

**MOKOLO AND CROCODILE  
WATER AUGMENTATION PROJECT  
PHASE 2 (MCWAP-2)**

**CONTRACT № 054/2024/PMID/MCWAP2/RFB**

**PART C3.1  
SPECIFICATION**

**SECTION 50**

**SOCIO-ECONOMIC TARGETS AND PENALTIES**

## PART C3.1 SPECIFICATION

### SECTION 50 SOCIO- ECONOMIC TARGETS AND PENALTIES

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## SECTION 50

### SOCIO-ECONOMIC TARGETS AND PENALTIES

#### 50.1 DEFINITIONS, ABBREVIATIONS AND REFERENCES

##### 50.1.1 Definitions

- a) **“Black owned”** refers to the definition in the Broad Based Black Economic Empowerment Act, Act No 53 of 2003, as amended by B-BBEE Act 46 of 2013.
- b) **“Black people/black women”** refers to the definition in the Broad Based Black Economic Empowerment Act No 53 of 2003.
- c) **“Community”**<sup>1</sup> means a South African Citizens, as defined in terms of the South African Citizenship Act, 1995 88 of 1995, who permanently resides within the Targeted Area(s).
- d) **“Contract Site Wage Bill”** means the total site wage bill including the wage bill of Subcontractors from the Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works.
- e) **“Contract Social Participation Performance (CSPP)”** means the measure of the Contractor’s progress in achieving the CSPG.
- f) **“Contract Social Participation Goals (CSPG)”** means the monetary value of the targets set by the Employer in the Contract Social Participation process and stated in the Contract Data.
- g) **“Exempted Micro Enterprise” (EME)** refers to Exempted Micro Enterprise which has a turnover of up to R 10 million, as defined in the Construction Sector Code gazette under section 9 (1) of the Broad-Based Black Economic Empowerment Act (Act No 53 of 2003).
- h) **“Enterprise Development Beneficiary”** is an enterprise which meets any one of the following criteria:
  - The beneficiary enterprise must be of any size and be owned at least 51% by black people. The beneficiary enterprise must be of any size and be owned at least 51% by black women.
  - The beneficiary enterprise must be of any size and be owned at least 51% by black people and have achieved at least a Level 1 BBEE Contributor Recognition Level.
  - The beneficiary enterprise must be of any size and be owned at least 51% by black women and have achieved at least a Level 1 BBEE Contributor Recognition Level.
- i) **“Local”** means inside the borders of South Africa, however with regard to employment and all other things being equal first preference will be given to those that reside within Waterberg District Municipality.
- j) **“MTEDB”** means Main Targeted Enterprise Development Beneficiary.

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<sup>1</sup> SANS 10845, Suite for Construction Procurement, 2015.

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The criteria for a MTEDB are as follows:

- i) All the above Enterprise Development Beneficiary criteria.
- ii) The enterprise must have a valid registration with CIDB – ranging from a Level 1 CE PE/ ME PE to 8 CE PE/ ME PE.
- iii) Such enterprise must not be a member of a joint venture or tenderer in MCWAP-2.
- k) **“Procurement target amount”** means the Accepted Contract Amount excluding the cost of certain materials and VAT, as shown in the Bill of Quantities.
- l) **“Qualifying Small Enterprise” (QSE)** refers to Qualifying Small Enterprises which has a turnover above R 10 million, but below or equal to R 50 million as defined in the Construction Sector Code gazette under section 9 (1) of the Broad-Based Black Economic Empowerment Act (Act No 53 of 2003).
- m) **“Social and Economic Development” (SED)** refers to the process of social and economic development in a society.
- n) **“Stakeholders”** means any strategic Stakeholder, who is affected by the Employer’s operations in the Targeted Area(s) and/or who has an interest or concern in the project, either as a decision maker, participant or affected party and may include, amongst others MMC, TCTA, Waterberg District Municipality LED Manager, Office of the Speaker, Engineers, Project Management Office, and Subcontractors.
- o) **“Subcontractor”** means an entity appointed by the Contractor to execute a portion of the works as defined in the Conditions of Contract.
- p) **“Target Area”** means the geographic area defined in the Contract Data for Targeted Labour and which are in order of preference:
  - i) One or more Wards that are located within Thabazimbi and Lephalale Local Municipalities.
  - ii) One or more Wards that are located within Thabazimbi and Lephalale Local Municipalities.
  - iii) One or more immediate Metropolitan or District Municipalities.
  - iv) Immediate Provinces namely; Limpopo and North West.
- q) **“Targeted Enterprise”** means entity to which the Contractor sub-contracts a percentage of the contract value as a condition of contract.
- r) **“Target Group”** means a group of business entities and/or groups that meet one or more of the following ownership categories:
  - i) Black Owned Enterprise (BOE).
  - ii) Black Women Owned Enterprises (BWOE).
  - iii) Black Youth Owned Enterprise (BYOE).
  - iv) Black Persons with Disability (BPD).
  - v) Military Veterans.
  - vi) Black Owned Local Enterprise (BOLE).
  - vii) Black Youth Owned Enterprises (BYOE).
- s) **“Training”** refers to the process of teaching a Learner, usually in a classroom or simulated work environment situation where principles and theory are taught, and demonstrations are given. Assignments are then set to ensure that the Learner can apply what has been taught. Training is done by a specialist in the subject, and who is qualified and accredited to train.

### 50.1.2 Abbreviations

ABET	:	Adult Basic Education and Training
BoQ	:	Bill of Quantities
CETA	:	Construction Education and Training Authority
CLO	:	Community Liaison Officer
CSD	:	Central Supplier Database
CSI	:	Corporate Social Investment
CSPG	:	Contract Social Participation Goal
CSPP	:	Contract Social Participation Performance
DWS	:	Department of Water and Sanitation
EIA	:	Environmental Impact Assessment
EPWP	:	Expanded Public Works Programme
HDIs	:	Historically Disadvantaged Individuals
LED	:	Local Economic Development
MCWAP-2	:	Mokolo Crocodile Water Augmentation Project, Phase 2
MMC	:	Member of the Mayoral Committee
MMS	:	Management Method Statement
OH&S	:	Occupational Health and Safety
PSIT	:	Project Social Interface Team
SAQA	:	South African Qualification Authority
SED	:	Socio-Economic Development
SMMEs	:	Small, Medium and Micro Enterprises
VAT	:	Value Added Tax

### 50.1.3 References

When reference is made to an Act, Regulation, Code of Practice, Specification or Standard, the reference shall be taken to mean the latest edition or replacement at time of tender of the Act, Regulation, Code, Specification or Standard, including addenda, supplements, modifications, and revisions thereto. Where a previous version is intentionally used, it will be indicated as such. Where reference is made to a Code, Specification or Standard that has subsequently been withdrawn and not replaced, the intended content will remain relevant unless confirmed otherwise in writing by the Engineer.

### 50.1.4 Purpose of Specification

The primary purpose of this specification is to establish key project performance indicators underpinned by the projects Socio-Economic Development (SED) Management requirements, which focus on the attainment of socio-economic development outcomes and contributing to the country's radical socio-economic transformational agenda. These SED requirements will foster guidance towards more intentional ways to implement large infrastructure capital projects. They intend to underpin SED inputs, policy, and legislation within context of the construction works, to

look beyond applying mere tick box compliance exercises. In doing so, the SED principles aim to ensure that the capital project does not leave the region without imparting some benefits on its people. Through enabling the advancement of Historically Disadvantaged Individuals (HDIs) and Small, Medium and Micro Enterprises (SMMEs).

## **50.2 SOCIO-ECONOMIC DEVELOPMENT (SED) MANAGEMENT PRINCIPLES**

The Employer is committed to transformation within the water sector through the optimisation of socio-economic benefits within its sphere of business influence in terms of the Broad Based Black Economic Empowerment Act, (Act No. 53 of 2003). The general principles, upon which the implementation of MCWAP-2 is based, are:

- a) Contribute to local economic development by optimising the use of the targeted areas resources.
- b) Strengthen social capital by providing training and capacity building programmes that will enable key groups to participate meaningfully.
- c) Contribute towards poverty reduction by providing jobs, developing skills, and providing preferential procurement.
- d) Operate in a manner that is equitable by including previously excluded and vulnerable groups such as women, youth, and the disabled.
- e) When addressing challenges, operate from the premise of building livelihoods and strengthening communities in ways that will build their resilience to withstand potential negative Project impacts, rather than just eliminating challenges.
- f) Promote transformation, technology, and skills transfer within the infrastructure development industry through short term employment creation, preferential procurement, enterprise development, training, and skills development.
- g) Ensure the project is implemented in a socially responsible and sustainable manner.

