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**Transnet National Ports Authority**

an Operating Division of **TRANSNET SOC LTD**

[Registration Number 1990/000900/30]

**REQUEST FOR PROPOSAL (RFP)**

**FOR THE APPOINTMENT OF SERVICE PROVIDER TO OBTAIN DEVELOPMENTAL RIGHTS FROM LOCAL AUTHORITY AND UNDERTAKE ENVIRONMENTAL AUTHORIZATION PROCESS FOR THE ESTABLISHMENT OF STAFF QUARTERS ON A PORTION OF ERF 356, COEGA, PORT OF NGQURA FOR A DURATION OF 18 MONTHS**

<b>RFP NUMBER</b>	<b>: TNPA/2023/05/0008/28476/RFP</b>
<b>ISSUE DATE</b>	<b>: 22 June 2023</b>
<b>COMPULSORY BRIEFING</b>	<b>: 04 July 2023</b>
<b>CLOSING DATE</b>	<b>: 21 July 2023</b>
<b>CLOSING TIME</b>	<b>: 16h00</b>
<b>TENDER VALIDITY PERIOD</b>	<b>: 12 weeks from closing date</b>

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## T1.1 TENDER NOTICE AND INVITATION TO TENDER

### SECTION 1: NOTICE TO TENDERERS

#### 1. INVITATION TO TENDER

Responses to this Tender [hereinafter referred to as a **Tender**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as a Tenderer].

<b>DESCRIPTION</b>	<b>The Appointment of Service Provider to Obtain Developmental Rights from Local Authority and Undertake Environmental Authorization Process for the Establishment of Staff Quarters on a Portion of Erf 356, Coega, Port of Ngqura for a Duration of 18 Months</b>
<b>TENDER DOWNLOADING</b>	This Tender may be downloaded directly from the National Treasury eTender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> and the Transnet website at <a href="https://transnetetenders.azurewebsites.net">https://transnetetenders.azurewebsites.net</a> (please use <b>Google Chrome to access Transnet link</b> ). <b>FREE OF CHARGE.</b>

<b>COMPULSORY TENDER CLARIFICATION MEETING</b>	<p>A Compulsory Tender Clarification Meeting will be conducted at <a href="#">eMendi Building, off Neptune Road, Port of Ngqura, Gqeberha</a> on the <b>04 July 2023, at 10:00am [10 O'clock]</b> for a period of <math>\pm 4</math> (four) hours. [Tenderers to provide own transportation and accommodation].</p> <p>The Compulsory Tender Clarification Meeting will start punctually and information will not be repeated for the benefit of Tenderers arriving late.</p> <p><b>Non-compulsory Site visit/walk will take place same day, tenderers are to note:</b></p> <ul style="list-style-type: none"><li>• Tenderers are required to wear safety shoes, goggles, long sleeve shirts, high visibility vests and hard hats.</li><li>• Tenderers without the recommended PPE will not be allowed on the site walk.</li><li>• Tenderers and their employees, visitors, clients and customers entering Transnet Offices, Depots, Workshops and Stores will have to undergo breathalyser testing.</li><li>• All forms of firearms are prohibited on Transnet properties and premises.</li><li>• The relevant persons attending the meeting must ensure that their identity documents, passports or drivers licences are on them for inspection at the access control gates.</li></ul>
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	<p>Certificate of Attendance in the form set out in the <b>Returnable Schedule T2.2-01</b> hereto must be completed and submitted with your Tender as proof of attendance is required for a <b>compulsory</b> site meeting and/or tender briefing.</p> <p><b>Tenderers are required to bring this Returnable Schedule T2.2-01 to the Compulsory Tender Clarification Meeting to be signed by the Employer's Representative.</b></p> <p><b>Tenderers failing to attend the compulsory tender briefing will be disqualified.</b></p>
<b>CLOSING DATE</b>	<p><b>16h00 on (21 July 2023)</b></p> <p>Tenderers must ensure that tenders are uploaded timeously onto the system. <b>If a tender is late, it will not be accepted for consideration.</b></p>

## 2. TENDER SUBMISSION

Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.

a) The Transnet e-Tender Submission Portal can be accessed as follows:

Log on to the Transnet eTenders management platform website (<https://transnetetenders.azurewebsites.net>);

- Click on "ADVERTISED TENDERS" to view advertised tenders;
- Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
- Click on "SIGN IN/REGISTER" - to sign in if already registered;
- Toggle (click to switch) the "Log an Intent" button to submit a bid;
- Submit bid documents by uploading them into the system against each tender selected.
- **Tenderers are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Tenderer can upload 30mb per upload and multiple uploads are permitted.**

b) The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any



confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.

