



VOLUME 3 OF 3

THE CONTRACT

NEC3 ECC OPTION A
PRICED CONTRACT WITH ACTIVITY SCHEDULE
TENDER NO. RFP 096/2022

Appointment of One (1) Turnkey Contractor for the Design, Supply, and Installation of Electricity Pump System to existing Boreholes in West-Rand District on behalf of the Gauteng Department of Agriculture and Rural Development (GDARD) (Cluster B)



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TABLE OF CONTENTS

Notes:

The Tender Document must be submitted as a whole. All forms must be properly completed as required and the document shall not be taken apart or altered in any way whatsoever.

All forms must be duly completed in **black ink** as required.

The list of returnable documents, which consists of forms and schedules to be completed and company specific certificates and information pages to be attached, comprise the following:

Document Reference	Title	Page
C1:	AGREEMENT AND CONTRACT DATA	4
C1.1	FORM OF OFFER AND ACCEPTANCE	5
C1.2	CONTRACT DATA	9
C1.2.1 :	CONDITIONS OF CONTRACT	10
C1.2.2 :	CONTRACT SPECIFIC DATA	15
C1.3 :	PERFORMANCE GUARANTEE	19
C2 :	PRICING DATA	22
C2.1 :	PRICING ASSUMPTIONS	23
C2.2 :	ACTIVITY SCHEDULE	25
C2.3 :	AMENDMENTS, QUALIFICATIONS & ALTERNATIVES	26
C3 :	SCOPE OF WORK	27
C3.1 :	EMPLOYERS WORKS INFORMATION	29
C3.2 :	CONTRACTORS WORKS INFORMATION	41
C4 :	SITE INFORMATION	42
C4.1 :	INFORMATION & MAP	43

THE CONTRACT

- C1 : AGREEMENT AND CONTRACT DATA**
- C2 : PRICING DATA**
- C3 : SCOPE OF WORK**
- C4 : SITE INFORMATION**

PART 1: AGREEMENT AND CONTRACT DATA

NEC 3 Engineering and Construction Contract Option A: Priced Contract with Activity Schedule of April 2013 (including amendments).

Document reference	Title	No of pages
C1.1	Form of Offer and Acceptance	4
C1.2	Contract Data	1
C1.2.1	Conditions of Contract	4
C1.2.2	Contract Specific Data	4
C1.3	Performance Guarantee	4
	Total number of pages	17

C1.1 FORM OF OFFER AND ACCEPTANCE

C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: **TENDER No: RFP 096/2022: Appointment of One (1) Turnkey Contractor for the Design, Supply, and Installation of Electricity Pump System to existing Boreholes in West-Rand District on behalf of the Gauteng Department of Agriculture and Rural Development (GDARD) (Cluster B)**

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 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)
 R (in figures).

This offer may be accepted by the Employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data or issue a conditional Letter of Acceptance subject to certain conditions which must be fulfilled prior to final acceptance and signing of the acceptance part of this form, whereupon the tenderer becomes or may become the party named as the Contractor in the conditions of contract identified in the contract data.

Signature
 Name
 Capacity



**VOLUME 3 OF 3
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for the Design, Supply, and Installation of
Electricity Pump System to existing Boreholes
in West-Rand District on behalf of the Gauteng
Department of Agriculture and Rural
Development (GDARD) (Cluster B)**

For the tenderer

Name of Tenderer

Address of Tenderer)

Name of witness.....

Signature of witness Date

C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)

C1.1.2 Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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



VOLUME 3 OF 3
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in West-Rand District on behalf of the Gauteng
Department of Agriculture and Rural
Development (GDARD) (Cluster B)

Signature

Name

Capacity

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

Name of witness

Signature of witness Date

.....

4 Subject

.....
Details

.....

5 Subject

.....
Details

.....

By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of Deviations as the only deviations from the amendments to the documents listed in the Tender Data and addend thereto as listed in the Tender Schedules, as well as any confirmation, clarification or change to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance.

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

For the Tenderer:

Signature(s)
.....

Name(s)
.....

Capacity
.....

Name of Tenderer
.....

Address of Tenderer

Name of witness
.....

Signature of witness Date

For the Employer:

Signature(s)
.....

Name(s)
.....

Capacity
.....

Name of Employer: **Development Bank of Southern Africa Limited**

Address of Employer **1258 Lever Road, Headway Hill, Midrand, Gauteng Province**

Name of witness
.....


Signature of witness Date

C1.2 CONTRACT DATA

Document reference	Title	No of pages
C1.2	Contract Data	
	Part One – Data provided by the Employer	10
	Part Two – Data provided by the Contractor	10
C1.3	Performance Guarantee	4
	Total number of pages	24

C1.2.2 CONTRACT SPECIFIC DATA

Part One - Data provided by the Employer

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data.
2. Whenever a cell is shaded in the left-hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row. Where the following symbol is used “” - data is required to be inserted relevant to the specific option selected.

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		A: Priced contract with activity schedule
	dispute resolution Option	
		W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2: Changes in the law

		X4: Parent Company Guarantee
		X5: Sectional Completion
		X7: Delay damages
		X13: Performance Bond
		X15: Limitation of the Contractor's liability for his design to reasonable skill and Care.
		X16: Retention
		X17: Low Performance Damages
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The Employer is:	the Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the "IDD"), a juristic person reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997 (the "DBSA");

	Address:	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	Represented by:	[•] Chuene Ramphele
	Tel No.	011 313 3162
	Fax No.	
10.1	The <i>Project Manager</i> is:	Lehlogonolo Rasebotsa
	Address:	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	Tel No.	011 313 3500
	Fax No.	
	e-mail:	LehlogonoloR@dbsa.org
10.1	The <i>Supervisor</i> is:	Funi Takalani
	Address:	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	Tel No.	011 313 3500
	Fax No.	
	e-mail:	FuniT@dbsa.org

11.2(13)	The <i>works</i> are	The Design, Supply, and Installation of Electricity Pump Systems to 26No. Boreholes in West-Rand District on behalf of the Gauteng Department of Agriculture and Rural Development (GDARD).	
11.2(14)	The following matters will be included in the Risk Register	Compliance with tender requirements	
11.2(15)	The <i>boundaries of the site</i> are	As per the project scope, within the district of West-Rand.	
11.2(16)	The Site Information is in	Part 4: Site Information	
11.2(19)	The Works Information is in	Part 3: Scope of Work.	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	5 days	
2	The Contractor's main responsibilities	Turn-key as per the scope of work	
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	4 Months	
30.1	The <i>access dates</i> are (within 5 days of start date subject to approval of Health & safety plan and notification of construction works)	Part of the site	Date
		TBC	
30.3		<i>condition to be met</i>	<i>key date</i>

	The <i>key dates and conditions</i> to be met are	Site establishment	TBC
		Completion	TBC
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	1 week of the Contract Date.	
31.2	The <i>starting date</i> is (within 7 days of notification of construction works has been submitted to department of Labour)	TBC	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	2 weeks	
4	Testing and Defects		
42.2	The <i>defects date</i> is	2 weeks after [Completion of the whole of the works/ a Section Completion]	
43.2	The <i>defect correction period</i> is	5 days	
5	Payment		
50.1	The <i>assessment interval</i> is	4 weeks	
51.1	The <i>currency of this contract</i> is the	South African Rand	
51.4	The <i>interest rate</i> is	the prime interest rate of the Standard Bank of South Africa Limited as last published.	
6	Compensation events		
60.1(13)	The place where weather is to be recorded is	West-Rand District	

	The <i>weather measurements</i> to be recorded for each calendar month are:	<ul style="list-style-type: none"> the cumulative rainfall (mm); the number of days with rainfall of more than 10mm; the number of days with minimum air temperature less than 0 degrees Celsius; the number of days with snow lying at +2 hours GMT; and these measurements: [NOTE: insert any other measurements applicable to the contract]
	The <i>weather measurements</i> are supplied by	Contractor and verified with closest weather station to site.
	The weather data are the records of the past <i>weather measurements</i> for each calendar month which were recorded at	West-Rand District
60.1(13)	Where no recorded data are available:- assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	TBC
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	N/A
84.1	The <i>Contractor</i> provides these additional insurances: guide: lateral support if applicable, professional indemnity if contractor does design, SASRIA or any other insurance identified but not in table at cl 84.2.	<ol style="list-style-type: none"> The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA). Public liability insurance to be effected by the contractor for the sum of R5 000 000.00 (Five Million Rand) with a deductible in an amount that the contractor

		deems appropriate. 3. Professional indemnity insurance with a limit of indemnity of not less than R10 000 000 (ten million Rand) in respect of each and any one claim and in the annual aggregate.
84.1	The <i>Employer</i> provides these insurances from the Insurance Table:	The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA)
84.1	The <i>Employer</i> provides these additional insurances:	Nil
84.2	If the <i>Employer</i> is to provide Plant and Materials:- the insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the Employer for an amount of	N/A
84.2	Insurance against loss of or damage to the <i>works</i> , Plant and Materials, without limitation on the number of claims	Insured sum is the total of the Prices plus 10%
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract for any one event is, without limiting the number of claims.	The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA). Public liability insurance to be affected by the contractor for the sum of R5 000 000.00 (Five Million Rand) with a deductible in an amount that the contractor deems appropriate.

84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is	as prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than ZAR5 000 000 (Five Million Rands).
DATA FOR MAIN OPTION CLAUSES		
Option A	Option A: Priced Contract with activity schedule	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
W1	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	to be appointed as needed, see W1.2(3) below
W1.2(3)	The <i>Adjudicator nominating body</i> is:	The Party, which raises the dispute, shall select three adjudicators from the panel of adjudicators published by the South African Institution of Civil Engineering and/or Association of Arbitrators Southern Africa depending upon the technical or legal issues and nature of the dispute, determine their hourly fees and confirm that these adjudicators are available to adjudicate the dispute in question. The other Party shall then select, within seven (7) days, one of the three (3) nominated adjudicators to act as the adjudicator; failing which the chairperson for the time being of the Association of Arbitrators Southern Africa shall nominate an adjudicator on request from either party.
W1.4(2)	The <i>tribunal</i> is:	Arbitration, arbitrator to be appointed as required.
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of

		Arbitrators Southern Africa or its successor body.		
	The place where arbitration is to be held is	South Africa, Johannesburg		
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	the Chairman for the time being or his nominee of the Association of Arbitrators Southern Africa or its successor body on application of either party.		
DATA FOR SECONDARY OPTION CLAUSES				
X1	Price adjustment for inflation			
	The <i>base date</i> for indices is	No price adjustment allowed		
	The proportions used to calculate the Price Adjustment Factor are:	0. [.]	linked to the index for	[.]
		0. [.]	linked to the index for	[.]
		0. [.]	linked to the index for	[.]
		0. [.]	linked to the index for	[.]
		0. [.]	non-adjustable	
		1.00		
	The indices are those prepared by	[.]		
X7	Delay damages (but not if Option X5 is also used)			

	Delay damages for Completion of the whole of the <i>works</i> are	The penalty per calendar day shall be calculated as per the current formula of penalty calculation by the Department of Public Works up to a maximum of 10% of the Prices.
X13	Performance Bond	
	The amount of the performance bond is	being a Guarantee issued by a registered entity approved by the <i>Employer</i> – fixed at ten percent (10%) of the contract Price at Contract Date, reducing to five percent (5%) of the contract Price when the <i>Contractor</i> achieves Completion and expires 1 month after the <i>defects date</i> .
X16	Retention	
	The <i>retention free</i> amount is	0%
	The <i>retention percentage</i> is	10% of the contract value
X18	Limitation of liability	
	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (zero Rand)
	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	cost for loss or damaged incurred by the <i>Employer</i>
	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	cost of the repair or reinstatement of property to original standard.
	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under	total of the Prices as at the <i>start date</i>

	or in connection with this contract, other than excluded matters, is limited to:	
	The <i>end of liability date</i> is	12 months after the Completion of the whole of the <i>works</i> .
X20	Key Performance Indicators	Not Applicable
	The <i>incentive schedule</i> for Key Performance Indicators is in	NA
	A report of performance against each Key Performance Indicator is provided at intervals of	NA

PART A – Additional Definitions

Clause	Amendment
11.2	Add the following new definition as clause 11.2(34):
Identified and defined terms	<p>“Baseline Risk Assessment means the baseline risk assessment contemplated in regulation 5(1)(a) of the Construction Regulations.”</p> <p>Add the following new definition as clause 11.2(35):</p> <p>"Construction Agent means an “agent” as per the Construction Regulations which means a competent person who acts as a representative for a client (“client” in this regard being the Employer); the agent contemplated herein: (i) manages the health and safety on a construction project for the client; (ii) is registered with a statutory body (being the South African Council for Project and Construction Management Professions or any other statutory body approved by the chief inspector); and (iii) is qualified to perform the functions required by the Construction Regulations”;</p> <p>Add the following new definition as clause 11.2(36):</p>

“Construction Health and Safety Officer means the construction safety officer as defined in the Construction Regulations.”

