



FUNCTIONALITY CRITERIA

PROJECT NAME

DUNDONALD SAPS- MPUMALANGA PROVINCE

TENDER NUMBER

#	CRITERIA	EVALUATION INDICATORS	ALLOCATED POINTS
1	RELEVANT CONSTRUCTION WORKS EXPERIENCE ON PREVIOUS CONTRACTS OF SIMILAR NATURE, SCOPE AND/OR COMPLEXITY		40
	<p>The bidder must submit signed reference letters from clients/consultants of previous projects completed in relation to building construction of a similar nature, in the last 10 years. Signed practical completion certificate must be attached.</p> <p>Reference letters MUST indicate the following:</p> <ol style="list-style-type: none">1. Full name of client2. Name of bidder3. Project duration (start and end dates)4. Project value (Including VAT)5. Description of works carried out6. Client contact details	One (1) Construction related project of similar nature, scope, and complexity at R 30 million or higher	10
		Two (2) Construction related projects of similar nature, scope, and complexity at R 30 million or higher	15
		Three (3) Construction related projects of similar nature, scope, and complexity at R 30 million or higher	20
		Four (4) Construction related projects of similar nature, scope, and complexity at R 30 million or higher	30
		Five (5) Construction related projects of similar nature, scope, and complexity at R 30 million or higher	40
2	FINANCIAL CAPACITY		20
	<p>Provide a valid bank rating from your banking institution stating A, B, C or D bank code /rating, not older than 3 months from tender closing date.</p>	Credit rating/code of D	5
		Credit rating/code of C	10
		Credit rating/code of B	15
		Credit rating/code of A	20
		No information provided	0
3	COMPETENCE OF KEY PERSONEL(S), PROFESSIONAL AND TECHNICAL PERSONNEL		40
	3.1 Professional Construction Manager (registered with SACPCMP)		15
	<p>Provide the following information for the Construction Manager</p> <ul style="list-style-type: none">• A detailed CV• Proof of professional registration with SACPCMP as a professional Construction Manager	2 or less years post registration relevant construction experience as a Professional Construction Manager	5
		More than 2 but less than 3 years post registration relevant construction experience as a Professional Construction Manager	10
		3 or more years post registration relevant construction experience as a Professional Construction Manager	15
	3.2 Professional Construction Health and Safety Officer		15
	<p>Provide the following information for the Construction Health and Safety Officer</p> <ul style="list-style-type: none">• A detailed CV• Proof of professional registration with SACPCMP as a professional Construction Health and Safety	2 or less years post registration relevant construction experience as a Professional Construction Health and Safety Officer	5
		More than 2 but less than 3 years post registration relevant construction experience as a Professional Construction Manager	10
		3 or more years post registration relevant construction experience as a Professional Construction Manager	15

3.3 Site Agent		10
Provide the following information for the Site Agent <ul style="list-style-type: none"> A detailed CV showing experience as a site agent Copy of built-environment academic qualification (where required) 	2 or less years relevant construction experience as site agent with built environment academic qualification. or More than 2 but less than 6 years of relevant construction experience as site agent without built-environment academic qualification	3
	More than 2 but less than 5 years relevant construction experience as site agent with built-environment academic qualification. or 6 or more but less than 10 years relevant construction experience as site agent without built-environment academic qualification	6
	6 or more years relevant construction experience as site agent with built-environment academic qualification. or 11 or more years relevant construction experience as site agent without built-environment academic qualification	10
TOTAL FUNCTIONALITY SCORE		100,00

Minimum functionality score to qualify for further evaluation	60,00
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ABBREVIATIONS

SACPCMP - South African Council for the Project and Construction Management Professions
CV - Curriculum Vitae

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CONSTRUCTION OF DUNDONALD NEW POLICE STATION: MPUMALANGA PROVINCE

BID: 19/1/9/1/28TB(24)

PART C: CONTRACT

**Part C1:
Agreements and contract data:**

C 1.1: FORM OF OFFER AND ACCEPTANCE

Tender* no: 19/1/9/1/28TB(24)

OFFER

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: **CONSTRUCTION OF DUNDONALD NEW POLICE STATION: MPUMALANGA PROVINCE**

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

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

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

Rand (in words):	
Rand (in figures):	R

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

SIGNED FOR THE TENDERER:

Signature	Capacity	Name and surname of representative	Date
Name and address of tenderer:			

WITNESSED BY:

Signature	Name and surname of witness	Date	

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Tender no: 19/1/9/1/28TB(24)

ACCEPTANCE

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

The terms of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)

Part C2 Pricing data

Part C3 Scope of work.

Part C4 Site information, drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the returnable schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect, on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five (5) working days of the date of such receipt notifies the employer in writing of any reason why he/she cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

SIGNED FOR THE EMPLOYER:

Signature	Capacity	Name and surname of representative	Date
Name and address of employer:			

WITNESSED BY:

Signature	Name and surname of witness	Date

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Tender no: 19/1/9/1/28TB(24)**Schedule of Deviations**

1.1.1. Subject:
Details:
1.1.2. Subject:
Details:
1.1.3. Subject:
Details:
1.1.4. Subject:
Details:
1.1.5. Subject:
Details:
1.1.6. Subject:
Details:

By the duly authorised representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

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**C1.2: INSERT CONTRACT DATA THAT WAS APPROVED BY THE
BID SPECIFICATION COMMITTEE**

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**C1.2: CONTRACT DATA**

JBCC SERIES 2000 PRINCIPAL BUILDING AGREEMENT (Edition 4.1 of March 2005)

Project : Construction of Dundonald new Police Station, Mpumalanga**Employer** : South African Police Service**Reference** : 19/1/9/1/28

	<p>The Conditions of Contract are clauses 1 to 41 of the JBCC Series 2000 Principal Building Agreement (Edition 4.1 of March 2005) prepared by the Joint Building Contracts Committee.</p> <p>Copies of these conditions of contract may be obtained through most regional offices of the Association of South African Quantity Surveyors, Master Builders Association, South African Association of Consulting Engineers, South African Institute of Architects, Association of Construction Project Managers, Building Industries Federation South Africa, South African Property Owners Association or Specialist Engineering Contractors Committee.</p>
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	<p>CONTRACT VARIABLES</p> <p>THE SCHEDULE</p> <p>The schedule contains all variables referred to in this document and is divided into part 1: contract data completed by the employer and part 2: contract data completed by the contractor. Part 1 must be completed in full and included in the tender documents. Both the part 1 and part 2 form part of this agreement</p> <p>Spaces requiring information must be filled in, shown as 'not applicable' or deleted but not left blank. Where choices are offered, the non-applicable items are to be deleted. Where insufficient space is provided the information should be annexed hereto and cross referenced to the applicable clause of the schedule. Key cross reference clauses are italicised in [] brackets</p>
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42.0	Part 1: Contract Data completed by the Employer:
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42.1	CONTRACTING AND OTHER PARTIES
42.1.1	<p>Employer:</p> <p>Government of the Republic of South Africa in its South African Police Service</p> <p>Postal address: Private Bag X254 Pretoria.. 0001</p> <p>Tel: 012 841 7000 Fax: 012 841 7495</p> <p>Physical address: Supply Chain Management 117 Cresswell Rd Silverton 0127</p>

[1.2]

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**PART C1.2: CONTRACT DATA**

42.1.2 [1.1, 5.1]	Principal Agent: Postal address: Tel: Fax:
[1.1]	Representative of the Employer: Postal address: Tel: Fax:
42.1.3 [1.1, 5.2]	Agent (1) Agent's service: Postal address: Tel: Fax:
42.1.4 [1.1, 5.2]	Agent (2) Agent's service: Postal address: Tel: Fax:
42.1.5 [1.1, 5.2]	Agent (3) Agent's service: Postal address: Tel: Fax: 62

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**PART C1.2: CONTRACT DATA**

42.1.6 [1.1, 5.2]	Agent (4) Agent's service: Postal address: Tel: Fax:
42.1.7 [1.1, 5.2]	Agent (5) Agent's service: Postal address: Tel: Fax:
42.1.8 [1.1, 5.2]	Agent (6) Agent's service: Postal address: Tel: Fax:
42.1.9 [1.1, 5.2]	Agent (7) Agent's service: Postal address: Tel: Fax:

42.2	CONTRACT DETAILS
42.2.1 [1.1]	Works description: Refer to document – Scope of Work.
42.2.2 [1.1]	Site description: Refer to document – Site Information.
42.2.4 [41.0]	Specific options that are applicable to a State organ only Where so :

