

UNIVERSITY OF JOHANNESBURG

CONSTRUCTION OF A NEW STORM WATER SYSTEM AT IMBEWU RESIDENCE

TENDER NO. T UJ 33/2022

DETAILS OF AMENDMENTS TO THE JBCC PRINCIPAL BUILDING AGREEMENT (EDITION 4.1 MARCH 2005)

	The JBCC Series 2000 Principal Building Agreement (edition 4.1 March 2005) prepared by the Joint Building Contracts Committee Inc. amended as hereinafter described, shall be the agreement	
	The JBCC Series 2000 preliminaries (May 2005) prepared by the Joint Building Contracts Committee Inc. amended as hereinafter described shall be deemed to be incorporated in these bills of quantities	
	Contractors are referred to the above-mentioned documents for the full intent and meaning of each clause thereof	
	These clauses are hereinafter referred to by clause number and heading only. Where standard clauses or alternatives are not entirely applicable to this contract such modifications, corrections or supplements as will apply are given under each relevant clause heading and such modifications, corrections or supplements shall take precedence notwithstanding anything contrary contained in the above-mentioned documents	
	Where any item is not relevant to this specific contract such item is marked N/A, signifying "not applicable"	
	<u>PREAMBLES FOR TRADES</u> The Model Preambles for Trades (2008 edition) as published by the Association of South African Quantity Surveyors shall be deemed to be incorporated in these bills of quantities and no claim arising from brevity of description of items fully described in the said Model Preambles for Trades will be entertained.	
	Supplementary preambles to the Model Preambles covering clauses of a general nature, clauses pertaining to specific materials and amendments to clauses in the Model Preambles are incorporated in these bills of quantities to satisfy the requirements of this project	
	The contractor's prices for all items throughout these bills of quantities must take account of and include for all of the obligations, requirements and specifications given in the Model Preambles and in any supplementary preambles	
	<u>SECTION A - PRINCIPAL BUILDING AGREEMENT</u>	
	<u>DEFINITIONS (A1)</u>	

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1	Clause 1.0 - Definitions and interpretation	
	Clause 1.1 is amended by the replacement and addition of the following definitions:	
	Amend the following definitions by deleting them and replacing them with the following:	
	"Interest" means the prime lending rate of First National Bank as adjusted from time to time.	
	"Penalty" means the stipulated amount per calendar day payable by the contractor to the employer where the date, or the revised date for practical completion , whichever is the latter, has not been met.	
	Add further definitions as follows:	
	"Confidential Information" means that the contractor agrees that it shall hold in confidence all information, documents, data, or know-how disclosed by the employer , and will not disclose to any third party or use (including to the commercial detriment of the employer), the confidential information or any part thereof without the employer's prior written approval or consent, provided that the confidential information may be disclosed to: A government entity pursuant to any law, subject to the contractor notifying the employer to the extent possible prior to making the disclosure.	
	"Force majeure" means an exceptional event or circumstance that: (a) Could not have been reasonably foreseen; (b) Is beyond the control of the parties ; and (c) Could not reasonably have been avoided or overcome. The inclusive list of such events or circumstances is limited, as follows: <ul style="list-style-type: none"> • Acts of war (declared or not), invasion, hostile acts of foreign enemies. • Insurrection, rebellion, revolution and riots and terrorism. • Strikes (other than the contractor's employees or subcontractors), or lockout. • Sonic shockwaves caused by aircraft or other aerial devices, and ionising or radio-active contamination. • Natural catastrophes including earthquakes, floods, hurricanes or volcanic activity. 	
	"Parties" means the person or entity named in the schedule or appointed by the employer to deal with specific aspects of the works	
	"the Project" means the upgrade of the Physics Undergraduate Lab for the Faculty of Science in the kelder area at C1 Lab Building at the Kingsway (APK) Campus for the University Of Johannesburg	
	"Programme" means a diagrammatic representation of the planned execution of the work or activities, indicating the dates for commencement and completion , which programme is prepared and maintained by the contractor .	
	"the Tender" means the invitation to prospective service providers to provide the employer with Main Building Works under Tender Number: T UJ 47/2019 , the Tender Document, Sections thereof and Annexure there to which are deemed to be incorporated herein	
	In respect of clause 1.7, add the following word: "provisional" between the words "purpose of" and "sentence".	
	Add further clauses after clause 1.9 as follows:	
	Add the following as clause 1.10:	

