

D/SM 1/25

DEVIATION: APPOINTMENT OF ZUTARI (Pty) Ltd FOR COMPLETION OF NEW CELLS AND ASSOCIATED INFRASTRUCTURE AT THE STELLENBOSCH LANDFILL

CHECK BEFORE SUBMISSION	YES	NO
REGISTERED ON CSD DATABASE		
LETTER - SOLE SUPPLIER if applicable.		
QUOTE/INVOICE ATTACHED		
BUDGET (SAMRAS)		
CASHFLOW		
SIGNATURES		



MEMORANDUM

DIRECTORATE: INFRASTRUCTURE SERVICES

To / Aan: MUNICIPAL MANAGER
From / Van: DIRECTORATE: INFRASTRUCTURE SERVICES
Job Title: SENIOR MANAGER – CLAYTON HENDRICKS
Date / Datum: 26 JUNE 2024
Re / Insake: DEVIATION: APPOINTMENT OF ZUTARI (Pty) Ltd FOR COMPLETION OF NEW CELLS AND ASSOCIATED INFRASTRUCTURE AT THE STELLENBOSCH LANDFILL

1. PURPOSE

To obtain approval in terms of Supply Chain Management Policy, to deviate from the official procurement process in terms of Section 36 of the approved SCM Policy, to re-appoint Zutari (Pty) Ltd for the completion of new cells and associated infrastructure at the Stellenbosch landfill.

REASON FOR DEVIATION: (Mark with x where applicable)		
1.	Emergency. "Emergency dispensation" means emergency as referred to in paragraph 36(1)(a)(i) of this policy under which one or more of the following is in existence that warrants an emergency dispensation;	
	a The possibility of human injury or death;	
	b The prevalence of human suffering or deprivation of rights;	
	c The possibility of damage to property, or suffering and death of livestock and animals;	
	d The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;	
	e The possibility of serious damage occurring to the natural environment;	
	f The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service;	
	g The possibility that the security of the state could be compromised; or	
	h The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.	
2.	Goods or services are produced or available from a single provider	
3.	Acquisition of special works of art or historical objects where specifications are difficult to compile.	
4.	Acquisition of animals for zoos and /or nature and game reserves	
5.	Exceptional case and it is impractical or impossible to follow the official procurement processes	X

NB! All deviations i.r.o the amount will be tabled at the BAC

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2. SUBSTANTIATE WHY SCM PROCESS COULD NOT BE FOLLOWED (TO BE REPORT TO COUNCIL)

Zutari (Pty) Ltd has an existing appointment with the Stellenbosch Municipality until 30 June 2024 and the Waste Management Department requires a new appointment to be made to Zutari (Pty) Ltd to enable the finalisation of the project after 30 June 2024.

The Municipality requires an engineer to supervise and certify the remaining work that is completed by the contractor. The work has been supervised and certified by Zutari (Pty) Ltd up to 98% of the work completed. The deviation is required to allow the consultant to finalise the project in its entirety. Zutari is well aware of all the contractual circumstances of the project and has dealt with the project thus far.

Due to the aforementioned it will not be feasible or cost effective and it would be impractical to follow the official procurement process to appoint a new engineering consultant to inspect, supervise and certify the remainder of the 2% of the work.

Therefore, the deviation in the procurement process to re-appoint Zutari is required as it is an exceptional case and it is impractical or impossible to follow the official procurement processes.

3. BACKGROUND

The current appointment with Zutari (Pty) Ltd tender BSM 98/21 for the design, procurement, contract management and construction monitoring of the new landfill cells at the Stellenbosch Landfill, terminates on the 30th of June 2024. The construction contract entered into with Burger and Wallace (Pty) Ltd initially had a completion date of 15 May 2024. The contractor has submitted numerous extensions of time claims during the course of the contract. (see annexure 1) Several extensions of time claims were ruled to extend the completion date, to the 26th of June 2024. These claims are briefly noted as;

- Claim No 1 due to a delay in giving possession to the south access portion of the works.
- Claim No 2, due to abnormal climate conditions- August 2023
- Claim No 3, due to Taxi Strike August 2023
- Claim No 4, due to Inclement weather September 2023
- Claim No 5, due to abnormal climate conditions October 2023
- Claim No 6, due to abnormal climate conditions November 2023
- Claim No 8, due to abnormal climatic conditions February 2024
- Claim No 9, due to abnormal climatic conditions March 2024
- Claim No 10 - Extension of Time for Gazetted Public Holiday

Claims 8,9 and 10 resulted in the practical completion date changing from 26 June 2024 to 2 July 2024.