Add the following new definition as clause 11.2(37):

“Construction Regulations means the Construction Regulations as defined in clause 27.4.2 below”

Add the following new definition as clause 11.2(38):

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

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

placing the Contractor under business rescue supervision, except for so long as such application or other legal process is being contested in good faith and by appropriate means or except for the bona fide purpose of reconstruction, amalgamation, reorganisation, merger or consolidation; or

- a resolution is passed by:
 - the shareholders of the Contractor for the winding-up of the Contractor, whether by way of a members' or creditors' voluntary winding-up; or
 - the board of the Contractor for the Contractor to voluntarily begin business rescue proceedings and place himself under business rescue supervision."

Add the following new definition as clause 11.2(39):

"Temporary Works is all temporary works of every kind required on site for the execution and Completion of the *works* and the remedying of any defects."

Add the following new definition as clause 11.2(40):

"Intellectual Property" means (a) any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know-how, business methods, trade secrets and confidential business information, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off; (b) applications for registration and the right to apply for registration for any of these rights; (c) all other intellectual property rights and similar forms of protection; existing anywhere in the world; and (d) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof,

PART B - Amendments and additions to Existing Core and Optional Clauses

Clause	Amendment
--------	-----------

12	
Interpretation and the law	
12.3	<p>Added the following clauses after clause 12.4:</p> <p>“Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Project Manager</i>, the <i>Supervisor</i>, or the <i>Adjudicator</i> does not constitute a waiver of rights and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.”</p>
	<p>Words denoting persons or parties shall include individuals and any organisation having legal capacity.</p>
	<p>In this contract, except where the context requires otherwise:</p> <ul style="list-style-type: none"> provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and; <p>"written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.</p>
	<ul style="list-style-type: none"> The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the conditions of contract. <p>Any word or expression defined in any clause in the Z clauses, unless the application of the word or expression is specifically limited to the clause in question, bears the meaning prescribed to the word or expression throughout the Z clauses.</p>
	<p>Week means a continuous period of 7 days.</p> <p>If the day for payment of any amount due by the Employer or Contractor in terms of this contract should fall on a Saturday, Sunday or official public holiday in the Republic of South Africa, the relevant day of payment is/are the next ordinary business day in the Republic of South Africa.</p>
	<p>Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.</p>

	<p>If any provision of this contract, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provision is not in any way affected or impaired thereby and the parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.</p>
	<p>Unless otherwise specifically recorded in this contract, termination of this contract for any cause does not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination. Similarly, the termination of this contract does not release a party from any obligation which, by its nature, is intended to survive such termination.</p>
Using the Contractor's design	
22.1	<p>Delete core clause 22.1 in its entirety and replace it with the following clauses: Subject to each Party retaining title to its own Intellectual Property prior to the contract date, title to, copyright in and other Intellectual Property rights in any documents or other property created by the Contractor for or in connection with the Works vests in the Employer on creation and the Contractor hereby cedes and assigns all such rights to the Employer with effect from the date of creation vesting such Intellectual Property in the Employer.</p>
22.2	<p>The Employer grants the Contractor a revocable license to use the Intellectual Property for the purposes of Providing the Works for the contract period.</p>
22.3	<p>Unless otherwise agreed by the Parties, the Contractor grants to the Employer a non-exclusive, perpetual, irrevocable, royalty free license to use any of the Contractor's Intellectual Rights, obtained prior to this contract, in connection with the Works and this contract.</p>
22.4	<p>All Intellectual Property created, enhanced or improvement arising from Providing the Works or from or in connection to the contract exclusively vests in the Employer.</p>
22.5	<p>If the Employer is prevented from receiving the Works or any part thereof as a result of any actual or alleged infringement of Intellectual Property rights,</p>

	the Contractor must, at its cost, take all reasonable steps necessary to procure for the Employer the right to receive the Works or the relevant part thereof for its intended purpose.
22.6	<p>Modification or replacement of the Works</p> <p>If the Contractor fails to procure the necessary rights in accordance with this clause within a reasonable time, the Employer may direct the Contractor, at the Contractor's cost, to promptly (i) amend the Works or the relevant part thereof to avoid the infringement of Intellectual Property rights; or (ii) replace the Works or the relevant part thereof with Works that do not infringe Intellectual Property rights.</p>
26 Subcontracting	
26.1	<p>Core clause 26.1 to be amended as follows:</p> <p>The Contractor does not subcontract the whole or any part of the works without the written consent of the Employer, which consent shall be the sole discretion of the Employer. If the Contractor subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the Contractor's. For the avoidance of doubt, the Contractor shall be responsible for the acts or defaults of any of its subcontractors, its agents or employees, as if they were the acts or defaults of the Contractor.</p>
26.3	<p>Core clause 26.3 to be amended as follows:</p> <p>The Contractor submits the conditions of contract for each subcontract to the Project Manager and may redact all commercially sensitive information.</p>
26.4	<p>Add a new core clause 26.4 as follows:</p> <p>The Contractor shall procure from the Subcontractor all consents required in order to ensure that all the rights and obligations the Contractor may have under the subcontracts can be ceded and delegated to the Employer.</p>
26.5	<p>Add a new core clause 26.5 as follows:</p> <ul style="list-style-type: none"> • If the Contractor does not make payment of any amount due and payable by him to a Subcontractor ("the Subcontractor debt") and the Project Manager considers that the Subcontractor debt adversely impacts on the progress of the Works or the obligations of the Contractor under the contract, Project Manager requests evidence of payment to the

	<p>Subcontractor. In the absence of such evidence, the Employer may (at its own discretion) pay the Subcontractor debt directly to the Subcontractor concerned in which event such payment is, for all purposes under the Contract, regarded as a payment made on behalf of the Contractor and at the request of and with the approval and consent of the Contractor, as a payment towards the Prices.</p> <p>Payment to the Subcontractor is conducted in terms of core clause 50.2 of the contract.</p>
26.6	<p>Add a new core clause 26.6 as follows: All adverse effects as a result of or arising from the Subcontractor debt does not result in a compensation event.</p>
27 Health, safety and the environment	
27.4	<p>Clause 27.4 is deleted in its entirety and replaced with the following: Health and Safety specification</p>
27.4.1	<p>The <i>Contractor</i> takes all reasonable steps and precautions to assess the Site, consider and receive all relevant information on the Site and health and safety related to the <i>works</i>, maintain the health and safety of persons in and about the execution of the <i>works</i>.</p>
27.4.2	<p>The <i>Contractor</i> acknowledges that the Occupational Health and Safety Act No. 85 of 1993 and the regulations promulgated therein (“the Act”); and the Construction Regulations 2014 promulgated under the Act (“the Construction Regulations”) and Covid-19 Consolidated Directions on Occupational Health and Safety Measures in Certain Workplaces will in all respects be applicable to this contract and the <i>works</i>.</p>
27.4.3	<p>The <i>Employer</i> appoints the <i>Contractor</i> as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014) for the Site.</p>
27.4.4	<p>Accordingly, the <i>Contractor</i> is responsible for all obligations of the “Principal Contractor” as defined and provided for under the Act and the Construction</p>

	Regulations including but not limited to those obligations defined and provided for in Annexures A, B and C of this contract.
27.4.5	The <i>Contractor</i> appoints a registered (Pr. CHSO SACPCMP) Full-time Construction Health and Safety Officer for the Works.
27.4.6	The <i>Contractor</i> confirms that it has received sufficient information about the Site and the <i>works</i> in order to: <ul style="list-style-type: none"> • comply with the provisions of the Act and the Construction Regulations, • comply with the provisions of this clause Error! Reference source not found.; • adhere to the <i>Employer's</i> health and safety specification as set out in Annexures A, B and C; • be properly appointed in accordance with Section 37(2) of the Act as contemplated in clause 0;
27.4.7	The <i>Contractor</i> acknowledges that the Project Manager acts as the <i>Employer's</i> "Implementing Agent" in respect of all obligations which the <i>Employer</i> has as "Client" in the Construction Regulations and the Act. Where Prices of this contract exceed sixty million Rands or Construction Industry Development Board grading 7, the <i>Contractor</i> acknowledges that the <i>Contractor</i> will in addition appoint a Construction Health and Safety Agent. The <i>Contractor</i> follows all instructions of the Construction Health and Safety Agent.
27.4.8	Without limitation, the <i>Contractor</i> :
27.4.8.1	notwithstanding any actions which the <i>Employer</i> may take, accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures imposed by the Act, all its regulations (including the Construction Regulations) and Annexures A, B and C. By entering into this contract it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act;

27.4.8.2	acknowledges and confirms that the Prices includes a sufficient amount for proper compliance with the Construction Regulations 2014 and Covid-19 Occupational Health and Safety Measures in Certain Workplaces and all applicable health and safety laws, regulations, rules, guidelines, procedures and all obligations imposed by this contract and Annexures A, B and C and generally for the proper maintenance of health and safety in and about the execution of <i>works</i> ;
27.4.8.3	undertakes, in and about the execution of the <i>works</i> , to comply with all applicable health and safety laws, regulations, rules, guidelines and procedures otherwise provided for under this contract and shall ensure that all sub-contractors, employees and Others under the <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing; and
27.4.8.4	indemnifies the <i>Employer</i> against any loss, damage or claim suffered by the <i>Employer</i> due to a failure to comply with any provision of this clause 27.4 by the <i>Contractor</i> .
27.4.8.5	acknowledges and confirms that a full-time Construction Health and Safety Officer will be appointed by the <i>Contractor</i> for the Project and that the Prices includes a sufficient amount for the appointment of a Health and Safety Consultant for the preparation of a Baseline Risk Assessment, Site specific Health and Safety Specification and to conduct 30-day site compliance audits.
27.4.9	The <i>Contractor</i> and his designer shall accept full responsibility and liability to comply with the Act, the Construction Regulations and Annexures A, B and C for the design of the Temporary <i>Works</i> and those parts of the Permanent <i>Works</i> which the <i>Contractor</i> is responsible to design in terms of this contract;
27.4.10	The <i>Employer</i> retains a right to inspect, review, obtain copies of all documents regarding, attend and participate in all meetings regarding; all inquiries, audits and reports conducted under this contract including but not limited to those that are conducted in accordance with:
27.4.10.1	Annexures A, B and C of this contract; and
27.4.10.2	Section 31 and/or 32 of the Act, its regulations and the Construction Regulations following any incident involving the <i>Contractor</i> and/or sub-contractor and/or their employees.