- c) Submissions must not contain documents relating to any Tender other than that shown on the submission.

### **3. CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidentiality. In this regard Tenderers are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Works, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

### **4. DISCLAIMERS**

Tenderers are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this Tender and/or its receipt of a tender offer. In particular, please note that Transnet reserves the right to:

- 4.1. Award the business to the highest scoring Tenderer/s unless objective criteria justify the award to another tenderer.
- 4.2. Not necessarily accept the lowest priced tender or an alternative Tender;
- 4.3. Go to the open market if the quoted rates (for award of work) are deemed unreasonable;
- 4.4. Should the Tenderers be awarded business on strength of information furnished by the Tenderer, which after conclusion of the contract is proved to have been incorrect, Transnet reserves the right to terminate the contract;
- 4.5. Request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 4.6. Not accept any changes or purported changes by the Tenderer to the tender rates after the closing date;
- 4.7. Verify any information supplied by a Tenderer by submitting a tender, the Tenderer/s hereby irrevocably grant the necessary consent to the Transnet to do so;



- 4.8. Conduct the evaluation process in parallel. The evaluation of Tenderers at any given stage must therefore not be interpreted to mean that Tenderers have necessarily passed any previous stage(s);
- 4.9. Unless otherwise expressly stated, each tender lodged in response to the invitation to tender shall be deemed to be an offer by the Tenderer. The Employer has the right in its sole and unfettered discretion not to accept any offer.
- 4.10. Not be held liable if tenderers do not provide the correct contact details during the clarification session and do not receive the latest information regarding this RFP with the possible consequence of being disadvantaged or disqualified as a result thereof.
- 4.11. Transnet reserves the right to exclude any Tenderers from the tender process who has been convicted of a serious breach of law during the preceding 5 [five] years including but not limited to breaches of the Competition Act 89 of 1998, as amended. Tenderers are required to indicate in tender returnable [clause 12 on T2.2-14], **[Breach of Law]** whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.
- 4.12. Transnet reserves the right to perform a risk analysis on the preferred tenderer to ascertain if any of the following might present an unacceptable commercial risk to the employer:
  - unduly high or unduly low tendered rates or amounts in the tender offer;
  - contract data of contract provided by the tenderer; or
  - the contents of the tender returnables which are to be included in the contract.

5. Transnet will not reimburse any Tenderer for any preparatory costs or other work performed in connection with this Tender, whether or not the Tenderer is awarded a contract.

## 6. NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Tenderer are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. The CSD can be accessed at <https://secure.csd.gov.za/>. Tenderer are required to provide the following to Transnet in order to enable it to verify information on the CSD:

Supplier Number..... and Unique registration reference number..... (**Tender Data**)



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**Transnet urges its clients, suppliers and the general public**  
**to report any fraud or corruption to**  
**TIP-OFFS ANONYMOUS: 0800 003 056 OR [Transnet@tip-offs.com](mailto:Transnet@tip-offs.com)**

## T1.2 TENDER DATA

The conditions of tender are the Standard Conditions of Tender as contained in Annex C of the CIDB Standard for Uniformity in Engineering and Construction Works Contracts. The Standard for Uniformity in Construction Procurement was first published in Board Notice 62 of 2004 in Government Gazette No 26427 of 9 June 2004. It was subsequently amended in Board Notice 67 of 2005 in Government Gazette No 28127 of 14 October 2005, Board Notice 93 of 2006 in Government Gazette No 29138 of 18 August 2006, Board Notice No 9 of 2008 in Government Gazette No 31823 of 30 January 2009, Board Notice 86 of 2010 in Government Gazette No 33239 of 28 May 2010, Board Notice 136 of 2015 in Government Gazette 38960 of 10 July 2015 and Board Notice 423 of 2019 in Government Gazette No 42622 of 8 August 2019.