A further allowance for another 2 weeks after 2 July 2024 must be provided to attend to the following:

- | | |
|---|-------------------|
| • Practical Completion: | 2 July 2024 |
| • Time to achieve completion including snags:2 weeks after P.C. | 16 July 2024 |
| • ICT completion and inspection: | 6 July 2024 |
| • ICT Final inspection | 12 July 2024 |
| • Final payment certificate and finalise quantities | 6 – 24 July 2024 |
| • Site De-establishment | 15 – 19 July 2024 |

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It is therefore required that Zutari (Pty) Ltd attend to the following activities after 30 June 2024:

- Compile and certify the final Payment Certificate;
- Inspect the finalisation of work;
- Issue a completion certificate
- Compiling a snag list;
- Evaluate Claims and provide a ruling on claims; and
- To complete the contract Administration, including issuing of the final completion certificate after the 12 month defect's liability period

An estimated amount of R 7 million of work must still be certified by Zutari (Pty) Ltd for the issuing of the final payment certificate. The work can only be contractually certified by an Engineer and cannot be completed without the appointment of a Consulting Engineer service provider. Should it not be possible to certify the work, it could result in a claim from the contractor for no being able to complete the work.

4. DISCUSSION

Zutari (Pty) Ltd has been appointed to design to an addition landfill cell at the Stellenbosch Landfill.

The contract included the design of the new cell(s) including but not limited to:

- basal and side slope liners,
- drainage layers and leachate collection drains;
- sumps as well as all associated infrastructure including the preparation of a bill of quantities.
- preparation of tender documentation, and
- Contract supervision as well as construction quality assurance (CQA).

The Municipality has also appointed Burger and Wallace (Pty) Ltd as the construction contractor to implement the work design and as per tender specification as compiled by Zutari (Pty) Ltd. The work was subjected to various delays, as stipulated above during construction.

5. FINANCIAL IMPLICATIONS

It must be noted that the financial implications are as per below quotation for the professional fees. The fee proposal is a fee estimated on a worst-case scenario and actual measured time will be invoiced. The Department has funds available and will be funded.

Item	Work Description	Chris	Levi	Total
	(Excl VAT)	R 1,500.00	R 750.00	
1	Payment Certificate	1	16	17.0
2	Site Inspection and Queries(4 hrs,3 Visit p/week for 4 weeks)	1	48	49.0
3	Snag lists	1	8	9.0
4	Claims Evaluation and ruling	4	16	20.0
5	Admin	4		4.0

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Total Hours	11	88	99.0
Total Cost (Excl VAT)	R 16,500.00	R 66,000.00	R 82,500.00
10% Contingency to be used at the Municipality's discretion			R8 250
Total			R90750

Disbursements	R/km	Km	Trips	Total
Travel to site and back	5.1	73	12	R 4,467.60

Total to be approved: **R95 217.60 (Excl. Vat)**

The work estimated to be certified in the final payment certificate is R7 million.

6. RECOMMENDATION

That the BAC supports the approval of the deviation from the official procurement process in terms of Section 36 of the approved SCM Policy to appoint Zutari (Pty) Ltd to provide the professional engineering service to supervise, inspect and certify the remainder 2% of the construction work of the project in the amount of R 95 217,60 excluding VAT.

