

**Transnet Pipelines**

**Tender Number: TPL/2023/11/0003/49989/RFP**

**Description of the Service: FOR THE INSPECTION, MAINTENANCE, REPAIR AND COMMISSIONING OF THE GAS FIRED HEATER FOR THE INTERMIXTURE REFRACTIONATOR PLANT (IRP) AT THE TRANSNET PIPELINES (TPL) TARLTON DEPOT**

# C1.1 Form of Offer & Acceptance

## Offer

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

**FOR THE INSPECTION, MAINTENANCE, REPAIR AND COMMISSIONING OF THE GAS FIRED HEATER FOR THE INTERMIXTURE REFRACTIONATOR PLANT (IRP) AT THE TRANSNET PIPELINES (TPL) TARLTON DEPOT**

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, deemed to be duly authorised, 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 exclusive of VAT is	<b>RATE BASED CONTRACT</b>
Value Added Tax @ 15% is	<b>RATE BASED CONTRACT</b>
The offered total of the Prices inclusive of VAT is	<b>RATE BASED CONTRACT</b>
(in words) <b>RATE BASED CONTRACT</b>	

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 & signature of witness

Date

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**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: Service 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 listed in the Returnable 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 Form of Offer and Acceptance. 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 securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. 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 of award.

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**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

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**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.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the *Employer* and the tenderer agree to and accept this 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 Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

**For the tenderer:**

**For the *Employer***

Signature	.....	.....
Name	.....	.....
Capacity	.....	.....
On behalf of	(Insert name and address of organisation)	(Insert name and address of organisation)
Name & signature of witness	.....	.....
Date	.....	.....

## C1.2 Contract Data

### Part one - Data provided by the *Employer*

Clause	Statement	Data
<b>1</b>	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		<b>A: Priced contract with price list</b>
	dispute resolution Option and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X2 Changes in the law</b>
		<b>X17: Low service damages</b>
		<b>X18: Limitation of liability</b>
		<b>Z: Additional conditions of contract</b>
		<b>Z1: Intellectual property</b>
		<b>Z2: Assignment and Waiver</b>
		<b>Z4: Protection of Personal Information Act</b>
		<b>Z5: Additional Clause Relating to Collusion</b>
		<b>Z6: Obligations in respect of Joint Venture Agreements</b>
	of the NEC3 Term Service Contract (June 2005) (and amended June 2006 and April 2013)	

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10.1	The <i>Employer</i> is:	<b>Transnet SOC Ltd</b>
	Address	Registered address: <b>Transnet Corporate Centre 138 Eloff Street Braamfontein Johannesburg 2000</b>
	Having elected its Contractual Address for the purposes of this contract as:	<b>Transnet Pipelines (TPL) 202 Anton Lembede Street Durban 4001</b>
10.1	The <i>Service Manager</i> is (name):	<b>TBA</b>
	Address	<b>TBA</b>
	Tel	<b>TBA</b>
	e-mail	<b>TBA</b>
11.2(2)	The Affected Property is	<b>Refer to Part C4 - Site information</b>
11.2(13)	The <i>service</i> is	<b>FOR THE INSPECTION, MAINTENANCE, REPAIR AND COMMISSIONING OF THE GAS FIRED HEATER FOR THE INTERMIXTURE REFRACTIONATOR PLANT (IRP) AT THE TRANSNET PIPELINES (TPL) TARLTON DEPOT</b>
11.2(14)	The following matters will be included in the Risk Register	<b>All those matters recorded in accordance with clause 16 of the Contract</b>
11.2(15)	The Service Information is in	<b>Refer to Part C3 - Scope of Services</b>
12.2	The <i>law of the contract</i> is the law of	<b>The Republic of South Africa subject to the jurisdiction of the Courts of South Africa.</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>1 week</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	(If the optional statement for this section is not used, no data will be required for this section)
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>1 weeks of the Contract Date</b>

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**3 Time**

30.1 The *starting date* is. **15 January 2024**

30.1 The *service period* is **7 weeks**

**4 Testing and defects** **No additional data is required for this section of the conditions of contract.**

**5 Payment**

50.1 The *assessment interval* is **18th (Eighteenth) day of each successive month.**

51.1 The *currency of this contract* is the **South African Rand.**

51.2 The period within which payments are made is **Payment will be effected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.**

51.4 The *interest rate* is **The prime lending rate of the Rand Merchant Bank**

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## 6 Compensation events

60.1(13) The *weather measurements* to be recorded for each calendar month are, **The cumulative rainfall (mm)**

**The number of days with rainfall more than 10 mm**

**The number of days with minimum air temperature less than 0 degrees Celsius**

**the number of days with snow lying at 08:00 hours South African Time**

**And these measurements: 10mm**

The place where weather is to be recorded (on the Site ) is:

**Site as defined in Clause 11.2(15) above**

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at:

**The closest weather station to the site under execution**

and which are available from:

