

82/2012

CONTRACT
PART 1 (OF 4) : AGREEMENT AND CONTRACT DATA

C1.1 Form of Offer and Acceptance

C1.2 Contract Data

C1.3 Pro Formas

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C1.1 : FORM OF OFFER AND ACCEPTANCE

1. OFFER

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

**Jansenville Water Conservation and Demand Management / WTW:
Installation of Zone Meters**

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

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

The offered total of the prices inclusive of Value-Added Tax is:

ONE MILLION TWO HUNDRED AND THOUSAND AND SIXTY ONE THOUSAND AND EIGHTY RANDS R40/100

Rand (in words),

R. 1.261.080 ⁴/₁₀ (in figures)

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

Signature(s)

[Handwritten Signature]

Name(s)

R. P. DWALA

Capacity

MANAGER

for the Tenderer

LUPHLE CONSTRUCTION, 12572 MAUVANA STREET KWAZAKHELE PORT ELIZABETH, 6205

(Name and address of organization)

Name and signature of witness

[Handwritten Signature]
LURHANYISO Mgone

Date 25/11/2012

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2. ACCEPTANCE

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

The terms of the contract are contained in

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

Part C2 : Pricing data

Part C3 : Scope of work

Part C4 : Site Information

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C4 above.

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

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

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

Signature(s)

Name(s)

B. H. MAKODAMA

Capacity

DIRECTOR

for the Employer:

Cacadu District Municipality
P. O Box 318, PORT ELIZABETH, 6000

Name and signature of witness

T. BETHA

Date

11/04/2013

3. SCHEDULE OF DEVIATIONS *N/A*

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, be the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents, and which it is agreed by the parties becomes an obligation of the contract, shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the contract.

A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, be the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

1. Subject
Details
2. Subject
Details
3. Subject *N/A*
Details
4. Subject
Details
5. Subject
Details

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

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

[Handwritten signatures and initials]

C1.2: CONTRACT DATA (PART 1)

The General Conditions of Contract for Construction Works (2004) published by the South African Institution of Civil Engineering (SAICE) are applicable to this contract.

Copies of these conditions of contract may be obtained from the SAICE telephone: 011-805 5947

PART 1: DATA PROVIDED BY THE EMPLOYER

No.	Clause	Description
1	1.1.14	The Employer is CACADU DISTRICT MUNICIPALITY
	1.2.2	The Employer's address for receipt of communications and notices is : Telephone: (0)41 508 7336/7106 Facsimile: (0)41 508 7272 Address (Postal) : -- PO BOX 318, Port Elizabeth 6000, South Africa Address (Physical): 32 Govan Mbeki Avenue, Standard Bank Building, Port Elizabeth, 6001, South Africa
2	1.1.15	The Engineer is the official holding the position of a partner/director/member of the firm GIBB (Pty) Ltd
	1.2.2	The Engineer's address for receipt of communications and notices is : Telephone: 041-392 7500 Facsimile: 041-363 9300 Address (Postal) : PO Box 63703 Address (Physical): 2 nd Floor, Greenacres Greyville House, 6057 Cnr, Greyville & Cape Rd Greenacres, 6045
3	1.1.13	The time for completing the works is 16 weeks.
4	1.4	The governing law is the law of SOUTH AFRICA
5	1.6	The special non working days are public holidays, Saturdays, Sundays and the year end break. These days will be excluded from time calculations. The year end break commences on 14 December 2012 and ends on 07 January 2013