### **50.2.1 Applicable legislation, regulations, and standards**

The following Acts, as amended from time to time, apply to the Construction Industry:

- a) The Constitution of South Africa.
- b) Public Finance Management Act, 1999 (Act No. 1 of 1999).
- c) Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and its regulations.
- d) Construction Industry Development Board Act, 2000 (Act No. 38 of 2000).
- e) Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- f) The Skills Development Act, 1998 (Act No. 97 of 1998).
- g) The amended Construction Sector Codes published in Notice 931 of 2017 of Government Gazette No. 41287 on 1 December 2017 by the Department of Trade and Industry.
- h) The Bargaining Council for Civil Engineering Industry in accordance with the Labour Relations Act, 1998 Task grade wage rates.

The following Standards and Practice Notes, as amended from time to time, are applicable in terms of Targeted Labour and Targeted Enterprises and are used fully or portions thereof:

- SANS 10845: 2015, Parts 5, 6, 7 and 8.

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- CIDB Standard for Contract Social Participation Goals for Targeted Enterprises and Labour through Construction Works Contracts, 31 October 2017.
- Standard for Indirect Targeting for Enterprise Development through construction works contracts.
- Standard for developing skills through infrastructure contracts.

The Employer is bound by legislative obligations relating to employment, preferential procurement, enterprise development and skills development, aimed at contributing to economic growth and expansion of the supplier base in the construction sector, as follows:

### **50.3 EMPLOYMENT**

The Employer is committed to optimise the creation of employment opportunities for local black people and black women and youth in particular; and preferentially employ targeted area based workers through appropriate and transparent channels where these skills are available in the community to minimise the chances of a haphazard influx of migrant work seekers.

#### **50.3.1 Target Group Participation**

##### **50.3.1.1 Objective**

The key objectives of Government are to extend economic opportunities and build entrepreneurial capacity in rural or underdeveloped areas or townships by:

- Optimising the utilisation of targeted area resources in the targeted area;
- Developing these local resources in the execution of the project; and
- Maximising the amount of funds retained within the project area.

To give effect to these objectives the Contractor shall:

- Recruit Targeted Labour from the Target Area as stated in Part C4: Site Information; and
- Subcontract Targeted Enterprises based on Business and Labour Skills audits of the rural or underdeveloped areas or townships within the Project Area.

##### **50.3.1.2 Socio- Economic Baseline**

A Socio- Economic Baseline is included in Part C4: Site Information. This document refers to the socio-economic data in the Social Status analysis which describes the project area as background and shall be used when responding to challenges and queries, when developing mitigation measures, when developing Targeted Labour and Targeted Enterprise interventions and when identifying targeted area opportunities.

The results of the Business and Labour Skills survey shall be used when identifying the enterprises and skills available and where the shortages lie. It also addresses the skills training and capacity building requirements.

The results of the Socio-political Climate Analysis and Analysis of Disruptive Business Forums studies shall be used to anticipate and manage internal and external instability that may arise on the project.



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The Socio-Economic Baseline shall also be used to manage communities' expectation of benefits that can be derived from the Project, to enhance relationships between the project and the identified stakeholders, to pre-empt threats to the project posed by disruptive business forums and any other community unrest. It may also be used to maintain access to intelligence gathered as part of the baseline studies in order to monitor suspicious activities and assist with putting measures in place to prevent and manage such threats. Implementation of the strategy identified in the Security Profiling study for securing the servitudes and project equipment as well as the assets and infrastructure of the landowners. It may also assist with building relationships with the stakeholders and partners identified in the Security Profile to help facilitate the protection of the impacted people, properties, assets, and project equipment.

The Socio- Economic Baseline includes a community development and livelihoods needs assessment for implementation of the Contractor's Corporate Social Investment (CSI) initiatives.

Before any new forums and structures are established, the Profile of Existing Business Forums and Community Structures report must be reviewed to understand the key business forums and community structures present. Also consider the outcomes of the report before engaging existing structures and before establishing new structures. Adopt the strategies identified in the report to maximise the use of structures and forums, to gain maximum benefit from stakeholder engagement and to enable procurement benefits for targeted area businesses.

#### **50.3.1.3 Targeted Labour Database**

The Contractor shall compile a Labour Database of Targeted Labour using the results of the Business and Labour Skills survey that forms part of the Social-Economic Baseline which are included in Part C4: Site Information, with input from the Project Social Interface Team (PSIT), for the Target Area(s). Once approved by the PSIT, the Contractor (with the assistance of the CLO) shall utilise this database to source Targeted Labour as required.

The Labour Database shall be updated as and when required and as agreed with the PSIT to reflect new employment seekers in the labour market. Only Labour recruited from the Targeted Area Labour Database will be measured for Contract Social Participation Performance (CSPP).

Contract Social Participation is a process by which the Employer will implement Government's objectives by setting targets to enhance Targeted Labour and Targeted Enterprises' utilisation and development, which the Contractor shall achieve as a minimum.

#### **50.3.1.4 Targeted Enterprise Database**

The Contractor shall use the Business and Labour Skills audit that forms part of the Social Economic Baseline which are included in Part C4: Site Information and apply the Contract Social Participation Goal (CSPG) criteria to compile a preliminary Targeted Enterprise Database of eligible Targeted Enterprises.

To update the Business and Labour Skills audit, the Contractor shall use, as a minimum, the National Treasury's Central Supplier Database (CSD) (to be obtained from the Employer) and the CIDB contractor database. Other databases, such as the Local Municipality's Economic Development database, may also be considered to determine the available resources and skills in the Project Area. The purposes of the preliminary Targeted Enterprise Database are:

- For the Contractor to determine if the required resources and skills to execute the identified Targeted Enterprise work packages are available in the anticipated Project Area(s);

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- For the PSIT to verify that Targeted Enterprises on the preliminary Targeted Enterprise Database are authentic in terms of the Contract Data and other Database criteria agreed with the Employer, Engineer, and the PSIT; and
- For the PSIT to alert possible eligible or qualifying Targeted Enterprises that are not on the preliminary Database of the opportunity.

Based on the above considerations, additional criteria for the Targeted Enterprise Database may be agreed with the Employer, Engineer and PSIT to ensure that the EMEs and QSEs are targeted as intended by the Employer.

Once the Targeted Enterprise Database has been agreed with the Employer and the Engineer, and acknowledged by the PSIT, the Contractor shall invite Targeted Enterprises to tender for the Targeted Enterprise work packages and preference shall be given to those Targeted Enterprises that adheres to the Database criteria.

It should be noted that:

- The Targeted Enterprise Database shall be a “live database”. Essentially, it is thus not the Database that is acknowledged and signed off by the PSIT, but rather the criteria for compiling the Database; and
- Any Targeted Enterprise may respond to the invitation to tender, but preference shall be given to those Targeted Enterprises that adheres to the Database criteria, which shall be determined by means of a functionality evaluation.

The Targeted Enterprise Database criteria shall be updated at every instance that a new tender or group of similar tenders are being issued for Targeted Enterprise work packages.

Targeted Enterprises within the Project Area shall be encouraged and assisted to register on the CSD and to be compliant with all other statutory requirements.

#### **50.3.1.5 Contract Social Participation Goal (CSPG)**

The CSPG is the monetary value of the targets set by the Employer in the Contract Social Participation process and stated in the Contract Data. The Contractor shall develop a project specific enterprise development plan to improve the attainment of CSPG in the identified developmental areas which will allocate resources and monitor progress in relation to improved performance of the CSPG. The Contractor will be required to submit to the employer’s representative a monthly CSPG report which documents all the mentoring activities that have taken place during that month and the progress made in improving the CSPG performance. The CSPG will be calculated as follows:

$$\text{CSPG} = \text{Final Contract Value} \times (\% \text{ Targeted Labour} + \% \text{ Targeted Enterprise})$$

The Final Contract Value is the total value of the Contractor’s final certified work measured at the date of issue of the Taking-Over Certificate. The Final Contract Value includes the value of scheduled work and extra work but excludes any Contract Price Adjustment and adjustments for reduced payments, Rise and Fall, Retention Money, Penalties and VAT.

It is the Contractor’s responsibility to assess the work required to meet the targets and, if necessary, to engage additional Targeted Enterprises and/or Targeted Labour to execute work on the Contract as well to ensure that the minimum targets are achieved.