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	<p>If the contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons:</p> <p>(i) These persons shall be deemed to be jointly and severally liable to the employer for the performance of the agreement;</p> <p>(ii) These persons shall notify the employer of their leader who shall have the authority to bind the contractor and each of these persons; and</p> <p>(iii) The contractor shall not alter its composition or legal status, without the prior written consent of the employer.</p>	
	<p>Add the following as clause 1.11:</p> <p>Failure by any party to enforce any provisions of this agreement, shall not constitute a waiver of terms of this agreement or affect such party's rights to require the performance at any time in the future.</p>	
	<p>Add the following as clause 1.12:</p> <p>If any definition contains a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause), effect shall be given to it as if it were a substantive provision in the body of the agreement.</p>	
	OBJECTIVE AND PREPARATION (A2 - A14)	
2	Clause 2.0 - Offer, acceptance and performance	
3	Clause 3.0 – Documents	
	<p>Clause 3.1 and 3.2 are deleted and clause 3.2 is replaced with the following clause:</p> <p>The contractor shall provide a construction guarantee in the JBCC Construction Guarantee Format in terms of 14.1.</p>	
	<p>Delete clause 3.3 and replace it with the following clause:</p> <p>The contractor shall waive its lien or right of continuing possession of the works in favour of the employer. The waiver shall be according to the JBCC Waiver of Contractor's Lien form, and shall ensure that any selected or nominated subcontractors or contractor's domestic subcontractors, also waive their lien or right of continuing possession, in favour of the employer and sign the JBCC Waiver of Contractor's Lien form.</p>	
4	Clause 4.0 - Design responsibility	
5	Clause 5.0 - Employer's agents	
6	Clause 6.0 - Site representative	
7	Clause 7.0 - Compliance with regulations	
	<p>Clause 7 is amended by adding the following as clause 7.3:</p> <p>Without limiting the generality of the provisions of clause 7.0 of the agreement, the contractor's attention is drawn to the provisions of the Construction Regulations, 2003 issued in terms of the Occupational Health and Safety Act, 1993 in which it is specifically stated that the employer shall prepare a documented health and safety specification for the works and that the employer shall ensure that the contractor has made provision for the cost of health and safety measures during the execution of the works. The contractor shall price opposite this item for compliance with the act and the regulations and the provisions of the aforementioned health and safety specification.</p> <p>The Health and Safety Specification is included in the Annexures to the Tender Enquiry Document and is deemed to be incorporated herein.</p>	

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8	Clause 8.0 - Works risk	
	Delete clauses 8.5.1, 8.5.2 and 8.5.3, 8.5.4 and 8.5.5 and replace it with the following as clause 8.5.1: force majeure	
9	Clause 9.0 – Indemnities	
10	Clause 10.0 - Works insurances	
11	Clause 11.0 - Liability insurances	
12	Clause 12.0 - Effecting insurances	
13	Clause 13.0 - No clause	
14	Clause 14.0 – Security	
	Amend clause 14.3.1 by the deletion of 12.5% and replacing it with 10%.	
	Add the following as clause 14.9: The employer shall be entitled to deduct an amount equal to the value of 10% (ten percent) of each and every payment certificate , which amount is to be retained by the employer . The amount of the retention held by the employer will be reduced to 5% on the issue of the certificate of practical completion . The final retention will be released in the final payment certificate after the certificate of final completion has been issued. The retention amounts held as security by the employer shall be for the due fulfilment of the contractor's obligation to attend to any defects arising.	
	EXECUTION (A15 - A23)	
15	Clause 15.0 - Preparation for and execution of the works	
	Add the following clauses to clause 15.3:	
	15.3.5 The contractor shall have inspected the site and any existing structures and be fully acquainted with the conditions under which the works is to be executed, including means of access and any matters which may influence the execution and/or the pricing of the works .	
	15.3.6 Submit to the principal agent the priced bill of quantities /lump sum document with items priced to include all costs, overheads and profits, extended and cast within 15 (fifteen) working days of acceptance of the contractor's offer. The principal agent may instruct the contractor to adjust prices considered to be imbalanced or unreasonable, and to eliminate errors or discrepancies without any change to the contract sum .	
	15.3.7 Prepare and submit to the principal agent within 15 (fifteen) working days of being given possession of the site by the employer , a programme for the works in sufficient detail to enable the principal agent to monitor the progress of the works .	
	15.3.8 Coordinate the programme with subcontractors and direct contractor's programmes .	
	15.3.9 Submit to the principal agent a progress report containing all necessary information for the principal agent to monitor the progress of the works , in order to ensure no delays to the works , on a monthly basis.	
	15.3.10 Update the programme to illustrate progress of the works and revise the programme where the principal agent has revised the	