27.4.11	The <i>Contractor</i> shall notify the Project Manager and copy in the <i>Employer</i> in writing of all inquiries, audits, reports, investigations, complaints or criminal charges which may arise pursuant to <i>works</i> performed under this contract.
27.4.12	The <i>Employer</i> and the Project Manager shall, at all times during construction and for a period of 5 (five) years after Completion, have the right to access and inspect any part of the Site/ <i>works</i> and all documents, reports, designs, specifications whatsoever that are prepared pursuant to any clause of this contract.
27.4.13	The <i>Contractor</i> liaises with the <i>Employer</i> and the Project Manager regarding all issues related to this clause 27, and in particular, complies with all reasonable requests from the Project Manager to (i) attend any meetings and/or (ii) provides any documents, audits and reports; required by the <i>Employer</i> or Project Manager.
27.4.14	The <i>Contractor</i> complies with the Baseline Risk Assessment provided by the <i>Employer, Project Manager or Health and Safety Consultant</i> . Notwithstanding the foregoing, the <i>Contractor</i> prepares its own Baseline Risk Assessment and complies with it where such Baseline Risk Assessment provides additional risks to those noted by the <i>Employer</i> or the <i>Project Manager</i> .
3 Time	

<p>37.1 The Contractor's recovery plan</p>	<p>Amend this clause by the addition of the following new clause:</p> <p>“Where actual progress on Site is not in accordance with the most current programme or where the <i>Employer</i> or <i>Project Manager</i> is of the opinion, at any time during the execution of the <i>works</i>, that the <i>Contractor</i> will not achieve Completion on the date stated in the most current programme, the <i>Contractor</i> shall prepare a recovery plan within 14 days of receipt of an instruction from the <i>Employer</i> or <i>Project Manager</i> requesting such recovery plan detailing:</p> <ul style="list-style-type: none"> • the Contractor's plan to ensure that the works will achieve Completion on the date stated in the most current programme; • all additional resources which will be employed by the Contractor in order to ensure that the Contractor achieves Completion on the date stated in the most current programme; • any other information which may be required by the Employer or Project Manager to ascertain that the Contractor will achieve Completion on the date stated in the most current programme.”
<p>5 Payment</p>	
<p>51.2</p>	<p>Amend this clause by deleting the second and the third sentences of the clauses and replace them with the following:</p> <p>If a certified payment is late by more than 8 weeks, interest is paid on the late payment. Interest is assessed from 4 weeks after the date by which the late payment should have been made until the date when the late payment is made and is included in the first assessment after the late payment is made.</p>
<p>51 Payment</p>	<p>Add the following new clauses after clause 51.4</p>
<p>51.5</p>	<p>Within one week of receiving a payment certificate from the <i>Project Manager</i> in terms of core clause 51.1, the <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer's</i> procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.</p>

51.6	If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice.
51.7	The <i>Contractor</i> (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the <i>Employer's</i> VAT number on each invoice the Contractor submits for payment.
6 Compensation Events	
61.3	The last paragraph is deleted and substituted with the following: <i>"In clarification, notwithstanding the Project Manager notifying the Contractor of a compensation event, if the Contractor does not notify a compensation event within the eight weeks of becoming aware of the event or ought reasonably to become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date."</i>
9 Termination	
91.1	Amend this clause by the addition of the following at the end of the second main bullet point, fourth sub-bullet point, after the words "against it": <i>"or the Contractor commits a Contractor Insolvency Event (R5),"</i>
91.3	Amend this clause by adding the following at the end of the clause: <ul style="list-style-type: none"> • "failed to effect any of the required insurances(R22); • failed to provide a satisfactory recovery plan pursuant to Clause 37 (<i>The Contractor's recovery plan</i>) (R23); or • failed to comply with the provision of Clause Z3 (<i>Broad Based Black Economic Empowerment</i>) (R24). <p>and for terminating for R22 to R24 the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply."</p>

9.0	Insert the following new clause 9.4
9.4 Termination for convenience	<p>The <i>Employer</i> is entitled to terminate the Contract, at any time for the <i>Employer's</i> convenience, by giving notice of such termination to the <i>Contractor</i>. The termination shall take effect 28 days after the later of the dates on which the <i>Contractor</i> receives this notice or the <i>Employer</i> returns the performance bond and all monies held in retention, unless there are outstanding calls/claims thereon in which event, and if applicable, the <i>Employer</i> returns the performance bond and all monies held in retention promptly after the last of the outstanding calls/claims have been met. The <i>Employer</i> does not terminate the Contract under this sub-clause in order to execute the <i>works</i> himself or to arrange for the <i>works</i> to be executed by another contractor. The same procedures on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply. The <i>Contractor</i> shall only be entitled to costs incurred at the date of termination.</p>
Option X2: Changes in the Law	
X2.2	<p>Amend this clause by the addition of the following new clause:</p> <p>Notwithstanding anything contained in this clause or this agreement, a "change in law" does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged</p>
Option X7: Delay Damages	
X7.4	<p>Amend this clause by adding of the following new clause: (if applicable in this contract)</p> <p>"If the amount due for the <i>Contractor's</i> payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the <i>Employer</i> may terminate the <i>Contractor's</i> obligation to</p>

	Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2.”
Option X13: Performance Bond	Amend this clause by adding the following new clause at the end of this clause: (if applicable in this contract)
X13.2	<p>The <i>Contractor</i> ensures that the performance bond is valid and enforceable until the <i>Contractor</i> has Provided the Works and remedied any and all <i>defects</i> therein. If the terms of the performance bond specify its expiry date, then the Contractor extends the validity of the performance bond 28 days prior to such an expiry date, such that the performance bond lapses at the later of:</p> <ul style="list-style-type: none"> • the date of issue of the Defects Certificate; or • the date when the last <i>defect</i> notified has been remedied or accepted in accordance with this contract.
X13.3	<p>The <i>Employer</i> may make a claim under the performance bond, for amounts to which the <i>Employer</i> is entitled under the contract in the event of:</p> <ul style="list-style-type: none"> • failure by the <i>Contractor</i> to extend the validity of the performance bond as described in the preceding paragraph, in which event the <i>Employer</i> may claim the full amount of the performance bond, • failure by the <i>Contractor</i> to pay the <i>Employer</i> an amount due, as either agreed with the <i>Contractor</i> or assessed by the Project Manager (or otherwise determined) in accordance with the provisions of this contract, within 28 days after this agreement, assessment or determination, • failure by the <i>Contractor</i> to remedy a default within 28 days after receiving the <i>Employer's</i> notice requiring the default to be remedied, or

	<ul style="list-style-type: none"> the occurrence of any one of the following termination reasons: R1 to R15, R18 and R22 to R24.
X13.4	The <i>Employer</i> indemnifies and hold the <i>Contractor</i> harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the performance bond to the extent to which the <i>Employer</i> is not entitled to make the claim.
X13.5	<p>Step Down</p> <p>The performance bond reduces by half its value on the date of issue of the Certificate of Completion.</p> <p>The performance bond expires/lapses on the later of:</p> <ul style="list-style-type: none"> the date of issue of the Defects Certificate; or the date when the last <i>defect</i> notified has been remedied or accepted in accordance with this contract.
PART C – Additional Clauses (entitled Z-Clauses)	
Z1	Cession delegation and assignment
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .
Z1.2	<p>Notwithstanding the above, the <i>Employer</i> may, on written notice to the <i>Contractor</i>, cede and delegate its rights and obligations under this contract to a Related Party or a Client of the <i>Employer</i>..</p> <p>For the purpose hereof</p>
Z1.2.1	Client means the owner, funder and or sponsor of the project and/or programme managed in terms of the MOA/agreement between the Client and DBSA
Z1.2.2	a “related party” means any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the employer and includes any other “Organ of State” as defined in section 239 of the Constitution of the Republic of South Africa,

	1996 and any entity or Organ of State for whom the employer carries out the works or acts as an implementing agent; and
Z1.2.3	“Control” means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity’s assets), and/or the right or ability to direct or otherwise control the entity or the votes attaching to the majority of the entity’s equity and “controlled” or “under common control” shall have a similar meaning.
Z2	Joint ventures
Z2.1	If the <i>Contractor</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the <i>Employer</i> for the performance of this contract.
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Project Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.
Z2.3	The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.
Z3	Broad Based Black Economic Empowerment, Construction Industry Development Board grading and the valid and active Tax Compliance Status Pin issued by SARS.
Z3.1	The <i>Contractor</i> warrants that it will:
Z3.1.1	comply with all laws including the <i>Broad Based Black Economic Empowerment Act 53 of 2003</i> , its regulations and Codes of Good Practice; and the <i>Preferential Procurement Act 5 of 2000</i> and all its regulations;
Z3.1.2	maintain or improve (i) the BEE rating stated in its BEE certificate (ii) the contractor’s Construction Industry Development Board grading, and (iii)

	its valid and active Tax Compliance Status Pin issued by SARS submitted at tender stage; and
Z3.1.3	not conduct any Fronting practices as defined in the Codes of Good Practice.
Z4	Change of Broad Based Black Economic Empowerment (B-BBEE) status
Z4.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.
Z4.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Project Manager</i> .
Z4.3	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works.
Z4.4	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.
Z5	Ethics
Z5.1	Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i> , which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract, including Fronting as referenced in Sub-Clause Z3.1.3, constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).
Z5.2	The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if the <i>Contractor</i> (or any member of the <i>Contractor</i> where the <i>Contractor</i>

	<p>constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.</p> <p>Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the <i>Employer</i> or other people or organisations and including in circumstances where the <i>Contractor</i> or any such member is removed from an approved vendor data base of the <i>Employer</i> as a consequence of such practice.</p>
Z5.3	Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.
Z6	Confidentiality
Z6.1	The <i>Contractor</i> does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the <i>Contractor</i> , enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to Others in terms of clause 25.1, the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.
Z6.2	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Project Manager</i> .
Z6.3	In the event that the <i>Contractor</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor</i> , to the extent permitted by law prior to disclosure, notifies the <i>Employer</i> so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the <i>Contractor</i> may disclose that portion of the information which it is required to be disclosed by law and uses

	reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
Z6.4	The taking of images (whether photographs, video footage or otherwise) of the <i>works</i> or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the <i>Project Manager</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z6.5	The <i>Contractor</i> ensures that all its subcontractors abide by the undertakings in this clause.
Z9	<i>Employer's limitation of liability</i>
Z9.1	The <i>Employer's</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	The <i>Contractor's</i> entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the <i>Employer's</i> liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.
Z10	<i>Employer's Step-in Rights and Additional Remedies</i>
Z10.1	In the event the <i>Contractor</i> and/or his subcontractor:
Z10.1.1	fails to carry out any obligation under the contract and the Works Information and fails to make good such failure and remedy it despite being requested to do so by the <i>Project Manager</i> in accordance with notices under Sub-Clause 16.1 (Early Warning) and/or Sub-Clause 13.1 (Communications), or
Z10.1.2	commits a breach of the Contract which reasonably places the project at risk of non-completion by the Completion Date, or non-Completion; or
Z10.1.3	commits a material breach of contract,
	the <i>Employer</i> may, without prejudice to its other rights in clause 9 (Termination), powers and remedies under the contract or in law, be entitled to step-in and take over the <i>works</i> , and on the account of the <i>Contractor</i> and at the <i>Contractor's</i> risk, to (i) make good the failure and remedy it, or complete