### 50.3.1.6 Contract Social Participation Performance (CSPP)

The CSPP is the monetary value of the Contractor's actual progress towards achievement of the CSPG calculated as follows:

$$\text{CSPP} = \text{total value (excluding VAT) of Targeted Labour contribution} + \text{total value of Targeted Enterprises contribution (excluding VAT)}$$

The Contractor's CSPP shall be monitored monthly to determine the extent to which it is striving to achieve the CSPG. The basis of monitoring shall be the levels of the individual contributions for Targeted Labour, Targeted Enterprises and Target Groups. Monthly returns, in the format required by the Employer, shall be submitted by the Contractor with each interim Payment Certificate.

To assist in the measurement of the CSPP the Contractor shall include in its contract programme details of how the CSPG will be achieved. The detail shall be provided not later than 1 (one) month after the Engineer has accepted the original construction programme and updated with every subsequent revision.

The failure to reach either the CSPG or any individual Target Group targets shall render the Contractor liable for a penalty, unless there are compelling reasons why the target or sub-targets could not be achieved. Penalties for Targeted Labour and for Targeted Enterprises shall be calculated as follows:

$$\text{Penalty Targeted Labour} = 0.15 \times (\text{Sum (TL n} - \text{TG n)} - 1.2 \times \text{L dp})$$

Where:

n=	Each lowest order subgroup of Targeted Labour stipulated in the Contract Data.
TL=	Monetary value of the Targeted Labour calculated at the percentage stipulated in the Contract Data applied to the final contract value (excluding VAT).
TG=	Cumulative monetary value of Targeted Labour employed on the contract by the Contractor and all Subcontractors.
L dp=	Cumulative monetary value of black Disabled Persons employed on the Contract by the Contractor and all Subcontractors.
(TL n - TG n) =	The monetary values calculated unless if any calculated value is negative, then it shall be a zero value.

$$\text{Penalty Targeted Enterprises} = 0.15 \times (\text{Sum (TE n} - \text{TGE n)} - 1.2 \times \text{TE mv} - 1.2 \times \text{TE dp})$$

Where:

n=	Each lowest order subgroup of Targeted Enterprise stipulated in the Contract Data.
TE=	Monetary value (excluding VAT) of Targeted Enterprises calculated at the percentage stipulated in the Contract Data applied to the final contract value (excluding VAT).

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TGE=	Cumulative monetary value (excluding VAT) by Targeted Enterprises subcontracted to the contract by the Contractor and 50% of the cumulative monetary value (excluding VAT) by Targeted Enterprise suppliers of goods and/or services.
TE mv=	Cumulative monetary value (excluding VAT) by Targeted Enterprises being majority owned by black Military Veterans, subcontracted to the Contract by the Contractor.
TE dp=	Cumulative monetary value (excluding VAT) by Targeted Enterprises being majority owned by black Disabled Persons, subcontracted to the Contract by the Contractor.
$(TE\ n - TGE\ n) =$	The monetary values calculated unless if any calculated value is negative, then it shall be a zero value.

The total Penalty value shall be the sum of the Targeted Labour and Targeted Enterprises Penalty values unless the total Penalty value is negative then it shall be a zero value.

Interim penalty valuations should be calculated to interim Payment Certificate values (excluding VAT) to establish the anticipated outcome, and to plan corrective actions, but must not be applied to the interim certificate value.

Any Penalty payable shall be calculated on, and applied to, the Final Contract Value.

#### **50.3.1.7 Accredited Registration**

The CSPP for Targeted Enterprises shall only be accepted if the respective Targeted Enterprises comply fully with the definition of a Targeted Enterprise, and documentary evidence to support the claim lodged with the Engineer before the work, goods or service may be considered as having been performed by a Targeted Enterprise. The responsibility for producing evidence of the respective documentation shall rest with the Contractor.

The Contractor shall assume responsibility for the compilation and maintenance of comprehensive records detailing each Targeted Enterprise's progress.

#### **50.3.1.8 Contractor's Responsibility**

All Targeted Labour recruitment and employment and Targeted Enterprises subcontracting, as well as its associated risks, shall remain the sole responsibility of the Contractor. The Employers CSPG requirements, and the compulsory utilisation of project specific Targeted Labour and Targeted Enterprises databases, shall not relieve the Contractor of its obligations under the Contract and shall not attract any liability to the Employer.

#### **50.3.1.9 Mobilisation Period**

This is the period from the Commencement Date until the physical commencement of the Works, as defined in the Conditions of Contract. Prior to site establishment stage and the commencement of the Works, the Contractor, or its authorised representative, shall become acquainted with the lines of communication and the agreed dispute resolution mechanism between the Employer, Engineer, Contractor, PSIT, project Stakeholders and affected Communities. The Contractor shall

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also follow the agreed eligibility and qualifying criteria and processes and procedures to employ Targeted Labour and subcontract Targeted Enterprises.

During the Mobilisation Period, the Contractor shall execute the following duties for the contracting of Targeted Enterprises:

- a) Liaise with the Employer, Engineer and PSIT to structure and finalise the work packages to be subcontracted to Targeted Enterprises.
- b) Liaise with the Employer, Engineer and PSIT to determine the Targeted Enterprise Database criteria for the subcontracting of Targeted Enterprises.
- c) Review the Targeted Enterprise Database(s) with inputs from the PSIT.
- d) Review the skills database of the Targeted Enterprises which appear on the Targeted Enterprise Database(s).
- e) Based on the skills audit, and in consultation with the Employer, Engineer and PSIT, identify the pre-tender training requirements of Targeted Enterprises.
- f) Provide an opportunity to Targeted Enterprises to receive the identified pre-tender training.
- g) Tender the initial work packages and subcontract the first group of Targeted Enterprises for commencement of the Works.

During the Mobilisation Period, the Contractor shall execute the following duties for the employment of Targeted Labour:

- Liaise with the PSIT and CLO on the compiled Labour Database(s) for the employment of Targeted Labour.
- Review the skills database of the Targeted Labour which appear on the Targeted Labour Database(s).
- Based on the skills audit, and in consultation with the Employer, Engineer, PSIT and CLO, identify the training requirements of Targeted Labour to make them more employable.
- Provide an opportunity to eligible Targeted Labour to receive the identified training to enable them to be more employable.
- Select and appoint the first group of Targeted Labour for commencement of the Works.

Produce an acceptable CSPG Plan, which sets out how the Contractor intends to achieve the various CSPG targets as stated in the Contract Data, complete with dates, work packages and values of work.

It should be noted that:

- The accepted CSPG Plan and any amendments thereof shall be made available to the PSIT for their monitoring purposes.
- The Employer and the Engineer shall monitor progress and adherence to the CSPG Plan in the same manner as they would monitor the Works Programme.
- It is acknowledged that all training requirements cannot be addressed during the Mobilisation Period and that training will take place over the duration of the Contract.
- The training provided to both Targeted Enterprises and Targeted Labour during the Mobilisation Period shall focus on the activities and/or skills required for the commencement of the Works and shall include the mandatory Occupational Health and Safety training.

The Mobilisation Period shall only be concluded once the CSPG Plan has been accepted by, and all the duties above have been executed to the satisfaction of, the Employer and the Engineer. This period shall not exceed three months.

It should be noted that the Mobilisation Period was introduced as an aid to the Contractor to allow for planning to obtain the CSPG as required in the Contract Data. An extension of the Mobilisation Period will therefore not form grounds for an extension of the Contract duration and hence, any costs incurred by the Contractor for an extension of the Mobilisation Period shall be for the Contractor's cost. Should an extension of the Mobilisation Period result in a delay of the Contract, the Employer's delay penalties shall apply.

#### **50.3.1.10 Duties of the Employer and Engineer**

The Employer, Engineer, and the Contractor, or their representatives, are parties to the PSIT and are collectively responsible for successful project Stakeholder and Community Liaison. The Employer and the Engineer also play a supporting role in the successful implementation of the Employer's Targeted Labour and Targeted Enterprise utilisation and development goals.