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**PART C1.2: CONTRACT DATA**

[1.1 #] [31.11.2 #] [31.12.2#]	1) Interest rate legislation: The interest rate applicable will be as determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)	
[11.2.#]	2) Lateral support insurance to be effected by the contractor:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
[31.4.2 #]	3) Payment will be made for materials and goods	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
[40.2.2.#]	4) Dispute resolution by litigation	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
[26.1.2 #]	5) Extended defects liability period applicable to the following elements: [State, if any]	
42.2.6 [15.3]	Period for the commencement of the works after the contractor takes possession of the site : One (1) working day .	
42.2.7 [24.3.1] [30.1]	For the works as a whole: The date for practical completion shall be 18 months from the date on which possession of the site is given to the contractor and the penalty per calendar day shall be as per the Appendix A attached herein upon award .	
42.2.8 [24.3.1] [28.1]	For the works in sections : The date for practical completion from the date on which possession of the site is given to the contractor and the penalty per calendar day : Section 1: [Description of the section] Construction period: [State Construction period of the section] Penalty: [To be determined as per Annexure A attached herein upon award] Section 2: [Description of the section] Construction period: [State Construction period of the section] Penalty: [To be determined as per Annexure A attached herein upon award] Section 3: [Description of the section] Construction period: [State Construction period of the section] Penalty: [To be determined as per Annexure A attached herein upon award] Section 4: [Description of the section] Construction period: [State Construction period of the section] Penalty: To be determined as per Annexure A attached herein upon award Section 5: [Description of the section] Construction period: [State Construction period of the section] Penalty: [To be determined as per Annexure A attached herein upon award] Section 6: [Description of the section] Construction period: [State Construction period of the section] Penalty: [To be determined as per Annexure A attached herein upon award]	
42.2.9 [1.2]	The law applicable to this agreement shall be that of the: Republic of South Africa	

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B.S.S.



42.3	INSURANCES
42.3.1 [10.1 #, 10.2 # 12.1 #]	Contract works insurance to be effected by the contractor <input checked="" type="checkbox"/> To the minimum value of the contract sum plus 20% With a deductible not exceeding 10% of each and every claim Or <input type="checkbox"/> For the minimum sum of R [State amount, if applicable] With a deductible not exceeding 5% of each and every claim
42.3.2 [10.1 #, 10.2 #, 12.1 #]	Supplementary insurance is required: Yes To the minimum value of the contract sum plus 10 %
42.3.3 [11.1 #, 12.1 #]	Public liability insurance to be effected by the contractor <input checked="" type="checkbox"/> For the sum of R 5 million With a deductible not exceeding 5% of each and every claim Or <input type="checkbox"/> For the sum of R [State amount, if applicable] With a deductible not exceeding 5% of each and every claim
42.3.4 [11.2 #, 12.1 #]	Support insurance to be effected by the contractor For the sum of R [State amount, if applicable] With a deductible of R
42.4	DOCUMENTS
42.4.2 [3.7]	Three (3) copies of the construction documents will be supplied to the contractor free of charge
42.4.3	Bills of quantities / Lump sum document schedule of rates drawn up in accordance with: <input checked="" type="checkbox"/> Standard System of Measuring Building Work (seventh edition as amended) Or <input type="checkbox"/> Standard System of Measuring Building Work for Small or Simple Buildings 1999 Or <input type="checkbox"/> Other(Specify)
42.4.5 [3.4]	JBCC Engineering General Conditions are to be included in the contract documents : No

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N.S.S



42.4.6 [31.5.3] [32.13]	<p>The contract value is to be adjusted using CPAP indices: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Where CPAP is applicable, the contract sum will be adjusted in accordance with the JBCC Contract Price Adjustment Provisions (CPAP) as set out in the CPAP Indices Application Manual as prepared by the JBCC Series 2000, code 2118, dated May 2005 and any amendments thereto:</p> <ol style="list-style-type: none">1) Glass etc. measured in specialist section Metalwork, will be adjusted in terms of the index for that work group unless specifically stated otherwise in the bills of quantities2) All electrical installations in buildings and power distribution systems shall be adjusted in terms of the index for Work Group 160 Electrical Installation. In case of uninterruptible power supplies, elevators, escalators and hoists, generating sets, motor-alternator sets and intercommunication systems shall be in accordance with Work Group 1703) With reference to Work Group 190 a proportion of the value related preliminaries pro rata to the amount of work excluded from adjustment, shall be excluded from Contract Price Adjustment Provisions, if Option A has been selected for the adjustment of preliminaries4) Further to clause 3.4.4 of the CPAP Indices Application Manual, the listing of additional items for exclusion by tenderers, will not be permitted5) Where V results in a negative amount after application of the formula in clause 8.3 of the CPAP Indices Application Manual the factor of 0,55 shall be substituted by 1,45 <p>Alternative Indices: Not Applicable</p>
42.4.7 [3.10]	<p>Details of changes made to the provisions of JBCC standard documentation</p> <p>Clause</p> <p>1.1 COMMENCEMENT DATE – means the date that the agreement, made in terms of the Form of Offer and Acceptance, comes into effect</p> <p>CONSTRUCTION GUARANTEE – means a guarantee at call obtained by the contractor from an institution approved by the employer in terms of the employer's construction guarantee form as selected in the schedule</p> <p>CONSTRUCTION PERIOD – means the period commencing on the date on which possession of the site is given to a contractor as stated in the schedule and ending on the date of practical completion</p> <p>CONSTRUCTION WORK PERMIT – means a document issued in terms of regulation 3 of the Construction Regulations, 2014 as published in Government Gazette No.40883 of 2 June 2017, as amended</p> <p>CORRUPT PRACTICE – means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the acquisition process or in contract execution</p> <p>FRAUDULENT PRACTICE – means a misrepresentation of facts in order to influence a acquisition process or the execution of a contract to the detriment of any tenderer, and includes collusive practice among tenderers (prior to or after the tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the tenderer of the benefits of free and open competition</p> <p>INTEREST – the interest rates applicable on this contract, whether specifically indicated in the relevant clauses or not, will be the rate as determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)</p> <p style="text-align: right;">66</p>



PRINCIPAL AGENT – means the person or entity appointed by the **employer** and named in the **schedule**. In the event of a **principal agent** not being appointed, then all the duties and obligations of a **principal agent** as detailed in the **agreement** shall be fulfilled by a representative of the **employer** as named in the **schedule**

SECURITY – means the form of security provided by the **employer** or **contractor**, as stated in the **schedule**, from which the **contractor** or **employer** may recover expense or loss

1.6 Any notice given may be delivered by hand, sent by prepaid registered post or telefax. Notice shall be presumed to have been duly given when:

1.6.4 No clause

3.2.1 A **construction guarantee** in terms of 14.0, where so elected in his tender

3.7 Add at the end thereof:

The **contractor** shall supply and keep a copy of the **JBCC Series 2000 Principal Building Agreement and Preliminaries** applicable to this contract on the **site**, to which the **employer**, **principal agent** and **agents** shall have access at all times.

3.10 Replace the second reference to "**principal agent**" with the word "**employer**"

4.3 No clause

5.1.2 under clause 41- Include reference to 32.6.3; 34.3; 34.4 and 38.5.8 in terms of which the **employer** has retained its authority and has not given a mandate to the **principal agent** and in terms of which the **employer** shall sign all documents

10.5 Add the following as 10.5

Damage to the works

- (1) Without in any way limiting the **contractor's** obligations in terms of the contract, the **contractor** shall bear the full risk of damage to and/or destruction of the **works** by whatever cause during construction of the **works** and hereby indemnifies and holds harmless the **employer** against any such damage. The **contractor** shall take such precautions and security measures and other steps for the protection and security of the **works** as the **contractor** may deem necessary
- (2) The **contractor** shall at all times proceed immediately to remove or dispose of any debris arising from damage to or destruction of the **works** and to rebuild, restore, replace and/or repair the **works**
- (3) The **employer** shall carry the risk of damage to or destruction of the **works** and materials paid for by the **employer** that is the result of the excepted risks as set out in 10.6
- (4) Where the **employer** bears the risk in terms of this contract, the **contractor** shall, if requested to do so, reinstate any damage or destroyed portions of the **works** and the costs of such reinstatement shall be measured and valued in terms of 32.0 hereof

10.6 Add the following as 10.6

Injury to Persons or loss of or damage to Properties

- (a) The **contractor** shall be liable for and hereby indemnifies the **employer** against any liability, loss, claim or proceeding whether arising in common law or by statute, consequent upon personal injuries to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the **works** unless due to any act or negligence of any person for whose actions the **employer** is legally liable