	<p>the <i>works</i> himself, or (ii) call upon other contractors to make good the failure and remedy it or complete the <i>works</i>, or (iii) to call upon other contractors to partner with the <i>Contractor</i> to make good the failure and remedy it, or complete the <i>works</i>. Further, notwithstanding anything contained in this contract, where the <i>Employer</i> has “stepped-in” the <i>Contractor</i> shall remain responsible as if the <i>works</i> were executed by the <i>Contractor</i> for the <i>works</i> up to the Completion Date.</p>
Z10.2	<p>The <i>Contractor</i> shall co-operate with the <i>Employer</i> and facilitate and permit the use of all required Contractor’s Equipment, Goods, information, materials and other matter (including Contractor’s Documents and all other drawings, CAD files, technical data, models, plans, designs, diagrams, evaluations, details, specifications, schedules, reports, calculation results, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the <i>Contractor</i> under the Contract or otherwise for and/or in connection with the <i>works</i>) and shall generally do all reasonable things required by the <i>Project Manager</i> to achieve this end; provided that where the foregoing constitute proprietary information, the <i>Contractor’s</i> obligation hereunder shall be limited to furnishing <i>works</i> specific information in a form capable of being disclosed to third parties or providing assistance to third parties without requiring the <i>Contractor</i> to disclose non <i>works</i>-specific source codes or other proprietary information.</p>
Z10.3	<p>Any information, materials and other matter made available by the <i>Contractor</i> under this Sub-Clause Z.10 shall be used solely and exclusively for the purpose of making good and remedying the <i>Contractor’s</i> failure and shall thereafter be returned to the <i>Contractor</i>. Any such information, materials and other matter which is made available by the <i>Employer</i> to other persons as contemplated in this Sub-Clause Z.13 shall be made available strictly in accordance with the foregoing and subject to a confidentiality undertaking.</p>
Z11	Employer Procured Materials and Goods
Z11.1	<p>The <i>Employer</i> is entitled but not obliged to procure materials and goods on behalf of the <i>Contractor</i>. The <i>Contractor</i> may request that the <i>Employer</i> procures materials and goods on behalf of the <i>Contractor</i>.</p>
Z11.2	<p>Should the <i>Employer</i> exercise this right, or should the <i>Employer</i> accept the <i>Contractor’s</i> request, the <i>Contractor</i> shall:</p>

Z11.2.1	issue to the <i>Project Manager</i> a list of all materials and goods the <i>Contractor</i> requires;
Z11.2.2	state in the list considered above, the time within which such materials and goods must be provided;
Z11.2.3	take delivery of such materials and goods provided by the <i>Employer</i> ;
Z11.3	The <i>Contractor</i> shall be responsible for and takes the risk on all materials and goods after taking delivery of such materials and goods at Site and indemnifies the <i>Employer</i> against all losses or costs arising from any damage, loss or theft of such materials and goods.
Z11.4	The <i>Contractor</i> shall not be entitled to any extension of time and costs for the late delivery of any materials and goods to be procured by the <i>Employer</i> under the provision of this clause.
Z11.5	The direct cost of all materials and goods procured by the <i>Employer</i> on behalf of the <i>Contractor</i> in accordance with the provisions of this clause shall be deducted from each payment due to the <i>Contractor</i>
Z11.6	The <i>Contractor</i> acknowledges that all <i>Employer</i> supplied materials and goods remain the property of the <i>Employer</i> .
Z12	Contractor Undertaking re CIDB and Tax Certificates
Z12.1	The <i>Contractor</i> shall ensure that all certificates, clearances and the like, including specifically any certificates required to be obtained by the <i>Contractor</i> for purposes of the contract in terms of the Construction Industry Development Board and the Value Added Tax Act, no 89 of 1991, remain in full force and effect up until the Completion Date.
Z12.2	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of the expiry of any requisite certificate may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. In addition to the <i>Employer's</i> right to terminate, should any requisite certificate that the <i>Contractor</i> is required to obtain expire or be null and void for any reason whatsoever, the <i>Employer</i> may withhold any payments due to the

	<i>Contractor</i> until such time as the <i>Contractor</i> provides the <i>Employer</i> and / or <i>Project Manager</i> with a valid and / or updated certificate, as the case may be.
Z13	RIGHT TO AUDIT
Z13.1	The Employer shall be entitled to, within 2 (two) Business Days of the giving of notice to the Contractor to such effect, conduct an audit of all relevant books, records, systems, processes, procedures and documents of the Contractor in order to verify compliance by the Contractor with its obligations in terms of this Contract and/or to assess any entitlement or claimed entitlement of the Contractor under this Contract or to investigate any allegations with regard to possible criminal activities or breach of DBSA policies or procedures.
Z13.2	The Contractor shall co-operate and render all assistance requested by the Employer relating to such audit. In addition, the Contractor shall provide the Employer with access to all such books, records, systems, data and documents of the Contractor that are relevant to this Contract, the Contractor's obligations under this Contract and/or any entitlement or claimed entitlement of the Contractor under this Contract and to any premises, shareholders, partners, members, subcontractors and Personnel of the Contractor for the purposes of conducting such audit. The Employer shall have the right to take copies of any records and information the Employer reasonably require assisting in connection with any such audit.
Z13.3	The Contractor shall maintain all data, records and documentation relating to this Contract and keep full and proper records in connection with providing the Works and all matters related thereto (whether contained in documents or in electronic format) for the period of this Contract, and for a period of at least 5 (five) years after termination or completion of all of the Works (as the case may be).
Z13.4	The Contractor shall ensure that the rights in this clause 18 also apply to any subcontractors and that the Employer be afforded the same auditing rights by the subcontractors.
Z13.5	The Employer shall keep all information obtained in terms of this clause 18 confidential and not disclose it to any third party. In the event that the Employer is, at any time, required by law to disclose any such information which is required to be kept confidential, the Employer, to the extent permitted by law prior to disclosure, notifies the Contractor so that an

appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the Employer may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

PART D – Annexures

Annexure A	Health and Safety Baseline Specification
Annexure B	Baseline Risk Assessment
Annexure C	DBSA Health and Safety Policy

C1.2 CONTRACT DATA (Continued)

Part two – Data provided by the Contractor

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

Statements given in all contracts

- The *Contractor* is
 - Name
 - Address
 -
 -
- The *direct fee percentage* is. %.
- The *subcontracted fee percentage* is. %.
- The *working areas* are the Site and
- The key people are
 - (1) Name
 -
 - Job
 -
 - Responsibilities
 -
 -
 - Qualifications
 -
 - Experience
 -
 -
 - (2) Name
 -
 - Job
 -
 - Responsibilities
 -
 -
 - Qualifications
 -
 - Experience
 -
 -

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

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

Optional statements

If the Contractor is to provide Works Information for his design

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

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

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is.

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

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

• The activity schedule is

• The tendered total of the Prices is.

• The percentage for people overheads is %.

• The published list of Equipment is the last edition of the list published by

.....
.....

• The percentage for adjustment for Equipment in the published list is

Data for the Shorter Schedule of Cost Components

..... % (state plus or minus).

- The rates for other Equipment are

Equipment	size or capacity	rate
.....
.....
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- The hourly rates for Defined Cost of design outside the Working Areas are
- | category of employee | hourly rate |
|----------------------|-------------|
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| | |

- The percentage for design overheads is %.

- The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are

.....

C1.3 PERFORMANCE BOND

Pro-Forma NEC3 ECC Variable Performance Bond – Demand Guarantee

To: *Employer*

Dear Sirs

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

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

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

1. In this Guarantee:

1.1 the following words and expressions have the following meanings:

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

1.1.1

1.1.2 “Guarantor’s Address” - means [●]; *[Drafting Note: Guarantor’s physical address to be inserted]*

1.1.3 “Contract” - means the written agreement entered into between *Employer* and the *Contractor* on or about [●] [●] 200[●] (Contract Reference No. [●]), as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: signature date and Contract reference number to be inserted]*

- 1.1.4 “Contractor” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; [*Drafting Note: Name and details of Contractor to be inserted*]
- 1.1.5 “Employer” - means The Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the “IDD”), being a development finance institution reconstituted and incorporated as a juristic person in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997;
- 1.1.6 “Expiry Date” – means the date of issue of the Defects Certificate or such later date as may be determined by the application of clause 3.3;
- 1.1.7 “this Guarantee” - means this Performance Bond;
- 1.1.8 “Guaranteed Sum” - means the sum of [● - figure] ([● - words]) as reduced from time to time as provided for in paragraph 3 below; [*Drafting Note: Maximum aggregate Guarantee amount to be inserted not exceeding 10% of the contract sum*]
- 1.1.9 “Project Manager” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; and
- 1.1.10 a “recovery statement”, an “interim payment certificate”, a “Payment Certificate”, a “Certificate(s) of Completion” or “Defect Certificate” shall mean any such certificate as issued by the Project Manager;
- 1.2 words and expressions defined in the Contract shall, unless otherwise defined in this Guarantee or otherwise required by the context of this Guarantee, have the same meanings in this Guarantee as those ascribed to them in the Contract, albeit that the Contract itself, and any terms as defined therein, are merely referenced for convenience and not to create an accessory obligation.
2. At the instance of the *Contractor*, the Guarantor hereby confirms that we hold the Guaranteed Sum at the disposal of *Employer*, as security for the proper performance by the *Contractor* of all of his obligations in terms of and arising from the Contract, and hereby irrevocably and unconditionally both agree and undertake to pay to *Employer*, on written demand from *Employer* envisaged in paragraph 3 below and

received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.

3. The Guarantor's liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:

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

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

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

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

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

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

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

R nil

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

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

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

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

- 4.3 state that the Demand Amount is payable to *Employer* in the circumstances contemplated in the Contract:
- 4.3.1 in regard to sums certified, shall state the Demand Amount to be the amount so certified and shall:
- 4.3.1.1 state that such first written demand notice issued by *Employer* to the Guarantor at the Guarantor's Address, with a copy to the *Contractor*, records that a period of seven (7) calendar days has elapsed since the issue of the first written demand notice in terms of paragraph 4.3.1.2 and that the sum certified has not been paid to date. *Employer* herewith calls up this Guarantee and demands payment of the sum certified from the Guarantor;
- 4.3.1.2 be accompanied by a copy of a preceding first written demand notice issued by *Employer* to the *Contractor* stating that payment of a sum certified by the Project Manager in an interim or final payment certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, *Employer* intends to call upon the Guarantor to make payment in terms of paragraph 4.3.1.1;
- 4.3.1.3 and
- 4.3.1.4 shall be accompanied by a copy of the applicable payment certificate which entitles *Employer* to receive payment in terms of the Contract of the sum certified;
- 4.3.2 where the Demand Amount is for the Guaranteed Sum or the full outstanding balance thereof, *Employer* shall deliver a first written demand notice to the Guarantor at the Guarantor's Address calling up this Guarantee stating that:
- 4.3.2.1 the Contract has been terminated due to the *Contractor's* default and that the Guarantee is called up in terms of this subparagraph. This demand shall enclose a copy of the notice of termination; or
- 4.3.2.2 a provisional sequestration or liquidation court order has been

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

5. Notwithstanding the reference herein to the Contract the Guarantor acknowledges that:
 - 5.1 the liability of the Guarantor in terms hereof is as principal and not as surety and the Guarantor's obligation/s to make payment:
 - 5.1.1 is and shall be absolute and unconditional in all circumstances; and
 - 5.1.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever;
6. *Employer* shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting the Guarantor's liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.
7. Should *Employer* cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then *Employer* shall be entitled to cede to such third party the rights of *Employer* under this Guarantee on written notification to the Guarantor of such cession.
8. The Guarantor's obligations in terms of this Guarantee:
 - 8.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - 8.2 shall not be discharged and compliance with any demand for payment received by the Guarantor in terms hereof shall not be delayed, by the fact that a dispute may exist between *Employer* and the *Contractor*.
9. This Guarantee:
 - 9.1 shall expire on the Expiry Date until which time it is irrevocable;

- 9.2 is, save as provided for in 7 above, personal to *Employer* and is neither negotiable nor transferable;
- 9.3 shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
- 9.4 shall be regarded as a liquid document for, firstly, the purpose of demonstrating and/or determining the amount due by the Guarantor to *Employer* and, secondly, obtaining any court order; and
- 9.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
10. The Guarantor chooses the *domicilium citandi et executandi* for all purposes in connection with this Guarantee at the Guarantor's Address.

