to Public Service Circular EIM 1/2016 to exercise the listed actions)</b>	NO	YES
<b>B2.</b>	Are any employees of the entity also employees of an organ of state? <b>(If yes complete Table B and attach their approved "RWOEE")</b>	NO	YES
<b>B3.</b>	Are any family members of the persons listed in Table A employees of an organ of state? <b>(If yes complete Table B)</b>	NO	YES

**TABLE B**

Details of persons (family members) connected to or employees of an organ of state should be disclosed in Table B below.

FULL NAME OF EMPLOYEE	IDENTITY NUMBER	DEPARTMENT/ ENTITY OF EMPLOYMENT	DESIGNATION/ RELATIONSHIP TO BIDDER**	INSTITUTION EMPLOYEE NO./ PERSAL NO. (Indicate if not known)

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**SECTION C: PERFORMANCE MANAGEMENT AND BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

To enable the prospective bidder to provide evidence of past and current performance.

<b>C1.</b>	Did the entity conduct business with an organ of state in the last twelve months? (If yes complete Table C)	NO	YES
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**C2. TABLE C**

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT/ ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT	
<b>C3.</b> Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector?					NO	YES
<b>C4.</b> Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)?					NO	YES
<i>(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) 326 5445.)</i>						
<b>C5.</b> If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?				NO	YES	N/A
<b>C6.</b> Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?					NO	YES
<b>C7.</b> Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?					NO	YES

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**SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT**

*This form must be signed by a duly authorised representative of the entity in the presence of a commissioner of oaths.*

I, ..... hereby swear/affirm;

- i. that the information disclosed above is true and accurate;
- ii. that I have read understand the content of the document;
- iii. that I have arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.
- iv. that the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specification, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates;
- v. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract; and
- vi. that there have been no consultations, communications, agreements or arrangements made with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and that my entity was not involved in the drafting of the specifications or terms of reference for this bid.

.....  
**DULY AUTHORISED REPRESENTATIVE'S SIGNATURE**

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

- 1.1 Do you know and understand the contents of the declaration? ANSWER: .....
- 1.2 Do you have any objection to taking the prescribed oath? ANSWER: .....
- 1.3 Do you consider the prescribed oath to be binding on your conscience? ANSWER:.....
- 1.4 Do you want to make an affirmation? ANSWER: .....
2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed and the deponent's signature/thumbprint/mark was place thereon in my presence.

.....  
 SIGNATURE FULL NAMES Commissioner of Oaths

Designation (rank) ..... ex officio: Republic of South Africa

Date:..... Place .....

Business Address: .....

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## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND IN TERMS OF THE WESTERN CAPE GOVERNMENTS INTERIM STRATEGY AS IT RELATES TO PREFERENCE POINTS

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS (TENDERERS) MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER, PREFERENTIAL PROCUREMENT REGULATIONS, 2022 AND THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND THE CODES OF GOOD PRACTICE**

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### 1. DEFINITIONS

- 1.1 **“acceptable tender”** means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.
- 1.2 **“affidavit”** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings.
- 1.3 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 1.4 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.5 **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 1.6 **“bid”** means a written offer on the official bid documents or invitation of price quotations and **“tender”** is the act of bidding /tendering;
- 1.7 **“Code of Good Practice”** means the generic codes or the sector codes as the case may be;
- 1.8 **“consortium or joint venture”** 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;
- 1.9 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;

- 1.10 **"EME"** is an Exempted Micro Enterprise with an annual total revenue of R10 million or less.
- 1.11 **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 1.12 **"Large Enterprise"** is any enterprise with an annual total revenue above R50 million;
- 1.13 **"non-firm prices"** means all prices other than "firm" prices;
- 1.14 **"person"** includes a juristic person;
- 1.15 **"price" means an amount of money tendered for goods or services, and** includes all applicable taxes less all unconditional discounts;
- 1.16 **"proof of B-BBEE status level contributor"** means-
- (a) The B-BBEE status level certificate issued by an authorized body or person;
  - (b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or
  - (c) Any other requirement prescribed in terms of the Broad- Based Black Economic Empowerment Act.
- 1.17 **QSE** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;
- 1.18 **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- 1.19 **"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.
- 1.20 **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- 1.21 **"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;
- 1.22 **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 1.23 **"the Regulations"** means the Preferential Procurement Regulations, 2022;