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	date for practical completion . The revised programme to be provided to the principal agent within 7 (seven) days of request by the principal agent to the contractor .	
	15.3.11 Maintain daily records of categories of persons and construction equipment employed on the works , and regularly provide copies of such daily records to the principal agent .	
	15.3.12 Allow the employer and principal agent reasonable access to the works , workshops or other places where the work is being prepared, executed or stored.	
	15.3.13 Provide, maintain and remove, on practical completion all temporary structures, construction equipment and notice boards.	
	15.3.14 On achieving practical completion , hand over to the principal agent all the information for the preparation of "as built" documents and applicable statutory/regulatory approval certificates.	
	15.3.15 On achieving practical completion , hand over to the principal agent all operating and instructions manuals, product guarantees and the like.	
	15.3.16 Cede to the employer on the date of issue of the certificate of final completion , any guarantees, warranties or indemnities pertaining to the works , including any subcontractors, whether nominated or selected.	
16	Clause 16.0 - Access to the works	
	Amend clause 16.0 clause by adding the following as clause 16.3: The contractor is bound by the terms of the University's Policy on Campus Access Control of 10 March 2009, and the Contractor has had regard to such policy in preparing the tender .	
17	Clause 17.0 - Contract instructions	
18	Clause 18.0 - Setting out of the works	
	Clause 18.0 is amended by the addition of the following clause:	
	Amend clause 18.0 by adding the following as clause 18.5: The contractor shall notify the principal agent if any encroachments of adjoining foundations, buildings, structures, pavements, boundaries, arrangements may be made for the rectification of any such encroachments	
19	Clause 19.0 – Assignment	
	Clause 19.1 is amended by deleting it and replacing it with the following: Neither the employer nor contractor shall assign or cede his rights or obligations	
20	Clause 20.0 - Nominated subcontractors	
	Add the following as clause 20.11: Unless expressly provided for elsewhere in this agreement , the contractor shall be responsible for the acts or defaults of any nominated subcontractor , his agent or employees, as if they were the acts or defaults of the contractor .	
21	Clause 21.0 - Selected subcontractors	
	Add the following as clause 21.11: Unless expressly provided for elsewhere in this agreement , the contractor shall be responsible for the acts or defaults of any selected subcontractor , his agent or employees, as if they were the acts or defaults of the contractor .	
	Add the following as clause 21.12:	

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	The contractor is to satisfy himself and give notice to the principal agent to such effect that tenderers to be appointed as selected subcontractors can fulfill the provisions of clauses 21.2.1 and 21.2.2 prior to the opening of the selected subcontract tenders	
	Clause 21.3.2 is deleted as well as the word "either" in clause 21.3	
22	Clause 22.0 - Employer's direct contractors	
23	Clause 23.0 - Contractor's domestic subcontractors	
	COMPLETION (A24 - A30)	
24	Clause 24.0 - Practical completion	
25	Clause 25.0 - Works completion	
26	Clause 26.0 - Final completion	
27	Clause 27.0 - Latent defects liability period	
	Add the following as clause 27.3: The contractor shall make good all latent defects that appear up to the date of the expiry of the latent defects liability period.	
28	Clause 28.0 - Sectional completion	
29	Clause 29.0 - Revision of date for practical completion	
	Clause 29.2.10 is deleted	
	Clause 29.0 is amended by the addition of the following clauses:	
	29.9 A revision of the date for practical completion in terms of this clause will only be considered when work on the critical path of the programme for the works is affected (clause 29.0)	
	29.10 The removal and replacement of materials and/or workmanship that do not conform to specification or drawings shall not constitute grounds for a revision of the date for practical completion nor for an adjustment to the contract value (clause 29.3)	
	Delete clause 29.1.4 and replace it with: " force majeure ".	
	Amend clause 29.4.3 by the deletion of the expression "failing which the principal agent shall not consider such claim" and replacing it with the expression "failing which the contractor shall forfeit such claim, and shall not be entitled to a revision of the date for practical completion or adjustment of the contract value ."	
	Amend clause 29.5 by: Deleting the reference to "60 (sixty) days" and replacing it with "40 (forty) days"; And add at the end of clause 29.5 the expression ",shall not be entitled to a revision of the date for practical completion or adjustment of the contract value ."	
30	Clause 30.0 - Penalty for non-completion	
	The penalty for the works that does not reach practical completion by the required date as set out in clause 42.2.7 shall be R 5 000.00/ calendar day	
	Clause 30.0 is amended by the addition of the following clauses:	
	30.3 Where the contractor fails to bring the works or sections thereof to works completion within forty (40) working days of the date of the	