7. VALUE FOR MONEY

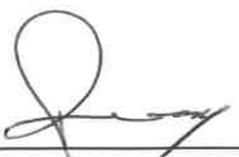
The tender was awarded to Zutari (Pty) Ltd as the Municipality's Agent and Consultant; and all the responsibilities resides with them to adhere to all the contractual implementation and management of the contract with the contractor. It will also be irresponsible to divide the responsibilities and it will not be possible to determine who the responsible party will be to repair defects in future, should it occur.

8. IT IS RECOMMENDED THAT:

The Municipality Manager supports the approval of the deviation from the official procurement process in terms of Section 36 of the approved SCM Policy to appoint Zutari (Pty) Ltd to ensure the completion of the contract to provide the professional engineering service to supervise, inspect and certify the remainder of the construction work of the project in the amount of R 95 217,60 excluding VAT

CLAYTON HENDRICKS
SENIOR MANAGER: WASTE MANAGEMENT
INFRASTRUCTURE SERVICES

Date: _____



SHANE CHANDAKA
DIRECTOR: INFRASTRUCTURE SERVICES

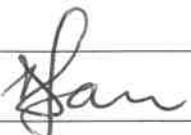
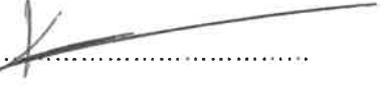
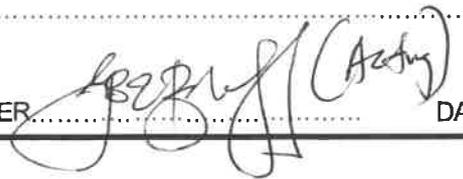
Date: 28/06/2024

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9. SUPPLY CHAIN MANAGEMENT COMMENTS:

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10. APPROVAL:

REQUEST SUPPORTED / NOT SUPPORTED BY THE STELLENBOSCH MUNICIPAL BID ADJUDICATION COMMITTEE		
Name	Signature	Date
D. Joubert		21/7/2024
S Chandaka	Online	21/7/2024
A de Beer	Online	21/7/2024
S Carstens	Online	21/7/2024.
Comments: <i>The deviation is supported by the BAC</i>		
CHAIRPERSON 		DATE <i>02/07/2024</i>
RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE ACCOUNTING OFFICER		
Comments: <i>Approved.</i>		
ACCOUNTING OFFICER 		DATE <i>2/7/24</i>

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ANNEXURE 1

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T +27 21 860 2200 526 9460 F +27 21 860 2222 E paarl@zutari.com
A 264 Main Street
Paarl
South Africa

zutari.com

23 April 2024

e-mail: Levi.Jones@zutari.com

Our Ref No: 1001682c032/CVDW/IJ

Chris.VanderWalt@zutari.com

By E-Mail

Burger and Wallace Construction (PTY) LTD
PO Box 133
Blackheath
7581
Attention: Johan Veldsman

Dear Sir

CONTRACT NUMBER: B/SM 12/23: CONSTRUCTION OF NEW CELLS AND ASSOCIATED INFRASTRUCTURE AT STELLENBOSCH LANDFILL

EXTENSION OF TIME CLAIM NO. 8 AND 9 – RULING

We refer to:

Your Claim No 8, dated 26 March 2024 (ref LT17 EOT Claim) for costs and extension of time due to abnormal climate conditions- February 2024

Your site memos (Numbers 41,42 & 42.1) abnormal climate conditions- February 2024

Your Claim No 9, dated 27 March 2024 (ref LT18 EOT Claim) for costs and extension of time due to abnormal climate conditions- March 2024

Your site memos (Numbers 43-47) abnormal climate conditions- March 2024

Copies of these letter will be made available if required.