- 1.24 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 11 October 2013;
- 1.25 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 1.26 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

## 2. GENERAL CONDITIONS

- 2.1 The following preference point systems are applicable to all bids:
- 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).
- 2.2 Preference point system for this bid:
- (a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or
- (b) Either the 80/20 or 90/10 preference point system will be applicable to this tender  
*(delete whichever is not applicable for this tender).*
- 2.3 Preference points for this bid (even in the case of a tender for income-generating contracts) shall be awarded for:
- (a) Price; and
- (b) B-BBEE Status Level of Contribution.
- 2.4 The maximum points for this bid are allocated as follows:

	POINTS
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 2.5 Failure on the part of a bidder to fill in, sign this form and submit in the circumstances prescribed in the Codes of Good Practice either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) or an affidavit confirming annual total revenue and level of black ownership together with the bid or an affidavit issued by Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

- 2.6 The organ of state reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 Subject to Section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the **bidder obtaining the highest number of total points** will be awarded the contract.
- 3.2 A tenderer must submit proof of its B-BBEE status level of contributor in order to claim points for B-BBEE.
- 3.3 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE will not be disqualified but will only score:
- (a) points out of 80 for price; and
  - (b) 0 points out of 20 for B-BBEE
- 3.4 Points scored must be rounded off to the nearest 2 decimal places.
- 3.5 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.6 As per section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraph (d) and (e) of the Act that justifies the award to another tenderer provided that it has been stipulated upfront in the tendering conditions.
- 3.7 Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.

### 4. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

#### 4.1 POINTS AWARDED FOR PRICE

##### 4.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

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

<b>80/20</b>	<b>or</b>	<b>90/10</b>
$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	or	$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$

Where

$P_s$  = Points scored for price of bid under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender

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

### 5.1 POINTS AWARDED FOR PRICE

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

80/20

or

90/10

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

$$Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

or

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

## 6. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 6.1 In terms of WCG interim strategy, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 6.2 An **EME** must submit a valid, originally certified affidavit confirming annual turnover and level of black ownership or an affidavit issued by Companies Intellectual Property Commission
- 6.3 A **QSE that is less than 51 per cent (50% or less) black owned** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.
- 6.4 A **QSE that is at least 51 per cent black owned (51% or higher)** must submit a valid, originally certified affidavit confirming turnover and level of black ownership as well as declare its empowering status or an affidavit issued by Companies Intellectual Property Commission.

- 6.5 A **large enterprise** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.
- 6.6 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 6.7 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE status level verification certificate for every separate tender.
- 6.8 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

## 7. BID DECLARATION

- 7.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## 8. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPH 6

- 8.1 B-BBEE Status Level of Contribution..... = ..... **(maximum of 20 points)**

***(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 6.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the tender.***

## 9. SUB-CONTRACTING

- 9.1 Will any portion of the contract be sub-contracted? **YES/NO** (delete which is not applicable)

- 9.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted? .....%

(ii) the name of the sub-contractor? .....

(iii) the B-BBEE status level of the sub-contractor? .....

(iv) whether the sub-contractor is an EME or QSE? **YES/NO** (delete which is not applicable)

- 9.1.2 Sub-contracting relates to a **particular** contract and if sub-contracting is applicable, the bidder to state in their response to a particular RFQ that a portion of that contract will be sub-contracted.

## 10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1 Name of company/ entity: .....

10.2 VAT registration number: .....

10.3 Company Registration number: .....

### 10.4 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

[SELECT APPLICABLE ONE]

10.5 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraph 7 above, qualifies the company/ firm for the preference(s) shown and I/we acknowledge that:

- (a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.
- (b) As set out in Section 13O of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:
  - (i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;
  - (ii) provides false information or misrepresents information to a B-BBEE Verification Professional in order to secure a particular B-BBEE status or any benefit associated with compliance to the B-BBEE Act;
  - (iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or
  - (iv) engages in a fronting practice.
- (c) If a B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity becomes aware of the commission of, or any attempt to commit any offence referred to in paragraph 10.5 (a) above will be reported to an appropriate law enforcement agency for investigation.