This edition incorporates the amendments made in Board Notice 423 of 2019 in Government Gazette 42622 of 8 August 2019. (See [www.cidb.org.za](http://www.cidb.org.za)).

The Standard Conditions of Tender make several references to Tender data for detail that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.

Each item of data given below is cross-referenced in the left-hand column to the clause in the Standard Conditions of Tender to which it mainly applies.

Clause	Data
<b>C.1.1</b> The Employer is	<b>Transnet SOC Ltd (Reg No. 1990/000900/30)</b>
C.1.2 The tender documents issued by the Employer comprise:	
<b>Part T: The Tender</b>	
Part T1: Tendering procedures	T1.1 Tender notice and invitation to tender T1.2 Tender data
Part T2 : Returnable documents	T2.1 List of returnable documents T2.2 Returnable schedules
<b>Part C: The contract</b>	
Part C1: Agreements and contract data	C1.1 Form of offer and acceptance C1.2 Contract data (Part 1 & 2) C1.3 Form of Securities
Part C2: Pricing data	C2.1 Pricing Instructions C2.2 Activity Schedule
Part C3: Scope of work	C3.1 Scope



Part C4: Site information		C4.1 Site information
C.1.4	The Employer's agent is:	Commodity Specialist
	Name:	Phumza Mhlontlo
	Address:	eMendi Administration Building N2, Neptune Road Off Klub Road Port of Ngqura 6001
	E – mail	Phumza.Mhlontlo@transnet.net
C.2.1	Only those tenderers who satisfy the following eligibility criteria are eligible to submit e-tenders:	
	<b>1. Stage One - Eligibility with regards to attendance at the compulsory clarification meeting:</b> An authorised representative of the tendering entity or a representative of a tendering entity that intends to form a Joint Venture (JV) must attend the compulsory clarification meeting in terms C2.7	
	<b>Any tenderer that fails to meet the stipulated Eligibility criteria will be regarded as an unacceptable tender</b>	
	<b>2. Stage Two - Tenderer's pre-qualification: Compliance to Technical Specifications</b> <ul style="list-style-type: none"> <li>○ Proof of Registration with South African Council for Planners (SACPLAN) for the Town Planner</li> <li>○ Proof of Registration with Environmental Assessment Practitioners Association of South Africa (EAPASA) for the Environmental Assessment Practitioner (EAP)/Senior EAP</li> <li>○ Proof of registration with South African Council for Natural Scientific Profession (SACNASP) for Environmental Specialists</li> <li>○ Proof of Professional Registration with Association of Professional Heritage Practitioners (APHP or SACNASP) for Heritage Specialist</li> </ul>	
	<b>3. Stage Three - Functionality:</b> Only those tenderers who obtain the minimum qualifying score for functionality will be evaluated further in terms of price and the applicable preference point system. The minimum qualifying for score for functionality is <b>60</b> points. The evaluation criteria for measuring functionality and the points for each criteria and, if any, each sub-criterion are as stated in C.3.11 below.	

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**Any tenderer that fails to meet the stipulated pre-qualifying criteria will be regarded as an unacceptable tender.**

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C.2.7 The arrangements for a compulsory clarification meeting are as stated in the Tender Notice and Invitation to Tender. **Tenderers must complete and sign the attendance register.** Addenda will be issued to, and tenders will only be received from those tendering entities including those entities that intends forming a joint venture appearing on the attendance register.

Tenderers are also **required to bring their RFP document to the briefing session and have their returnable document T2.2-01 certificate of attendance** signed off by the Employer's authorised representative.

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C.2.12 No alternative tender offers will be considered.

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**C.2.13.3** Each tender offer shall be in the **English Language**.

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C.2.13.5 The Employer's details and identification details that are to be shown on each tender offer are as follows:

Identification details:	The tender documents must be uploaded with: <ul style="list-style-type: none"><li>▪ Name of Tenderer: (insert company name)</li><li>▪ Contact person and details: (insert details)</li><li>▪ The Tender Number:</li><li>▪ The Tender Description</li></ul>
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Documents must be marked for the attention of:  
**Employer's Agent:**

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C.2.13.9 Telephonic, telegraphic, facsimile or e-mailed tender offers will not be accepted.