- (b) The **contractor** shall be liable for and hereby indemnifies the **employer** against any liability, loss, claim or proceeding consequent upon loss of or damage to any moveable, or immovable property or personal property or property contiguous to the **site**, whether belonging to or under the control of the **employer** or any other body or person, arising out of or in the course of or by reason of the execution of the **works** unless due to any act or negligence of any person for whose actions the **employer** is legally liable
- (c) The **contractor** shall upon receiving a **contract instruction** from the **principal agent** cause the same to be made good in a perfect and workmanlike manner at his own cost and in default thereof the **employer** shall be entitled to cause it to be made good and to recover the cost thereof from the **contractor** or to deduct the same from amounts due to the **contractor**
- (d) The **contractor** shall be responsible for the protection and safety of such portions of the premises placed under his control by the **employer** for the purpose of executing the **works** until the issue of the **certificate of practical completion**
- (5) Where the execution of the **works** involves the risk of removal of or interference with support to adjoining properties including land or structures or any structures to be altered or added to, the **contractor**, shall obtain adequate insurance and will remain adequately insured or insured to the specific limit stated in the contract against the death of or injury to persons or damage to such property consequent on such removal or interference with the support until such portion of the **works** has been completed
- (6) The **contractor** shall at all times proceed immediately at his own cost to remove or dispose of any debris and to rebuild, restore, replace and/or repair such property and to execute the **works**

10.7 Add the following as 10.7

HIGH RISK INSURANCE

In the event of the project being executed in a geological area classified as a "High Risk Area", that is an area which is subject to highly unstable subsurface conditions that might result in catastrophic ground movement evident by sinkhole or doline formation the following will apply:

10.7.1 Damage to the works

The **contractor** shall, from the date on which possession of the **site** is given to the **contractor** until the date of the **certificate of practical completion**, bear the full risk of and hereby indemnifies and holds harmless the **employer** against any damage to and/or destruction of the **works** consequent upon a catastrophic ground movement as mentioned above. The **contractor** shall take such precautions and security measures and other steps for the protection of the **works** as he may deem necessary

When so instructed to do so by the **principal agent**, the **contractor** shall proceed immediately to remove and/or dispose of any debris arising from damage to or destruction of the **works** and to rebuild, restore, replace and/or repair the **works**, at the **contractor's** own costs

10.7.2 Injury to persons or loss of or damage to property

The **contractor** shall be liable for and hereby indemnifies and holds harmless the **employer** against any liability, loss, claim or proceeding arising at any time during the period of the contract whether arising in common law or by statute, consequent upon personal injuries to or the death of any person whomsoever resulting from, arising out of or caused by a catastrophic ground movement as mentioned above

The **contractor** shall be liable for and hereby indemnifies the **employer** against any and all liability, loss, claim or proceeding consequent upon loss of or damage to any moveable, or



immovable property or personal property or property contiguous to the **site**, whether belonging to or under the control of the **employer** or any other body or person whomsoever arising out of or caused by a catastrophic ground movement, as mentioned above, which occurred during the period of the contract

10.7.3 It is the responsibility of the **contractor** to ensure that he has adequate insurance to cover his risk and liability as mentioned in 10.7.1 and 10.7.2. Without limiting the **contractor's** obligations in terms of the contract, the **contractor** shall, within twenty one (21) **calendar days** before commencement of the **works**, submit to the **employer** proof of such insurance policy, if requested to do so

10.7.4 The **employer** shall be entitled to recover any and all losses and/or damages of whatever nature suffered or incurred consequent upon the **contractor's** default of his obligations as set out in 10.7.1; 10.7.2 and 10.7.3. Such losses or damages may be recovered from the **contractor** or by deducting the same from any amounts still due under this contract or under any other contract presently or hereafter existing between the **employer** and the **contractor** and for this purpose all these contracts shall be considered one indivisible whole

14.0 Replace the entire clause 14.0 with the following:

14.0 SECURITY

14.1 In respect of contracts with a **contract sum** up to R1 million, the **security** to be provided by the **contractor** to the **employer** will be a payment reduction of five per cent (5%) of the value certified in the **payment certificate** (excluding VAT)

14.1.1 The payment reduction of the value certified in a **payment certificate** shall be *mutatis mutandi* in terms of 31.8(A)

14.1.2 The **employer** shall be entitled to recover expense and loss from the payment reduction in terms of 33.0 provided that the **employer** complies with the provisions of 33.4 in which event the **employer's** entitlement shall take precedence over his obligations to refund the payment reduction **security** or portions thereof to the **contractor**

14.2 In respect of contracts with a **contract sum** above R1 million, the **contractor** shall have the right to select the **security** to be provided in terms of 14.3, 14.4, 14.5, 14.6, or 14.7 as stated in the **schedule**. Such **security** shall be provided to the **employer** within twenty-one (21) **calendar days** from the **commencement** date. Should the **contractor** fail to select the **security** to be provided or should the **contractor** fail to provide the **employer** with the selected **security** within twenty-one (21) **calendar days** from the **commencement** date, the **security** in terms of 14.7 shall be deemed to have been selected.

14.3 Where the **security** as a cash deposit of ten per cent (10%) of the **contract sum** (excluding VAT) has been selected:

14.3.1 The **contractor** shall furnish the **employer** with a cash deposit equal in value to ten per cent (10%) of the **contract sum** (excluding VAT) within twenty-one (21) **calendar days** from the **commencement** date

14.3.2 Within twenty-one (21) **calendar days** of the date of **practical completion** of the **works** the **employer** shall reduce the cash deposit to an amount equal to three per cent (3%) of the **contract value** (excluding VAT), and refund the balance to the **contractor**

14.3.3 Within twenty-one (21) **calendar days** of the date of **final completion** of the **works** the **employer** shall reduce the cash deposit to an amount equal to one per cent (1%) of the **contract value** (excluding VAT) and refund the balance to the **contractor**

14.3.4 On the date of payment of the amount in the final **payment certificate**, the **employer** shall refund the remainder of the cash deposit to the **contractor**

14.3.5 The **employer** shall be entitled to recover expense and loss from the cash deposit in terms of 33.0 provided that the **employer** complies with the provisions of 33.4 in which event the



employer's entitlement shall take precedence over his obligations to refund the cash deposit **security** or portions thereof to the **contractor**

- 14.3.6 The parties expressly agree that neither the **employer** nor the **contractor** shall be entitled to cede the rights to the deposit to any third party
- 14.4 Where **security** as a variable **construction guarantee** of ten per cent (10%) of the **contract sum** (excluding VAT) has been selected:
- 14.4.1 The **contractor** shall furnish the **employer** with an acceptable variable **construction guarantee** equal in value to ten per cent (10%) of the **contract sum** (excluding VAT) within twenty-one (21) **calendar days** from the **commencement date**
- 14.4.2 The variable **construction guarantee** shall reduce and expire in terms of the Variable **Construction Guarantee** form included in the invitation to tender
- 14.4.3 The **employer** shall return the variable **construction guarantee** to the **contractor** within fourteen (14) **calendar days** of it expiring
- 14.4.4 Where the **employer** has a right of recovery against the **contractor** in terms of 33.0, the **employer** shall issue a written demand in terms of the variable **construction guarantee**
- 14.5 Where **security** as a fixed **construction guarantee** of five per cent (5%) of the **contract sum** (excluding VAT) and a five per cent (5%) payment reduction of the value certified in the **payment certificate** (excluding VAT) has been selected:
- 14.5.1 The **contractor** shall furnish a fixed **construction guarantee** to the **employer** equal in value to five per cent (5%) of the **contract sum** (excluding VAT)
- 14.5.2 The fixed **construction guarantee** shall come into force on the date of issue and shall expire on the date of the last certificate of **practical completion**
- 14.5.3 The **employer** shall return the fixed **construction guarantee** to the **contractor** within fourteen (14) **calendar days** of it expiring
- 14.5.4 The payment reduction of the value certified in a **payment certificate** shall be in terms of 31.8(A) and 34.8
- 14.5.5 Where the **employer** has a right of recovery against the **contractor** in terms of 33.0, the **employer** shall be entitled to issue a written demand in terms of the fixed **construction guarantee** or may recover from the payment reduction or may do both
- 14.6 Where **security** as a cash deposit of five per cent (5%) of the **contract sum** (excluding VAT) and a payment reduction of five per cent (5%) of the value certified in the **payment certificate** (excluding VAT) has been selected:
- 14.6.1 The **contractor** shall furnish the **employer** with a cash deposit equal in value to five per cent (5%) of the **contract sum** (excluding VAT) within twenty-one (21) **calendar days** from the **commencement date**
- 14.6.2 Within twenty-one (21) **calendar days** of the date of **practical completion** of the **works** the **employer** shall refund the cash deposit in total to the **contractor**
- 14.6.3 The payment reduction of the value certified in a **payment certificate** shall be *mutatis mutandi* in terms of 31.8(A)
- 14.6.4 Where the **employer** has a right of recovery against the **contractor** in terms of 33.0, the **employer** may issue a written notice in terms of 33.4 or may recover from the payment reduction or may do both



