
Part C1

Agreement and contract data

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C1.1 FORM OF OFFER AND ACCEPTANCE (ECC3)

OFFER

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

Bayhead, (CX) Loliwe House (Admin): Refurbishment of floors – Ground, First, Second, Third and Fourth Floor to implement space optimization.

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, 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 representative, when signing this part of the Form of Offer and Acceptance, shall be deemed to be duly authorised by a Resolution of the Board of Directors/Certificate of Partners, a certified copy to be included in the Returnable Documents.

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

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 including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s) _____

Capacity _____

For the tenderer:

(Insert name and address of organisation) _____

Name of witness _____

Signature of witness _____

Date _____

Tenderer's CIDB registration number (if any): _____



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 Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

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 of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any, bonds, guarantees, proof of 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 these 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 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)

Capacity

for the

Employer

Name of

witness

Signature of

witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

**Transnet Limited trading as Transnet Freight Rail, 49th Floor, Carlton Centre, 150
Commissioner Street, Johannesburg, 2000**

SCHEDULE OF DEVIATIONS

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.
4. 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 become an obligation of the contract, shall also be recorded here.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this agreement, 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 any addenda thereto 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.



C1.2 CONTRACT DATA PROVIDED BY EMPLOYER (ECC3)

The conditions of contract are the NEC3 Engineering and Construction Contract (June 2005), copies of which may be obtained from the South African Institution of Civil Engineering (tel. 011-805 5947) or Engineering Contract Strategies (tel. 011 803-3008).

Part One – Data Provided by the Employer

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

Statements given in all contracts

1 General

- (a) The conditions of contract are the core clauses and the clauses for main Option **B**, dispute resolution Option **W1** and secondary Options **X7, X13 & X16** of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006).
- (b) **The Contractor's Offer and the Employer's Acceptance is in the document called Form of Offer and Acceptance – Part 1 (C1.1).**
- (c) The works are **Bayhead, (CX) Loliwe House (Admin): Refurbishing of floors Ground, First, Second, Third and Fourth to implement space optimization.**

(d) The Employer is

Name Transnet Limited trading as Transnet Freight Rail
Address 49th Floor, Carlton Centre
150 Commissioner Street
Johannesburg, 2000

(e) The Project Manager is

Name : **A. P. Marais**
Address: **Room 404**
FC Sturrock Building
Port Elizabeth

(f) The Supervisor is

Name : **To be advised**
Address: _____

- (g) The *Adjudicator* **will be appointed as mutually agreed upon between the parties when a dispute arises.**

- (h) The *Works Information* is in **the document called “Scope of Work” – Part 3 (C3).**
- (i) The *Site Information* is in **the document called “Site Information” – Part 4 (C4).**
- (j) The *boundaries of the site* are including the Loliwe House (Admin).
- (k) The *language of this contract* is **English.**
- (l) The *law of the contract* is the law of **the Republic of South Africa.**
- (m) The *period for reply to a communication* is **3 weeks.**
- (n) The *Adjudicator nominating body* is **the Association of Arbitrators (Southern Africa).**
- (o) The *tribunal* is **Arbitration.**
- (p) The following matters will be included in the Risk Register
 - 1 Staff working under clearances at Bayhead, (CX) Loliwe House (Admin) in implementing space optimization.**
 - 2 Inadequate staffing.**
 - 3 Failure to use safety and protective equipment.**
 - 4 Incompetent employees**
 - 5 Fitness for duty.**
 - 6 Theft and vandalism of material and equipment.**
 - 7 Damage to existing services.**

- 3 Time
- (a) The *starting date* is to be advised upon awarding of **contract.**
 - (b) The *access dates* are

Part of the Site	Date
1 All sites listed under “Description of work” contract	Duration of contract
 - (c) The *Contractor* submits revised programmes at intervals no longer than **4 weeks.**
- 4 Testing and Defects
- (a) The *defects date* is **52 Weeks** after Completion of each site.
 - (b) The *defect correction period* is **TWO** weeks
 - (i) The *defect correction period* for **N/A** is weeks.
 - (ii) The *defect correction period* for **N/A** is weeks.
- 5 Payment
- (a) The *currency of this contract* is the **South African Rand (ZAR).**
 - (b) The *assessment interval* is **on the 10th of each calendar month.**