Signed at _____ Date _____

For and behalf of the Guarantor

Guarantor Signatory 1: _____

Guarantor Signatory 2: _____

Capacity of Guarantor

Capacity of Guarantor

Signatory 1: _____

Signatory 2: _____

Witness: _____
(Printed Name (Printed Name of Witness) _____

Witness: _____
of _____
Witness) _____

Guarantor's seal or stamp

PART 2: PRICING DATA

NEC 3 Engineering and Construction Contract Option A: Priced Contract with Activity Schedule of April 2013 (including amendments).

Document reference	Title	No of pages
C2.1	Pricing Assumptions: Option A	2
C2.2	The activity schedule	1
C2.2	Amendments, Qualifications And Alternatives By Tenderer	1
	Total number of pages	4

C2.1 PRICING ASSUMPTIONS: OPTION A

1. How work is priced and assessed for payment

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

Identified and defined terms 11 11.2 (20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.

(22) Defined Cost is the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not excluding the cost of preparing quotations for compensation events.

(27) The Price for Work Done to Date is the total of the Prices for

- each group of completed activities and
- each completed activity which is not in a group.

A completed activity is one which is without Defects which would either delay or be covered by immediately following work.

(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

This confirms that Option A is a lump sum form of contract where the work is broken down into activities, each of which is priced by the tendering contractor as a lump sum. Only completed activities are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date.

2. Function of the Activity Schedule

Clause 54.1 in Option A states: "Information in the Activity Schedule is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Activity Schedule but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Activity Schedule. **The Activity Schedule is only a pricing document.**

3. Link to the programme

Clause 31.4 states that “The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance”. **Ideally the tendering contractor will develop a high level programme first then resource each activity and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.**

4. Preparing the activity schedule

Generally, it is the tendering contractor who prepares the *activity schedule* by breaking down the work described within the Works Information into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Contractor*:

- **Has taken account of the guidance given in the ECC3 Guidance Notes pages 19 and 20;**
- **Understands the function of the Activity Schedule and how work is priced and paid for;**
- **Is aware of the need to link the Activity Schedule to activities shown on his programme;**
- **Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;**
- **Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *works* for the tendered total of the Prices.**
- **Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.**

C2.2 THE ACTIVITY SCHEDULE

Use this page as a Tender Schedule by the employer to the *Contractor's activity schedule*.

Ref.	Activity Description	Amount
SECTION 1: PRELIMINARIES AND GENERAL AND PROFESSIONAL SERVICES		
A1	1. PRELIMINARY AND GENERAL	
1	Site establishment	
2	Site de-establishment	
3	Temporary works & plant	
4	Security of the works	
5	Insurance & guarantees	
6	Contractor's representatives	
7	Compliance with Health, Safety & Occupational requirements	
8	Compliance with COVID-19 Consolidated Directions on Occupational Health and Safety Measures in certain Workplaces.	Note
9	Allow a Budgetary Allowance of One Hundred Thousand Rand (R100,000) for compliance with COVID-19 requirements, to be used at the discretion of the employer, for provision of products & service the Employers representative, employers and agents of the beneficiaries, but excluding all the contractors, its officials and employees of the contractor	100, 000.00
SUB-TOTAL of ACTIVITY SCHEDULE A1 - CARRIED OVER TO FINAL SUMMARY		
A2	2. PROFESSIONAL SERVICES (% of estimated cost)	
10	2.1. Initiation Stage (Including site assessments and contracting)	
11	2.2. Concept Development Stage	
12	2.3. Design Development Stage	
13	2.4. Procurement Documentation Stage	N/A
14	2.5. Works Stage	
15	2.6. Handover Stage	

16	2.7. Close-out Stage																													
	SUB-TOTAL of ACTIVITY SCHEDULE A2 - CARRIED OVER TO FINAL SUMMARY																													
	SECTION 2 – BUILDING WORKS																													
B	1. WEST-RAND DISTRICT																													
	SUPPLY AND INSTALLATION OF DUAL PUMP SYSTEM (SOLAR AND ELECTRICITY); ELECTRIC OR SOLAR WATER PUMPS/SYSTEMS AND 2 x 5000L ELEVATED WATER TANKS ON STEEL STANDS TO EXISTING NEW BOREHOLES																													
Ref.	Activity Description	Amount																												
	<table border="1"> <thead> <tr> <th>Project Name</th> <th>Borehole Depth (m)</th> <th>Yield (litres/hr)</th> <th>Required Borehole Type</th> </tr> </thead> <tbody> <tr> <td>Sello Raborethe Farm</td> <td>100</td> <td>2470</td> <td>Electric pump system, nearest electricity pole is +/-70m from borehole. Borehole needs rehabilitation</td> </tr> <tr> <td>Bogatsu Boerdery</td> <td>270m</td> <td>8388</td> <td>Electric pump system</td> </tr> <tr> <td>Rutegang Agri Cycling</td> <td>140m</td> <td>7560</td> <td>Dual pump system (solar and electric), nearest electricity pole is +/-100m from borehole</td> </tr> <tr> <td>Ipopeng Farm</td> <td>55m</td> <td>2978</td> <td>Dual pump system (solar and electric), nearest electricity pole is +/-200m from borehole</td> </tr> <tr> <td>Isibusiso Farm</td> <td>140m</td> <td>3420</td> <td>Dual pump system (solar and electric), nearest electricity pole is +/-400m from borehole</td> </tr> <tr> <td>Abba Farm</td> <td>120m</td> <td>2100</td> <td>Dual pump system (solar and electric), nearest electricity pole is +/-50m from borehole</td> </tr> </tbody> </table>	Project Name	Borehole Depth (m)	Yield (litres/hr)	Required Borehole Type	Sello Raborethe Farm	100	2470	Electric pump system, nearest electricity pole is +/-70m from borehole. Borehole needs rehabilitation	Bogatsu Boerdery	270m	8388	Electric pump system	Rutegang Agri Cycling	140m	7560	Dual pump system (solar and electric), nearest electricity pole is +/-100m from borehole	Ipopeng Farm	55m	2978	Dual pump system (solar and electric), nearest electricity pole is +/-200m from borehole	Isibusiso Farm	140m	3420	Dual pump system (solar and electric), nearest electricity pole is +/-400m from borehole	Abba Farm	120m	2100	Dual pump system (solar and electric), nearest electricity pole is +/-50m from borehole	Notes
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Abba Farm	120m	2100	Dual pump system (solar and electric), nearest electricity pole is +/-50m from borehole																											

C1.1	Design, supply and install Borehole pump system x 6 boreholes.	
C1.2	Supply and install 2 x 5,000L water tanks on elevated steel stands x 6 boreholes.	
C1.3	Supply and install solar panels complete with mounting structure, ant-theft and foundation x 6 boreholes (capacity to be determined by Engineer).	
C1.4	Supply and install 2 x 4m tank stand for the tanks complete with foundation for each borehole x 6.	
C1.5	Supply and install HDPE pipes and fittings for water connection between the borehole and the tank x 6 borehole.	
C1.6	Provide lighting protection 6 boreholes.	
C1.7	Provisional Sum of R950,000 for Drip Irrigation for 6.	
SUB-TOTAL of ACTIVITY SCHEDULE B - CARRIED OVER TO FINAL SUMMARY		

FINAL SUMMARY OF THE ACTIVITY SCHEDULE

ITEM NO	DESCRIPTION	AMOUNT (R)
A	SECTION 1 – PRELIMINARIES & PROFESSIONAL SERVICES (Total for Activity Schedule A1)	
	SECTION 1 – PRELIMINARIES & PROFESSIONAL SERVICES (Total for Activity Schedule A2)	
B	SECTION 2 – BUILDING WORKS (Totals for Activity Schedules B)	
	SUB – TOTAL OF SECTION 1 AND 2	
	ADD Contingencies @ 10%	
	ADD VAT @ 15%	
	THE GRAND TOTAL OF THE ACTIVITY SCHEDULE (To be carried over to the Form of Offer page)	
Rand		
		(in words)

I, _____ of _____,
(Authorised Signatory) (Company Name)



**VOLUME 3 OF 3
NEC3 ECC OPTION A
THE CONTRACT**

Tender No. RFP 096/2022

**Appointment of One (1) Turnkey Contractor
for the Design, Supply, and Installation of
Electricity Pump System to existing Boreholes
in West-Rand District on behalf of the Gauteng
Department of Agriculture and Rural
Development (GDARD) (Cluster B)**

Hereby acknowledge having read, understood and agree to requirements as set out in C2.2 and warrant that the documents submitted are true and accurate.

(Signature)

(Date)

C2.3 — AMENDMENTS, QUALIFICATIONS AND ALTERNATIVES BY TENDERER

Subject to condition stated in Tender Data:

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

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Works Information</i>	16
C3.2	<i>Contractor's Works Information</i>	1
	Total number of pages	18

C3.1 EMPLOYER’S WORKS INFORMATION

1 Description of the works

Employer’s objectives

The purpose of this project is to procure and install new infrastructure in order to improve the various farmers across regions of Gauteng.

The projects are located at various sites not necessarily equipped with basic services needed for the contract execution. Therefore, the tenderer shall arrange for the provision of all services needed. The sites must be managed to minimize theft and vandalism to construction material, including security costs during the contract execution period.

No separate payment will be made to the Contractor for the obtainment, providing and consumption of electricity, water or any services. These will be deemed to be in the Contractor’s Preliminary and General costs.

On behalf of GDARD, DBSA as the Implementing Agent therefore, seeks to procure the services of a construction service provider (Turnkey contractor) to undertake the design, supply and installation of 26 boreholes with electric and/or solar water pump systems.

Overview of the Works

The sites and scope of works are listed in the table below:

Project Name	Depth	Required Borehole Type
WEST-RAND DISTRICT		
Sello Raborethe Farm	100m	Electric pump system,
Bogatsu Boerdery	270m	Electric pump system
Rutegang Agri Cycling	140m	Dual pump system (solar and electric),
Ipopeng Farm	55m	Dual pump system (solar and electric),
Isibusiso Farm	140m	Dual pump system (solar and electric),
Abba Farm	120m	Dual pump system (solar and electric),

This is a turnkey project and must include all the correctly Professionally required person for all the required disciplines to ensure the all the required stages as reflected below, can be covered.

The Turnkey Contractor bidding for this assignment should thus consist of a multi-disciplinary team of professionals for the execution and supervision of the works:

- Professionally Registered Key Team Members with relevant years of built environment experience relevant to the assignment in the following but not limited disciplines:
 - Project Manager
 - Civil/Structural Engineer
 - Electrical Engineer
 - Mechanical Engineer
 - Health and Safety Consultant (Pr.CHSM SACPCMP)
 - Geohydrologist

The Construction team should consist of built environment personnel such as;

- Site Agent/Supervisor
- Construction Health and Safety Officer (Pr.CHSO SACPCMP)
- Artisans (Plumbers, Electricians, etc.)
- Company experience on similar projects with contactable references (references to be provided);

2. Scope deliverables or milestones

The scope of works must be delivered according to the stages of the Infrastructure Delivery Management Project Processes listed below (as outlined in the FIDPM):

- 1) Stage 1: Inception/Initiation
- 2) Stage 2: Concept Development
- 3) Stage 3: Design Development
- 4) Stage 4 : **Not applicable**
- 5) Stage 5: Works
- 6) Stage 6: Handover
- 7) Stage 7: Close-Out

Therefore, the above listed scope of works deliverables or work breakdown structure (WBS) sets this contract's principle through which the successful tenderer shall deliver the contract objectives.

Stage 1: Inception/Initiation

During the inception phase the following items will be addressed

- a) Kick-off and site handover meeting.
- b) Signing of contract.
- c) Obtaining information, documents and drawings.
- d) Interpret the project brief.
- e) Conduct site assessments and confirm scope brief.
- f) Assess requirements for construction site security.
- g) Secures approvals for safety, health and environmental file.
- h) Submit confirmed scope of works to the DBSA for approval.
- i) Submit **Inception Report** to the DBSA for approval.