- (d) Any person convicted of an offence by a court is liable in the case of contravention of 10.5 (b) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person to a fine not exceeding 10 per cent of its annual turnover.
- (e) The purchaser may, if it becomes aware that a bidder may have obtained its B-BBEE status level of contribution on a fraudulent basis, investigate the matter. Should the investigation warrant a restriction be imposed, this will be referred to the National Treasury for investigation, processing and imposing the restriction on the National Treasury's List of Restricted Suppliers. The bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, may 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.
- (f) The purchaser may, in addition to any other remedy it may have –
  - (i) disqualify the person from the bidding process;
  - (ii) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (iii) 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; and
  - (iv) forward the matter for criminal prosecution.
- (g) The information furnished is true and correct.
- (h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

**SIGNATURE(S) OF THE BIDDER(S):** .....

**DATE:** .....

**ADDRESS:** .....

.....

**WITNESSES:**

1. ....

2. ....

**CONTRACT FORM - PURCHASE OF GOODS/WORKS/SERVICES**

**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 services described in the attached bidding documents to the **Western Cape Gambling and Racing Board** in accordance with the requirements and specifications stipulated in bid number **WCGRB 042526 – Refurbishment of Office Accommodation** at the fee structure quoted.
2. My offer remains binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
3. 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 [WCBD 1];*
    - *Pricing/Fee Schedule [WCBD 3.3];*
    - *Declaration of Interests, Bidders Past SCM Practices and Independent Bid Determination [WCBD 4];*
    - *Preference Point Claim Form [WCBD 6.1];*
    - *Proposal submitted in terms of WCGRB 042526 (including the Terms of Reference);*
  - (ii) Joint Building Contracts Committee (JBCC) Principal Building Agreement;
  - (iii) Special Conditions of Contract (*where applicable*); and
  - (iv) Any other documents submitted as part of bid WCGRB 042526.
4. 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.
5. 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.
6. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
7. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

**WITNESSES**

1 .....

2. ....

DATE: .....

## **Annex F**

(normative)

### **Standard Conditions of Tender**

As published in Annexure F of the cidb Standard for Uniformity for construction Procurement, Board Notice 136 Government Gazette No 38960 of 10 July 2015

#### **F.1 General**

##### **F.1.1 Actions**

**F.1.1.1** The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

**F.1.1.2** The employer and the tenderer and all their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

*Note:*

- 1) *A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.*
- 2) *Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.*

**F.1.1.3** The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

##### **F.1.2 Tender Documents**

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

##### **F.1.3 Interpretation**

**F.1.3.1** The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

**F.1.3.2** These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

**F.1.3.3** For the purposes of these conditions of tender, the following definitions apply:

- a) **conflict of interest** means any situation in which:
  - i) someone in a position of trust has competing professional or personal interests which make it difficult to fulfill his or her duties impartially;
  - ii) an individual or organisation is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit; or
  - iii) incompatibility or contradictory interests exist between an employee and the organisation which employs that employee.
- b) **comparative offer** means the price after the factors of a non-firm price and all unconditional discounts it can be utilised to have been taken into consideration;
- c) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process;
- d) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels;
- e) **organization** means a company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body;
- f) **functionality** means the measurement according to the predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service and technical capacity and ability of a tenderer.

#### **F.1.4 Communication and employer's agent**

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

#### **F.1.5 Cancellation and Re-Invitation of Tenders**

F.1.5.1 An organ of state may, prior to the award of the tender, cancel a tender if-

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable tenders are received.

F.1.5.2 The decision to cancel a tender must be published in the cidb website and in the government Tender Bulletin for the media in which the original tender invitation was advertised.

#### **F.1.6 Procurement procedures**

##### **F.1.6.1 General**

Unless otherwise stated in the tender data, a contract will, subject to F.3.13, be concluded with the tenderer who in terms of F.3.11 is the highest ranked or the tenderer scoring the highest

number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

#### **F.1.6.2 Competitive negotiation procedure**

**F.1.6.2.1** Where the tender data require that the competitive negotiation procedure is to be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of F.3.4, the employer shall announce only the names of the tenderers who make a submission. The requirements of F.3.8 relating to the material deviations or qualifications which affect the competitive position of tenderers shall not apply.