Our evaluation of the claims follows:

1. Contract Background

Contact Amount	:	
(Incl. VAT and Adjustments)	:	R 91,230,000.00
Commencement Date	:	17 April 2023
Original Time for Completion	:	304 Calendar days (Phase 1: 245 days; Phase 2:59 days)
Revised Time for Completion	:	436.5 Calendar days (Claims 1-7) (Phase 1: 363.5 days; Phase 2:73 days)
Current Practical Completion Date (DCD)	:	26 June 2024 (Claims 1-7)

Zutari (Pty) Ltd, Reg No 1977/003711/07 | Board of Directors (05/2023): *NN Geragwea (Chairperson), T Daka, *AC Discalea *PJ Hendricks, Motsei, S Naidoo, J Ndaia, *GT Rohde (*Non-Executive Director)

ISO 9001 Certified | Member of CESA and ASAQs | Silver Founding Member of the Green Building Council of South Africa

*NOL



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2. Claims Information and History

Claim No 8 – Abnormal climatic conditions February 2024:

Rain and inclement weather was encountered on site during the month of February which resulted in a delay of works of the critical path. Thirty-six (36) hours was recorded as lost due to Rain/inclement weather as per the Site memos submitted. This equates to four (4) days lost due to rain delays. The Contract data allows for 2 calendar days for the month of February 2024 to be included in the Contractors programme. Two (2) calendar days are claimed as a result.

Claim No 9 – Abnormal climatic conditions March 2024:

Rain and inclement weather conditions were experienced on site during the month of March, leading to a delay in the critical path works. A total of thirty-nine (39) hours was recorded as lost due to rain and inclement weather, as documented in the site memos submitted. As per the contract data, the Contractors programme allows for 2 calendar days (equivalent to 18 hours) for the month of March 2024. This translates to a loss of 21 hours (or 4.3 days) due to rain delays. Consequently, the Contractor is claiming two (2.3) calendar days as a result of these delays.

3. Contractors Contention

Claim No 8 - Abnormal climatic conditions February 2024:

The Contractor contends that due to Rain/inclement weather experienced on site, critical path items according to their program was affected and delayed. The delay could not be mitigated.

The Contractor is claiming in terms of Clauses 1.1.2.1; 5.12.3; 5.12.2.2; 10.1; 10.1.1; 10.1.1.1; 10.1.1.2.2; 10.1.1.2.1; 10.1.1.1.1; 10.1.1.1.2; 10.1.1.1.3 and 10.1.1.1.4 of the General Conditions of Contract for Construction Works (3rd Edition 2015)

Time: The Contractor claims 2 Calendar days.

Rain/inclement weather was encountered on site during the month of February which resulted in a delay of works of the critical path. Thirty-six (36) hours was recorded as lost due to Rain/inclement weather as per the Site memos submitted. This equates to four (4) days lost due to rain delays. The Contract data allows for 2 calendar days for the month of February 2024 to be included in the Contractors programme. Two (2) calendar days are claimed as a result.

The Employers Agent award 2 Calendar days.

Claim No 9 – Abnormal climatic conditions March 2024:

The Contractor contends that due to Rain/inclement weather experienced on site, critical path items according to their program was affected and delayed. The delay could not be mitigated.

The Contractor is claiming in terms of Clauses 1.1.2.1; 5.12.3; 5.12.2.2; 10.1; 10.1.1; 10.1.1.1; 10.1.1.2.2; 10.1.1.2.1; 10.1.1.1.1; 10.1.1.1.2; 10.1.1.1.3 and 10.1.1.1.4 of the General Conditions of Contract for Construction Works (3rd Edition 2015)

Time: The Contractor claims 2.3 Calendar days.

Rain and inclement weather conditions were experienced on site during the month of March, leading to a delay in the critical path works. A total of thirty-nine (39) hours was recorded as lost due to rain and inclement weather, as documented in the site memos submitted. As per the contract data, the Contractors programme allows for 2 calendar days

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ZUTARI

(equivalent to 18 hours) for the month of March 2024. This translates to a loss of 21 hours (or 4.3 days) due to rain delays. Consequently, the Contractor is claiming two (2.3) calendar days as a result of these delays.

The Employers Agent award 2.3 Calendar days.

4. Employers Agent Ruling

As indicated in Table 1, the adjusted and awarded extension of time are indicated by the numbering in Table 1. And, as listed below:

- Claim 8 - 2 Calendar days.
- Claim 9 - 2.3 Calendar days.