Stages 2 : Concept Development

- a) Prepare concept design drawings.
- b) Prepare implementation plan.
- c) Identify and obtain the statutory permissions and utility approvals required.
- d) Prepare Site specific health and safety specifications, baseline risk assessment and health and review safety plan as required by the relevant Act and regulations.
- e) Submit concept design drawings to DBSA for approval.
- f) Client review and approval of concept design drawings.
- g) Stage Gate Notification / Client Approval to Proceed to Next Stage

Stage 3 : Design Development

(Detailed design, full construction drawings and specifications):

- a) Prepare coordinated detailed design drawing/schedules and specifications.
This includes to produce the final detailing, performance definition, specification, sizing and positioning of all systems and components enabling either construction (where the contractor is able to build directly from the information prepared) or the production of manufacturing and installation information for construction.
- b) Designs and specifications to be in full accordance with SANS 10400 (all sections, including XA). Specification for all components are to be written with reference to the specification guidelines (where relevant) to be provided by the DBSA (and others where relevant).
- c) Submit detailed design drawing and reports to DBSA.

- d) All design information will be presented and submitted in hard copy and 3D model format – native format (AutoCAD, etc.).
- e) DBSA review of detailed designed drawings.
- f) DBSA approval of detailed design drawings.
- g) Update a baseline program schedule for the project.
- h) Stage Gate Notification / Client Approval to Proceed to Next Stage

Stage 5: Works

The Contractor is responsible for planning, organizing, sourcing, monitoring and management of the scope of works including, but not limited to;

- a) Works programme: Develop schedule of works management plan for all activities.
- b) Develop quality control programme and implementation plan as well as quality assurance plan.
- c) Carry out scope of works in terms of the contract.
- d) Prepare schedules of cash-flow projection as per programme of works.
- e) Submit payment certificates.
- f) Establish and maintain a financial control system.
- g) Attend regular site, technical and progress meetings.
- h) Carryout all quality tests as per the quality plan, record all results for filing and submission to DBSA/GDARD.
- i) Prepare operation and maintenance manuals, guarantee certificates and warranties.
- j) Arrange for the delivery of all test certificates, statutory (regulatory) and other approvals, as-built drawings and operating manuals.

Stage 6: Handover

The Contractor is responsible to Handover the project by fulfilling the following duties including, but not limited to;

- a) Rectify defects.
- b) Submit operations and maintenance manuals to DBSA/GDARD.

- c) Provide a completion report, detailing the construction process, the material test results, the final founding conditions as well as any changes from the works stages up to the construction completion.
- d) Assist with the preparation of as-built records and drawings to the extent required in the agreement with the client.
- e) Schedule of quality test results.
- f) Provide guarantees that extend beyond the defect's liability period provided for in the package.

Stage 7: Close-out

The Contractor is responsible to Close-out the project by discharging the following duties;

- a) Complete liability period
- b) Carry out final inspection
- c) Release retention
- d) Terminate contract
- e) Close-out report.

The *works* also include all ancillary works or actions which even if not expressly stated, are required for the safe and proper installation, commissioning and functioning of the Baseline Systems or otherwise required by law. These includes:

- All precautions requisite for the protection of life and property on or about or in connection with the works, including the provision of all signs, lighting, barriers required by any competent authority;
- The remedy of, any building, wall, fence, garden, sewer, pipe, cable and any other structure, facility or thing, interfered with damaged or removed in Providing the Works, and restoration in the same condition as they were in prior to such interference, damage or removal, save where the same is unavoidable as part of the proper installation of the Baseline Systems;
- Clearing away and removal from the site and proper disposal of all constructional plant, temporary works, rubbish, surplus material, debris and unused materials resulting from or attributable to the Contractor's and subcontractor's operations.

The responsibilities required for the Contractor to take over professional and compliance liabilities is also as detailed below.

3.1. General Guide on how the *Contractor* Provides the Services.

3.1.1. Management meetings

- 3.1.1.1. Weekly meetings are scheduled for 1 hour at the *Employer's* property. The purpose of the meeting is:
- 3.1.1.2. Discussion of the overall co-ordination, other matters of a general nature, early warnings and any savings. (Designed to pro-actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties).
- Discuss all the activities scheduled for the next report period
 - Weekly meeting with Senior Managers scheduled for 1 hour at the Employer's property:
 - The purpose of the meeting:
 - Discussion will be focusing on the items coming from the DBSA IDD or GDARD management and those issues that need management attention and focus.
 - Ad-hoc meeting (as required by the Employer and with the authorization from the Employer's Agent)
 - Discussion on an overall activities as may required
 - Records of these meetings shall be submitted to the *Employer's Agent* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the Contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

3.1.2. Documentation control and retention

3.1.2.1. Identification and communication

- All reports and documents supplied to *Employer* shall be in a hard copy and electronic format and on Microsoft format (i.e. Word, Excel, and the like always be forwarded to *Employer's Agent*).
- Electronic copies of text files shall be in '.doc' and drawings in 'pdf' format. All drawings and documents compiled for the services are to be sized to metric paper size standards (A4, A3 etc.).
- Every document must have a title, reference number, date and revision number.
- The *Contractor* handles all formal communication between the *Contractor* and the *Employer* through the *Employer's Agent* or other person delegated in writing by the *Employer*.
- The *Contractor* conducts informal day-to-day oral communications with others as necessary for the purpose of providing the Services.
- The *Contractor* maintains up to date record of the receipt and submission of all

communication related to providing the Services.

3.1.2.2. Invoicing and payment

- The *Contractor* ensures that the requirement in terms of Section 20(4) (c) of the Value Added Tax Act, No. 89 of 1991 (as amended by the Revenue Laws Amendment Act 45 of 2003), that the VAT registration number of the recipient of the tax invoice, appears on the said tax invoice in order for the invoice to fully comply with the requirements of a valid invoice for VAT purposes as contained in the said Section 20 (4) (c), is adhered to. The Employer requires adherence by the *Contractor* to this requirement, applicable from 1 June 2004. No payment will be made on tax invoices not fully meeting the requirement.
- The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

The *Contractor* shall address the tax invoice to:

GDARD – Mandate

C/O The Development Bank of Southern
Africa, 1258 Lever Road, Headway Hill,
Midrand.

1685

Attention: Financial Accounting (AP) and include on it the following information:

- a. Name and address of the *Contractor* and the *Employer's Agent*;
 - b. The contract number and title;
 - c. *Contractor's* VAT registration number;
 - d. The *Employer's* VAT registration number 426 012 6711
 - e. Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
 - f. The date of the invoice
 - g. An Invoice number
 - h. Reference to Contract and/Invoice/Purchase Order number
 - i. A descriptive title of the service covered by the invoice and/or the Contract's Assessment number
 - j. A copy of the Assessment Certificate/ Signed Task instruction
- To enable payment against each applicable invoice the *Employer's Agent* and the *Contractor* signs next to each line acceptance of the service, materials or

Goods delivered on the applicable invoice. The signed copy of this invoice is forwarded (faxed or hand delivered) to the Contracts Administration Section.

- The original invoices will go directly to DBSA Finance Department. The payment period will start from the date and time at which the invoice and all relevant documentation were received at this office.

3.2.2. Contractor's key persons

- The *Contractor* submits the relevant qualification and experience of a proposed replacement to the *Employer* for acceptance- including a list of similar projects demonstrating his/her competency and experience and organizational structure/ organogramme showing his/her lines of authority/communication. The *Employer* reserves the right to examine the certification.
- The *Employer* may, having stated, instruct the *Contractor* to remove a key person. The *Contractor* then arranges that, after one day, the key person has no further connection with the work included in this contract.

3.2.3. Provision of bonds and guarantees

3.2.3.1. The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

3.2.3.2. The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Employer's Agent* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer's* right to termination stated in this contract.

3.2.4.4. Contract change management

3.2.4.4.1. This section deals with additional requirements to the compensation event clauses in section 6 of the core clauses which are:

3.2.4.4.1.1. The *Employer* provides the *Contractor* with the signed PSC event register form notifying the compensation event. The *Contractor* signs the form and returns to the *Employer*.

3.2.4.5. Inclusions in the programme

- The programme shows all the information required by Clause 31.2.
- The programme incorporates the services and work (programme) of the Sub-Contractors, the *Employer* and Others. The interfaces between Sub-Contractors as well as the interfaces between Sub-Contractors and the *Contractor* are clearly identified.
- Every programme has a revision number.
- The *Contractor* submits a programme in a computerized package - MS project.
- The *Contractor* prepares and submits at the stated intervals, all programming documentation, the layout and level of detail of which is subject to the *Employer's Agent* acceptance.
- The *Contractor* makes allowance for incorporation of *Employer* acceptance review comments for documents delivered to the *Employer's Agent* for *Employer's* acceptance.

4. Quality management

4.1 System requirements

- The Client expects that the *Contractor* operate a quality management system as stated in the Scope.

4.2 Information in the quality plan

- The Client requires that the *Contractor* provide a quality policy statement and quality plan which complies with requirements stated in the Scope.

5. The Parties use of material provided by the *Contractor*

5.1 *Employer's* purpose for the material

- The Client states that the *Employer* has the right to use the material provided by the *Contractor* for the purpose stated in the Scope.
- The *Employer* owns the rights and uses all documents and data for the sole purpose of all its needs.
- The *Contractor* may not use any material provided by the *Employer* and/or Others for any other purpose than to provide the Services. The *Contractor* may not copy and therefore not retain copies of any such material.

5.2 Restrictions on the *Contractor's* use of the material for other work

The *Contractor* has no authority to use the works submitted without authorisation from the *Employer's* Agent

6. Management of work done by Task Order

- A task order, together with an instruction from *Employer* to perform a task, is the *Employer's* notice to the *Contractor* to carry out a task.
- The *Contractor* does not perform any work without a task order accompanying the *Employer's* instruction to perform a task.
- The Contractor performing work without a task order is done at the risk of non-payment by the *Employer*.
- The *Employer* may not issue a task order after the completion date.
- To enable payment against each applicable Task, Order the *Employer's* Agent and the *Contractor* signs next to each line acceptance of the service, materials or goods delivered on the applicable generated Task Order. The signed copy of a signed Task Order is forwarded (faxed or hand delivered) to the Project Manager.

7. Health and safety

- The Client states that the *Contractor* acts in accordance with the health and safety requirements stated in the Scope.
- The *Contractor* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *services*.
- A health and safety plan is submitted to the *Health and Safety Consultant* for review and acceptance one week after the Contract date but in any event

prior to the commencement of any work on site.

- The *Contractor* complies with the *Employer's* SHE management system, Policy, standard and specification and must request it from the *Employer's* Agent on site establishment.
- The *Contractor* shall carry all work in accordance with all relevant safety laws and procedures.
- The *Contractor* shall where necessary supply Personal Protective Equipment (PPE) for his employees. A hard hat, musk, safety boots, ear plugs and safety glasses are mandatory safety equipment at the site.
- The *Contractor* provides the *Health and Safety Consultant and DBSA SHEQ SPecialist* with the following before work commence:
 - a. Approved Health and Safety plan
 - b. Letters of appointment
 - c. Risk assessments of the tasks
 - d. Copy of the letter of Notification of Construction work
 - e. Some other documents requested by the Employer to perform the tasks.
 - f. Covid-19 required documents (Work / preparedness plans, Risk Assessment)

Environment (as applicable)

- The *Contractor* ensures that all goods, services and works supplied in terms of this contract conform to all applicable environmental legislation and to the Employer's environmental specifications.