- 14.7 Where **security** as a payment reduction of ten per cent (10%) of the value certified in the **payment certificate** (excluding VAT) has been selected:
- 14.7.1 The payment reduction of the value certified in a **payment certificate** shall be *mutatis mutandi* in terms of 31.8(B)
- 14.7.2 The **employer** shall be entitled to recover expense and loss from the payment reduction in terms of 33.0 provided that the **employer** complies with the provisions of 33.4 in which event the **employer's** entitlement shall take precedence over his obligations to refund the payment reduction or portions thereof to the **contractor**
- 14.8 Payments made by the guarantor to the **employer** in terms of the fixed or variable **construction guarantee** shall not prejudice the rights of the **employer** or **contractor** in terms of this **agreement**
- 14.9 Should the **contractor** fail to furnish the **security** in terms of 14.2 the **employer**, in his sole discretion, and without notification to the **contractor**, is entitled to change the **contractor's** selected form of **security** to that of a ten per cent (10%) payment reduction of the value certified in the **payment certificate** (excluding VAT), whereafter 14.7 shall be applicable
- 15.1.1 No clause
- 15.1.2 The **security** selected in terms of 14.0
- 15.1.4 Add 15.1.4 as follows:
- An acceptable health and safety plan, required in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), within twenty-one (21) **calendar days** of **commencement date**
- 15.2.1 Under 41: Amend to read as follows:
- "Give the **contractor** possession of the **site** within forty (40) **working days** of the **contractor** complying with the terms of 15.1.4 where a **construction work permit** is required in terms of the **works** or within ten (10) **working days** where a **construction work permit** is not a requirement in terms of the **works**"
- 17.1.11 Delete the words "and the appointment of **nominated** and **selected subcontractors**"
- 20.1.3 No clause
- 21.0 No clause
- 26.1.2 Add # next to 26.1.2
- 29.2.5 No clause
- 31.5.2 Security adjustments in terms of 14.0 or 31.8
- 31.8 Amend as follows:
- 31.8(A) Where a **security** is selected in terms of 14.1; 14.5 or 14.6, the value of the **works** in terms of 31.4.1 and of the **materials and goods** in terms of 31.4.2 shall be certified in full. The value certified shall be subject to the following percentage adjustments:
- 31.8(A).1 Ninety-five per cent (95%) of such value in interim **payment certificates** issued up to the date of **practical completion**
- 31.8(A).2 Ninety-seven per cent (97%) of such value in interim **payment certificates** issued on the date of **practical completion** and up to but excluding the date of **final completion**



- 31.8(A).3 Ninety-nine per cent (99%) of such value in interim **payment certificates** issued on the date of **final completion** and up to but excluding the final **payment certificate** in terms of 34.6
- 31.8(A).4 One hundred per cent (100%) of such value in the final **payment certificate** in terms of 34.6 except where the amount certified is in favour of the **employer**. In such an event the payment reduction shall remain at the adjustment level applicable to the final **payment certificate**.
- 31.8(B) Where security is a payment reduction in term of 14.7 has been selected the value of the **works** in terms of 31.4.1 and **materials and goods** in terms of 31.4.2 shall be certified in full. The value certified shall be subject to the following percentage adjustments:
- 31.8(B).1 Ninety per cent (90%) of such value in interim **payment certificates** issued up to the date of **practical completion**
- 31.8(B).2 Ninety-seven per cent (97%) of such value in interim **payment certificates** issued on the date of **practical completion** and up to but excluding the date of **final completion**
- 31.8(B).3 Ninety-nine per cent (99%) of such value in interim **payment certificates** issued on the date of **final completion** and up to but excluding the final **payment certificate** in terms of 34.6
- 31.8(B).4 One hundred per cent (100%) of such value in the final **payment certificate** in terms of 34.6 except where the amount certified is in favour of the **employer**. In such an event the payment reduction shall remain at the adjustment level applicable to the final **payment certificate**
- 31.12 Delete the following: "Payment shall be subject to the **employer** giving the **contractor** a tax invoice for the amount due."
- 32.5.1 Add the following to the end of each of these clauses: "...due to no fault of the
32.5.4 **contractor**"
and
32.5.7
- 34.1 Remove #
- 34.2 Add # next to 34.2
- 34.8 The **principal agent** shall certify one hundred per cent (100%) of the amount of the **final account** in the **final payment certificate**
- 34.13 Replace "seven (7) **calendar days**" with "twenty one (21) **calendar days**" and delete the words: "subject to the **employer** giving the **contractor** a tax invoice for the amount due"
- 36.1 Add the following clauses 36.1.3 to 36.1.5. under 36.1 to read as follows:
- 36.1.3 refuses or neglects to comply strictly with any of the conditions of contract
- 36.1.4 estate being sequestrated; liquidated or surrendered in terms of the insolvency laws in force within the Republic of South Africa
- 36.1.5 in the judgment of the **employer**, has engaged in **corrupt or fraudulent practices** in competing for or in executing the contract
- 36.3 Remove reference to "No clause", and replace "**principal agent**" with "**employer**"
- 36.7 Add the following: "Notwithstanding any clause to the contrary, on cancellation of this



37.5 and 38.7	agreement either by the employer or the contractor ; or for any reason whatsoever, the contractor shall on written instruction, discontinue with the works on a date stated and withdraw himself from the site . The contractor shall not be entitled to refuse to withdraw from the works on the grounds of any lien or right of retention or on the grounds of any other right whatsoever"
37.3.5 and 38.5.4	Replace "ninety (90)" with "one hundred and twenty (120)"
39.3.5	Add the following words at the end thereof: "within one hundred and twenty (120) working days of completion of such a report"
40.2.2	under clause 41 – Replace "one (1) year" with "three (3) years"
40.6	under clause 41 – Remove reference to no clause
40.7.1	Change "(10)" to "(15)"
	Add the following to the end thereof: Whether or not mediation resolves the dispute, the parties shall bear their own costs concerning the mediation and equally share the costs of the mediator and related costs.

42.4.8	CONTRACT PARTICIPATION GOALS AND CONTRACT SKILLS DEVELOPMENT GOALS
The contractor shall achieve in the performance of the contract the following Contract Participation Goals (CPGs) and Contract Skills Development Goals (CSDG) as described in C3: Scope of Work and C2.1: Pricing Assumptions and in accordance with the feasibility study(when applicable), which forms part of the specifications in the CPG Section of the Specification of this contract.	

(a)	cidb BUILD Programme: Minimum Targeted Enterprise Development Contract Participation Goal in accordance with the cidb Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts, No 36190 Government Gazette, 25 February 2013, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract. (Applicable to projects that require 7GB or 7CE cidb grading, i.e. R20 000 001 and above with a minimum 6 month construction period)
(b)	cidb BUILD Programme: Minimum Targeted Contract Skills Development Goal in accordance with the cidb Standard for Developing Skills through Infrastructure Contracts as published in the Government Gazette Notice No. 43495 of 3 July 2020, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract. (Applicable to projects which require cidb Grade 7 and above for all class of works categories, i.e. R20 000 001 and above with minimum 12 month construction period)
(c)	Failing to achieve the minimum targeted Contract Skills Development Goal and/or minimum targeted Contract Skills Development Goal will result in a thirty percent (30%) penalty of the value of the portion not achieved, excluding VAT (see example in Annexure B)



42.0	Part 2: Contract Data provided by the Contractor:
42.5	CONTRACT DETAILS
42.5.1	Contractor: Postal address: _____ _____ _____ Tel: _____ Fax: _____ TAX / VAT Registration No: _____ Physical address: _____ _____ _____ _____
42.5.2	The accepted contract sum inclusive of tax is R _____ Amount in words: _____
42.5.3 [31.3]	The latest day of the month for the issue of an interim payment certificate : _____
42.5.4 [32.12]	The preliminaries amounts shall be paid in terms of: Alternative A <input type="checkbox"/> Alternative B <input type="checkbox"/>
42.5.5 [32.12]	The preliminaries amounts shall be adjusted in terms of: Alternative A <input type="checkbox"/> Alternative B <input type="checkbox"/>