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No.	Clause	Description
6	2.2	The Engineer shall obtain specific approval from the Employer before executing any of his functions or duties according to the following Clauses of the General Condition of Contract: 1. Variations, in terms of, Clause 36. 2. Rulings, in terms of Clause 48.5, on claims submitted by the Contractor, with the exception of claims relating to Clause 42.3.2 (Abnormal climatic conditions) 3. Rulings, in terms of Clause 57 (Disagreements) and Clause 58 (Disputes)
7	4.5.2	The Contractor shall deliver his health and safety plan, in terms of Clause 5(1) of the Construction Regulations (July 2003), within fourteen (14) days of the Commencement Date.
	7	The time to deliver the Deed of Guarantee is fourteen (14) days. [Within twenty eight (28) days of the Commencement Date].
8	7	The amount of the Guarantee shall be 10 percentage of the original Contract Price.
9	10	The Contactor shall commence executing the Works within twenty eight (28) days of the Commencement Date.
10	12.2	The Contractor shall deliver his programme of work within fourteen (14) days of the Commencement Date.
11	35	Delete Clause 35 and replace it with the contract data contained in Appendix A :
12	38	Delete the words "between sunrise and sunset" in the first line and replace with "within normal working hours". Normal working hours shall be those as stated in the Government Gazette for Civil Engineering and Road making Industries as applicable to a 5 (five) day week Add the following to Clause 38: "The cost of supervision by the Engineer or his representatives outside of normal (Monday to Friday) working hours in accordance with this Clause shall be to the Contractor's account".
13	42.1	The Works shall be completed within 16 weeks.
14	42.3.2	Add to Clause 42.3.2: The time period specified as the time for completion includes allowances for those days on which it is expected that work, on the critical path items of the works, would be prevented due to weather conditions such as wind, rain falling or the subsequent waterlogged condition. Based on average weather conditions of wind, rain and sunshine the allowances are: <ul style="list-style-type: none"> • 3 working days per month for the months of May to October • 2 working days per month for the months of November to April If the Contractor has been prevented by these weather conditions from working on the critical path items of the works, then he must notify the Engineer in writing. The submission shall be made within five calendar days of the resumption of work. The Engineer shall upon considering all the relevant factors determine the extension of time to be granted on the basis that an extension of time to the contract will only be granted if the total number of days upon which work on the critical items was prevented, exceeds the total number of days calculated in terms of the above allowance and considering the official contract period as a whole. The tendered sums of the appropriate time-related items shall be increased to take account of the extensions of time granted.
15	43.1	The penalty for failing to complete the Works in time is R2000.00 for each calendar day that lapses after the Due Completion Date.
16	46.2	The value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values: The value of "x" is 0,15 The values of the coefficients are : a = 0,25 b = 0,25 c = 0.40 d = 0,10

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No.	Clause	Description
		The urban area nearest to the Site is PORT ELIZABETH/UITENHAGE The base month for this project is the month before this tender is advertised
17	46.3	Price adjustments for variations in the costs of special materials are allowed. Refer Contract Data (Part 2).
18	49.1.5	The percentage advance on materials not yet built into the Permanent Works is 80 % [80%]. Payment for materials on site will be made through the monthly payment certificates only if accompanied by valid VAT invoices/receipts. Materials that have, or have not, been paid for in full will require a cession agreement with the contractor/supplier of the said materials prior to payment.
19	49.3	The percentage retention on the amounts due to the Contractor is 10% of the Contract Price. [10%].
20	49(3)	The limit of retention money is 5% of the contract price.
21	49(6)	A Retention Money Guarantee will not be permitted.
22	51.5.5	Delete Clause 51.5.5 and replace with: Insurance of the works shall continue until the expiration of the Defects Liability Period, in terms of Clause 35.1.
23	53.1	The Defects Liability Period is 12 months, measured from the date of the Certificate of Completion.
24	54.3	Replace Clause 54.3 with the following: Up to the time of termination of the contract by either party in terms of this Clause, or until the Contractor gives notice in terms of this Clause to terminate the contract and the Contractor is precluded from exercising his right to terminate the contract because the Employer agrees to bear any resultant additional costs provided for in Clause 54.2.2 hereof, the Contractor: a) will be entitled to an extension of calendar time for working days lost as may be approved by the Engineer, and b) will be reimbursed the cost of delays per working day, where the number of working days will be determined pro rata the effect the delays have on the progress of the work as agreed with the Engineer. Payment in full and final settlement will be made at the rates tendered for the payment items specially provided in the Bill of Quantities. Where the circumstances described in Clauses 54.1 and 54.2 are applicable only to a certain portion of the contract, the Engineer will decide after consulting the Contractor, to what extent the contract as a whole is affected and whether or not a claim in terms of this Clause can be submitted. No payment will be made in terms of this Clause after the expiry of the due completion date.
25	58.2	Dispute resolution shall be by mediation
26	58.4	The determination of disputes which are unresolved in terms of Clause 58.2.7, shall be by arbitration

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C1.2 : CONTRACT DATA (PART 2)

PART 2 : DATA PROVIDED BY THE CONTRACTOR

No.	Clause	Description																									
1	1.18	The Contractor is: <u>LPHM CONSTRUCTION</u> [The Legal name of the Contractor]. <u>WASTE MANAGEMENT AND PLANT HIRE</u>																									
	1.2.2	The Contractor's address for receipt of communications and notices is : Telephone: <u>079 543 3692</u> Facsimile: <u>086 764 2729</u> Address (Postal): <u>P.O. Box 957</u> Address (Physical): <u>12572 MAVAVANA</u> <u>PORT ELIZABETH, 6000</u> <u>STREET, KWAZAKHELE, P.E, 6205</u>																									
2	37.2.2.3	The percentage allowances to cover all charges for the contractor's and subcontractor's profits, timekeeping, clerical work, insurance, establishment, superintendence and the use of hand tools is%.																									
3	42.1	The Works shall be completed within <u>16</u> weeks as proposed by the contractor.																									
4	46.3	The variation in cost of special materials is : <u>N/A</u>																									
		<table border="1"> <thead> <tr> <th>Type of Material</th> <th>Unit</th> <th>Rate or Price</th> </tr> </thead> <tbody> <tr><td colspan="3" style="text-align: center;"><u>N/A</u></td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Type of Material	Unit	Rate or Price	<u>N/A</u>																					
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C1.8.2 Variations to the General Conditions of Contract