To implement the Employer's Targeted Labour and Targeted Enterprise goals, the Employer and the Engineer shall provide support to the Contractor by executing the following duties:

- a) Make recommendations to the Contractor in the identification and structuring of the work packages to be subcontracted to Targeted Enterprises and agree to the scope and extent of the work packages.
- b) Verify that the Targeted Enterprise Database(s), has been updated prior to the letting of every new set of subcontracts.
- c) Review all Databases, and approve tender procedures, tender documents, tender submission requirements and adjudication processes for the subcontracting of Targeted Enterprises.
- d) Review all tender adjudication reports and monitor that the criteria and procedures applied by the Contractor to subcontract Targeted Enterprises are executed in a fair and transparent manner and are within the Employer's and Government's Supply Chain Management Policies.
- e) Review subcontract agreements and ensure that the conditions of subcontracting with Targeted Enterprises are fair and transparent and within the prescripts of the Contract requirements.
- f) Monitor the management of Targeted Enterprise subcontracts and ensure that conditions such as the application of penalties, the termination of contracts, etc. are applied in a fair and transparent manner and within the prescripts of the agreement.
- g) Verify that the Labour Database(s) from which Targeted Labour will be employed is updated prior to every new Labour intake.
- h) Monitor that the criteria and procedures applied by the Contractor to employ Targeted Labour are executed in a fair and transparent manner and is within the Contract requirements.
- i) Monitor the conditions of employment of Targeted Labour, ensuring that they are applied in a fair and transparent manner and within the prescripts of the current and relevant Labour legislation.
- j) Make recommendations to the Contractor for the identification of the training requirements of Targeted Labour and Targeted Enterprises and approve the proposed training programmes.
- k) Monitor the training programmes and support programmes that the Contractor committed to, ensuring that they are implemented and executed as intended.

**50.3.1.11 Tender Process for Targeted Enterprises**

While the Contractor may utilise service providers, sub-contractors and suppliers of its choice and selected via its own internal processes, for the subcontracting of Targeted Enterprises based on the Employer's Contract Social Participation Goals, the Contractor shall follow the prescripts of this Section.

At a minimum, the eligibility and functionality criteria, and the tender processes and procedures for subcontracting include, amongst others, the tasks outlined below.

**50.3.1.12 Tender Preparation**

- a) Compile preliminary list of subcontracting packages.
- b) Conduct a resources and skills audit.
- c) Identify Targeted Enterprises, Target Groups and Project Area(s).
- d) Compile a Contract Social Participation Goal (CSPG) Plan.
- e) Table CSPG Plan to the Employer, Engineer, and the PSIT.
- f) Alert Targeted Enterprises of the opportunities and establish a helpdesk.
- g) Compile tender documents.

**50.3.1.13 Tender Process**

- Advertise the subcontract packages.
- Conduct a tender briefing and tender training session.
- Provide the minimum tender submission documents.
- Provide tender closure and conduct opening of tenders.

**50.3.1.14 Tender Evaluation**

The Contractor shall evaluate the tenders. It shall be a condition of tender that tenders will only be accepted from Targeted Enterprises that fully comply with the definition of a Targeted Enterprise as described in the Contract Data.

**50.3.1.15 Appoint Successful Targeted Enterprises**

- Table the Tender Report to the Employer, Engineer, and the PSIT.
- Negotiate tender sum and/or rates with Targeted Enterprises.

**50.3.1.16 General Responsibilities of the Contractor**

The Contractor shall have the responsibilities as described herein, towards all Targeted Enterprises subcontracted in terms of the Contract Social Participation Goals stated in the Contract Data.

The Contractor shall appoint a dedicated Enterprise Development Manager whose sole responsibility shall be to assist with the execution of its responsibilities towards Targeted Enterprises and Target Groups as prescribed herein. Amongst others, the Enterprise Development Manager shall facilitate the training, mentoring, development, and support of Targeted Enterprises.

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The Enterprise Development Manager shall develop and establish a Targeted Enterprise Training, Development and Support Programme, which shall be approved by the Employer and Engineer and acknowledged by the PSIT prior to implementation, and which shall adhere to Government's and the Employer's Transformation and Supply Chain Management policies and principles.

**50.3.1.17 General Obligations**

The Contractor shall, comply with the following obligations:

- Assist the Targeted Enterprises in instituting a quality assurance system.
- Provide adequate training, coaching, guidance, mentoring and any other identified and approved assistance to Targeted Enterprises.
- Provide support and any other identified and approved assistance to ensure that the Targeted Enterprises meet their obligations and commitments with respect to their subcontracts.
- Ensure that the CSPG objectives are achieved.

**50.3.1.18 Subcontract Agreements**

The Contractor, in liaison with the Employer and the Engineer, shall conclude the subcontract agreements and provide the necessary management support to the Targeted Enterprises. The subcontract agreements shall be in accordance with the provisions of the Conditions of Contract and shall be consistent with the terms and conditions of this Contract.

A copy of each subcontract agreement shall be filed with the Engineer after confirming that it is in accordance with the provisions of this Contract and after it has been acknowledged by the PSIT.

It should be noted that to protect Targeted Enterprises' competitive advantage and/or tender strategy, only the main subcontract agreement shall be available to the PSIT for acknowledgement and not the pricing structure and/or Schedule of Quantities.

The subcontract agreement shall include for the following:

- a) An entitlement of the Targeted Enterprise to receive such training as is contemplated in this Contract.
- b) An obligation on the Targeted Enterprise to participate and co-operate in such training as is provided for in this Contract.
- c) The allowable sources from which Labour may be drawn in terms of the Contract.
- d) The terms and conditions relating to the recruitment, employment and remuneration of Labour engaged on the Contract.
- e) The training to be provided to the Targeted Enterprise's workforce.
- f) The terms and conditions relating to payment of the Targeted Enterprise.
- g) Sanctions in the event of failure by the Targeted Enterprise to comply with the terms and conditions of the subcontract agreement.
- h) Dispute avoidance and resolution procedures.

Special Conditions of Contract shall only be applied once approved by the Employer and Engineer.



**50.3.1.19 Payment of Targeted Enterprises**

- Targeted Enterprises shall be paid the rates and/or provisional sums, which they have tendered, or which have been negotiated.
- In addition, provision shall be made for the Targeted Enterprise's preliminary and general obligations (P&Gs), suggested to be calculated as 15% of the value of the scheduled subcontract work items.
- Where the subcontract work is not paid from a Provisional sum, P&Gs of the subcontractor will be paid from the lump sum tendered by the Contractor for the P&Gs of Targeted Enterprise sub-contractors and P&Gs shall be paid to Targeted Enterprises.

**50.3.1.20 Quality of Work and Performance of Targeted Enterprises**

The Contractor shall closely monitor and supervise all Targeted Enterprises and shall train, coach, guide, mentor and assist each Targeted Enterprise in all aspects of management, execution, and completion of its subcontract. This shall typically include assistance with planning of the Works, sourcing and ordering of materials, labour relations, monthly measurements, and invoicing procedures. The extent and level of such training, coaching, guidance, mentoring, and assistance to be provided by the Contractor shall be commensurate with the level of subcontract applicable and shall be directed at enabling the Targeted Enterprise to achieve the successful execution and completion of its subcontract.

The Contractor shall give reasonable warning to the Targeted Enterprise when any contravention of the terms and conditions of the subcontract has occurred or appears likely to occur. The Contractor shall, whenever feasible, give the Targeted Enterprise reasonable opportunity to make good any such contravention, or to avoid such contravention, and shall render all reasonable assistance to the Targeted Enterprise in this regard.

**50.3.1.21 Dispute Avoidance and Resolution Procedures**

When any disputes arise as provided for in the subcontract, the Contractor shall explain fully to the Targeted Enterprise that such actions are provided for in the subcontract. If such action is contemplated it shall be discussed with the Employer and the Engineer before any action is taken and communicated with the PSIT as soon as action has been taken.

If the Targeted Enterprise, in the opinion of the Engineer, fails to comply with any of the criteria listed below, the Engineer shall issue a written warning to the Contractor, stating all the areas of non-compliance. A copy of the letter of warning shall be forwarded to the Employer. The criteria are as follows:

- Acceptable standard of work as set out in the specifications.
- Progress in accordance with the time constraints in the Targeted Enterprise's tender document.
- Punctual and full payment of the workforce and suppliers.
- Site safety.
- Accommodation of traffic.

The Targeted Enterprise shall have 21 days from the date of receipt of the letter of warning by the Contractor to address and rectify the issues raised by the Engineer, except for sub-clauses (iv) and

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(v) above, for which the reaction time shall be in accordance with the relevant specifications for those aspects of the Works, but which shall not be longer than 24 hours. Failure by the Targeted Enterprise to comply with a deadline, will be sufficient grounds for the Contractor to apply a penalty or terminate the subcontract provided that the Employer and the Engineer is satisfied that the Contractor has made every effort to correct the performance of the Targeted Enterprise.

The Targeted Enterprise shall have the right to dispute any ruling given or deemed to have been given by the Contractor, Engineer or Employer. Provided that, unless the Targeted Enterprise shall, within 21 days after his receipt of a ruling or after a ruling shall have been deemed to have been given, give written notice (hereinafter referred to as a Dispute Notice) to the Contractor, referring to the relevant clause(s) in the subcontract agreement, disputing the validity or correctness of the whole or a specified part of the ruling, he shall have no further right to dispute that ruling or the part thereof not disputed in the said notice.