8. Procurement

8.1. Other constraints

- The *Contractor* assigns suitably qualified personnel, where indicated by the *Employer* who are professionally registered with Engineering Council of South Africa (ECSA) or as stipulated. The *Contractor* is to ensure that registration remains active for the contract duration.
- The *Contractor* personnel must be able to communicate in English.

8.2. Preferred sub-Contractors

8.2.1. The *Contractor* assigns suitably qualified personnel, where indicated by the

Employer who are professionally registered with the relevant professional body. The *Contractor* is to ensure that registration remains active for the contract duration.

8.2.2. The *Contractor* appoints the sub-Contractor to perform the work shall be competent in the field for which they are appointed and has resources to carry out the work in a safe and healthy manner.

8.2.3. The *Contractor* must personally verify and ensure that only a skilled and properly authorised specialist is supplied to the *Employer*. The *Employer* reserves the right to examine the certification of appointed personnel/or sub-contractor.

8.2.4. All staff must be able to communicate in English.

8.3. Subcontract documentation, and assessment of subcontract tenders

Addition:

8.3.1. The *Contractor* shall supply where applicable the Employer's SHE specification to the subcontractors.

8.3.2. The *Employer* ensures that the *Contractor* audit their subcontractors on their compliance with the approved SHE plan as per the requirements of the SHE file.

8.3.3. The *Contractor* shall apply in accordance with SHE Specification Guideline.

8.4. Limitations on subcontracting

8.4.1. The *Contractor* assigns suitably qualified personnel, where indicated by the Employer who are professionally registered with Engineering Council of South Africa (ECSA). The *Contractor* is to ensure that registration remains active for the contract duration

8.4.2. The *Contractor* appoints the sub-Contractor to perform the work shall be competent in the field for which they are appointed and has resources to carry out the work in a safe and healthy manner.

8.4.3. The *Contractor* must personally verify and ensure that only a skilled and properly authorised specialist is supplied to the Employer. The Employer reserves the right to examine the certification of appointed personnel/or sub-contractor.

8.4.4. All staff must be able to communicate in English.

9. Working on the *Employer's* property

Employer's entry and security control, permits, and site regulations

10. Location of the site:

10.1. The sites are located as indicated under C 4.1 [Information and Map] and details of site location and co-ordinates are obtainable from the *Employer's* representative.

10.2. Access requirements

10.2.1. All personnel must have a valid identification document (green identity document) or passport.

10.2.2. On a daily routine all personnel will access and leave the Site via the security-controlled access point, where all are subjected to security screening procedures.

10.2.3. Application to a temporary access worker permit will require the following:

10.2.3.1. Copy of relevant Task Order (Invoice) should any of the *Contractor's* employees have completed any of the necessary training previously, these records can be obtained from the *Employer*. The *Employer* has a database, which makes available all the training records of individuals whom have previously worked at the *Employer's* site. Access to this database will be provided to the *Contractor* on contract award for future use.

11. Security check point

11.1. Prior to access to site, there may be security check points, the *Contractor* is obliged to comply and register for access cards.

Vehicles and Tools/Equipment (as applicable)

11.2. All tools and equipment are subject to a security screening before they are allowed on the Site. All tools and equipment must be listed and specified before they are brought on Site. This list will serve as evidence for removal permits. Vehicles will only be allowed on Site, if proof is provided to the *Employer* that there is a requirement, that such a vehicle is necessary to complete the Works.

11.3. Security

11.3.1. All workers shall prior to them being allowed to commence work in terms of the contract have satisfactorily passed the security screening by the *Contractor* in terms of the *Contractor's* own security regulations and the *Contractor's*

conditions of employment.

- 11.3.1.1. All the *Contractor's* personnel shall be subject and conform to the *Employer's* and, to the site security requirements, system and processes.
- 11.3.1.2. If requested by the *Employer*, the *Contractor* shall furnish the *Employer* with curriculum vitae, security records, police clearance and credit checks, and where applicable, medical records and radiation exposures histories of all ~~PERSONNEL~~ PERSONNEL. A security document to permit to pass ports to the *Employer's*
- 11.3.1.4. The violation of any security measures will result in the withdrawal of access permits.
- 11.3.1.5. The *Contractor* shall remain responsible for the retrieval and return of all *Employer's* security permits upon expiry of the contract or task order. A cost of R50 per permit will be levied on the *Contractor*, should the permits not be returned after the termination of the contract period.
- 11.3.1.6. The *Contractor* shall ensure that all employees complete an exit process on the final day of employment.

12. Instruction to commence work (ICW)

12.1. The work will be provided under an instruction to commence work issued by the *Employer* to the *Contractor*.

- 12.1.1.1. A schedule including milestones for completing works.
- 12.1.1.2. An estimate of the cost involved and/or a lump sum where applicable
- 12.1.1.3. The proposed organisation of the *Contractor's* personnel, identifying the key personnel that would be assigned to the task
- If the *Employer* elects to accept the *Contractor's* proposal, the *Employer* shall issue an ICW.
 - Alternative, the *Employer* may issue an ICW or a revision thereof without first seeking a proposal from the *Contractor*.
 - The Task Order/Invoice will include the following information:
 1. A description of the works
 2. Purchase Order number (Invoice Number)
 3. Special terms and conditions that may be applicable
 4. Any specifications and drawings that may be applicable
 5. The *Employer's* employee who will be the contact person for all the matters concerning the ICW, including technical direction.
 6. The contract number allocated to the contract.
 - Unless the *Contractor* notifies the *Employer* in writing within the period for reply, after the receipt of an ICW or any revision concerning

same, that there is an aspect which is unclear, incorrect or unacceptable, the *Contractor* shall be considered to have accepted all the terms of the ICW as issued.

- Any ICW that is not signed by the duly authorised Employee of the Employer shall be void and of no effect, and the *Contractor* shall not compensate for any work performed pursuant to such ICW

13. Facilities

- 13.1. The *Contractor* is liable for any damage incurred to the *Employer's* facility during the period of occupation.
- 13.2. The *Contractor* submits a facilities checklist to the *Employer* for acceptance, prior to occupation and again upon departure, which serves as proof of any damage to the *Employer's* facility.
- 13.3. All expenses incurred by the *Employer* in the event of the *Employer* having to perform repairs, will be at a fee that is in line with the current building tariffs and be charged for the *Contractor's* account.

14. Telephones

- 14.1. Usage of cellular or mobile phones on site is the risk of the user.
- 14.2. The *Contractor* is responsible for payment of the total telephone account when the *Employer's* telephone account system is utilised by the *Contractor*.

15. Supply of personal computers (as applicable)

- 15.1. The *Contractor* supplies his own computing equipment.
 - The Contractor exercises diligent control in the prevention and elimination of viruses and subjects his PCs to the Employer's anti-virus software.
 - Files produced by the PCs must be compatible with the MS office suite of programmes used at the Employer's site.
 - Should the PC require connection to the *Employer's* Local Area Network (LAN), the Employer supplies the connection point, the required network card (which will be signed for and returned after use) and arranges for its installation. *Contractor* PCs are typically "fire-walled" from the *Employer's* LAN.

- External internet connections are not supplied. Hardware and software maintenance is the responsibility of the *Contractor* at his own cost.
- The *Contractor* accepts full responsibility for, and therefore exercises tight control over the confidentiality and integrity of data held and used on his PC.
- The *Employer's* Microsoft license does not extend to the *Contractor*.

16. Electric power supplies

- 16.1.1. Electric power for use during the works will not be supplied to the *Contractor*. All electrical installations shall comply with the details set out in the applicable regulations. ~~The *Employer* does not guarantee continuity of supply and no claims as a result of power failures will be considered.~~

17. Use of Employer's tools and equipment (as applicable)

- 17.1.1. For the purpose of expediting the services, the *Employer* may make facilities available to the *Contractor* at no cost to the *Contractor*. The *Contractor* does not receive any reimbursement or make any charge relative to the beneficial use of the *Employer's* facilities or services.
- 17.1.2. The *Employer* may allow the *Contractor*, for the Provision of Services, the reasonable use of its workshop, cranes, tools and equipment, provided that the *Employer's* own work and business are not interfered with in any manner because of such use. The *Contractor* leaves all workshops, cranes, tools and equipment in as good condition as he found them, fair wear and tear excepted, and is liable for and indemnifies the *Employer* against any damages suffered by the *Employer* as a result of any act of negligence by the *Contractor*, his employees or sub-*Contractor's* while using such workshops, cranes, tools and equipment.
- 17.1.3. The *Employer* may provide workshop and machining facilities to assist the *Contractor* with the Provision of the Services. The priority of work to be executed is determined by the *Employer* who also approves the manner of execution of work, which cannot be reasonable executed at the *Employer's* site workshop.
- 17.1.4. Should the *Employer* on behalf of the *Contractor* undertake work, which is part of the works, the *Contractor* shall meet all charges levied by the *Employer*.

18. People restrictions, hours of work, conduct and records

18.1. People restrictions

18.1.1. Entrance to site is only for workers and authorized persons.

18.2. People conduct

18.2.1. The *Contractor* maintains at all times a harmonious relationship with and co-operates with the *Employer* and all its suppliers and all its suppliers and sub-suppliers or their employees who may be involved.

18.2.2. The *Contractor* employs in and about the Provision of the services only such person that are careful, competent and efficient in their several trades and callings and the *Employer* be at liberty to object to and require the *Contractor* to remove from the services forthwith any person employed by the *Contractors* in or about the Provision of the Services who, in the opinion of the *Employer*, misconduct's himself or is incompetent or negligent in the proper performance of his duties and such person is not again employed for the services without the written permission of the *Employer*.

- The *Contractor* ensures that the *Contractor's* employees, Co-ordinators and employees are reasonably fluent in the language of the contract.
- The *Contractor* regularly reports person hours worked at the *Employer* on a monthly basis.

19. Laws and regulations to be complied with

19.1. The *Contractor* shall at its own expense comply with all laws, regulations, bye-laws and requirements of local and other authorities which may be applicable to the works and as amended or replaced.

19.2. The *Contractor* shall at its own expense comply with the Basic Conditions of Employment Act No.75 of 1997. The *Contractor* indemnifies the *Employer* against any claims, proceedings, compensation and cost arising from the *Contractor's* transgression of the Act.

19.3. The *Contractor* complies with all relevant labour legislation and applies to the Ministerial Determination for working hours and obtains approval prior to the commencement of any work on site. The *Contractor* submits the approval to the *Employer* for acceptance.

20. Ethics

20.1. The *Employer* is committed to the highest standard of ethical behaviour and principles, and expects the same from the *Contractor*. Non-adherence from the *Contractor* personnel results in dismissal.

21. Cooperating with and obtaining acceptance of Others

In providing the services during this contract duration, the *Contractor*:

- Accepts that all work is subject to, at any given time, inspections various Employer groups i.e. Occupational Health & Safety, Engineering, Quality Assurance/Quality Control, Maintenance, Chemistry and Environmental Assurance.
- Shares the site with others and maintains a harmonious relationship at all times.
- Co-operates at any time with other appointed by the Employer to review work performed by the *Contractor* during this contract.
- Makes all the time the assignees and key persons available for providing the services.
- Brings to the attention of the *Employer* any additional services that the *Contractor* believes should be performed by him in keeping with sound professional practice.
- If has a different opinion or disagree or cannot resolve to his satisfaction with *Employer* of any matter, notifies the *Employer*.
- Seeks out everything necessary to identify those matters that fall fully or partially within the scope of the services, whether or not such matters are addressed in the description of the services or in the Scope or in other requirements for the services stated from time to time.
- Provides information as required by the *Employer* for issues affecting the services but outside the scope of the services.

22. Dealings with authorities and obtaining permits

22.1. Each party shall be responsible for all dealings with government and local authorities relating to its' role in terms of the contract and shall obtain and maintain at its' own expense such permits, licenses and authorisations as may be required in this regard.