The following amendments of the General Conditions of Contract 2004 apply to this contract. The headings in these Special Conditions of Contract shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction thereof or of the Contract.

1. DEFINITIONS, INTERPRETATIONS AND GENERAL PROVISIONS

Add the following sub-clause:

1.1.25 Letter of Acceptance means the letter from the Employer stating that the Contract has been awarded to the Contractor.

1.1.25 Selected sub contractor shall mean a sub contractor selected in terms of clause 6 of the GCC.

2. ENGINEER AND ENGINEER'S REPRESENTATIVE

2.2 Engineer to consult with contractor and Employer

Replace the word "Engineer" in the last sentence with the word "Employer".

Add the following:

2.10 Authority of the Employer

Notwithstanding any provisions to the contrary in the Contract, the Employer shall have the right to reverse and, should he deem it necessary, to amend any certificate, direction, decision or valuation of the Engineer and to issue a new one, and such certificate, direction, decision or valuation shall for the purpose of the Contract be deemed to be issued by the Engineer, provided that the Contractor shall be remunerated in the normal manner for work executed in good faith in terms of an instruction issued by the Engineer and which has subsequently been rescinded.

3. BASIS OF CONTRACT

Change the number of clauses 4.2 to 4.5 to read 4.3 to 4.6.

Add the following:

3.2 Contractor deemed to have inspected the Site

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself before submitting his tender (as far as practicable) as to

- (a) the form and nature of the Site and its surroundings, including subsurface conditions,
- (b) the hydrological and climatic conditions.
- (c) the extent and nature of work and materials necessary for the execution and completion of the Works,

(d) the means of access to the Site and the Accommodation he may require and, in general, shall be deemed to have obtained all information (as far as is practicable) as to risks, contingencies and all other circumstances which may influence or affect his tender.

No subsequent claims by the Contractor arising from his lack of knowledge of perceptible conditions on the site or its surroundings or of information available in connection therewith shall be entertained.

3.3 Contractor's liability for his own design errors

In the first line insert "and Temporary" between "Permanent" and "Works".

3.6 Compliance with Applicable Laws

Amend subclause 4.6.2 to "Health and Safety".

Add the following:

3.6(3) Occupational Health and Safety Act

The Contractor shall enter into and execute an Agreement as provided for under Section 37 (2) of the Occupational Health and Safety Act 1993 (Act No. 85 of 1993). The Agreement shall be in the form included C1.3.2 in this document.

3.6(4) Mining Authorisations

The Contractor shall obtain the Mining Authorisation for all sites where mining activities, as defined in the Mine Health and Safety Act, number 29 of 1996 as amended, are to be conducted.

3.6(5) Environmental Management Programme

The Contractor shall assume responsibility for the Environmental Management Programme (EMPR) in respect of the sites and shall ensure that the sites are rehabilitated at the conclusion of the contract. The tendered rate for compliance with Occupational Health and Safety shall include allowance for preparation of Environmental Management plan for the project.

4. SUBCONTRACTING

Add the following subclauses:

4.7 Continuing obligation extending beyond date of completion of the work

In the event of a Selected Subcontractor having undertaken to the Contractor, in respect of work executed or goods or materials supplied by such Selected Subcontractor, any continuing obligation extending beyond the date of completion of the work or the end of the Defects Liability Period, as the case may be, the Contractor shall at any time after such date cede to the Employer, at the Employer's request and

cost, the benefit of such obligation for the unexpired duration thereof, whereupon the Employer shall have no further claim against the Contractor in respect of the said continuing obligation.

4.8 Convert the subcontract

If the contract shall have been cancelled in terms of clause 55, the Employer shall have the right, by written notice given to any Selected Subcontractor not later than 28 days after the said cancellation, to convert the subcontract concerned to a direct contract between the Employer and the Subcontractor.