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**C.2.15** The closing time for submission of tender offers is:

Time: **16h00** on the **13 July 2023**

Location: The Transnet e-Tender Submission Portal:  
(<https://transnetetenders.azurewebsites.net>)

**NO LATE TENDERS WILL BE ACCEPTED**

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C.2.16 The tender offer validity period is **12 weeks** after the closing date. Tenderers are to note that they may be requested to extend the validity period of their tender, on the same terms and conditions, if Transnet's internal evaluation and governance approval processes has not been finalised within the validity period.

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C.2.23 The tenderer is required to submit with his tender:

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1. A valid Tax Clearance Certificate issued by the South African Revenue Services.  
**Tenderers also to provide Transnet with a TCS PIN to verify Tenderers compliance status.**

2. A **valid B-BBEE Certificate** from a Verification Agency accredited by the South African Accreditation System [**SANAS**], or a **sworn affidavit** confirming annual turnover and level of black ownership, in line with the code of good practice, more together with the tender;

3. Proof of registration on the Central Supplier Database;

**Note:** Refer to Section T2.1 for List of Returnable Documents

C3.11 The minimum number of evaluation points for functionality is **60**

The procedure for the evaluation of responsive tenders is Functionality, Price and Preference:

**Only those tenderers who attain the minimum number of evaluation points for Functionality will be eligible for further evaluation, failure to meet the minimum threshold will result in the tender being disqualified and removed from any further consideration.**

#### **Functionality Criteria**

The functionality criteria and maximum score in respect of each of the criteria are as follows:

**(Please see CIDB Compiler guidance note T1.2 – Tender Data).**

Functionality criteria	Sub-criteria	Sub-criteria points	Maximum number of points
<b>T2.2-03 CVs and Qualifications of Key persons:</b>	<b>Environmental Assessment Practitioner (EAP)</b> - The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience, and qualifications	10	<b>30</b>
	<b>Professional Town Planner (Project Lead)</b> - The tender must be able to demonstrate that the	10	



	project personnel have sufficient knowledge, experience, and qualifications	5	
	<b>Structural Heritage Specialist</b> - The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience, and qualifications		
	<b>Environmental Monitoring Specialist (Dust, Noise and vibration)</b> -The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience, and qualifications		
<b>T2.2-04 Company Previous Experience</b>	<b>Environmental Assessment Practitioner (EAP)</b> - The tenderer shall supply a list/table and description of major infrastructure projects, capital value and undertakings that the Key Person identified in T2.2-02 was involved in, and a sufficiently detailed reference list, contact details of existing and previous customers, clients and/or peers who can verify their previous experience.	15	



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	<b>Town Planner</b> - The tenderer shall supply a list/table and description of major infrastructure	15	<b>30</b>
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		projects, capital value and undertakings that the Key Person identified in T2.2-02 was involved in, and a sufficiently detailed reference list, contact details of existing and previous customers, clients and/or peers who can verify their previous experience.		
<b>T2.2-05</b>	<b>Method Statement</b>	<b>Town Planner</b> – The Method statement shall include the following as a minimum of the critical elements in terms of Scope of Work but not limited to the following: 1.How the Tenderer plans to collate initial data from the Client/Employer. 2.Technical approach to the project. 3.How is the Tenderer planning to resource the project. 4.Tenderer good understanding of the Scope of Works. 5.Tenderer to elaborate on how external services will be sourced. 6.Demonstrate how Client approvals will be facilitated. 7.Manage the integration of the preliminary design to form the basis for the initial viability assessment of the project. 8.Demonstration of how the Multicriteria Analysis will be developed.	20	<b>40</b>