**F.1.6.2.2** All responsive tenderers, or not less than three responsive tenderers that are highest ranked in terms of the evaluation method and evaluation criteria stated in the tender data, shall be invited in each round to enter into competitive negotiations, based on the principle of equal treatment and keeping confidential the proposed solutions and associated information. Notwithstanding the provisions of F.2.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

**F.1.6.2.3** At the conclusion of each round of negotiations, tenderers shall be invited by the employer to make a fresh tender offer, based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

**F.1.6.2.4** The contract shall be awarded in accordance with the provisions of F.3.11 and F.3.13 after tenderers have been requested to submit their best and final offer.

#### **F.1.6.3 Proposal procedure using the two stage-system**

##### **F.1.6.3.1 Option 1**

Tenderers shall in the first stage submit technical proposals and, if required, cost parameters around which a contract may be negotiated. The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data, and in the second stage negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of these conditions of tender.

##### **F.1.6.3.2 Option 2**

**F.1.6.3.2.1** Tenderers shall submit in the first stage only technical proposals. The employer shall invite all responsive tenderers to submit tender offers in the second stage, following the issuing of procurement documents.

**F.1.6.3.2.2** The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of these conditions of tender.

#### **F.2 Tenderer's obligations**

### **F.2.1 Eligibility**

**F.2.1.1** Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

**F.2.1.2** Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer and obtain the employer's written approval to do so prior to the closing time for tenders.

### **F.2.2 Cost of tendering**

**F2.2.1** Accept that, unless otherwise stated in the tender data, the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer complies with requirements.

**F2.2.2** The cost of the tender documents charged by the employer shall be limited to the actual cost incurred by the employer for printing the documents. Employers must attempt to make available the tender documents on its website so as not to incur any costs pertaining to the printing of the tender documents.

### **F.2.3 Check documents**

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

### **F.2.4 Confidentiality and copyright of documents**

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

### **F.2.5 Reference documents**

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

### **F.2.6 Acknowledge addenda**

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

### **F.2.7 Clarification meeting**

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

#### **F.2.8 Seek clarification**

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

#### **F.2.9 Insurance**

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

#### **F.2.10 Pricing the tender offer**

**F.2.10.1** Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.

**F.2.10.2** Show VAT payable by the employer separately as an addition to the tendered total of the prices.

**F.2.10.3** Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

**F.2.10.4** State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

#### **F.2.11 Alterations to documents**

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.

#### **F.2.12 Alternative tender offers**

**F.2.12.1** Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

**F.2.12.2** Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

**F.2.12.3** An alternative tender offer may only be considered in the event that the main tender offer is the winning tender.

### **F.2.13 Submitting a tender offer**

**F.2.13.1** Submit one tender offer only, either as a single tendering entity or as a member in a joint venture to provide the whole of the works, services or supply identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

**F.2.13.2** Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

**F.2.13.3** Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

**F.2.13.4** Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

**F.2.13.5** Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

**F.2.13.6** Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

**F.2.13.7** Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

**F.2.13.8** Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

**F.2.13.9** Accept that tender offers submitted by facsimile or e-mail will be rejected by the employer, unless stated otherwise in the tender data.

### **F.2.14 Information and data to be completed in all respects**

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

### **F.2.15 Closing time**



**F.2.15.1** Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Accept that proof of posting shall not be accepted as proof of delivery.

**F.2.15.2** Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.

#### **F.2.16 Tender offer validity**

**F.2.16.1** Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

**F.2.16.2** If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period with or without any conditions attached to such extension.

**F.2.16.3** Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

**F.2.16.4** Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of F.2.13 with the packages clearly marked as "SUBSTITUTE".

#### **F.2.17 Clarification of tender offer after submission**

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

*Note: Sub-clause F.2.17 does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.*

#### **F.2.18 Provide other material**

**F.2.18.1** Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

**F.2.18.2** Dispose of samples of materials provided for evaluation by the employer, where required.

#### **F.2.19 Inspections, tests and analysis**

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

### **F.2.20 Submit securities, bonds and policies**

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

### **F.2.21 Check final draft**

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

### **F.2.22 Return of other tender documents**

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

### **F.2.23 Certificates**

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

## **F.3 The employer's undertakings**

### **F.3.1 Respond to requests from the tenderer**

**F.3.1.1** Unless otherwise stated in the tender Data, respond to a request for clarification received up to five working days before the tender closing time stated in the Tender Data and notify all tenderers who drew procurement documents.