Provided that:

- (a) the terms of the said direct contract shall mutatis mutandis be those of the subcontract concerned, and
- (b) the Employer shall have the said right, notwithstanding any breach of the subcontract by the Contractor, subject to his forthwith paying to the Subcontractor all amounts then owing to the Subcontractor by the Contractor and perform any obligation which the Contractor has failed to perform.

5. ACCESS TO THE SITE

5.1.2 Add the following to subclause 11.1.2

Should these be insufficient for the needs and requirements of the work, the Contractor shall arrange with the owners or tenants for the additional land required and pay all rent and costs in connection therewith. The Contractor shall be responsible for all damage to such land and property, and he shall indemnify the Employer and hold him harmless in respect of all claims, demands proceedings, damages, costs, including attorneys and client costs, charges and expenses arising in respect thereof.

6. REMOVAL OF CONSTRUCTION EQUIPMENT

Add the following: sub clauses:

6.2 Preclude seizure of constructional plant

In order to preclude seizure by the owner of any constructional plant being held by the Contractor on a hire or hire-purchase agreement for the purposes of the contract, the Employer shall be entitled to pay any such owner the amount of any outstanding instalment or other sum owing under any hire or hire-purchase agreement and in the event of his doing so, any amount thus paid by him shall be a debt payable to the Employer by the Contractor and may be deducted by the Employer from any moneys owing or that may become owing to the Contractor in terms of the contract, or be recovered at law from the Contractor by the Employer.

6.3 Constructional plant brought to the site by the subcontractor

When entering into any subcontract agreement for the execution of any part of the works, the Contractor shall incorporate in such subcontract agreement, by reference or otherwise, the provisions of this clause in respect of constructional plant brought to the site by the subcontractor.

7. CARE OF THE WORKS

7.3.4 Delete the wording of subclause 32.3.4 and replace this clause with the following:

7.3.4 "Risk arising from political riot and malicious damage, unless these risks are insurable with The South African Special Risk Insurance Association at the time of tendering and it is stipulated in the contract that the Contractor is to effect insurance against these risks.

8.2 Daywork

8.2.2 In the first line, after the word "schedule" insert the words "and for items not included in the daywork schedule".

9. PROVISIONAL AND PRIME COST SUMS

9.1.2.1.1 In the first line after the word "sums" insert "excluding VAT"

9.1.2.1.2 In the fourth line after the word "amount" insert "excluding VAT"

10 INTERIM PAYMENTS

10.4 Employer's obligation to pay

Add the following new paragraph:

"The Employer reserves the right to refuse payment of an interim certificate the value of which is less than the minimum value stated in C1.8.1 Section 1: Data provided by the Employer."

11 VARIATIONS EXCEEDING 15 PER CENT

In the last paragraph, first line, replace "(if any)" with "(based on the amount by which such additions or deductions shall be in excess of 30 % of the Tender Sum).

Add the following subclause:

11.1.7 Variations exceeding 30% per cent

Where the decrease or increase in the quantity of work has not resulted from a written variation order (or an additional agreement) in terms of clause 39 but from the fact that the quantities are less or more than those given in the bill of quantities, the tendered rates or sums shall still apply, except in the case of a sub-item (or an item

not subdivided into sub-items) in the bill of quantities, which covers work the value of which during the tender stage exceeds 7,5 % of the value of the tender sum, and where the quantity of such sub-item or item, upon completion of the contract, deviates by more than 30 % from the quantity given in the bill of quantities so that the scale of activities or the method of construction consequently changes to such an extent that the tendered rate or sum no longer applies. In such case the Engineer, should he deem it to be in the interest of the Employer or should the Contractor enter a claim, shall, considering the extent by which the deviation in respect of the quantity of the sub-item or item concerned exceeds 30 %, determine a sum which will be equitable in the circumstances, and shall certify that such sum shall be deducted from or added to the sums owing to the Contractor."

12 TERMINATION BY EMPLOYER

12.1.3 Delete "with due diligence" and replace with "at a rate laid down in his approved programme or, otherwise, with due diligence".

12.1.6 Add the following to the end of the existing wording:

"has failed to expel a subcontractor after having been instructed to do so in terms of sub-clause 6.4, or"

13. CANCELLATION BY CONTRACTOR

Delete the wording of subclause 56.1.1.2 and replace this clause with the following:

13.1.1.2 "Failing to pay the contractor the amount due in terms of any payment certificate issued by the engineer, provided that such payment certificate is acceptable to the employer and further more subject to the provision of sub-clause 2.8, within the time of payment provided in the contract, or.

14. SETTLEMENT OF DISPUTES

14.1.1 Add to the end of the first paragraph the words "with the exception that the Engineer's decision on the true intent and meaning of drawings shall be final and binding."