	<p>9.Tenderer demonstrate how to Conduct and record the appropriate planning, co-ordination and management of meetings.</p> <p>10.Tenderer to demonstrate how they will Manage and monitor the timeous submission by the team of all plans and documentation to obtain the necessary statutory approvals.</p> <p>11.Tenderer to demonstrate how to establish responsibilities and monitor the information flow between the teams.</p> <hr/> <p><b>Environmental Assessment Practitioner (EAP) - The Method statement shall include the following as a minimum of the critical elements in terms of Scope of Work but not limited to the following:</b></p> <ol style="list-style-type: none"> <li>1.How the Tenderer plans to collate initial data from the Client/Employer.</li> <li>2.Technical approach to the project.</li> <li>3.How is the Tenderer planning to resource the project.</li> <li>4.Tenderer good understanding of the Scope of Works.</li> <li>5.Tenderer to elaborate on how external services will be sourced.</li> </ol>	20	
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	6.Demonstrate how Client approvals will be facilitated. 7.Manage the integration of the preliminary design to form the basis for the initial viability assessment of the project. 8.Demonstration of how the Multicriteria Analysis will be developed. 9.Tenderer demonstrate how to Conduct and record the appropriate planning, co-ordination and management of meetings. 10.Tenderer to demonstrate how they will Manage and monitor the timeous submission by the team of all plans and documentation to obtain the necessary statutory approvals. 11.Tenderer to demonstrate how to establish responsibilities and monitor the information flow between the teams.	
<b>Maximum possible score for Functionality</b>		<b>100</b>

Functionality shall be scored independently by not less than 3 (three) evaluators and averaged in accordance with the following schedules:

- T2.2- 03 Project Organogram, Management & CVs of Key Persons
- T2.2- 04 Previous Experience
- T2.2- 05 Method Statement

Each evaluation criteria will be assessed in terms of scores of 0, 20, 40, 60, 80 or 100.

The scores of each of the evaluators will be averaged, weighted and then totalled to obtain the final score for functionality, unless scored collectively. (See CIDB Inform Practice Note #9).





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**Note: Any tender not complying with the above mentioned requirements, will be regarded as non-responsive and will therefore not be considered for further evaluation. This note must be read in conjunction with Clause C.2.1.**

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C.3.11. Only tenders that achieve the minimum qualifying score for functionality /Only tendersthat are Administratively and Substantively Responsive (Please select the applicable statement and please delete this note)

will be evaluated further in accordance with the 80/20 preference points systems as described in Preferential Procurement Regulations 2022 .

80 where the financial value of one or more responsive tenders received have a value equal to or below R50 million, inclusive of all applicable taxes,

Thresholds	Minimum Threshold
Functionality	60

Evaluation Criteria	Final Weighted Scores
Price	80
Specific goals - Scorecard	20
<b>TOTAL SCORE:</b>	<b>100</b>

Up to 100 minus  $W_1$  tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preferenceclaimed.

**Should the evidence required for any of the Specific Goals applicablein this tender not be provided, a tenderer will score zero preference points for that particular "Specific Goal".**

In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, the following preference points must be awarded to a bidder who provides the relevant required evidence for claiming points

Selected Specific Goal	Number of points allocated ( <b>80/20</b> )
B-BBEE Level of contributor (1 and 2)	<b>10</b>
Company majority owned by black women	<b>10</b>
Non-Compliant and/or B-BBEE Level 3-8 contributors	<b>0</b>

**The following Table represents the evidence to be submitted for claiming preference points for applicable specific goals in a particular tender:**

<b>Specific Goals</b>	<b>Acceptable Evidence</b>
B-BBEE	B-BBEE Certificate / Sworn-Affidavit B-BBEE Certificate of JV, a consolidate scorecard will be accept) as per guidelines
30% Black Women Owned Entities	B-BBEE Certificate / Sworn-Affidavit / CIPC B-BBEE C (in case of JV, a consolidate scorecard will be accept DTIC guidelines
50% Black Youth Owned Entities	Certified copy of ID Documents of the Owners and B-BBEE Certificate / Affidavit (in case of JV, a consolidate scorecard will be accept)
Entities Owned by People with Disability (PWD)	Certified copy of ID Documents of the Owners and Disability Note confirming the disability and/or Employment Equity 1 (EEA1) form.
Entities/Black People living in rural areas	Entity's Municipal/ESKOM bill or letter from Induna/c confirming residential address not older than 3 months
South African Enterprises	CIPC Registration Documents
EME or QSE 51% Black Owned	B-BBEE Certificate / Affidavit (in case of JV, a consolidate scorecard will be accept) as per DTIC guidelines
Entities that are 51 % Black Owned	B-BBEE Certificate / Sworn-Affidavit B-BBEE Certificate of JV, a consolidate scorecard will be accept) as per guidelines
Promoting exports orientated production for Job creation	Returnable section/annexure .....on job creation
Local Content and Local Production	Returnable Local Content and production Annexures
NIPP	NIPP Returnable documents
Creation of new jobs and labour intensification	Returnable section/annexure .....on job creation.
The promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to South African Companies which are: I. HDI's – Women, Youth and people with disabilities II. Entities with a specified minimum B-BBEE level (1 and 2) III. EMEs and/or QSEs black-owned	Sub-contracting agreements and Declaration / Joint Agreement. Certified copy of ID Documents of the Owners and B-BBEE Certificate / Affidavit (in case of JV, a consolidate scorecard will be accept) of the sub-contracted entities
The promotion of enterprises located in a specific province/region/municipal area for work to be done or	CIP - Registered address of entity