- (c) The *interest rate* is **two percent** per annum above the **prime lending** rate of the **Standard Bank of South Africa Ltd. as determined from time to time.**

6 Compensation events

- (a) The place where weather is to be recorded is at each site.
- (b) The *weather measurements* to be recorded for each calendar month are
- (i) the number of days with rainfall more than **10mm**
 - (ii) the number of days temperature below zero
 - (iii) the number of days snow lying on the ground at 09h00
- (c) The *weather measurements* are supplied by the **SA Weather Service.**
- (d) The *weather data* are the records of past *weather measurements* for each calendar month which were recorded by **an official weather station nearest to each site** and which are available from **SA Weather Service.**
- (e) Where no recorded data are available

N/A

Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are

N/A

7 Title

N/A

8 Risks and insurance

- (a) The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and (not an employee of the *Contractor*) caused by activity in Equipment) and liability for bodily injury to or death of a person in connection with this contract for any one event is **whatever the Contractor deems desirable in addition to that provided by the Employer.**
- (b) The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is that **which is prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.**

Optional statements

- (a) Arbitration
- The *arbitration procedure* is the **Rules for the Conduct of Arbitrations issued by the Association of Arbitrators (Southern Africa) by an Arbitrator to be mutually agreed by the parties and failing agreement to be appointed by the association of Arbitrators.**

- The place where arbitration is to be held is
To be advised.
 - The person or organisation who will choose an Arbitrator if the Parties cannot agree a choice is **The Chairman of the Association of Arbitrators (Southern Africa).**
- (b) The completion date for the whole of the *works* is **5 (Five) months from the starting date.**
- (c) If the Employer is not willing to take over the works before the completion date.
- (d) If no programme is identified in part two of the Contract Data.
The *Contractor* is to submit a first programme for acceptance within **4** weeks of the Contract Date.
- (e) The *key dates* and *conditions* to be met are
- | <i>condition</i> to be met | <i>key date</i> |
|----------------------------|-----------------|
| N/A | |
- (f) The period within which payments are made is **30 days from month end statement.**
- (g) These are additional *Employer's* risks
N/A
- (h) The *Employer* provides these insurances from the Insurance Table
1. Insurance against loss of or damage to the *works*, Plant and Materials is **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**
Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**
The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**
 2. Insurance against loss of or damage to Equipment (**Temporary Works only**) as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.
Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**
The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**
 3. Insurance against loss of or damage to property (except the *works*, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the

Contractor) caused by activity in connection with this contract **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

(j) The *Employer* provides these additional insurances

1. **Contract Works SASRIA insurance subject to the terms exceptions and conditions of the SASRIA coupon policy.**

Cover/indemnity is **to the extent provided by the SASRIA coupon policy**

The deductibles are **in respect of each and every theft claim 0,1% of Contract Value subject to a minimum of R2 500 and a maximum of R25 000.**

The Contractor provides these additional insurances

- 1 Where the Contract requires that design of any part of the *works* shall be provided by the *Contractor*, he shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been effected.
- 2 Where the Contract involves manufacture, and/or fabrication of Plant and Materials, components or other goods to be incorporated into the *works*, at premises other than the site, the *Contractor* shall satisfy the *Employer* that such Plant and Materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication.
- 3 Should the *Employer* have an insurable interest in such items during manufacture or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any subcontractor.
4. The insurance coverage referred to in 1 and 2 above shall be obtained from an insurer in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.

Option B

All Option B clauses apply with the following amplification:-

- (a) The method of measurement is **as indicated in the measurement clauses of SANS 1200**.
- (b) The last sentence of Clause 63.13 of Option B states:-
“The *Employer* and the *Contractor* agree, rates and lump sums to be used to assess a compensation event instead of Defined Cost.”
- (c) When agreed rates and lump sums are used, Compensation Events are assessed as follows:-
- (i) Where in the opinion of the *Project Manager* work is of a similar character and executed under similar conditions to work priced in the Bill of Quantities, it is to be valued at such rates and prices (including General Items) contained therein as may be applicable; or
- (ii) Where work is not of a similar character or is not executed under similar conditions, the rates and prices in the Bill of Quantities are to be used as the basis for valuation as far as may be reasonable; or
- (iii) Where work cannot reasonably be valued in accordance with Clauses (c)(i) and (c)(ii) above, suitable rates or prices are agreed upon between the *Project Manager* and the *Contractor* after due consultation by the *Project Manager* with the *Employer* and the *Contractor*, or
- (iv) In respect of additional or substituted work, the *Project Manager* may, if in his opinion it is necessary or desirable, issue an instruction that the work be executed in some other appropriate manner.
- (v) If the parties cannot agree, the *Project Manager* notifies the *Contractor* accordingly and makes his own assessment.