- Total Claim duration - 4.3 Calendar days.

Table 1 – Revised completion date in relation to EOT claims

Claim no	Programme days affected	Due completion days affected	Original Phase 1 completion date	Revised Phase 1 completion date	Original Due Completion dated	Revised Due Completion dated	Description of Claim
1	55	30	15-Dec-23	08-Feb-24	15-May-24	14-Jun-24	Revised programme (LT04)
2	4	4	15-Dec-23	12-Feb-24	15-May-24	18-Jun-24	Rain Delay (LT05)
3	3	3	15-Dec-23	15-Feb-24	15-May-24	21-Jun-24	Taxi Strike (LT06)
4	4	4	15-Dec-23	19-Feb-24	15-May-24	25-Jun-24	Rain Delay (LT08)
5	0.5	0.5	15-Dec-23	19-Feb-24	15-May-24	25-Jun-24	Rain Delay (LT12)
6	1	1	15-Dec-23	20-Feb-24	15-May-24	26-Jun-24	Rain Delay (LT15)
*7	54	0	15-Dec-23	15-Apr-24	15-May-24	26-Jun-24	Water log cell 4a (LT16)
8	2	2	15-Dec-23	17-Apr-24	15-May-24	28-Jun-24	Weather Feb (LT17)
*9	2.3	2.3	15-Dec-23	19-Apr-24	15-May-24	01-Jul-24	Weather Mar (LT18)

* Adjusted completion date so that the completion date did not fall on a non-working day.

5. Costs

Time-Related costs:

Contractor's Time related P&G costs as per Contract	R	4,000,000.00
Lining Contractor Time related P&G costs as per Contract	R	797,045.00
Phase 1 Contract period		245 Calendar days
Costs per day (Burger and Wallace)	R	16,326.53
Costs per day (Lining Contractor)	R	11,896.19
Burger and Wallace 4.3 day x R16,326.53	R	70,204.08
Lining Contractor 4.3 day x R11,896.19 (R797,045.00/67day)	R	51,153.62

6. Claim Adjudication

6.1 Notification of the claim:

The Contractor notified and submitted their claim to the Employer's Agent as required in terms of Clause 10 of the General Conditions of Contract.

6.2 Evaluation of the claim:



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The claims that were submitted by the contractor and evaluated by the Employer Agent has been done in accordance with Clause 10 of the General Conditions of Contract. The information provided in the claims are correct.

Revised Time for Completion : 440.8 Calendar days
(Claims 1-9) (Phase 1: 368.8 days; Phase 2:72 days)

Revised Practical Completion Date (DCD) : 1 July 2024
(Claims 1-9)

7. Conclusion

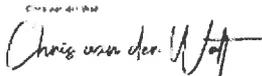
As per the above, the Employer's Agent's recommended ruling on Claim No 8 and 9, made in terms of Clause 10.1.5 of SAICE General Conditions of Contract for Construction Works, 3rd Edition, 2015 (GCC 2015) (as amended) is as follows for Employer's confirmation:

In terms of Clauses 10.1.5. and Clause 3.2.3 (as amended), the Contractor's claim for extension of time is approved with changes to time and compensation claimed, as follows: approved extension of time of 4.3 days and time-related costs of R 121,357.70 (Excl. Vat). The amended phase 1 completion is 19 April 2024, and the amended Due Completion Date (DCD) is 1 July 2024. The Time-Related costs will become payable at the time when the time extension occurs.

In terms of the amended Clauses 3.2.2 and 3.2.3 the Employer's specific approval is required for finalisation of this ruling.

Please contact us should you require any additional information.