services to be rendered in that  
province/region/municipal area

The maximum points for this bid are allocated as follows:

DISCRIPTION	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION B-BBEE Level of contributor (1 and 2) - (10)  Company majority owned by black women – (10)	20
Total points for Price and Specific Goals must not exceed	100

**Note:** Transnet reserves the right to carry out an independent audit of the tenderers scorecard components at any stage from the date of close of the tenders until completion of the contract.

#### C.3.13 Tender offers will only be accepted if:

1. The tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;
2. the tenderer does not appear on Transnet's list for restricted tenderers and National Treasury's list of Tender Defaulters;
3. the tenderer has fully and properly completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the Employer or potentially compromise the tender process and persons in the employ of the state.
4. Transnet reserves the right to award the tender to the tenderer who scores the highest number of points overall, unless there are **objective criteria** which will justify the award of the tender to another tenderer. Objective criteria include but are not limited to the outcome of a due diligence exercise to be conducted. The due diligence exercise may take the following factors into account inter alia;  
  
the tenderer:



- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- b) is not undergoing a process of being restricted by Transnet or other state institution that Transnet may be aware of,
- c) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- d) has the legal capacity to enter into the contract,
- e) is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
- f) complies with the legal requirements, if any, stated in the tender data and
- g) is able, in the option of the employer to perform the contract free of conflicts of interest.

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C.3.17 The number of paper copies of the signed contract to be provided by the Employer is 1 (one).

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## **T2.1 List of Returnable Documents**

### **2.1.1 These schedules are required for pre-qualification and eligibility purposes:**

T2.2-01 **Stage One as per CIDB: Eligibility Criteria Schedule** - Certificate of attendance at Compulsory Tender Clarification Meeting

T2.2-02 **Stage Two per CIDB:** Tenderer's pre-qualification: Compliance to Technical Specifications (Professional Registration)

### **2.1.2 Stage Three as per CIDB: these schedules will be utilised for evaluation purposes:**

T2.2-03 **Evaluation Schedule:** CV's and Qualifications of Key Personnel

T2.2-04 **Evaluation Schedule:** Company Previous experience

T2.2-05 **Evaluation Schedule:** Method Statement

### **2.1.3 Returnable Schedules:**

#### **General:**

T2.2-06 Authority to submit tender

T2.2-07 Record of addenda to tender documents

T2.2-08 Letter of Good Standing

T2.2-09 Risk Elements

T2.2-10 Schedule of proposed Subcontractors

Valid proof of Respondent's compliance to Specific Goals evidence (Preference Claim Form) requirements stipulated in SBD6.1.ANNEX G Compulsory Enterprise Questionnaire

#### **Agreement and Commitment by Tenderer:**

T2.2-11: CIDB SFU ANNEX G Compulsory Enterprise Questionnaire

T2.2-12 Non-Disclosure Agreement

T2.2-13 RFP Declaration Form

T2.2-14 RFP – Breach of Law

T2.2-15 Certificate of Acquaintance with Tender Document

T2.2-16 Service Provider Integrity Pact

T2.2-17 Agreement in terms of Protection of Personal Information Act, 4 of 2013 ("POPIA")