22.2. Co-ordination with work of others

22.2.1. The *Employer's* responsibility is to co-ordinate the execution of the *Contractor's* work with the work of others *Contractor* on site.

22.2.2. The *Contractor* co-operates with and does not delay, impede or otherwise impair the work of others.

23. Bid Requirements

(a) Registration with Professional Body

It is a requirement for this bid that all works as performed under this bid must be signed off by a Registered Professional Engineer or equivalent, as registered in terms of the relevant Act, in-order to support the above, **bidders are required to submit CV's and professional registration number/s for verification with relevant bodies, failing which the bid will be rejected.**

(b) Competency of Personnel

The successful Bidder shall submit with this bid a team of competent people as listed above.

(c) Previous Experience

Complete understanding of the scope of this contract by the appointed Contractor and as well as the full knowledge of the critical impact the work covered under this specification has relative to the Public Sector service delivery programs is of the utmost importance. For the bidder to be considered under this contract, the bidder must provide information in Previous Experience table provided in the bid document indicating at least 5 successfully executed projects or minimum of three (3) projects of the same or similar nature of the contract.

24. General Conditions

(1) If items in the Schedule of Activities are not bid for, a line must be drawn through the space in pen.

- (2) DBSA reserve the right to terminate this appointment at any stage. In the case of such termination the Contractor will be remunerated for the work done up to that stage.
- (3) Generally administer the contract and certify that the works are completed according to plans and specification.
- (4) Inspect and keep records for a period of at least 3 years, that methods of construction and material required for bedding, backfilling and compacting of trenches meet with the requirements of the specification especially along roads/railway lines, at road crossing, at paved areas and in dolomite areas.
- (5) Before and after blasting of rock take place (if any), inspect adjoining structure/building/services. Keep strict digital photographic and other written records.
- (6) Be present on site when the contractor exposes major services. Report immediately to the client any damage done to existing services. Take photos.
- (7) Inform the various Authorities before their services are exposed.
- (8) Be available to provide the contract with technical interpretation of the plans and specification.
- (9) In liaison with the Chief Area Engineer and the Project manager of the area concerned, identify at the earliest possible date, exact position of connections to the existing network.
- (10) Notify in writing the Chief Area Engineer and the Project Manager well in advance before any electricity supply planned outage is contemplated. Some industries may have to shut down their production plant at considerable expense and may need considerable time notice before shutting down their plant.
- (11) Do not allow access to/agrees from properties to be blocked without first advising the owner.

- (12) Keep detailed daily site records of contractor's labour forces, training of labour, labour intensive construction, SMMEs, plant etc. and keep records further records as required by the client from time to time. Compare SMME, job creation, local content etc. as tendered with actual data on site.
- (13) Keep digital photos and other written records with dates, of progress and disruptions to the works. Supply copies to the client.
- (14) Report immediately to the client any accident involving site personnel or third parties and damage to property.
- (15) If necessary assist the contractor in preparing insurance claims.
- (16) Be available to receive complaints from the public. Keep records of all complaints.
- (17) Keep records of rainfall.
- (18) Provide monitoring on an as and when required basis during the maintenance period.
- (19) The Employer's Representative shall determine the number, type and experience of his construction monitoring staff needed to comply with the above requirements. Monitoring staff is deemed to be in the employ of the Employer's Representative and shall take instructions only from him. If any reason, insufficient or inadequate staff for construction monitoring is appointed, the Employer's Representative shall provide additional services, including additional site visits by the client.
- (20) Overall contract administration and co-ordination including and compiling of monthly progress reports in a format as required by the client. Keep and issue minutes of meetings within 7 days of the meeting.
- (21) Issuing instruction to contractors on behalf of the client.
- (22) Issuing certificates or recommendations for payment to the contractors and submitting regular reports regarding works finances and anticipated completion dates and final costs.

- (23) Advice to the client in regard to or the resolution of disputes or difference that may arise between the client and the contractor, except medication, arbitration and /or litigation.
- (24) Preparation of and issuing variation orders on behalf of and after consultation with the client.
- (25) General inspection of material and equipment for compliance with the original design and bid, including checking of marks or documentation for adherence to National and international standards and advice to the client regarding further inspection and testing to be carried out on behalf of the client's expenses.
- (26) Evaluation results of contractor's commissioning procedure and tests and witnessing final performance or acceptance tests on site.
- (27) The compiling of monthly progress report for /on behalf of the client for use by external funding sources (e.g., INEP, EPWP reports) and in the format as required by external funding sources.
- (28) Issuing of Completion Certificate together with all responsibilities and liabilities attached to such issuance of Completion Certificate as require by the client. Obtain permission from the client before issuing the Certificate of Compliance.
- (29) Keep strict control of expenditure on the construction contract and motivate reasons if additional funds are to be made available by the client. The Employer's Representative shall report in writing to the client in good time so as not to delay the progress of the Works. Financial regulations require that a report be submitted to the client for approval of additional funds prior to any over expenditure being incurred. The period required between the reporting of possible over-expenditure and getting approval for it is 2 months prior.
- (30) Obtain written permission from the client before granting extension of time to the contractor.
- (31) Do an initial setting out or staking out of the work indicating all reference marks and levels to the contractor.
- (32) Provide reports on each stage of construction within 30 day of issue of Certificate of Completion and within final Approval Certificate.

25. Duration of project

For pricing purposes, the duration of the project is **Ten (10) months**.

26. Occupational Health and Safety Act, 85 of 1993 (Act No. 1993)

Construction Regulations 6 – Duties of Designer

(1) The designer of a structure must-

- (a) ensure that the applicable safety standards incorporated into these Regulations under section 44 of the Act are complied with in the design;
- (b) take into consideration the health and safety specification submitted by the client;
- (c) before the contract is put out to tender, make available in a report to the client –
 - (i) all relevant health and safety information about the design of the relevant structure that may affect the pricing of the construction work;
 - (ii) the geotechnical-science aspects, where appropriate; and
 - (iii) the loading that the structure is designed or when the design is subsequently altered;
- (d) inform the client in writing of any known or anticipated dangers or hazards relating to the construction work, and make available all relevant information required for the safe execution of the work upon being designed or when the design is subsequently altered;
- (e) refrain from including anything in the design of the structure necessitating the use of dangerous procedures or materials hazardous to the health and safety of persons, which can be avoided by modifying the design or by substituting materials;
- (f) take into account the hazards relating to any subsequent maintenance of the relevant structure and must make provision in the design for the work to be performed to minimize the risk;
- (g) when mandated by the client to do so, carry out the necessary inspections at appropriate stages to verify that the construction of the relevant structure is carried out in accordance with his design: Provided that if the designer is not so mandated, the client's appointed agent in this regard is responsible to carry out such inspections;
- (h) when mandated as contemplated in paragraph (g), stop any contractor from executing any construction work which is not in accordance with the relevant design's health and safety aspects: Provided that if the designer is not so mandated, the client's appointed agent in that regard must stop that contractor from executing that construction work;
- (i) when mandated as contemplated in paragraph (g), in his or her final inspection of the completed structure in accordance with the National Building Regulations, include the health and safety aspects of the structure as far as reasonably practicable, declare the structure safe for use, and issue a completion certificate to the client and a copy thereof to the contractor; and;

- (j) during the design stage, take cognizance of ergonomic design principles in order to minimize ergonomic related hazards in all phases of the life cycle of a structure.
- (2) The designer of temporary works must ensure that –
- (a) all temporary works are adequately designed so that it will be capable of supporting all anticipated vertical and lateral loads that may be applied;
 - (b) the designs of temporary works are done with close reference to the structural design drawings issued by the contractor, and in the event of any uncertainty consult the contractor;
 - (c) all drawings and calculations pertaining to the design of temporary works are kept at the office of the temporary works designer and are made available on request by an inspector; and;
 - (d) the loads caused by the temporary works and any imposed loads are clearly indicated in the design.

The Employer's Representative to undertake duties falling under the above Occupational Health and Safety Act and the Construction Regulations in terms thereof, on behalf of the client, services will include the following:

- (1) preparing baseline risk assessment and health and safety specifications for the construction phase
- (2) The Employer's Representative must execute the duties of the client, as his appointed agent, as contemplated in the Construction Regulations 2014 to the above Occupational Health and Safety Act.
- (3) The Employer's Representative must arrange formally and in writing, for the contractor to provide documentary evidence of compliance with all the requirements of Occupational Health and Safety Act.
- (4) The Contractor will be required to serve as Occupational Health and Safety agents for DBSA.

27. Quality Assurance System

Where the client requires that a quality management system or quality assurance services, over and above construction monitoring services, be applied to the project, these are in addition to normal services provided by the Employer's

Representative and to be specifically defined and separately agreed in writing prior to commencement thereof.

28. Copyright/patent rights

- (1) All information obtained and paid for during the course of the project is required to be submitted to the DBSA in the pre-specified format.
- (2) All data, information, plans, documents and other deliverables collated and/or produced as a result of this appointment are the rightful property of the DBSA and the DBSA shall also require the copyright thereof.
- (3) The DBSA reserves the right, in its sole discretion, to make any of the above-mentioned data, information, plans, documents and other deliverables, available for use, processing or sharing with / by other organizations.
- (4) The DBSA, in paying for any appointment of a Contractor, also acquires the intellectual property associated with the project being / having been undertaken. This intellectual property shall not be utilized elsewhere without prior written consent of the DBSA.
- (5) The source codes of all electronically developed program and systems are considered to be a part of the project and need to be delivered to the DBSA on completion of the project who will then assume full ownership of such source codes.
- (6) In the event that source codes are changed / or altered or modified for whatever reason, such changes shall be communicated and delivered to the DBSA on a mutually agreed basis.
- (7) Any development of programmes, systems and other application need to be undertaken in such a manner so as to be compatible with the Free State Department of Education systems at the time of development.

Copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed, by a Contractor in the course of the consultancy service is vested in the Free State Department of Education. After the completion of the project all documents become the sole property of the Free State Department of Education and the Municipality reserves the right to utilize the documentation as a standard for the erection of similar and/or identical buildings in other locations within the jurisdiction of the Municipality.

29. Training

The following accredited training for Free State department of Education personnel is required and must be included in the pricing schedule:

- Hands-on training to operate distribution network design software system e.g. DIGSILENT. Advanced training to cover load flow calculations, protection setting calculations, fault analysis, setting relays etc. accordingly.
- Provision of a detailed design training course covering all aspects of designs from basic to detail, the course should be CPD compliant.

All training shall consist of a theoretical & practical component. Bidders shall submit details on the training schedule offered as part of their offers. The successful bidder shall provide the necessary training facilities.

C3.2 CONTRACTOR'S WORKS INFORMATION

This section of the Works Information will always be contract specific depending on the nature of the *works*.

It is most likely to be required for design and construct contracts where the tendering contractor will have proposed specifications and schedules for items of Plant and Materials and workmanship, which once accepted by the *Employer* prior to award of contract now become obligations of the *Contractor* per core clause 20.1.

Typical subheadings could be

- a) *Contractor's* design
- b) Plant and Materials specifications and schedules
- c) Other

This section could also be compiled as a separate file.

PART 4: SITE INFORMATION

Document reference	Title	No of pages
	This cover page	1
C4.1	<i>Information & Map</i>	1
	Total number of pages	2

C4.1 INFORMATION & MAP

Location:

1. As indicate in the below and the actual coordinates to be obtained from the Employer.

Project Name	Property Description / location
WEST-RAND DISTRICT	
Sello Raborethe Farm	Plot 74 ,Elandsfontein
Bogatsu Boerdery	Portion 51 of Sluis, 46/IQ
Rutegang Agri Cycling	ERF 7688 in Jabavu EXT 2
Ipopeng Farm	Leshata School, Orange farm
Isibusiso Farm	Jabulile Senior Secondary School,
Abba Farm	Plot 144,Austen view ,Midrand