**F.3.1.2** Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to prequalify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence:

- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements;
- b) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or
- c) in the opinion of the Employer, acceptance of the material change would compromise the outcome of the prequalification process.

### **F.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until three days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, shall then notify all tenderers who drew documents.

### **F.3.3 Return late tender offers**

Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

### **F.3.4 Opening of tender submissions**

**F.3.4.1** Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

**F.3.4.2** Announce at the meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where applicable, the total of his prices, number of points claimed for its BBEE status level and time for completion for the main tender offer only.

**F.3.4.3** Make available the record outlined in F.3.4.2 to all interested persons upon request.

### **F.3.5 Two-envelope system**

**F.3.5.1** Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

**F.3.5.2** Evaluate functionality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the functionality evaluation more than the minimum number of points for functionality stated in the tender data, and announce the score obtained for the technical proposals and the total price and any points claimed on BBEE status level. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for functionality.

### **F.3.6 Non-disclosure**

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

### **F.3.7 Grounds for rejection and disqualification**

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

### **F.3.8 Test for responsiveness**

**F.3.8.1** Determine, after opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

**F.3.8.2** A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- b) significantly change the Employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

### **F.3.9 Arithmetical errors, omissions and discrepancies**

**F.3.9.1** Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with F.3.11 for:

- a) the gross misplacement of the decimal point in any unit rate;
- b) omissions made in completing the pricing schedule or bills of quantities; or
- c) arithmetic errors in:
  - i) line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or
  - ii) the summation of the prices.

**F3.9.2** The employer must correct the arithmetical errors in the following manner:

- a) Where there is a discrepancy between the amounts in words and amounts in figures, the amount in words shall govern.
- b) If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- c) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of the arithmetical error in the manner described above.

### **F.3.10 Clarification of a tender offer**

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

### **F.3.11 Evaluation of tender offers**

#### **F.3.11.1 General**

Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate them using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

#### **F.3.11.2 Method 1: Price and Preference**

In the case of a price and preference:

- 1) Score tender evaluation points for price
- 2) Score points for BBBEE contribution
- 3) Add the points scored for price and BBBEE.

#### **F.3.11.3 Method 2: Functionality, Price and Preference**

In the case of a functionality, price and preference:

- 1) Score functionality, rejecting all tender offers that fail to achieve the minimum number of points for functionality as stated in the Tender Data.
- 2) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- 3) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference points system prescribed in paragraphs 4 and 4 and 5 below.

The 80/20 preference point system for acquisition of services, works or goods up to Rand value of R1 million

- 4) (a)(i) The following formula must be used to calculate the points for price in respect of tenders( including price quotation) with a rand value equal to, or above R 30 000 and up to Rand value of R 1 000 000 ( all applicable taxes included):

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of tender or offer under consideration;

$P_t$  = Comparative price of tender or offer under consideration; and

$P_{\min}$  = Comparative price of lowest acceptable tender or offer.

- (4)(a)(ii) An employer of state may apply the formula in paragraph (i) for price quotations with a value less than R30 000, if and when appropriate:

(4)(b) Subject to subparagraph(4)(c), points must be awarded to a tender for attaining the B-BBEE status level of contributor in accordance with the table below:

B-BBEE status level of contributor	Number of points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

(4)(c) A maximum of 20 points may be allocated in accordance with subparagraph (4)(b)

(4)(d) The points scored by tender in respect of B-BBEE contribution contemplated in subparagraph (4) (b) must be added to the points scored for price as calculated in accordance with subparagraph (4)(a).

(4)(e) Subject to paragraph 4.3.8 the contract must be awarded to the tender who scores the highest total number of points.

#### **The 90/ 10 preference points system for acquisition of services, works or goods with a Rand value above R 1 million**

(5)(a) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R1 000 000 (all applicable taxes included):

**90/10**

$$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

*P<sub>s</sub>* = Points scored for comparative price of tender or offer under consideration;

*P<sub>t</sub>* = Comparative price of tender or offer under consideration; and

*P<sub>min</sub>* = Comparative price of lowest acceptable tender or offer.

