

CITY OF CAPE TOWN

INFRASTRUCTURE TRANSPORT FOR CAPE TOWN

CONTRACT NO. 391Q/2014/15

COASTAL PROTECTION WORKS BETWEEN STRAND PAVILION AND DA GAMA STREET, STRAND

C1.2 Contract Data

Part 1: Contract Data provided by the Employer

GENERAL CONDITIONS OF CONTRACT

The following standardised General Conditions of Contract:

General Conditions of Contract for Construction Works, Second Edition, 2010

Prepared by the South African Institution of Civil Engineering (SAICE) shall apply to and form the General Conditions of Contract for this contract. Copies of these conditions of contract are obtainable from the South African Institution of Civil Engineering (SAICE), Private Bag X200, Halfway House 1685, Tel: (011) 805 5947, Fax: (011) 805 5971, e-mail: civilinfo@saice.org.za.

Copies of the General Conditions of Contract are available for inspection and scrutiny at the offices of the Employer and employer's agent.

The Pro-formas bound with the General Conditions of Contract 2010 shall not apply to this Contract and shall be replaced with the documentation bound into this Contract Document.

The General Conditions of Contract make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the general conditions of contract.

The General Conditions of Contract shall be read in conjunction with the variations, amendments and additions set out in the Contract Specific Data below. Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies.

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) the Form of Offer and Acceptance,
- b) the Contract Specific Data within the Contract Data,
- c) the General Conditions of Contract for Construction Works, Second Edition, 2010,
- d) the Drawings,
- e) the Scope of Work, and
- f) the Pricing Data.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

CONTRACT SPECIFIC DATA

The following contract specific data, referring to the General Conditions of Contract for Construction Works, Second Edition, 2010, are applicable to this Contract:

Clause 1.1.1.2:

Add the following after "Bill of Quantities":

, also referred to as Bills of Quantities,

Clause 1.1.1.13:

The Defects Liability Period is 12 months.

Clause 1.1.1.14:

The time for achieving Practical Completion is 78 (seventy eight) **weeks**, inclusive of the 14 day period referred to in Clause 5.3.2 below, and inclusive of non-working days referred to in Clause 5.8.1 below, but exclusive of special non-working days (Clause 5.8.1).

Clause 1.1.1.15:

The **Employer** is the CITY OF CAPE TOWN, represented by the Director : INFRASTRUCTURE TRANSPORT FOR CAPE TOWN and/or such other person or persons duly authorised thereto by the Employer in writing.

The name of the Employer is: CITY OF CAPE TOWN
INFRASTRUCTURE TRANSPORT FOR CAPE TOWN

and is referred to in this Contract Document by the terms "Employer", "City of Cape Town" or "Council" as the context provides.

Clause 1.1.1.26:

The Pricing Strategy is a Re-measurement Contract.

Add the following Clauses after Clause 1.1.1.34:

- 1.1.1.35 **"Drawings"** means all drawings, calculations and technical information forming part of the Contract Documents and any modifications thereof or additions thereto from time to time approved in writing by the Engineer or delivered to the Contractor by the Engineer.
- 1.1.1.36 **"Letter of Notification"** means the letters of formal notification, signed by the Employer, of the decision of the Supply Chain Management Bid Adjudication Committee sent to all tenderers. The notification of the decision does not form part of the Employer's Acceptance of the successful tenderer's Offer and no rights shall accrue.

Clause 1.2.1.2:

The address of the Employer is:

Physical address: Tower Block, Civic Centre
12 Hertzog Boulevard
Cape Town
8001

Postal address: P O Box 298
Cape Town
8001

E-mail address: victor.hugo@capetown.gov.za

Clause 1.1.1.16:

The **Engineer**, referred to in the documents, is the firm of Mott MacDonald PDNA (Pty) Limited acting through a director, an associate or an official authorised thereto in writing.

The name of the Engineer is: Mott MacDonald PDNA (Pty) Limited or their successors duly appointed by the Employer

Clause 1.2.1.2:

The address of the Engineer is: Mott MacDonald PDNA (Pty) Limited

Physical address: 2nd Floor, 5 St Georges Building, St Georges Mall
Cape Town
8001

Postal address: P O Box 7786
Roggebaai
8012

E-mail address: brenton.heron@mottmac.com

Clause 3.1.3:

The Engineer shall obtain the specific approval of the Employer before executing any of his functions or duties according to the following Clauses of the General Conditions of Contract or Contract Data:

- a) Clause 3.2.1 Nomination of Engineer's Representative
- b) Clause 3.2.4 Engineer's authority to delegate
- c) Clause 5.8.1 Non-working times
- d) Clause 5.11.1 Suspension of the Works
- e) Clause 5.12.4 Acceleration instead of extension of time
- f) Clause 6.10.10 Advance payment, for items not listed in the Advance Payment Schedule.