#### **50.3.1.22 Training, Coaching, Guidance, Mentoring and Assistance**

It is important to the Employer that Targeted Labour and Targeted Enterprises be equipped with skills that can be used to gain meaningful future employment and secure subcontracting opportunities in at two developmental areas. Such developmental areas shall be guided by the requirements of the CIDB best practice Contractor Recognise Scheme, as well as National Contractors Development Programme (NCDP) exit requirements for accreditation of contractors.

It is, therefore, a requirement of this Contract that the Contractor provide adequate Training, Coaching, Guidance, Mentoring and assistance to the Targeted Labour and Targeted Enterprises, to ensure skills development within the Construction Industry.

The Contractor shall, in collaboration with the PSIT, develop a Training and Skills Development Programme(s) which shall be managed by the Contractor's Enterprise Development Manager.

#### **50.3.1.23 Skills Audit and Analysis**

Prior to developing the Training and Skills Development Programme(s), the Contractor shall conduct a Skills Audit and Analysis of its own employees and those of its Subcontractors to determine their levels of education, existing qualifications, and skills sets. The outcome of the Skills Audit and Analysis shall be used to develop a Training and Skills Development Programme(s) that will benefit both the employee and the Construction Industry at large.

Included in the Skills Audit and Analysis shall be a separate section, analysing the education, qualifications and skills sets of the Targeted Enterprises subcontracted by the Contractor to develop a Training and Skills Development Programme(s) that will develop and improve the ability of small business owners and their supervisory staff to better manage their enterprises.

#### **50.3.1.24 Developing the Training and Skills Development Programme(s)**

The Employer shall be involved in the decision making and quality control pertaining to the development and implementation of the Training and Skills Development Programme(s) facilitated through this Contract.

The Employer has no service agreement or memorandum of understanding with any education and training quality assurance body and, therefore, does not function as the "Employer" as defined under any three-party-agreement between the Trainee, the Training Provider, and the Employer.

However, the Employer requires similar outcomes to that of formal learnership programmes and the Contractor shall structure a Training and Skills Development Programme(s) in a manner that permits continued access to further learning and qualifications within a defined programme.

The complete Training and Skills Development Programme shall be approved by the Employer and Engineer and acknowledged by the PSIT before any training commence.

#### **50.3.1.25 The Training Service Provider**

While the Contractor's Enterprise Development Manager will manage the Training, Development and Support Programme(s) and mentor subcontractors from a practical point of view, the Contractor shall subcontract a Training Service Provider to implement the theoretical training components of the Programme(s) by applying the Employer's Supply Chain Management Policy for second tier procurement.

The Training Service Provider entity shall be accredited, and have in its employ Practitioners, Assessors and Moderators who are registered, with the Construction Education Training Authority (CETA). Proof of accreditation and registration shall be current, valid and list the NQF levels and Unit Standards for which the entity and its staff are accredited.

In addition to the above qualifications, and in keeping with current CETA practical experience requirements for registration as a Practitioner, NQF Level 4 Unit Standards shall only be presented by Practitioners with NQF Level 5 (one level up) credentials.

Elective Unit Standards are typically more vocational orientated and may require specialist input. It is thus not a requirement that individual Practitioners and Assessors shall have all the necessary skills for all the different categories of Unit Standards. The Training Service Provider may and shall therefore, when necessary, appoint Practitioners and Assessors on and ad hoc basis with the levels of experience which are required for the Unit Standards to be presented.

#### **50.3.1.26 Training Programme: General Requirements**

The Training and Skills Development Programme(s) shall consist of Learnerships that include multiple, but related Unit Standards which are (1) relevant to the Works to be constructed, (2) aimed at achieving the skills development objectives of the Programme, and (3) lead towards a formal qualification in the Construction Industry.

Learnerships shall include both the theoretical and practical components of each Unit Standard and shall be in accordance with the various laws and regulations contained in the South African Qualification Authority (SAQA) statutes.

#### **50.3.1.27 Keeping of Records**

The Training Service Provider shall keep comprehensive records of the training provided to each Trainee and shall ensure that Trainees' successful completion of successive Unit Standards are entered onto the national SAQA database. After the successful completion of generic skills courses each Trainee shall be issued with a certificate indicating the course contents as proof of attendance and completion. The Contractor shall keep a register of certificates issued. Whenever required, the Contractor shall provide copies of such records to the Engineer.

**50.3.1.28 Generic Skills Training**

Generic but relevant skills shall be taught where the need has been identified and approved by the Employer and/or the Engineer.

The Contractor shall make representation to the Employer and the Engineer, who shall approve candidates that should attend such courses as they deem appropriate. Those selected shall receive formal generic skills training in a programmed and progressive manner. The Employer, Engineer or the PSIT may also identify a need for generic skills training.

Typical training programmes could comprise some or all of the following modules:

- a) Basic hygiene and HIV/AIDS awareness.
- b) COVID-19 awareness and requirements.
- c) Basic management of the environment.
- d) Tourism awareness and opportunities.
- e) Managing personal finance.
- f) Adult Basic Education and Training (ABET).
- g) Community based training programmes (e.g. knitting, computer skills, plant/ machine operator, etc.).

All generic skills training shall be accredited by the relevant Sector Education and Training Authority (SETA) and shall be provided with accredited entities and/or individuals.

**50.3.1.29 Community Training**

Community training shall be taught where the need has been identified.

Community training needs shall be identified by the PSIT, who shall submit their proposal to the Employer and the Engineer for consideration and inclusion into the Contract. While the Employer shall consider the training needs of the Community, the Employer shall inform the PSIT of the training limitations, as well as of the training that could be undertaken through the Contract. Candidates shall be identified through the Community structures. The selected candidates shall receive formal skills training in a programmed and progressive manner. Priority shall be given to training that will equip the Community with skills that will enhance their employability.

All community skills training shall be accredited by the relevant Sector Education and Training Authority (SETA) and shall be provided with accredited entities and/or individuals.

As prescribed in CIDB Standard for developing skills through infrastructure contracts (July 2020), the contractor is required to price for skills development with reference to this Standard and as stated in the pricing instruction and such provision shall cover all training related cost such as:

- Stipends;
- Venue hire;
- Food;
- Transport;
- Training facilitation; and
- Plant hire.

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The Contractor shall, within 28 days of the date of the Letter of Acceptance, make available to the Engineer, for evaluation, his elaborated and fully detailed Skills Development Method Statement with a supporting training programme. Upon acceptance by the Engineer of the Contractor's Skills Development Method Statement, the Contractor may start with the training programme.

### 50.3.1.30 Training Facilities

The Contractor shall be responsible for providing everything necessary to offer the various training workshops and modules including:

- A suitable venue with sufficient furniture, lighting, and power.
- All necessary stationery consumables and study material.
- Transport for attendees.

Before commencing with any structured training, the Contractor shall submit his intended programme to the Employer and Engineer for approval of its subject content and proposed trainers, and the Contractor shall, if instructed by the Employer or Engineer, alter, or amend the programme and/or course content.

### 50.3.2 Employment Targets

To give effect to the above, the Contractor shall on a preferential basis recruit staff and labour for his workforce, such that the number of person-hours employed in the following designated groups expressed as a percentage of the workforce person-hours for that specific designated group (including Subcontractor's personnel but excluding head office personnel) employed on the Contract, shall be at least:

**TABLE 50/1  
EMPLOYMENT TARGETS**

SKILLS LEVEL	CRITERIA	TARGET (%)
Unskilled labour	Target area black persons	20% of the total unskilled labour force
Unskilled labour	Target area black women	10% of the total unskilled labour force
Unskilled labour	Target area youth	30% of the total unskilled labour force
Unskilled labour	Target area person with disability	5% of the total unskilled labour force
Semi-skilled labour	Target area black persons	10% of the total semi-skilled labour force
Semi-skilled labour	Target area black women	5% of the total semi-skilled labour force
Semi-skilled labour	Target area youth	10% of the total semi-skilled labour force
Semi-skilled labour	Target area person with disability	5% of the total semi-skilled labour force
Semi-skilled labour	Target Area	5% of the total semi-skilled labour force
Skilled Labour	Black People	10% of the total skilled labour force

The Contractor is to obtain, file and retain suitable proof to support the workers' Target Area residential status. This may include but will not necessarily be limited to electricity and water accounts, telephone or cell phone accounts, bank statements, copies of vehicle licence documents, reference from a school or church, or affidavits, or other suitable evidence.