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	issue the works completion list or revision thereof in terms of clause 30.4, the contractor shall be liable to the employer for the penalty per calendar day for non-completion of the works at the rate stated in clause 30.7. The principal agent shall calculate the penalty due from and including forty one (41) working days after the date or revised date in terms of clause 30.4 of the issue of the works completion list up to and including the actual date of works completion of the works or section thereof	
30.4	The contractor may request additional time for the completion or rectification of works on the works completion list, within 5 working days from receipt of the works completion list, failing which the principal agent shall not consider such claim. The granting of additional time will be by decision of the principal agent	
30.5	Where the contractor fails to bring the works or sections thereof to final completion within one hundred and twenty (120) calendar days of or revision thereof in terms of clause 30.6, the contractor shall be liable to the employer for the penalty per calendar day for non-completion of the works or each section thereof at the rate stated in clause 30.7. The principal agent shall calculate the penalty due from and including one hundred and twenty one (121) calendar days after the date of the certificate of works completion or revised date in terms of clause 30.4, up to and including the actual date of final completion of the works or section thereof	
30.6	The contractor may request additional time for the completion or rectification of works on the defects completion list, within 5 working days from receipt of the defects completion list, failing which the principal agent shall not consider such claim. The granting of additional time will be by decision of the principal agent	
30.7	The penalty will be calculated as follows: For the works that did not reach works completion or final completion Penalty amount: R 1 250.00/calendar day	
30.8	Where the employer levies such a penalty the principal agent shall detail the amount for recovery in terms of clause 33.1.1	
30.9	The contractor shall agree with the principal agent in writing at least five (5) working days before access to the works is required for the completion or rectification of works on the works completion list. Should the contractor not be allowed access to the works as agreed, then the contractor will be granted additional time for completion of the works on the works completion list, equal to the time access was refused	
	PAYMENT (A31 - A35)	
31	Clause 31.0 - Interim payment to the contractor	
	Clause 31.0 is amended as follows:	
	By adding the following at the end of clause 31.7 "Notwithstanding the provisions of this clause, the contractor bears the risk of loss or damage to any materials and goods , due to any cause whatsoever, other than the employer's wilful misconduct or gross negligence	

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	in respect of such materials and goods. "	
	<p>Clause 31.9 is amended by deleting it and replacing it with the following clause:.</p> <p>The employer shall pay the contractor the amount certified in an interim payment certificate within thirty (30) calendar days following the date of issue of the payment certificate. Payment shall be subject to the contractor giving the quantity surveyor a valid tax invoice for the amount due</p>	
	Clause 31.10 is deleted	
32	Clause 32.0 - Adjustment to the contract value	
	Clause 32.0 is amended by the addition of the following expressions and clauses:	
	Add in clause 32.6 after the words "no compensation will be made" the following expression: "and such claim shall be forfeited."	
	<p>Add the following as clause 32.16:</p> <p>All fluctuations in costs, with the exception of fluctuations in the rate of Value Added Tax shall be for the account of the contractor. Clause 32.13 shall therefore not apply</p>	
	<p>Add the following as clause 32.17:</p> <p>Where prices are submitted by the contractor or nominated/selected subcontractors during the progress of the works in respect of contract instructions or in regard to a claim under the terms of the agreement and notwithstanding the fact that such prices may be used in an interim payment certificate, there is to be no presumption of acceptance. Should the principal agent wish to accept any such prices prior to the issue of the final payment certificate, it will be in writing</p>	
33	Clause 33.0 - Recovery of expense and loss	
	Clause 33.1.4 is deleted	
	<p>Add the following as clause 33.7:</p> <p>Payment of compensatory interest in terms of 31.10 shall not apply since clause 31.10 has been deleted</p>	
34	Clause 34.0 - Final account and final payment	
	<p>Clause 34.0 is amended by the addition of the following as clause 34.15:</p> <p>The employer shall not pay any interest on amounts payable to the contractor for one hundred and forty seven (147) working days after the date of issue of the certificate of practical completion. The employer shall, however, pay interest to the contractor at the rate stipulated in clause 34.11 on any amounts payable to the contractor more than one hundred and forty seven (147) working days after the date of issue of the certificate of practical completion but only for such period as the settlement of the final account is delayed by the non-performance of the principal agent or the employer or his agents. In evaluating non-performance for purposes of this clause a reasonable time shall be allowed by the principal agent to the employer or his agents to respond to any matter brought to his/their attention and which may affect the settlement of the final account</p>	
35	Clause 35.0 - Payment to other parties	
	CANCELLATION (A36 - A39)	

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36	Clause 36.0 - Cancellation by employer - contractor's default	
37	Clause 37.0 - Cancellation by employer - loss and damage	
38	Clause 38 - Cancellation by contractor - employer's default	
38	Clause 39 - Cancellation - cessation of the works	
	DISPUTE (A40)	
40	Clause 40.0 - Dispute settlement	
	SUBSTITUTE PROVISIONS (A41)	
41	Clause 41 - State clauses	

SIGNATORIES OF THE CONTRACTING PARTIES

Please sign below confirming the above amendments made to the provisions of The JBCC Series 2000 Principal Building Agreement (edition 4.1 March 2005) have been examined and agreed upon.

For and on behalf of the Employer

Name (Capitals): _____

Signature: _____ Date: _____

Designation: _____

On behalf of: _____

For and on behalf of the Contractor

Name (Capitals): _____

Signature: _____ Date: _____

Designation: _____

On behalf of: _____

Contractor

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