Yours faithfully



Chris van der Walt
Associate
Zutari

Enc:

Copies: Employer Attention: Clayton Hendricks (e-mail: Clayton.Hendricks@stellenbosch.gov.za)
EA's Representative Attention: Levi Jones (e-mail: Levi.Jones@zutari.com)

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BURGER & WALLACE CONSTRUCTION

PROPRIETARY LIMITED (REG NO. 1988/000247/07)

37 RANGE ROAD, BLACKHEATH, 7581.
P O BOX 133, BLACKHEATH, 7581
TEL: 021-9053660 E-MAIL: bw@burgerandwallace.co.za

22 June 2024
Zutari(PTY) LTD
A 264 Main Street
Paarl

LT23: EOT Claim

Mr Chris Van Der Walt

RE: Contract No: B/SM 12/23 CONSTRUCTION OF NEW CELL AND ASSOCIATED INFRASTRUCTURE AT STELLENBOSCH LANDFILL-Extension of Time for Gazetted Public Holiday; Voting Day on 29 May 2024

In terms of Clause 10.1 of the General Conditions of Contract for Construction Works, Third Edition, 2015, hereafter referred to as GCC 2015, we hereby present our Claim for an Extension of Time.

In terms of Clause 10.1.1.1.1 of GCC 2015:

- As per the Government Gazette the 29th of May 2024 was declared a public holiday to enable the public to cast their Vote.
- Notification of our intention to make a claim was given in our letter LT19 dated 10 April 2024.

In terms of Clause 10.1.1.1.2 of GCC 2015:

- Our claim is based on Clause 5.12.1; Clause 5.12.2.4 and Clause 6.8.4 of the GCC 2015.
- CL 5.12.1: *"If the contractor considers himself entitled to an extension of time for circumstances... that will, in fact, delay Practical Completion of the Works, the Contractor shall claim in accordance with Clause 10.1 such extension of time as is appropriate."*
- CL 5.12.2.4: *"Any disruption which is entirely beyond the Contractor's control"*
- CL 6.8.4: *"subsequent changes on legislation" that causes additional costs to the Contractor in respect of carrying out the Contract, such additional costs shall be added to the Contract Price*

DIRECTORS:

Non-Executive: T J Wallace Pr.Eng. B.Sc.(Eng) M.B.A. MSAICE
Executive: C A Budge Pr.CM (SACPCMP) ND (Civil Eng); J R Keating ND (Civil Eng)
P N Summers Pr.Eng. B.Sc.(Eng)
Alternative: C Roberson NH Dip (Survey)

CIVIL ENGINEERING CONTRACTORS

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BURGER & WALLACE CONSTRUCTION
PROPRIETARY LIMITED (REG NO. 1988/000247/07)

37 RANGE ROAD, BLACKHEATH, 7581.
P O BOX 133, BLACKHEATH, 7581
TEL: 021-9053660 E-MAIL: bw@burgerandwallace.co.za

In terms of Clause 10.1.1.1.3 of GCC 2015:

- The length of the extension of time is 1 working day.

In terms of Clause 10.1.1.1.4 of GCC 2015:

- As per Clause 6.8.4, the additional costs for carrying out the Contract is as follow:

○ Item 1.1.2.1 Time Related P&G Items	
○ TOTAL: Reduced: R400 000/month/30days =	R13 333.33
○ Staff & Labour Wages (Break down attached to claim)	R12 471.00
○ Plant Standing time (80% of cost) (Breakdown attached to claim)	<u>R17200.00</u>
	<u>TOTAL R43 004.33</u>

We therefore claim an extension of time of 1 days and the amount claimed is R43 004.33 ex VAT.

We await to be advised accordingly.

Kind Regards

A handwritten signature in black ink, appearing to read 'Johan Veldsman', written over a faint circular stamp.

Johan Veldsman

DIRECTORS:

Non-Executive: T J Wallace Pr.Eng. B.Sc.(Eng) M.B.A. MSAICE
Executive: C A Budge Pr. CM (SACPCMP) ND (Civil Eng); J R Keating ND (Civil Eng)
P N Summers Pr.Eng. B.Sc.(Eng)
Alternative: C Robertson NH Dip (Survey)

CIVIL ENGINEERING CONTRACTORS

NB! All deviations i.r.o the amount will be tabled at the BAC

2023/2024