Option X7

Delay damages is a penalty in South African Law and the word penalty is to replace delayed damages throughout the Contract.

- a) Penalty for late completion of the whole of the works is R 2,000 per day.

Option X13

- (a) The amount of the Guarantee (Performance Bond) is to be calculated as **10 % or 5%** of the tender price.

The Contractor has the option of providing the guarantee of 10% and having the retention money of 5% or providing the guarantee of 5% and having the retention money of 10% taken.

- (b) The Form of Guarantee (or Performance Bond) is in Clause C 1.3 of Part C1.

Option X16

a) The retention percentage is 5% or 10%, depending upon the option X13.

Option Z

The additional Conditions of Contract are:-

(a) Clause 11.2 (34) – Day

Day is a calendar day and where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, public holidays and the annual Christmas break from 16 December to 5 January (both days included) is excluded from the calculation of the number of days concerned.

(b) Clause 28.1 – Intellectual property

Intellectual property rights (including patents, copyright, trade marks etc) rests with the party owning them and the *Contractor* indemnifies the *Employer* from any liability arising from infringement of such intellectual property rights. [See Clauses 80.1, 83.1 and 83.2]

(c) Clause 28.2 – Assignment & cession

Neither the *Contractor* nor the *Employer* may, without the written consent of the other, assign the Contract or any part thereof or any obligation under the Contract or cede any right or benefit thereunder.

(d) Clause 28.3 – Non-Waiver

No grant by the *Employer* or the *Contractor* to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than that in respect of which the grant was made to constitute a waiver of the rights of the grantor in terms of the Contract or an *estoppel* of the grantor's right to enforce the provision of the Contract.

(e) Clause 28.4 – Limitation of the authority of the Project Manager.

i) The Project Manager is authorised to agree increases to the contract value to a maximum of 10% of the contract value or R300,000.00 whichever is the lesser amount, without referring it to the management of the Employer.

In referral to management is necessary, a period of 6 weeks over and above any times allowed in the Contract is to be provided.

(f) Option B- Clause 63.13

The last sentence of the clause to be deleted and the following substituted: "The Employer and Contractor agree, rates and lump sums to be used to assess a compensation event instead of Defined cost".

C1.2 CONTRACT DATA PROVIDED BY CONTRACTOR (ECC3)

Part Two – Data Provided by the Contractor

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

Statements given in all contracts

(a) The Contractor is

Name

Address

.....

.....

(b) The direct fee percentage is %

(c) The subcontracted fee percentage is %

(d) The working areas are the Site and

.....

(e) The key people are

(1) Name

Job

Responsibilities

.....

Qualifications

Experience

.....

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(2) Name
Job
Responsibilities
.....
Qualifications
Experience

(3) Name
Job
Responsibilities
.....
Qualifications
Experience

(4) Name
Job
Responsibilities
.....
Qualifications
Experience

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(f) The following matters will be included in the Risk Register

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

Optional statements (a) If the Contractor is to provide Works Information for his design

The Works Information for the Contractor's design is in

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

(b) If a programme is to be identified by the Contract Data.

The programme identified in the Contract Data is

.....

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

The completion date for the whole of works is

.....

If Option A or B is used

Data for SSCC

(a) The percentage for people overheads is%

(a) The published list of Equipment is the last edition of the list published by

(c) The percentage for adjustment for Equipment in the published list is% (state plus or minus).

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(d) The rates for other Equipment are

Equipment	size or capacity	rate
.....
.....
.....
.....
.....

(e) The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
Site / Contracts Engineer
Commissioning Engineer
Supervisor
Draughtsperson

(f) The percentage of design overheads is%

(g) The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are **all of the categories listed above.**

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