### **50.3.3 Implementation Requirements**

The Contractor shall comply with the following requirements:

- a) All unskilled and semi-skilled personnel shall be of South African nationality.
- b) Skilled personnel shall, be South African nationals, or non-citizen individuals with legal work permits or a South African endorsed identity document or passport, which have the appropriate skills and experience.
- c) The Contractor shall pay his employees and shall ensure that his Subcontractors pay their employees rates of remuneration not less than that prescribed by legislation and applicable to the area of the Works.
- d) The Contractor, in the fulfilment of his obligations under the Contract, shall observe conditions of employment for those trades and occupations which are customary in the area in which the Works are to be constructed taking into account the relevant sectoral salary determination issued by the Department of Labour and the prevailing Labour Bargaining Council agreement in the relevant affected sector. The Contractor shall, as practically and reasonably possible, also practice and ensure that his Subcontractors practice a policy of equal remuneration, conditions of employment and benefits for people of equal skills and productivity.
- e) Provided that any rate or part of a rate of remuneration, fringe benefits or conditions of employment of persons employed by them who come from outside South Africa, shall be disregarded for the purpose of determining the performance by the Contractor.
- f) As and when required by the Engineer, the Contractor shall allow and shall ensure that Subcontractors allow the Engineer to audit or to arrange an audit of the Contractor's or his Subcontractors' records as the case may be and thereby monitor the performance by the Contractor of the obligations he has undertaken under paragraphs (c) and (d) hereof. In the event of the Engineer certifying that the Contractor has failed to carry out or has failed to ensure that his Subcontractors are carrying out any such obligations the Contractor shall make good the default certified by the Engineer within 14 days from such certificate.
- g) Notwithstanding anything elsewhere contained in the Contract, the Contractor shall recognise and ensure that his Subcontractors recognise the right and freedom of their respective employees to be members of trade unions of the employee's choice as may be permitted by legislation and the rights of such unions to bargain for improvement in the terms and conditions of employment of their members.
- h) The Contractor shall be deemed to be acquainted with and shall comply with all relevant and applicable legislation on industrial relations and labour including the Basic Conditions of Employment Act (No. 3 of 1983), the Labour Relations Act (No. 66 of 1995), the Employment Equity Act (No. 55 of 1998) as they apply to the admission of personnel into and their employment in the Republic of South Africa. In particular the Contractor and his Subcontractors shall enter into written agreements of employment, remunerate staff according to the agreements and provide an explanation of payment particulars by means of a printed payslip.

The Contractor shall, within 28 days of the date of the Letter of Acceptance, make available to the Engineer, for evaluation and acceptance of his elaborated and fully detailed Employment Method Statement. Upon acceptance by the Engineer of the Contractor's Employment Method Statement, the Contractor may start recruiting and employing workers.

#### **50.3.4 Recruitment Centre**

The Contractor shall set up and operate for the duration of the project a recruitment centre in the town of Lephalale and Thabazimbi. The recruitment centres shall be set up with reference to Section C313 paragraph 3.4.4.1 and all labour recruitment for the Contractor and Subcontractors shall be undertaken through and only at these centres. No recruitment shall be undertaken on Site. Appropriate signage in the English, Afrikaans, Sepedi, and Setswana languages shall be erected at the Contractor establishment areas directing work seekers to the recruitment centre.

At the recruitment centre the Contractor shall employ a procedure for the orderly registration and processing of all applications for employment, with a record card and/ or file for each applicant. To ensure transparency of the recruitment and employment process the records of the recruitment centre shall be open to inspection by the Employer and Engineer.

#### **50.3.5 Non-Conformance Penalties**

Should the Contractor fail to reach the specified employment target in any one month after the sixth month measured from the Commencement Date for each of the designated groups, a penalty shall be applied according to the formula as stated below:

Penalty amount = [(target unskilled local people % - actual unskilled local people %) x (total payroll costs for total unskilled workforce for the month in question)] + [(target semi-skilled black people % - actual semi-skilled black people %) x (total payroll costs for total semi-skilled workforce for the month in question)] + [(target semi-skilled local black people % - actual semi-skilled local black people %) x (total payroll costs for total semi-skilled workforce for the month in question)].

For the purpose of calculating the penalty amount, payroll costs are defined as the total cost of employment to the Contractor of the workforce of the Contractor and all Subcontractors for the specific designated group.

Penalties that become due in any one month will be deducted from any payments due to the Contractor. Penalties will not be refunded until an overall reconciliation from the Commencement Date to the date of the issue of the Taking-Over Certificate for the whole of the Works is undertaken on receipt of the final audited statement as specified in Clause 3.4.5. Thereupon the Engineer will apply the above formula to the overall period to do a final calculation of the penalties.

#### **50.3.6 Monitoring and Reporting**

For interim monitoring, the Contractor shall submit a signed report to the Engineer as part of his Monthly Report. The contents of the report shall include, but shall not be limited to, a schedule of total monthly and cumulative person-months, total person-years, total staff, and workforce person-hours (including Subcontractors but shown separately for each Subcontractor). These schedules shall be reported against each employment group and its associated target percentages. The data shall be presented in MS Excel spreadsheets and analysed using graphs showing deviations for comparison purposes. The format of the report shall be agreed with the Engineer. The Contractor shall sign the report, certifying that the information is true and correct.

Within 60 days of the issue of the Taking-Over Certificate for the whole of the Works the Contractor shall submit to the Engineer, a final audited statement verifying the total monthly and cumulative person-months, total person-years, total staff, and workforce person-hours (including Subcontractors but shown separately for each Subcontractor) from the Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works. The Contractor shall

simultaneously submit a final audited statement verifying the total cumulative wages (excluding VAT and escalation) paid from Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works. During execution of the Contract, statements shall also be audited annually and submitted to the Engineer. The auditing shall be carried out by an independent external specialist recruitment and employment auditor ("the auditor") appointed by and paid for by the Contractor. However, the Employer reserves the right to appoint the auditor should the Contractor fail to appoint one in time, or if the Employer is not satisfied with the qualifications, independency or ability of the auditor appointed by the Contractor. The terms of reference for the auditor shall be agreed with the Engineer before appointment of the service provider.

The data so derived will be the criteria by which penalties, if any, will be calculated.

#### **50.4 PREFERENTIAL PROCUREMENT**

The TCTA is guided by the empowerment of black owned enterprises through their participation on this project. As part of the projects key objectives, is the procurement of goods and services from Black Owned Entities (BOEs). The Contractor, in meeting this objective shall allocate 15% target of the total measured procurement spend towards procurement from Targeted Groups. The contractor shall allocate 15% to suppliers of goods and services allocation will be set aside for enterprises of services. The procurement modality to which the Contractor is prescribed will be through sub-contracting to advance the Targeted Groups.

Within 28 days of the letter of acceptance, the Contractor shall provide the Employer and Engineer a preliminary compilation of the work packages (type and number) that are anticipated to be subcontracted to Targeted Groups. It remains the Contractors responsibility to ensure all identified construction activities identified as being suitable for construction by Targeted Enterprises.

##### **50.4.1 Preferential Procurement Targets**

The value of goods and services preferentially procured from sources external to the Contractor shall be based on the tendered percent as a percentage of the Procurement Target Amount shown in the Bill of Quantities. Such percentage shall not be less than 15%.

TCTA transformation focuses on:

- a) Ownership - The ownership category shall promote the participation of Black-Owned Entities in the core scope of goods, works, construction and services procured by TCTA procured by TCTA and shall be implemented through Consortiums, Partnerships, Joint Ventures or contracting directly with BOEs.
- b) Enterprise and Supplier Development (ESD) - The ESD component shall promote the development and growth of EME or QSE, which are at least 51% owned by black people. The ESD shall be implemented by subcontracting EME or QSE by the supplier, service provider or contractor appointed by TCTA.
- c) Employment - The employment category aims to create a significant increase in the number of black people in executive management positions of the Contractor including Consortiums, Partnerships, Joint Ventures, and Sub-Contractors; and the employment of black people in temporary roles and, where possible, permanent job opportunities at senior, middle and junior employment levels at the implementation stage.
- d) Training and Skills Development - The training and skills development category aims to empower black people with the core skills and improve their quality of life. The following training and skills development programmes shall be applicable:
  - i) Bursaries.



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- ii) Learnership.
  - iii) Apprenticeships.
  - iv) Internships.
  - v) Work-integrated learning.
  - vi) Mentorships.
- e) The Contractor shall be acquainted with and shall comply with all relevant and applicable legislation on industrial relations and labour including the Basic Conditions of Employment Act (No. 3 of 1983), the Labour Relations Act (No. 66 of 1995), the Employment Equity Act (No. 55 of 1998) as they apply to the admission of personnel into and their employment in the Republic of South Africa. In particular the Contractor and his Subcontractors shall enter into written agreements of employment, remunerate staff according to the agreements and provide an explanation of payment particulars by means of a printed payslip.