Clause 4.1:

Add the following Clause after Clause 4.1.2:

- 4.1.3 Where the Contract is based on an alternative tender offer submitted by the Tenderer/Contractor, he shall, notwithstanding acceptance of the offer by the Employer, be liable for any deficiency in the alternatives proposed, for any costs in ensuring that the alternatives meet the Employer's standards and requirements, and for any loss or damage arising out of such error or deficiency.

Clause 4.3:

Add the following Clause after Clause 4.3.2:

- 4.3.3 The Employer and the Contractor shall enter into an agreement to complete the work required for the construction of the Works in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act, 85 of 1993 and the Construction Regulations, 2014 promulgated thereunder.

An agreement is included in the Contract Document (Part C1.5 in Agreements and Contract Data) and shall be completed and submitted to the Employer together with a letter of good standing from the Compensation Commissioner (if not insured with a licenced compensation insurer) within fourteen (14) days after the Commencement Date. The Contractor shall ensure that any letter of good standing shall be timeously renewed in order that it remains in full force for the duration of the Contract.

Clause 4:

Add the following Clause after Clause 4.12.3:

4.12.4 Protection of the Environment

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor's attention is also drawn to the Environmental Management Specification in the Scope of Work.

Clause 5.3.1:

The documentation required before commencement with Works execution is:

- a) Health and Safety Plan (Refer to Clause H8.3 in the Health and Safety Specification in Part C3.5 in the Scope Work)
- b) Initial programme (Refer to Clause 5.6)
- c) Security (Refer to Clause 6.2)
- d) Insurance (Refer to Clause 8.6)
- e) Occupational Health and Safety Agreement (Part C1.5 in Agreements and Contract Data)
- f) Letter of good standing from the Compensation Commissioner, or a licensed compensation insurer (Refer to Clause 4.3)
- g) Protection of the Environment Declaration (Part C1.6 in Agreements and Contract Data)
- h) Proof of Registration / Letter of Good Standing with the Bargaining Council for the Civil Engineering Industry (BCCEI)

Clause 5.3.2:

The time to submit the documentation required before commencement with Works execution is within 14 days.

Clause 5.4.2:

Access to and possession of the Site shall not be exclusive to the Contractor insofar as the provisions of Clause 4.8 apply, and where ongoing use by the general public is required.

Add the following Clause after Clause 5.4.3:

5.4.4 The Contractor shall bear all costs and charges for special and temporary rights of way required by him in connection with access to the Site.

Clause 5.8.1:

The non-working days are Sundays.

The special non-working days are:

- a) All gazetted public holidays falling outside the year end break.
- b) The year end breaks as determined by the SAFCEC.
- c) For the purpose of this contract five (5) special non-working days are to be added on to the year-end break before start up in January 2016.

Clause 5.12.2.2:

No extension of time will be granted in respect of any delays attributed to normal climatic conditions. Normal climatic conditions shall be deemed to include normal rainfall and associated wet conditions and materials, strong winds and extremes of temperature. However, in the event that delays to critical activities exceed the number of working days listed below for each month, then abnormal climatic conditions shall be deemed to exist, and an extension of time may be claimed in accordance with the provisions of Clause 5.12.

The number of days quoted below shall be regarded as a fair estimate of the delays to be anticipated and allowed for under normal climatic conditions where inclement weather prevents or disrupts critical work.

January	2 days
February	2 days
March	2 days
April	2 days
May	2 days
June	4 days
July	4 days
August	4 days
September	4 days
October	2 days
November	2 days
December	2 days

Claims for delays for abnormal climatic conditions shall be accompanied by substantiating facts and evidence, which shall be submitted timeously as each day or half-day delay is experienced.

It shall be further noted that where the critical path is not affected, no extension of time for abnormal climatic conditions or for any other reason will be entertained.

Clause 5.13.1:

The penalty for failing to complete the Works is R7 500 per day.

Insert the following after "actual date of Practical Completion":

... or, in the case of termination by the Employer in terms of Clause 9.2.1, the actual date of termination,

Clause 5.16.3:

The latent defects period is 10 years.

Clause 6.2.1:

The security to be provided by the Contractor shall be a performance guarantee of 7% of the Contract Sum. The performance guarantee shall contain the precise wording of the document included in Part C1.3 of the Contract Data: **Form of Performance Guarantee**, and it shall be issued by a financial institution approved by the Employer, as listed in the Annexure attached thereto.

Clause 6.2.2:

Delete Clause 6.2.2 in its entirety.