### **2.1.4 Bonds/Guarantees/Financial/Insurance:**

T2.2-18 Insurance provided by the Contractor

T2.2-19 Three (3) years audited financial statements

## **2.2 C1.1 Offer portion of Form of Offer & Acceptance**

## **2.3 C1.2 Contract Data**

## **2.4 C1.3 Forms of Securities**

## **2.5 C2.1 Pricing Instructions (Activity Schedule)**

## **2.6 C2.2 Activity Schedule**

## **T2.2-01: Eligibility Criteria Schedule: Certificate of Attendance at Tender Clarification Meeting**

This is to certify that

(Company Name  
or member of a  
Joint Venture)

Represented  
By:

(Name and  
Surname)

Was represented at the compulsory tender clarification meeting

Held at:		
On (date)		Starting time:

**Attendance of the above company/joint venture at the meeting was confirmed:**

Name

Signature

**For and on Behalf of the  
Employers Agent.**

Date





## **T2.2-02: Tenderer's pre-qualification: Compliance to Technical Specifications (Professional Registration)**

**Any tenderer that fails to meet the stipulated pre-qualifying criteria for all 1 Technical Specification requirements below, will be regarded as an unacceptable tender.**

### ***Tenderer's pre-qualification requirements***

	<b>Technical Specification requirements to be submitted with RFP</b>	<b>Submitted (Attached to T2.2-02) Yes / No</b>	<b>Complied fully to the specification in C3.1 Scope of Works</b>
1.	Proof of Registration with SACPLAN for the Town Planner		
2.	Proof of Registration with EAPASA for the EAP/Senior EAP		
3.	Proof of registration with SACNASP for Environmental Specialists		
4.	Proof of Professional Registration with (APHP or SACNASP) for Heritage Specialist		



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## T2.2-03: Evaluation Schedule: Management & CVs of Key

### Persons

The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience, and qualifications to provide the required service.

Submit the following documents as a minimum with your tender document:

1. Organizational structure to include a clear indication of roles and responsibilities and specific function of each team member
2. The experience of assigned key persons in relation to the scope of work will be evaluated from two different points of view, namely:
  - a. The education, professional registration, training, and skills. (Proof of education, and training must be attached).
  - b. Relevant experience to be indicated in the CVs

All above requirements are mandatory. Bidders who fail to submit all documents will be disqualified.

All Copies for proof of Qualifications and Professional registration must be certified by a Commissioner of Oaths and certification must be not older than 3 months. **Copies with certification older than 3 months shall be disqualified.**

Key personnel should include at least, amongst others but not limited to:

- Town Planner (Pr. Pln)
- Environmental Assessment Practitioner (EAP)
- Snr. Environmental Assessment Practitioner or Project Manager
- Structural Heritage Specialist
- Environmental Monitoring Specialists (Soil, Dust and Noise)
- Faunal Specialist
- Social Impact Assessment Specialist

Where the tenderer chooses to use the same person as EAP and Senior EAP, it should be made clear in the submission.

The CV's of Key People must include their:

- Qualifications
- Years' of Experience delivering Management, EAP, or specialist services (relevant to the role the CV is provided for).

No.	Key Persons	Name and Surname	CV attached (Yes/No)
1	Town Planner (Pr. Pln)		
2	Environmental Assessment Practitioner (EAP)		
3	Snr. Environmental Assessment Practitioner or Project Manager		
4	Structural Heritage Specialist		
5	Environmental Monitoring Specialists (Soil, Dust and Noise)		
6	Faunal Specialist		
7	Social Impact Assessment Specialist		

**Note: Mandatory CV's and profiles should show experience, background, and track record in similar types of projects**

### **Town Planner**

The Town Planner must at least have a minimum qualification of a Degree in Town and Regional Planning or equivalent and at least 10 years of experience in Land Use Management. Professional Registration with SACPLAN is mandatory.

### **Environmental Assessment Practitioner (EAP)/Project Manager**

The Project Manager must at least have a minimum qualification of a Degree in Environmental Management and at least 10 years of experience in conducting SEAs, EMFs, EIAs and management of multidisciplinary projects. Professional Registration with EAPASA is mandatory.