42.5.7 [14]	<p>The security to be provided by the contractor:</p> <p>(a) in respect of contracts up to R1 million, the contractor will provide security in terms of 14.1</p> <p>(b) in respect of contracts above R1 million, the contractor will provide, as security, one of the following:</p> <p>(1) cash deposit of 10 % of the contract sum (excluding VAT) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(2) variable construction guarantee of 10 % of the contract sum (excluding VAT) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(3) payment reduction of 10% of the value certified in the payment certificate (excluding VAT) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>(4) cash deposit of 5% of the contract sum (excluding VAT) and a payment reduction of 5% of the value certified in the payment certificate (excluding VAT) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(5) fixed construction guarantee of 5% of the contract sum (excluding VAT) and a payment reduction of 5% of the value certified in the payment certificate (excluding VAT) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>NB. Guarantees submitted must be issued by either an insurance company duly registered in terms of the Short-Term Insurance Act, 1998 (Act 35 of 1998) or by a bank duly registered in terms of the Banks Act, 1990 (Act 94 of 1990) on the pro-forma referred to above. No alterations or amendments of the wording of the pro-forma will be accepted.</p>
42.5.8 [29.7.2]	<p>The annual building holiday period after the commencement of the construction period:</p> <p>From: _____ to _____</p>
42.6 42.6.1	<p>DOCUMENTS</p> <p>Contract documents marked and annexed hereto:</p> <p>Priced bills of quantities: Yes <input type="checkbox"/> No <input type="checkbox"/> Document marked as: _____</p> <p>Lump sum document: : Yes <input type="checkbox"/> No <input type="checkbox"/> Document marked as: _____</p> <p>Guarantees: Yes <input type="checkbox"/> No <input type="checkbox"/> Document marked as: _____</p> <p>Contract drawings: Yes <input type="checkbox"/> No <input type="checkbox"/> Document marked as: _____</p> <p>Other documents: Yes <input type="checkbox"/> No <input type="checkbox"/> (Attach additional pages if more space is required)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>



APPENDIX A

CALCULATION OF PENALTY

The following calculation of **penalty** will be based on the tendered amount (excluding **tax**) of the awarded **contractor** and it shall be carried forward to item 42.2.7 of the **schedule** for **works** to be completed as a whole and item 42.2.8 for **works** to be completed in **sections**.

CONSTRUCTION PERIOD	RATE PER R100 OF ESTIMATE
1 month	27,5 cents
1,5 months	22 cents
2 months	16,5 cents
2,5 months	13,5 cents
3 months	11 cents
3,5 months	9,5 cents
4 months	8,5 cents
4,5 months	7,5 cents
5 months	6,25 cents
6 months	5,75 cents
7 months	4,75 cents
8 months	4 cents
9 months	3,75 cents
10 months	3,5 cents
11 months	3 cents
12 months	2,75 cents
14 months	2,5 cents
15 months	2,25 cents
16 months	2 cents
18 months	1,75 cents
20 months	1,5 cents
21 months	1,5 cents
24 months	1,25 cents
30 months	1 cent
36 months	1 cent
42 months	1 cent

PENALTY PER DAY ROUNDED OFF AS FOLLOWS:

R 0 – R 500	nearest R 5
R 501 – R 1 000	nearest R 10
R 1 001 – R 5 000	nearest R 50
R 5 001 and above	nearest R 100

EXAMPLE

Contract sum = R2 500 000 (excluding **tax**)

Construction period = 12 months

$R2\ 500\ 000 \times \frac{0.0275}{100}$

= R687.50/Calendar day

Therefore rounded off to the nearest R10.00 = R690.00/Calendar day

**APPENDIX B****PENALTY FOR NOT ACHIEVING MINIMUM CPG AND CSDG EXAMPLE****1. Minimum Targeted Enterprise Development Contract Participation Goal**

A.	Project Value	R	120 000 000,00
B.	Minimum 5% CPG Targeted Enterprise Development	R	6 000 000,00
C.	CPG Achieved*	R	4 000 000,00
D.	Shortfall	R	2 000 000,00
E.	Penalty applicable as per Contract Data (D x 30%)	R	600 000,00

*amount sub-contracted and/or amount for joint venture partner for targeted enterprise/s

2. Minimum Targeted Contract Skills Development Goal

A.	Contract amount (Excl. VAT and allowances)	R	95 000 000,00
B.	Minimum 0,5% CSDG (GB Contractor)	R	475 000,00
C.	CSDG Achieved*	R	400 000,00
D.	Shortfall	R	75 000,00
E.	Penalty applicable as per Contract Data (D x 30%)	R	22 500,00

* Actual CSDG training requirement value after award upon selecting method/s of training and appointment of beneficiaries

**CONSTRUCTION OF DUNDONALD NEW POLICE STATION:
MPUMALANGA PROVINCE**

BID: 19/1/9/1/28TB(24)

PART C:

CONTRACT

Part C.2

Pricing data:

	Unit	Quantity	Rate	Amount
<u>SECTION NO 1</u>				
<u>BILL NO. 1</u>				
<u>PRELIMINARIES AND GENERAL</u>				
<u>MEANING OF TERMS "TENDER / TENDERER"</u>				
Any reference to the words "Tender" or "Tenderer" herein and/or in any other documentation shall be construed to have the same meaning as the words "Bid" or "Bidder"				
<u>PRELIMINARIES</u>				
The JBCC Preliminaries Code 2103, May 2005 edition for use with the JBCC Principal Building Agreement Edition 4.1 Code 2101, March 2005 is taken to be incorporated herein. The tenderer is deemed to have referred to these documents for the full intent and meaning of each clause. These clauses are referred to by number and heading only. Where standard clauses or options are not applicable to the contract such modifications or corrections as are necessary are given under each relevant clause. Where an item is not relevant to this specific contract such item is marked. "N/A" signifying "Not Applicable".				
<u>PRICING OF PRELIMINARIES</u>				
Should Option A, as set out in clause B10.3.1 hereinafter be used for the adjustment of preliminaries then each item priced is to be allocated to one or more of the three categories Fixed, Value Related or Time Related and the respective amounts entered in the spaces provided under each item				
Items not priced in these Preliminaries shall be deemed to be included elsewhere in these Bills of Quantities.				
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**SECTION A: JBCC PRINCIPAL BUILDING
AGREEMENT**

DEFINITIONS

1 **A1 DEFINITIONS AND INTERPRETATION**

Clause 1.0 Clause

1.1 Definition of "**Commencement Date**" is added:

"**COMMENCEMENT DATE**" means the date that the agreement, made in terms of the Form of Offer and Acceptance, comes into effect

Clause 1.1 Definition of "**Construction Guarantee**" is amended by replacing it with the following:

"**CONSTRUCTION GUARANTEE**" means a guarantee at call obtained by the contractor from an institution approved by the employer in terms of the employer's construction guarantee form as selected in the schedule

Clause 1.1 Definition of "**Construction Period**" is amended by replacing it with the following:

"**CONSTRUCTION PERIOD**" means the period commencing on the commencement date and ending on the date of practical completion

Clause 1.1 Definition of "**Corrupt Practice**" is added:

"**CORRUPT PRACTICE**" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

Clause 1.1 Definition of "**Fraudulent Practice**" is added:

"**FRAUDULANT PRACTICE**" means a misrepresentation of facts in order to influence a procurement process in the execution of a contract to the detriment of any tenderer and includes collusive practice among tenderes (prior to or after the tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the tenderer of the benefits of free and open competition.

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Clause 1.1 Definition of "Interest" is amended by replacing it with the following:

"INTEREST" means the interest rates applicable on this contract, whether specifically indicated in the relevant clauses or not, will be the rate determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Clause 1.1 Definition of "Principal Agent" is amended by replacing it with the following:

"PRINCIPAL AGENT" means the person or entity appointed by the **employer** and named in the **schedule**. In the event of a **principal agent** not being appointed, then all the duties and obligations of a **principal agent** as detailed in the **agreement** shall be fulfilled by a representative of the **employer** as named in the **schedule**.