Clause 6.2.3:

Delete Clause 6.2.3 in its entirety and replace with the following:

The Contractor shall ensure that the performance guarantee remains valid and enforceable until the Certificate of Completion of the Works is issued.

Clause 6.5.1.2.3:

The percentage allowance to cover overhead charges is 10%

Clause 6.8.2:

Add the following to Clause 6.8.2:

"The Contract Price shall be subject to contract price adjustment in accordance with Clause 6.8 of the General Conditions of Contract.

If special materials are specified in Part 2 of the Contract Data then the provisions of Clause 6.8.3 of the General Conditions of Contract shall apply to such special materials."

Where applicable, in terms of the foregoing, the value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values for "Concrete works"

The value of "x" is 0,10.

The values of the coefficients for "Concrete works" are:

a = 0,15 b = 0,20 c = 0,55 d = 0,10

The base month is one month prior to the month in which the tender closed.

Furthermore, the Contract Price Adjustment Schedule shall be amended as follows:

"L" is the "Labour Index" and shall be the Consumer Price Index (CPI) for the City of Cape Town, Western Cape, as published in the Statistical News Release, P0141 Additional Tables: Table 14 – CPI – all items, according to area, of Statistics South Africa.

"P" is the "Plant Index" and shall be the Producer Price Index for selected materials, Plant for "Concrete works" and/or "Roads and earthworks," as published in the Statistical News Release P0151, Table 4 of Statistics South Africa.

"M" is the "Materials Index" and shall be the Producer Price Index for selected materials, Materials for "Concrete works" and/or "Roads and earthworks," as published in the Statistical News Release P0151, Table 4 of Statistics South Africa.

"F" is the "Fuel Index" and shall be the Producer Price Index for selected materials, Diesel fuel – Coast and Witwatersrand, as published in the Statistical News Release P0151, Table 4 of Statistics South Africa.

The amount "Ac" shall be sub-divided into Ac_1 and Ac_2 , as appropriate, and each of these shall be multiplied by its Contract Price Adjustment Factor (CPAF), with the resultant amounts added together to produce the adjustment as envisaged in the CPA Schedule;

where

Ac₁ is the proportion of Ac applicable to "Concrete works", and
Ac₂ is the proportion of Ac applicable to "Roads and earthworks"

and where

Ac₁ = T₁ – S₁ – D₁ – E₁ – G₁ – Ap₁, and
Ac₂ = T₂ – S₂ – D₂ – E₂ – G₂ – Ap₂

in which formulae the values associated with the symbols T₁ and T₂.... Ap₁ and Ap₂ shall be applicable to the proportions of T Ap in "Concrete works" and "Roads and earthworks", respectively.

Furthermore, the value of the General Items shall be proportional to the value of work done and materials on Site in T₁ and T₂ respectively.

Clause 6.8.3: Variation in the cost of special materials

Price adjustment for variations in the cost of special materials is provided for in the Special Materials Schedule at the end of this Part1: Contract Data provided by the Employer.

Clause 6.8.4:

Add the following to Clause 6.8.4:

Notwithstanding the above, in the event that a public holiday is proclaimed after 28 days before the closing date for tenders, no costs other than those that can be claimed under Clause 5.12.3 shall be added to the contract price.

Clause 6.10.1.5:

Delete Clause 6.10.1.5 in its entirety and replace with the following:

6.10.1.5 The value of Plant and materials:

6.10.1.5.1 up to a percentage limit of **80%** for the Plant and materials referred to in Clause 6.9.1.1 brought on to the Site but not yet built into the Permanent Works;

Provided that the Contractor has produced documentary evidence of ownership of such Plant and/or materials and has delivered to the Employer an indemnity, approved in writing by the Employer, against any claim to or in respect of such Plant and/or materials by reason of the Contractor's sequestration or liquidation, or of any defect in the Contractor's title to the Plant and/or materials;

6.10.1.5.2 which have been manufactured and are stored at places other than the Site, in respect of which the Employer has indicated, on the Advance Payment Schedule, that advance payment will be permitted;

6.10.1.5.3 for which a deposit with order is required from the Contractor by a manufacturer/supplier, only in respect of which the Employer has indicated, on the Advance Payment Schedule, that advance payment will be permitted;

The terms and conditions for advance payment are set out in Clause 6.10.10 and in the Advance Payment Schedule at the end of this Part 1: Contract Data provided by the Employer.

Clause 6.10.1.7:

Add the following after the words "Clause 5.13":

or any other fines or penalties that become due under the Contract.