(5)(b) Subject to subparagraph(5)(c), points must be awarded to a tender for attaining the B-BBEE status level of contributor in accordance with the table below:

B-BBEE status level of contributor	Number of points
1	10
2	9

B-BBEE status level of contributor	Number of points
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

(5)(c) A maximum of 10 points may be allocated in accordance with subparagraph (5)(b).

(5)(d) The points scored by tender in respect of B-BBEE contribution contemplated in subparagraph (5) (b) must be added to the points scored for price as calculated in accordance with subparagraph (5)(a).

(5)(e) Subject to paragraph 4.3.8 the contract must be awarded to the tender who scores the highest total number of points.

#### **F.3.11.6 Decimal places**

Score price, preference and functionality, as relevant, to two decimal places.

#### **F.3.11.7 Scoring Price**

Score price of remaining responsive tender offers using the following formula:

$$N_{FO} = W_1 \times A$$

where:  $N_{FO}$  is the number of tender evaluation points awarded for price.

$W_1$  is the maximum possible number of tender evaluation points awarded for price as stated in the Tender Data.

$A$  is a number calculated using the formula and option described in Table F.1 as stated in the Tender Data.

**Table F.1: Formulae for calculating the value of A**

Formula	Comparison aimed at achieving	Option 1 <sup>a</sup>	Option 2 <sup>a</sup>
1	Highest price or discount	$A = (1 + \frac{P - P_m}{P_m})$	$A = P / P_m$
2	Lowest price or percentage commission / fee	$A = (1 - \frac{P - P_m}{P_m})$	$A = P_m / P$
<sup>a</sup> $P_m$ is the comparative offer of the most favourable comparative offer. $P$ is the comparative offer of the tender offer under consideration.			

### **F.3.11.8 Scoring preferences**

Confirm that tenderers are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where tenderers are not eligible for such preferences.

Calculate the total number of tender evaluation points for preferences claimed in accordance with the provisions of the tender data.

### **F.3.11.9 Scoring functionality**

Score each of the criteria and subcriteria for quality in accordance with the provisions of the Tender Data.

Calculate the total number of tender evaluation points for quality using the following formula:

$$N_Q = W_2 \times S_O / M_S$$

where:  $S_O$  is the score for quality allocated to the submission under consideration;  
 $M_S$  is the maximum possible score for quality in respect of a submission; and  
 $W_2$  is the maximum possible number of tender evaluation points awarded for the quality as stated in the tender data

### **F.3.12 Insurance provided by the employer**

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

### **F.3.13 Acceptance of tender offer**

Accept the tender offer, if in the opinion of the employer, it does not present any risk and only if the tenderer:

- is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- has the legal capacity to enter into the contract,



- d) is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
- e) complies with the legal requirements, if any, stated in the tender data, and
- f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

#### **F.3.14 Prepare contract documents**

**F.3.14.1** If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents, and
- c) other revisions agreed between the employer and the successful tenderer.

**F.3.14.2** Complete the schedule of deviations attached to the form of offer and acceptance, if any.

#### **F.3.15 Complete adjudicator's contract**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

#### **F.3.16 Notice to unsuccessful tenderers**

**F.3.16.1** Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period.

**F.3.16.2** After the successful tenderer has been notified of the employer's acceptance of the tender, notify other tenderers that their tender offers have not been accepted.

#### **F.3.17 Provide copies of the contracts**

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

#### **F.3.18 Provide written reasons for actions taken**

Provide upon request written reasons to tenderers for any action that is taken in applying these conditions of tender, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.

#### **F.3.19 Transparency in the procurement process**

F3.19.1 The cidb prescripts require that tenders must be advertised and be registered on the cidb i.Tender system.

F3.19.2 The employer must adopt a transparency model that incorporates the disclosure and accountability as transparency requirements in the procurement process.

F3.19.3 The transparency model must identify the criteria for selection of projects, project information template and the threshold value of the projects to be disclosed in the public domain at various intervals of delivery of infrastructure projects.