Clause 1.1 Definition of "Security" is amended by replacing it with the following:

"SECURITY" means the form of security provided by the **employer** or **contractor**, as stated in the **schedule**, from which the **contractor** or **employer** may recover expense or loss

Clause 1.6 is amended by replacing the words "prepaid registered post, telefax or e-mail" with "prepaid registered post or telefax"

Clause 1.6.4 is amended by replacing it with the following:

No clause

Fixed: _____ Value: _____
Time: _____

Item

OBJECTIVE AND PREPARATION

2 **A2 OFFER, ACCEPTANCE AND PERFORMANCE**

Clause 2.0

Fixed: _____ Value: _____
Time: _____

Item

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3 A3 DOCUMENTS

Clause 3.0

Clause 3.2.1 is amended by replacing "14.1" with "14.0"

Clause 3.7 is amended by the addition of the following:

The **contractor** shall supply and keep a copy of the **JBCC Series 2000 Principal Building Agreement** and Preliminaries applicable to this contract on the **site**, to which the **employer, principal agent and agents** shall have access at all times

Clause 3.10 is amended by replacing the second reference to "**principal agent**" with the word "**employer**"

Fixed: _____ Value: _____
Time: _____

Item

4 A4 DESIGN RESPONSIBILITY

Clause 4.0

Clause 4.3 is amended by replacing it with the following:

No clause

Fixed: _____ Value: _____
Time: _____

Item

5 A5 EMPLOYER'S AGENTS

Clause 5.0

Clause 5.1.2 is amended to include clauses 32.6.3, 34.3, 34.4 and 38.5.8

Fixed: _____ Value: _____
Time: _____

Item

6 A6 SITE REPRESENTATIVE

Clause 6.0

Fixed: _____ Value: _____
Time: _____

Item

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7 A7 COMPLIANCE WITH REGULATIONS

Clause 7.0

Note: A separate clause has been included in Section C : Specific Preliminaries of the **bills of quantities / lump sum document** for the contractor to have the opportunity to price for all the requirements of the Occupational Health and Safety Act, Construction Regulations and Health and Safety Specification

Fixed: _____ Value: _____
Time: _____

Item

8 A8 WORKS RISK

Clause 8.0

Fixed: _____ Value: _____
Time: _____

Item

9 A9 INDEMNITIES

Clause 9.0

Fixed: _____ Value: _____
Time: _____

Item

10 A10 WORKS INSURANCES

Clause 10.0

Clause 10.0 is amended by the addition of the following clauses:

10.5 Damage to the Works

- (a) Without in any way limiting the **contractor's** obligations in terms of the contract, the **contractor** shall bear the full risk of damage to and/or destruction of the **works** by whatever cause during construction of the **works** and hereby indemnifies and holds harmless the **employer** against any such damage. The **contractor** shall take such precautions and security measures and other steps for the protection and security of the **works** as the **contractor** may deem necessary

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- (b) The **contractor** shall at all times proceed immediately to remove or dispose of any debris arising from damage to or destruction of the **works** and to rebuild, restore, replace and/or repair the **works**
- (c) The **employer** shall carry the risk of damage to or destruction of the **works** and material paid for by the **employer** that is the result of the excepted risks as set out in 10.6
- (d) Where the **employer** bears the risk in terms of this contract, the **contractor** shall, if requested to do so, reinstate any damage or destroyed portions of the **works** and the costs of such reinstatement shall be measured and valued in terms of 32.0 hereof

10.6 Injury to Persons or loss of or damage to Properties

- (a) The **contractor** shall be liable for and hereby indemnifies the **employer** against any liability, loss, claim or proceeding whether arising in common law or by statute, consequent upon personal injuries to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the **works** unless due to any act or negligence of any person for whose actions the **employer** is legally liable
- (b) The **contractor** shall be liable for and hereby indemnifies the **employer** against any liability, loss, claim or proceeding consequent upon loss of or damage to any moveable or immovable or personal property or property contiguous to the **site**, whether belonging to or under the control of the **employer** or any other body or person, arising out of or in the course of or by reason of the execution of the **works** unless due to any act or negligence of any person for whose actions the **employer** is legally liable

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- (c) The **contractor** shall, upon receiving a **contract instruction** from the **principal agent**, cause the same to be made good in a perfect and workmanlike manner at his own cost and in default thereof the **employer** shall be entitled to cause it to be made good and to recover the cost thereof from the **contractor** or to deduct the same from amounts due to the **contractor**
- (d) The **contractor** shall be responsible for the protection and safety of such portions of the premises placed under his control by the **employer** for the purpose of executing the **works** until the issue of the **certificate of practical completion**
- (e) Where the execution of the works involves the risk of removal of or interference with support to adjoining properties including land or structures or any structures to be altered or added to, the **contractor** shall obtain adequate insurance and will remain adequately insured or insured to the specific limit stated in the contract against the death of or injury to persons or damage to such property consequent on such removal or interference with the support until such portion of the **works** has been completed
- (f) The **contractor** shall at all times proceed immediately at his own cost to remove or dispose of any debris and to rebuild, restore, replace and/or repair such property and to execute the **works**

10.7 High risk insurance

In the event of the project being executed in a geological area classified as a "High Risk Area", that is an area which is subject to highly unstable subsurface conditions that might result in catastrophic ground movement evident by sinkhole or doline formation the following will apply:

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10.7.1 Damage to the works

The **contractor** shall, from the commencement **date** of the **works** until the date of the **certificate of practical completion** bear the full risk of and hereby indemnifies and holds harmless the **employer** against any damage to and/or destruction of the **works** consequent upon a catastrophic ground movement as mentioned above. The **contractor** shall take such precautions and security measures and other steps for the protection of the **works** as he may deem necessary

When so instructed to do so by the **principal agent**, the **contractor** shall proceed immediately to remove and/or dispose of any debris arising from damage to or destruction of the **works** and to rebuild, restore, replace and/or repair the **works**, at the **contractor's** own costs

10.7.2 Injury to persons or loss of or damage to property

The **contractor** shall be liable for and hereby indemnifies and holds harmless the **employer** against any liability, loss, claim or proceeding arising at any time during the period of the contract whether arising in common law or by statute, consequent upon personal injuries to or the death of any person whomsoever resulting from, arising out of or caused by a catastrophic ground movement as mentioned above

The **contractor** shall be liable for and hereby indemnifies the **employer** against any and all liability, loss, claim or proceeding consequent upon loss of or damage to any moveable or immovable or personal property or property contiguous to the **site**, whether belonging to or under the control of the **employer** or any other body or person whomsoever arising out of or caused by a catastrophic ground movement, as mentioned above, which occurred during the period of the contract

10.7.3 It is the responsibility of the **contractor** to ensure that he has adequate insurance to cover his risk and liability as mentioned in 10.7.1 and 10.7.2. Without limiting the **contractor's** obligations in terms of the contract, the **contractor** shall, within twenty-one (21) **calendar days** of the **commencement date** but before commencement of the **works**, submit to the **employer** proof of such insurance policy, if requested to do so

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10.7.4 The **employer** shall be entitled to recover any and all losses and/or damages of whatever nature suffered or incurred consequent upon the **contractor's** default of his obligations as set out in 10.7.1; 10.7.2 and 10.7.3. Such losses or damages may be recovered from the **contractor** or by deducting the same from any amounts still due under this contract or under any other contract presently or hereafter existing between the **employer** and the **contractor** and for this purpose all these contracts shall be considered one indivisible whole

Fixed: _____ Value: _____
Time: _____

Item

11 A11 LIABILITY INSURANCES

Clause 11.0

Fixed: _____ Value: _____
Time: _____

Item

12 A12 EFFECTING INSURANCES

Clause 12.0

Fixed: _____ Value: _____
Time: _____

Item

13 A13.0 No clause

N/A

14 A14 SECURITY

Clause 14.0

Clauses 14.1 - 14.8 are amended by replacing them with the following:

14.1 In respect of contracts with a **contract sum** up to R1 million, the **security** to be submitted by the **contractor** to the **employer** will be as a payment reduction of five per cent (5%) of the value certified in the **payment certificate** (excluding VAT)

14.1.1 The payment reduction of the value certified in a **payment certificate** shall be *mutatis mutandi* in terms of 31.8(A)

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14.1.2 The **employer** shall be entitled to recover expense and loss from the payment reduction in terms of 33.0 provided that the **employer** complies with the provisions of 33.4 in which event the **employer's** entitlement shall take precedence over his obligations to refund the payment reduction **security** or portions thereof to the **contractor**

14.2 In respect of contracts with a **contract sum** above R1 million, the **contractor** shall have the right to select the **security** to be provided in terms of 14.3, 14.4, 14.5, 14.6, or 14.7 as stated in the **schedule**. Such **security** shall be provided to the **employer** within twenty-one (21) **calendar days** from **commencement date**. Should the **contractor** fail to select the **security** to be provided or should the **contractor** fail to provide the **employer** with the selected **security** within twenty-one (21) **calendar days** from **commencement date**, the **security** in terms of 14.7 shall be deemed to have been selected.