The following minimum target is indicative based on the absorption availability in the Target Area and is to be met in respect of preferential procurement from Preferential Procurement Beneficiaries (Important to note is that the targets below are to be considered as “sub-percentages” of the Black Owned Enterprise (15%) target, thus a percentage of a percentage):

**TABLE 50/2**  
**MCWAP-2 PREFERENTIAL PROCUREMENT TARGETS (OTHER CONSTRUCTION)**

<b>PREFERENTIAL PROCUREMENT BENEFICIARIES CATEGORY</b>	<b>TARGET (% OF THE ACCEPTED CONTRACT AMOUNT)</b>
Black Owned Enterprise (BOE)	15
Black Women Owned Enterprises (BWOE)	10
Black Youth Owned Enterprise (BYOE)	5
Black Persons with Disability (BPD)	5
Military Veterans	5
Black Owned Local Enterprises (BOLE)	10

**TABLE 50/3**  
**MCWAP-2 PREFERENTIAL PROCUREMENT TARGETS (PIPE CONSTRUCTION)**

<b>PREFERENTIAL PROCUREMENT BENEFICIARIES CATEGORY</b>	<b>TARGET (% OF THE ACCEPTED CONTRACT AMOUNT)</b>
Black Owned Enterprise (BOE)	15
Black Women Owned Enterprises (BWOE)	10
Black Youth Owned Enterprise (BYOE)	5

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<b>PREFERENTIAL PROCUREMENT BENEFICIARIES CATEGORY</b>	<b>TARGET (% OF THE ACCEPTED CONTRACT AMOUNT)</b>
Black Persons with Disability (BPD)	5
Military Veterans	5
Black Owned Local Enterprise (BOLE)	10

The Preferential Procurement Beneficiaries categories are not mutually exclusive.

The Contractor shall, within 28 days of the date of the Letter of Acceptance, make available to the Engineer, for evaluation, his elaborated and fully detailed Preferential Procurement Method Statement. Upon acceptance by the Engineer of the Contractor's Preferential Procurement Method Statement the Contractor may commence procurement from his approved vendors.

#### **50.4.2 Non-Conformance Penalties**

Should the Contractor fail to reach the specified procurement targets at the date of the Taking-Over Certificate for the whole of the Works, the Contractor will be penalised. The penalty amount shall be based on the variance between the Contract percentage target and the actual overall preferential procurement expenditure percentage applied to the Procurement Target Amount. The penalties will be calculated for each category and the overall preferential procurement target according to the formulae as follows:

**Penalty amount = (Target % - Actual %) x Procurement Target Amount, applicable for each category in Table 50/2**

#### **50.4.3 Monitoring and Reporting**

For interim monitoring, the Contractor shall submit to the Engineer within 7 days of the end of each month, throughout the duration of the Contract, a schedule of the names, procured goods and/or services and amounts paid for that particular month and on a cumulative basis for the preceding months. The cumulative monetary expenditure per category and overall shall be expressed as percentages of the Procurement Target Amount multiplied by the percentage of the time of the Contract that has already lapsed. These percentages should then be compared to each of the Contract targets. The data shall be presented in MS Excel spreadsheets and analysed using graphs for comparison purposes to show the deviations between the targets and the actuals. The format of the report shall be agreed with the Engineer.

Within 60 days of the issue of the Taking-Over Certificate for the whole of the Works, an audited statement verifying the total cumulative spend (excluding VAT and escalation) paid from Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works, shall be submitted to the Engineer. During execution of the Contract, statements shall also be audited annually and submitted to the Engineer. The auditing shall be carried out by an independent external auditor appointed by the Contractor. However, the Employer reserves the right to appoint the auditor at the Contractor's cost should the Contractor fail to appoint an auditor in time, or if the Employer is not satisfied with the qualifications, independence or ability of the auditor appointed by the Contractor. The terms of reference for the external auditor shall be agreed with the Engineer before appointment of the service provider.

The data so derived will be the figures by which penalties, if any, will be calculated up to the date of the Taking-Over Certificate for the whole of the Works.

## **50.5 ENTERPRISE AND SUPPLIER DEVELOPMENT (ESD)**

TCTA aims to develop Contractors that are at least 51% black owned to enable them to implement appropriate business management systems and be in a position to undertake future large multi-disciplinary projects either independently or at JV partner level.

To this end, tenderers shall identify Enterprise Development beneficiaries, referred to as Main Targeted Enterprise Development Beneficiaries (MTEDB) located within each respective Local Municipality. The MTEDBs will undertake work through the mentorship of the main Contractor using a structured enterprise development plan that will cover all aspects of the business, from human resource management, financial management, tendering procedures and strategy, project management and contract administration, amongst others. The criteria for selection of the MTEDB shall be maintained under the category of GB, CE, ME actively registered enterprises with a CIDB grading between 1 – 8. The MTEDB will be enabled to upgrade their current grading in order to participate in future projects.

As part of this programme, TCTA has identified sections of the scope of work in order to allow the MTEDBs meaningfully participate on ESD:

- Construction of buildings and structures;
- Wet services of structures;
- Temporary and permanent fencing requirements of the Contract;
- Bush clearing and earth works; and
- Landscaping and rehabilitation; etc.

### **50.5.1 ESD Targets**

- a) Total expenditure on MTEDBs and other enterprise development beneficiaries shall not be less than 15% of the Accepted Contract Amount.
- b) The annual turnover of at least one of the MTEDBs must be doubled upon completion of the project, either through work from this project or any other project outside of TCTA.

### **50.5.2 Implementation Requirements**

To mentor the MTEDB, the Contractor shall employ suitably qualified and experienced individuals on his site staff as mentor(s) or engage the services of an external company to provide the requisite technical and business management systems mentoring services. The Mentor needs to be knowledgeable such that skills transfer can be affected on all aspects of the business. Business management systems mentors must be professionally qualified with at least 10 years' experience in the field(s) which they are to oversee. During execution of the enterprise development requirements, the Contractor shall remain obligated to complete the Works on time.

The Contractor shall, within 28 days of the date of the Letter of Acceptance, make available to the Engineer, for evaluation, his elaborated and fully detailed Enterprise Development Method Statement. Refer to Schedule H20 – Enterprise Development (Part T2.2.1).

### 50.5.3 Non-Conformance Penalties

Should the Contractor fail to reach the specified enterprise development targets at the date of the Taking-Over Certificate for the whole of the Works, the Contractor will be penalised by amounts calculated as follows:

$$\text{Penalty amount}_{(1)} = (\text{Target \%} - \text{Actual \%}) \times \text{Accepted Contract Amount}$$

$$\text{Penalty amount}_{(2)} = \text{Target (Turnover)}_{(3)} - \text{Actual (Turnover)}$$

**Notes:**

- a) Penalty amount (2) is only applicable to the MNEDBs that must double their actual annual turnover.
- b) Target (Turnover) is double the average annual turnover of the past three years of the MNEDB. Should this turnover be either lower than R 7.8 million or the MNEDB is an EME, then R 7.8 million shall become the baseline from which the Target (Turnover) is calculated.
- c) Actual (Turnover) is the annual turnover of the designated MTEDB in the year that the Works are taken over.

### 50.5.4 Monitoring and Reporting

For interim monitoring the Contractor shall submit to the Engineer within 7 days from the end of each month, throughout the duration of the Contract, a schedule of the names of enterprise development beneficiaries and MTEDBs, detail of work undertaken by each enterprise development beneficiary and/or MTEDBs for the reporting month, and amounts paid to each enterprise development beneficiaries and/or MTEDB for that particular month and on an accumulative basis for the preceding months, as well as a progress report from the mentor on the development of each enterprise development beneficiary and/or MTEDB. The Contractor will further report on their achievements of the Expanded Public Works Programme (EPWP) targets, and will take into consideration the following indicators:

- Gender targets;
- Disability targets;
- Woman and youth; and
- Military Veterans.

Within 60 days of the date of the Taking-Over Certificate for the whole of the Works, an audited statement verifying the total cumulative spend on Enterprise Development Beneficiaries and MNEDBs (excluding VAT and escalation) paid from Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works issued by the Engineer, shall be submitted to the Engineer. During execution of the Contract, statements shall also be audited annually and submitted to the Engineer. The auditing shall be carried out by an independent external auditor appointed by the Contractor. However, the Employer reserves the right to appoint the independent external auditor. The terms of reference for the external auditor shall be agreed with the Employer before appointment to conduct a project audit.