Clause 6.10.3:

Add the following to Clause 6.10.3:

Notwithstanding the provision of a performance guarantee in terms of Clause 6.2.1, interim payments to the Contractor shall be subject to a retention by the Employer of an amount of **5%** of the said amounts due to the Contractor, with no limit. A guarantee in lieu of retention is not permitted.

Clause 6.10.4:

Add the following to the last sentence of Clause 6.10.4:

..., dated as at the date of delivery of the Contractor's statement to the Engineer.

Add the following to Clause 6.10.4:

Notwithstanding the above, the Engineer shall be empowered to withhold the delivery of the payment certificate until the Contractor has complied with his obligations to report in terms of Clause 4.10.2 and as described in the Scope of Work.

Clause 6.10.10:

Add the following Clause after Clause 6.10.9:

6.10.10 Advance payment

Subject to Clauses 6.10.1.5.2 and 6.10.1.5.3, and the Advance Payment Schedule, the Employer shall make an advance payment for Plant and materials stored at places other than the Site, or in respect of which a deposit with order is required, only once the Contractor has submitted an advance payment guarantee in accordance with this Clause.

Unless and until the Employer receives this guarantee, the following paragraphs shall not apply.

The Engineer shall issue an Interim Payment Certificate for, or including, advance payment after receiving a statement under Clause 6.10.1 and after the Employer has received a guarantee in an amount equal to the advance payment requested. This guarantee shall be issued by a financial institution approved by the Employer, as listed in the Annexure in Part C1.3 of the Contract Data, and shall be in the form of and shall contain the precise wording of the document included in Part C1.4: **Form of Advance Payment Guarantee** and shall come into force, be administered and expire in terms thereof.

The Employer shall return the guarantee to the Contractor within 14 days after the expiry date.

The provision of the Advanced Payment Guarantee shall be at the Contractor's cost.

The term "deposit" or "deposit with order" used in the context of this Clause and elsewhere by reference to this Clause, means a sum payable by the Contractor to a manufacturer/supplier prior to the manufacture of an item of Plant or material, required at the time of placing an order, the balance of the value of the item being payable later.

Clause 8.6.1.1.2:

The value of Plant and materials supplied by the Employer to be included in the insurance sum is **R 0.00 (Nil)**.

Clause 8.6.1.1.3:

The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is **2%**

Clause 8.6.1.3:

The limit of indemnity for liability insurance is **R20 000 000.00** for any single claim – the number of claims to be unlimited during the construction and defects liability periods.

Clause 8.6.1.5:

In addition to the insurances required in terms of General Conditions of Contract Clauses 8.6.1.1 to 8.6.1.4 the following insurance is also required:

- a) Insurance of Construction Equipment (including tools, offices and other temporary structures and contents) and other things (except those intended for incorporation into the Works) brought onto the site for a sum sufficient to provide for their replacement.
- b) Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.
- c) Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity.

- d) Where the contract involves manufacturing and/or fabrication of the works or part thereof at premises other than the Site, the Contractor shall satisfy the Employer that all materials and equipment for incorporation in the works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such works during manufacture or fabrication then such interest shall be noted by endorsement to the Contractor's Policies of Insurance.

Clause 8.6.6:

The evidence that the insurances have been effected in terms of Clause 8.6.1, shall be in the form of an insurance broker's warranty worded precisely as given in Part C1.7 Insurance Broker's Warranty.

Clause 9.1:

In Clause 9.1.6 replace "and 9.1.3" with:

, 9.1.3 and 9.1.7 .

Add the following Clause after Clause 9.1.6:

9.1.7 Death of Sole Proprietor/Member

Upon the death of the Contractor who was a Sole Proprietor, or a sole member of a Close Corporation, the Contract will terminate forthwith. The Employer shall pay to the Contractor's estate any money which it considers due under the Contract in terms of Clause 9.1.5, in full and final settlement thereof.

Clause 9.2.1:

Delete "or" at the end of Clause 9.2.1.3.6 and add the following three Clauses after Clause 9.2.1.3.7:

9.2.1.3.8 Has failed to provide the required insurances within the prescribed time,

9.2.1.3.9 Has committed a corrupt or fraudulent act during the tender process or the execution of the Contract,
or

9.2.1.3.10 Has benefitted from an official or other role player committing any corrupt or fraudulent act during the tender process or in the execution of the Contract.

Clause 10.5.3:

The number of ad-hoc Adjudication Board Members to be appointed is 1(one).

ADDITIONAL CONDITIONS OF CONTRACT

Add the following Clause after Clause 10:

Clause 11 Details to be confidential

The Contractor shall treat the details of the Works comprised in this Contract as private and confidential (save in so far as may be necessary for the purposes hereof) and shall not publish or disclose the same or any particulars thereof in any trade or technical paper elsewhere without the prior written consent of the Engineer.