**South African Weather Service 012 367 6023 or [info3@weathersa.co.za](mailto:info3@weathersa.co.za).**

<b>7</b>	<b>Use of Equipment Plant and Materials</b>	<b>No additional data is required for this section of the <i>conditions of contract</i>.</b>
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<b>8</b>	<b>Risks and insurance</b>
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80.1	These are additional <i>Employers</i> risks	<b>None</b>
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83.1	The minimum limit of indemnity for insurance in respect of loss and damage to property (except goods, plant and materials and equipment) and liability for bodily injury or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is:	<b>Whatever <i>Contractor</i> deems necessary as the <i>Employer</i> is not carrying this indemnity.</b>
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83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act.</b>
83.1	Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R 5 000 000	
83.1	For any one event, the <i>Contractor</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employers</i> property is limited to:	<b>The Total of the Prices.</b>
83.1	The <i>Contractor</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to:	<b>The Total of the Prices.</b>
<b>9</b>	<b>Termination</b>	<b>There is no Contract Data required for this section of the <i>conditions of contract</i>.</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	<b>4 weeks.</b>

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**11 Data for Option W1**

W1.1 The *Adjudicator* is (Name) **Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the *Adjudicator*, the chairman of the Association of Arbitrators will appoint an *Adjudicator*.**

W1.2(3) The *Adjudicator nominating body* is:  
 If no *Adjudicator nominating body* is entered, it is **The Association of Arbitrators (Southern Africa)**

W1.4(2) The *tribunal* is: **Arbitration**

W1.4(5) The *arbitration procedure* is **The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)**

The place where arbitration is to be held is **Durban, South Africa**

The person or organisation who will choose an arbitrator  
 - if the Parties cannot agree a choice or  
 - if the arbitration procedure does not state who selects an arbitrator, is **The Chairperson of the Association of Arbitrators (Southern Africa)**

**12 Data for secondary Option clauses**

**X2 Changes in the law No additional data is required for this Option**

**X17 Low service damages**

X17.1 The amount of the low service damages on completion of works. **R 10 000 per day**

**X18 Limitation of liability**

X18.1 The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to **Nil.**

X18.2 For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to **The deductible of the relevant insurance policy**

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X18.3 The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to **Nil.**

X18.4 The *Contractor's* total liability to the *Employer*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to **Total of the Prices.**

X18.5 The *end of liability date* is **3 years after the end of the *service period*.**

<b>Z Additional conditions of contract</b>		
Z1	<b>Intellectual property</b>	
Z1.1		Intellectual property rights (including patents, copyright, trademarks etc.) rest with the party owning them
Z1.2		The <i>Employer</i> indemnifies the <i>Contractor</i> against any claim or action (including costs) caused by or arising from the failure as the <i>Employer</i> to obtain such consent and the <i>Contractor</i> indemnifies the <i>Employer</i> against any claim or action (including costs) caused by or arising from the failure of the <i>Contractor</i> to obtain such consent.
Z2	<b>Assignment and Waiver</b>	
Z2.1		No rights, duties or liabilities under this contract may be ceded, assigned, transferred, conveyed or otherwise disposed of by either Party ( <i>Employer</i> or <i>Contractor</i> ) without the prior written consent of the other Party ( <i>Employer</i> or <i>Contractor</i> ), which consent shall not be unreasonably withheld.
Z2.2		No grant by the <i>Contractor</i> or the <i>Employer</i> to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than 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 provisions of the Contract.

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Z4	<b>Protection Of Personal Information Act:</b>	
Z4.1		The <i>Employer</i> and the <i>Contractor</i> are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act
Z5	<b>Additional Clause Relating To Collusion</b>	
Z5.1		The Contract award is made without prejudice to any rights Transnet may have to take appropriate action later with regard to any declared bid rigging including blacklisting

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Z6	<b>Additional clauses relating to Joint Venture</b>	
Z6.1		<p>27.5 In the instance that the <i>Contractor</i> is a joint venture, the <i>Contractor</i> shall provide the <i>Employer</i> with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract Date.</p> <p>The Joint Venture agreement shall contain but not be limited to the following:</p> <ul style="list-style-type: none"> <li>• A brief description of the Contract and the Deliverables;</li> <li>• The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;</li> <li>• The constituent's interests;</li> <li>• A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;</li> <li>• Details of an internal dispute resolution procedure;</li> <li>• Written confirmation by all of the constituents:             <ol style="list-style-type: none"> <li>i. of their joint and several liabilities to the Employer to Provide the Works;</li> <li>ii. identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the Contractor's representative;</li> <li>iii. Identification of the roles and responsibilities of the constituents to provide the Works.</li> </ol> </li> <li>• Financial requirements for the Joint Venture:             <ol style="list-style-type: none"> <li>iv. the working capital requirements for the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time;</li> </ol> <p>The names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.</p> </li> </ul>



# C1.2 Contract Data

## Part two - Data provided by the Contractor

The tendering Contractor is advised to read both the NEC3 Term Service Contract (June 2005) and the relevant parts of its Guidance Notes (TSC3-GN) in order to understand the implications of this Data which the tenderer is required to complete.

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

Clause	Statement	Data
10.1	The Contractor is (Name): Address Tel No. Fax No.	
11.2(8)	The direct fee percentage is The subcontracted fee percentage is	.....% .....%
11.2(14)	The following matters will be included in the Risk Register	.....
11.2(15)	The Service Information for the Contractor's plan is in:	.....
21.1	The plan identified in the Contract Data is contained in:	.....
24.1	The key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	..... ..... ..... ..... ..... ..... ..... ..... ..... ..... ..... .....