The data so derived will be the figures by which penalties, if any, will be calculated up to the date of the Taking-Over Certificate for the whole of the Works.

## **50.6 TRAINING AND SKILLS DEVELOPMENT**

The Employer is committed to the development of unskilled, semi-skilled and skilled labour, in accordance with the corresponding percentage employment targets set out in Table 50/1. In order to give effect to this objective, the Contractor shall institute a South African Qualification Authority (SAQA) approved training and skills development programme aimed primarily to improve the literacy and technical skills of site-based staff, in order to meet the targets and criteria provided below.

Upon commencement of the Contract, a Performance Monitoring System will be developed and implemented by the Engineer to monitor the Contractor's compliance with the Contract Target Percentages and criteria as stated in the Contract which will not be less than the minimum requirements as set out in the Clauses below.

In order to give effect to this objective, notwithstanding these requirements the Contractor shall carry out a training programme to meet the Skills Development targets.

### **50.6.1 Training and Skills Development Targets**

With reference to the CIDB "Standard for developing skills through infrastructure contracts" (July 2020), the contractor shall determine the contract skills participation goals, expressed in Rand, which shall not be less than the contract amount multiplied by a percentage (%) factor given in Table 2 in the Standard for the applicable class of construction works.

Induction, Health and Safety and HIV and AIDS training are excluded from the cost of skills development training and the calculation of the target.

### **50.6.2 Implementation Requirements**

This Specification requires four training programmes as follows:

**Programme 1:** Relevant construction skills training (learnership and skills programmes) for local un-skilled personnel and semi-skilled and skilled black personnel from both the targeted area and elsewhere in SA. This expenditure must not include any other types of training. It is the only training expenditure that makes up the minimum expenditure required to meet a target as per the CIDB Standard for developing skills for infrastructure contracts.

The training shall be restricted to trade skills for the construction sector, such as those identified within the categories: trade workers, machine operators, elementary workers, supervisors, and other skills identified by the Construction Education and Training Authority (CETA).

This programme will also include internship programmes that are recognised by the Built Environment statutory bodies (engineers, technicians, surveyors, quantity surveyors etc.). Expenditure on internships will not be included in the target percentage expenditure.

**Programme 2:** Additional training is required for personnel employed on the project and not earmarked for training under programme 1. This training does not require SAQA accreditation. This training must satisfy the immediate and long-term requirements of the Works and introduce unskilled employees to the constraints and requirements of an organized working environment.

**Programme 3:** Formal employment induction sessions for the labour force.

**Programme 4:** Any identified skills development training requirements for the MNEDBs must be included in the Skills Development Method Statement and measured separately.

In line with the Basic Conditions of Employment Act and South African Labour Relation ACT, the training candidate's transport and meals costs and any other associated costs such as stipends shall be covered by the Contractor. This will be reserved for the implementation of the training.

The Contractor shall within 28 days of the date of the Letter of Acceptance, make available to the Engineer, for evaluation and acceptance, his elaborated and fully detailed Skills Development Method Statement. Upon acceptance by the Engineer of the Contractor's Skills Development Method Statement the Contractor may commence with skills development.

### 50.6.3 Non-Conformance Penalties

Should the Contractor fail to reach the specified skills development targets at the date of the Taking-Over Certificate for the whole of the Works the Contractor will be penalised by an amount calculated as follows:

$$\text{Penalty amount}_{(1)} = (\text{Training Expenditure Target \%} - \text{Training Expenditure Actual \%}) \times \text{Contract Site Wage Bill}$$

### 50.6.4 Monitoring and Reporting

For interim monitoring, three months after Commencement Date, the Contractor shall submit to the Engineer within 7 days of the project month end, throughout the duration of the Contract, a schedule of trainee names and the training courses undertaken and actual duration thereof, and amounts paid on skills development for that particular month and on accumulative basis for the preceding months. The monthly report shall report against requirements of the Skills Development Method statement. The format of the report shall be agreed by the Engineer. The Contractor shall, on a regular quarterly basis, evaluate the effectiveness and efficiency of the system and report to the Engineer.

Within 60 days of the date of the Taking-Over Certificate for the whole of the Works, an audited statement verifying the total accumulative expenditure spent on training (excluding VAT and escalation) paid from Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works, shall be submitted to the Engineer.

During execution of the Contract, statements shall also be audited annually and submitted to the Engineer. The auditing shall be carried out by an independent external auditor appointed by the Contractor. However, the Employer reserves the right to appoint the auditor, should the Contractor fail to appoint an auditor in time or at all, or if the Employer is not satisfied with the qualifications, independence or ability of the auditor appointed by the Contractor. The terms of reference for the external auditor shall be agreed with the Employer before appointment of the service provider.

The data so derived will be the figures by which penalties, if any, will be calculated up to the date of the Taking-Over Certificate for the whole of the Works.

## 50.7 CORPORATE SOCIAL INVESTMENT (CSI)

The Contractor shall demonstrate its willingness to actively participate in the social development initiatives for Communities affected by the Contract. To this end, the Contractor shall provide details of CSI initiatives it will actively pursue.

## **50.8 RESOURCES**

The following resource will be appointed by the Contractor to manage deliverable on enterprise development, preferential procurement, Skill Development and Training as well as the employment targets.

### **50.8.1 Enterprise Development Manager**

The role of the Enterprise Development Manager will be to provide overall leadership and strategic guidance for all facets of the ESD and preferential procurement programme entered into with the Contractor/s of the MCWAP-2.

The specific responsibilities of the Enterprise Development Manager are as follows:

- a) Oversee the ESD programme and to ensure that the MTEDBs are engaged to the identified work packages and are developed in terms of the baseline development needs of the MTEDBs identified in the accepted method statement.
- b) Manage the agreed mentoring programme entered into and between the Contractor and MTEDBs.
- c) Proactively Troubleshoot contractual disputes that may arise between the MTEDBs and Preferential Procurement Beneficiaries.
- d) Foster and advocate local participation on enterprise development, preferential procurement, local employment to site and Skills Development and Training.
- e) Manage and update reporting on contracted enterprise development deliverables, Preferential Procurement, Skills Development and Training.
- f) Any other duties which will assist social order in the communities where the project and contracts are being implemented.

## **50.9 METHOD STATEMENTS**

The Contractor shall, within 28 days of the date of the Letter of Acceptance, make available to the Engineer, for evaluation, elaborated and fully detailed method statements for; the allocation of Local Labour Employment and Targeted Enterprise and Supplier Development and Training and Skills Development; Target Group Participation; Tender processes for Targeted Enterprises; Payment of Targeted Enterprises; Subcontract Agreements; Payment of Targeted Enterprises; Quality of Work and Performance of Targeted Enterprises; Dispute Avoidance and Resolution Procedures; and Training, Coaching, Guidance, Mentoring and Assistance.

## **50.10 MEASUREMENT AND PAYMENT**

Payment for the Contractor's obligations in respect of Social and Socio-economic requirements shall be made through the Fixed Charges, Time Related Charges and Provisional Sum items as described in Clause 1.15. The payment items together shall include full compensation for all personnel (including a dedicated full time Social Officer(s), costs, and incidentals in respect of compliance with and enforcement of the Specification.

For interim monitoring, the Contractor shall submit to the Engineer within 7 days of the end of each month, throughout the duration of the Contract, a schedule of the names, procured goods and/or services and amounts paid for that particular month and on a cumulative basis for the preceding months. The cumulative monetary expenditure per category and overall shall be expressed as

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percentages of the Procurement Target Amount multiplied by the percentage of the time of the Contract that has already lapsed. These percentages should then be compared to each of the Contract targets. The data shall be presented in MS Excel spreadsheets and analysed using graphs for comparison purposes to show the deviations between the targets and the actuals. The format of the report shall be agreed with the Engineer.

Within 60 days of the issue of the Taking-Over Certificate for the whole of the Works, an audited statement verifying the total cumulative spend (excluding VAT and escalation) paid from Commencement Date up to the date of the Taking-Over Certificate for the whole of the Works, shall be submitted to the Engineer. During execution of the Contract, statements shall also be audited annually and submitted to the Engineer. The auditing shall be carried out by an independent external auditor appointed by the Contractor. However, the Employer reserves the right to appoint the auditor at the Contractor's cost should the Contractor fail to appoint an auditor in time, or if the Employer is not satisfied with the qualifications, independence or ability of the auditor appointed by the Contractor. The terms of reference for the external auditor shall be agreed with the Engineer before appointment of the service provider.

The data so derived will be the figures by which penalties, if any, will be calculated up to the date of the Taking-Over Certificate for the whole of the Works.