F3.19.4 The client must publish the information on a quarterly basis which contains the following information:

- Procurement planning process
- Procurement method and evaluation process
- Contract type
- Contract status
- Number of firms tendering
- Cost estimate
- Contract title
- Contract firm(s)
- Contract price
- Contract scope of work
- Contract start date and duration
- Contract evaluation reports

F3.19.5 The employer must establish a Consultative Forum which will conduct a random audit in the implementation of the transparency requirements in the procurement process.

F3.19.6 Consultative Forum must be an independent structure from the bid committees.

F3.19.7 The information must be published on the employer's website.

F 3.19.8 Records of such disclosed information must be retained for audit purposes.





## 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

## **Disclaimer**

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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:

The **employer** resulting from:

- 27.1.1 **Penalty** [24.3]
- 27.1.2 **Default interest** [25.7.4]
- 27.1.3 Expense and/or loss [27.2]

The **contractor** resulting from:

- 27.1.4 **Default interest** [25.7.4]
- 27.1.5 **Compensatory interest** [25.7.5]
- 27.1.6 Damages
- 27.1.7 Expense or loss caused by a **direct contractor** [16.1.3]
- 27.1.8 Advance payments [9.2.10; 12.1.8]
- 27.1.9 Termination of a **n/s subcontract agreement** due to default of the **employer**, the **principal agent** and/or **agents** [14.7.1; 15.7.1]

27.2 The **employer** may recover expense and/or loss incurred or to be incurred resulting from:

- 27.2.1 Paying charges [2.1]
- 27.2.2 Effecting insurances due to the **contractor's** default [10.0]
- 27.2.3 Work executed by others due to the **contractor's** default [17.3]
- 27.2.4 Recoupment of advance payments [9.2.10; 11.3]
- 27.2.5 The **contractor** not paying amounts due to the **employer** [25.3.7]
- 27.2.6 Termination of this **agreement** by the **employer** [29.1]
- 27.2.7 Amounts paid directly to **subcontractors** on default by the **contractor** [14.5; 15.5]
- 27.2.8 Termination of a **n/s subcontract agreement** [14.7.2; 15.7.2]
- 27.2.9 Default by the **contractor** where not less than five (5) **working days notice** detailing such default has been given before the issue of the next **recovery statement** to allow the **contractor** the opportunity to remedy such default
- 27.2.10 Adjustment of the **n/s subcontract preliminaries** due to the **subcontractor** as a result of a default by the **contractor**

27.3 Where an amount is due to either **party** and has not been paid, the other **party** may recover the amount from any of the following:

- 27.3.1 Subsequent **payment certificates** [25.0]
- 27.3.2 A demand in terms of the **security** [11.0]
- 27.3.3 The defaulting **party** as a debt
- 27.4 Where either **party** has been liquidated, or this **agreement** terminated, the other **party** may exercise rights in terms of the **security** [11.0]



## 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**

# 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 <b>contract sum</b> including <b>tax</b>		
Accepted <b>contract sum</b> including <b>tax</b> in words		
Signed – who by signature hereto warrants authority		
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of witness		

## LIST OF RETURNABLE DOCUMENTS

**NOTE:** The Below sheet is to be completed by the service provider as part of their submission for their tender proposals

The service provider must complete the below tick exercise /confirmation of submission of the requested documents and, or information which is required to ensure that their bid proposals are complete and valid.

No.	Completed and signed Documents / Information to be submitted and confirmed as part of the Bid Proposal	Are the required documents signed, initialled, submitted, and, or information is submitted by the service provider?  ** Y = Yes, N = No
1.	Invitation to Bid (WCBD 1)	
2.	ENVELOPE A REQUIREMENTS	
3.	ENVELOPE B REQUIREMENTS	
4.	Specification Document / Terms of Reference	
5.	Pricing Schedule (WCBD 3.3) including completed Bill of Quantities (BOQ)	
6.	Declaration of Interest, Bidders Past SCM Practices and Independent Bid Determination (WCBD 4)	
7.	Preference Point Claim Form (WCBD 6.1)	
8.	Valid Broad-Based Black Economic Empowerment certificate / Relevant SCM sworn Affidavit	
9.	Contract Form (WCBD7.1 – Part 1)	
10.	Joint Building Contracts Committee (JBCC) Principal Building Agreement	