14.3 Where **security** as a cash deposit of ten per cent (10%) of the **contract sum** (excluding VAT) has been selected:

14.3.1 The **contractor** shall furnish the **employer** with a cash deposit equal in value to ten per cent (10%) of the **contract sum** (excluding VAT) within twenty-one (21) **calendar days** from **commencement date**

14.3.2 Within twenty-one (21) **calendar days** of the date of **practical completion** of the **works** the **employer** shall reduce the cash deposit to an amount equal to three per cent (3%) of the **contract value** (excluding VAT), and refund the balance to the **contractor**

14.3.3 Within twenty-one (21) **calendar days** of the date of **final completion** of the **works** the **employer** shall reduce the cash deposit to an amount equal to one per cent (1%) of the **contract value** (excluding VAT) and refund the balance to the **contractor**

14.3.4 On the date of payment of the amount in the final **payment certificate**, the **employer** shall refund the remainder of the cash deposit to the **contractor**

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14.3.5 The **employer** shall be entitled to recover expense and loss from the cash deposit in terms of 33.0 provided that the **employer** complies with the provisions of 33.4 in which event the **employer's** entitlement shall take precedence over his obligations to refund the cash deposit **security** or portions thereof to the **contractor**

14.3.6 The parties expressly agree that neither the **employer** nor the **contractor** shall be entitled to cede the rights to the deposit to any third party

14.4 Where **security** as a variable construction guarantee of ten percent (10%) of the **contract sum** (excluding VAT) has been selected:

14.4.1 The **contractor** shall furnish the **employer** with an acceptable variable construction guarantee equal in value to ten per cent (10%) of the **contract sum** (excluding VAT) within twenty-one (21) **calendar days** from **commencement date**

14.4.2 The variable construction guarantee shall reduce and expire in terms of the Variable Construction Guarantee form included in the invitation to tender

14.4.3 The **employer** shall return the variable construction guarantee to the **contractor** within fourteen (14) **calendar days** of it expiring

14.4.4 Where the **employer** has a right of recovery against the **contractor** in terms of 33.0, the **employer** shall issue a written demand in terms of the variable construction guarantee

14.5 Where **security** as a fixed construction guarantee of five per cent (5%) of the **contract sum** (excluding VAT) and a five per cent (5%) payment reduction of the value certified in the payment certificate (excluding VAT) has been selected:

14.5.1 The **contractor** shall furnish a fixed construction guarantee to the **employer** equal in value to five per cent (5%) of the **contract sum** (excluding VAT)

14.5.2 The fixed **construction guarantee** shall come into force on the date of issue and shall expire on the date of the last certificate of **practical completion**

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14.5.3 The **employer** shall return the fixed **construction guarantee** to the **contractor** within fourteen (14) **calendar days** of it expiring

14.5.4 The payment reduction of the value certified in a **payment certificate** shall be in terms of 31.8 (A) and 34.8

14.5.5 Where the **employer** has a right of recovery against the **contractor** in terms of 33.0, the **employer** shall be entitled to issue a written demand in terms of the fixed **construction guarantee** or may recover from the payment reduction or may do both

14.6 Where **security** as a cash deposit of five per cent (5%) of the **contract sum** (excluding VAT) and a payment reduction of five per cent (5%) of the value certified in the **payment certificate** (excluding VAT) has been selected:

14.6.1 The **contractor** shall furnish the **employer** with a cash deposit equal in value to five per cent (5%) of the **contract sum** (excluding VAT) within twenty-one (21) **calendar days** from **commencement date**

14.6.2 Within twenty-one (21) **calendar days** of the date of **practical completion** of the **works** the **employer** shall refund the cash deposit in total to the **contractor**

14.6.3 The payment reduction of the value certified in a **payment certificate** shall be *mutatis mutandi* in terms of 31.8(A)

14.6.4 Where the **employer** has a right of recovery against the **contractor** in terms of 33.0, the **employer** may issue a written notice in terms of 33.4 or may recover from the payment reduction or may do both

14.7 Where **security** as a payment reduction of ten per cent (10%) of the value certified in the **payment certificate** (excluding VAT) has been selected:

14.7.1 The payment reduction of the value certified in a **payment certificate** shall be *mutatis mutandi* in terms of 31.8(B)

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14.7.2 The **employer** shall be entitled to recover expense and loss from the payment reduction in terms of 33.0 provided that the **employer** complies with the provisions of 33.4 in which event the **employer's** entitlement shall take precedence over his obligations to refund the payment reduction or portions thereof to the **contractor**

14.8 Payments made by the guarantor to the **employer** in terms of the fixed or variable **construction guarantee** shall not prejudice the rights of the **employer** or **contractor** in terms of this **agreement**

14.9 Should the **contractor** fail to furnish the **security** in terms of 14.2, the **employer**, in his sole discretion and without notification to the **contractor**, is entitled to change the **contractor's** selected form of **security** to that of a ten per cent (10%) payment reduction of the value certified in the **payment certificate** (excluding VAT), whereafter 14.7 shall be applicable

Fixed: _____ Value: _____
Time: _____

Item

EXECUTION

15 **A15 PREPARATION FOR AND EXECUTION OF THE WORKS**

Clause 15.0

Clause 15.1.1 is amended by replacing it with:

No Clause

Clause 15.1.2 is amended by replacing it with:

The **security** selected in terms of 14.0

Clause 15.1 is amended by the addition of the following clause:

15.1.4 An acceptable health and safety plan, required in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), within twenty-one (21) **calendar days** of **commencement date**

Clause 15.2.1 is amended by replacing it with the following clause:

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Give the **contractor** possession of the **site** within ten (10) **working days** of the **contractor** complying with the terms of 15.1.2 and 15.1.4

Fixed: _____ Value: _____
Time: _____

Item

16 **A16 ACCESS TO THE WORKS**

Clause 16.0

Fixed: _____ Value: _____
Time: _____

Item

17 **A17 CONTRACT INSTRUCTIONS**

Clause 17.0

Clause 17.1.11 is amended by deleting the words "and the appointment of **nominated** and **selected subcontractors**"

Fixed: _____ Value: _____
Time: _____

Item

18 **A18 SETTING OUT OF THE WORKS**

Clause 18.0

Fixed: _____ Value: _____
Time: _____

Item

19 **A19 ASSIGNMENT**

Clause 19.0

Fixed: _____ Value: _____
Time: _____

Item

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20 A20 NOMINATED SUB-CONTRACTORS

Clause 20.0

Clause 20.1.3 is amended by replacing it with the following:

No Clause

Note: See item B9.1 hereinafter for adjustment of attendance on **nominated subcontractors** executing work allowed for under provisional sums

Fixed: _____ Value: _____
Time: _____

Item

21 A21 SELECTED SUBCONTRACTORS

Clause 21.0

Clause 21 is amended by replacing it with:

No Clause

Fixed: _____ Value: _____
Time: _____

Item

22 A22 EMPLOYER'S DIRECT CONTRACTORS

Clause 22.0

Fixed: _____ Value: _____
Time: _____

Item

23 A23 CONTRACTOR'S DOMESTIC SUBCONTRACTORS

Clause 23.0

Fixed: _____ Value: _____
Time: _____

Item

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COMPLETION

24 **A24 PRACTICAL COMPLETION**

Clause 24.0

Fixed: _____ Value: _____
Time: _____

Item

25 **A25 WORK'S COMPLETION**

Clause 25.0

Fixed: _____ Value: _____
Time: _____

Item

26 **A26 FINAL COMPLETION**

Clause 26.0

Clause 26.1.2 is amended by inserting "#" next to 26.1.2

Fixed: _____ Value: _____
Time: _____

Item

27 **A27 LATENT DEFECTS LIABILITY PERIOD**

Clause 27.0

Fixed: _____ Value: _____
Time: _____

Item

28 **A28 SECTIONAL COMPLETION**

Clause 28.0

Fixed: _____ Value: _____
Time: _____

Item

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29 **A29 REVISION OF DATE FOR PRACTICAL
COMPLETION**

Clause 29.0

Clause 29.2.5 is amended by replacing it with:

No clause

Fixed: _____ Value: _____

Time: _____

Item

30 **A30 PENALTY FOR NON-COMPLETION**

Clause 30.0

Fixed: _____ Value: _____

Time: _____

Item

PAYMENT

31 **A31 INTERIM PAYMENT TO THE CONTRACTOR**

Clause 31.0

32 Clause 31.5.2 is amended by replacing "14.7.1"t with
"14.0"

Clause 31.8 is amended by replacing it with the
following two alternative clauses:

Alternative A

31.8(A) Where a **security** is selected in terms of 14.1;
14.5 or 14.6, the value of the **works** in terms of 31.4.1
and **materials and goods** in terms of 31.4.2 shall be
certified in full. The value certified shall be subject to the
following percentage adjustments:

31.8(A).1 Ninety-five per cent (95%) of such value in
interim **payment certificates** issued up to the date of
practical completion

31.8(A).2 Ninety-seven per cent (97%) of such value in
interim **payment certificates** issued on the date of
practical completion and up to but excluding the date
of **final completion**

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31.8(A).3 Ninety-nine per cent (99%) of such value in interim **payment certificates** issued on the date of **final completion** and up to but excluding the final **payment certificate** in terms of 34.6

31.8(A).4 One hundred per cent (100%) of such value in the final **payment certificate** in terms of 34.6 except where the amount certified is in favour of the **employer**. In such an event the payment reduction shall remain at the adjustment level applicable to the final **payment certificate**

Alternative B

31.8(B) Where **security** is a payment reduction in terms of 14.7 the value of the **works** in terms of 31.4.1 and **materials and goods** in terms of 31.4.2 shall be certified in full. The value certified shall be subject to the following percentage adjustments:

31.8(B).1 Ninety per cent (90%) of such value in interim **payment certificates** issued up to the date of **practical completion**

31.8(B).2 Ninety-seven per cent (97%) of such value in interim **payment certificates** issued on the date of **practical completion** and up to but excluding the date of **final completion**

31.8(B).3 Ninety-nine per cent (99%) of such value in interim **payment certificates** issued on the date of **final completion** and up to but excluding the final **payment certificate** in terms of 34.6

31.8(B).4 One hundred per cent (100%) of such value in the final **payment certificate** in terms of 34.6 except where the amount certified is in favour of the **employer**. In such an event the payment reduction shall remain at the adjustment level applicable to the final **payment certificate**

Clause 31.12 is amended by deleting the following:

- 33 Payment shall be subject to the **employer** giving the **contractor** a tax invoice for the amount due

Fixed: _____ Value: _____
Time: _____

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34 **A32 ADJUSTMENT TO THE CONTRACT VALUE**

Clause 32.0

Clauses 32.5.1, 32.5.4 and 32.5.7 are amended by the addition of the following at the end of the sentence:

"due to no fault of the **contractor**"

Fixed: _____ Value: _____

Time: _____

Item

35 **A33 RECOVERY OF EXPENSE AND LOSS**

Clause 33.0

Fixed: _____ Value: _____

Time: _____

36 **A34 FINAL ACCOUNT AND FINAL PAYMENT**

Clause 34.0

Clause 34.1 is amended by removing "#" next to 34.1

Clause 34.2 is amended by removing "#" next to 34.2

Clause 34.8 is amended by deleting the words "where **security** as a fixed **construction guarantee** in terms of 14.4 has been selected or where payment reduction has been applied in terms of 14.7.1"

Clause 34.13 is amended by replacing "seven (7) **calendar days**" with "twenty-one (21) **calendar days**" and deleting the words "subject to the **employer** giving the **contractor** a tax invoice for the amount due"

Fixed: _____ Value: _____

Time: _____

Item

37 **A35 PAYMENT TO OTHER PARTIES**

Clause 35.0

Fixed: _____ Value: _____

Time: _____

Item

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CANCELLATION

**A36 CANCELLATION BY EMPLOYER -
CONTRACTOR'S DEFAULT**

Clause 36.0

Clause 36.1 is amended by the addition of the following clauses:

36.1.3 refuses or neglects to comply strictly with any of the conditions of contract

36.1.4 estate being sequestrated, liquidated or surrendered in terms of the insolvency laws in force within the Republic of South Africa

36.1.5 in the judgement of the **employer**, has engaged in **corrupt** or **fraudulent practices** in competing for or in executing the contract

Clause 36.3 is amended by removing the reference to "No clause" and replacing the words "**principal agent**" with "**employer**"

Clause 36.0 is amended by the addition of the following clause:

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

Fixed: _____ Value: _____
Time: _____

Item

38 **A37 CANCELLATION BY EMPLOYER - LOSS AND
DAMAGE**

Clause 37.0

Clauses 37.3.5 is amended by replacing "ninety (90) with "one hundred and twenty (120)"

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Clause 37.0 is amended by the addition of the following clause:

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

Fixed: _____ Value: _____
Time: _____

Item

39 **A38 CANCELLATION BY CONTRACTOR -
EMPLOYER'S DEFAULT**

Clause 38.0

Claues 38.5.4 is amended by replacing "ninety (90) with "one hundred and twenty (120)"

Clause 38.0 is amended by the addition of the following clause:

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

Fixed: _____ Value: _____
Time: _____

Item

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40 **A39 CESSATION - CANCELLATION OF THE WORKS**

Clause 39.0

Clauses 39.3.5 is amended by the addition of the following at the end of the sentence "within one hundred and twenty (120) **working days** of completion of such a report"

Fixed: _____ Value: _____
Time: _____

Item

41 **A40 DISPUTE SETTLEMENT**

Clause 40.0

Clause 40.2.2 is amended by replacing "one (1) year" with "three (3) years"

Clause 40.6 is amended by removing the reference to:

No clause

Clause 40.7.1 is amended by replacing "(10)" with "(15)" and by the addition of the following:

Whether or not mediation resolves the dispute, the parties shall bear their own cost concerning the mediation and equally share the costs of the **mediator** and related costs

Fixed: _____ Value: _____
Time: _____

Item

SUBSTITUTE PROVISIONS

42 **A41 STATE CLAUSES**

Clause 41.0

Fixed: _____ Value: _____
Time: _____

Item

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CONTRACT VARIABLES

THE SCHEDULE (DPW04EC)

43 **A42 PRE-TENDER INFORMATION**

Clause 42.0

Tenderers are referred to the Contract Data DPW-04(EC) for variables pertaining to this contract

Fixed: _____ Value: _____
Time: _____

Item

SECTION B: JBCC PRELIMINARIES

1: DEFINITIONS AND INTERPRETATION

44 **Definitions and interpretation**

See also clause A1.0 of Section A for additional an/or amended definitions which shall apply to this Section

Fixed: _____ Value: _____
Time: _____

Item

2: DOCUMENTS

45 **Checking of documents**

Fixed: _____ Value: _____
Time: _____

Item

46 **Provisional bills of quantities**

Fixed: _____ Value: _____
Time: _____

Item

47 **Availability of construction documentation**

Fixed: _____ Value: _____
Time: _____

Item

48 **Interests of agents**

Fixed: _____ Value: _____
Time: _____

Item

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49 **Priced documents**

Fixed: _____ Value: _____
Time: _____

Item

50 **Tender submission**

Clause 2.6 is amended by replacing "JBCC Form of Tender" with "Form of Offer and Acceptance DPW-07(EC)"

Fixed: _____ Value: _____
Time: _____

Item

3: THE SITE

51 **Defined works area**

Fixed: _____ Value: _____
Time: _____

Item

52 **Geotechnical investigation**

Fixed: _____ Value: _____
Time: _____

Item

53 **Inspection of the site**

Fixed: _____ Value: _____
Time: _____

Item

54 **Existing premises occupied**

Fixed: _____ Value: _____
Time: _____

Item

55 **Previous work - dimensional accuracy**

Fixed: _____ Value: _____
Time: _____

Item

56 **Previous work - defects**

Fixed: _____ Value: _____
Time: _____

Item

57 **Services - known**

Fixed: _____ Value: _____
Time: _____

Item

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58 **Services - unknown**

Fixed: _____ Value: _____
Time: _____

Item

59 **Protection of trees**

Fixed: _____ Value: _____
Time: _____

Item

60 **Articles of value**

Fixed: _____ Value: _____
Time: _____

Item

61 **Inspection of adjoining properties**

Fixed: _____ Value: _____
Time: _____

Item

4: MANAGEMENT OF CONTRACT

62 **Management of the works**

Fixed: _____ Value: _____
Time: _____

Item

63 **Programme for the works**

Fixed: _____ Value: _____
Time: _____

Item

64 **Progress meetings**

Fixed: _____ Value: _____
Time: _____

Item

65 **Technical meetings**

Fixed: _____ Value: _____
Time: _____

Item

66 **Labour and plant records**

Fixed: _____ Value: _____
Time: _____

Item

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