### **Structural Heritage Specialist**

The Structural Heritage Specialist must at least have a minimum qualification of a Degree in Heritage/ Archeology and at least 10 years of experience in structural heritage and archeology work. Registration with professional body is mandatory (APHP)

### **Environmental Monitoring Specialists (Soil, Dust and Noise)**

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The Environmental Monitoring Specialists must at least have a minimum qualification of a Degree in Environmental Management and at least 10 years of experience in environmental monitoring of multidisciplinary projects. Professional Registration with SACNASP is mandatory.

The scoring of the Management & CV's of Key Persons will be as follows:

**NB: All Qualification, Professional Registration and Years of Experience requirements in the below table must be met before a score can be allocated.**

	<b>Environmental Assessment Practitioner (EAP)</b>	<b>Professional Town Planner (Project Lead)</b>	<b>Structural Heritage Specialist</b>	<b>Environmental Monitoring Specialist (Dust, Air, Soil, Noise, Etc)</b>
	<b>10</b>	<b>10</b>	<b>5</b>	<b>5</b>
<b>Score 0</b>	The tenderer has submitted no information OR the tenderer does not possess the all the required Qualification, and/or Years of Experience.	The tenderer has submitted no information OR the tenderer does not possess the required Qualification, and/or years of experience.	The tenderer has submitted no information OR the tenderer does not possess the required Qualification, and/or years of experience.	The tenderer has submitted no information OR the tenderer does not possess the required Qualification, and/or years of experience.
<b>Score 20</b>	<b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.  <b>Years of experience:</b> They have ≤2 years on-the-job EAP experience in conducting EIAs	<b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.  <b>Years of experience:</b> They have ≤4 years of experience in Land Use Management.	<b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.  <b>Years of experience:</b> They have ≤2 years relevant on-the-job Heritage Specialist experience.	<b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.  <b>Years of experience:</b> They have <2 years relevant on-the-job Environmental monitoring experience



	<b>Environmental Assessment Practitioner (EAP)</b>	<b>Professional Town Planner (Project Lead)</b>	<b>Structural Heritage Specialist</b>	<b>Environmental Monitoring Specialist (Dust, Air, Soil, Noise, Etc)</b>
<b>Score 40</b>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree</p> <p><b>Years of experience:</b> They have &gt; 2 years but ≤6 years of on-the-job EAP experience in conducting EIAs.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree</p> <p><b>Years of experience:</b> They have &gt;6 years but ≤8 years of experience in Land Use Management.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree</p> <p><b>Years of experience:</b> They have &gt; 2 years but ≤6 years of relevant on the job Heritage Specialist experience</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree</p> <p><b>Years of experience:</b> They have &gt;2 years but ≤6 years of relevant on the job Environmental monitoring experience</p>
<b>Score 60</b>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.</p> <p><b>Years of experience:</b> They have &gt;6 years but ≤10 years of on-the-job EAP experience in conducting EIAs.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.</p> <p><b>Years of experience:</b> They have &gt;8 years but ≤10 years of experience in Land Use Management.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.</p> <p><b>Years of experience:</b> They have &gt;6 years but ≤10 years of relevant on-the-job Heritage experience.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree.</p> <p><b>Years of experience:</b> They have &gt;6 years but ≤10 years of relevant on-the-Environmental monitoring experience.</p>



<b>Score 80</b>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree with Honours</p> <p><b>Years of experience:</b> They have &gt;10 years but ≤12 years on-the-job EAP experience in conducting EIAs.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree with Honours</p> <p><b>Years of experience:</b> They have &gt;10 years but ≤ 15 years of experience in Land Use Management.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree with Honours.</p> <p><b>Years of experience:</b> They have &gt;10 years but ≤12 years of relevant on-the-job Heritage experience</p>	<p><b>Qualifications:</b> They are in possession of a relevant Bachelor's Degree with Honours.</p> <p><b>Years of experience:</b> They have &gt;10 years but ≤ 12 years of relevant on-the-job Environmental monitoring experience.</p>
<b>Score 100</b>	<p><b>Qualifications:</b> They are in possession of a relevant Masters Degree.</p> <p><b>Years of experience:</b> They have &gt;12 years of on-the-job EAP &amp; Project Management experience in conducting SEAs or EMFs</p>	<p><b>Qualifications:</b> They are in possession of a relevant Masters Degree .</p> <p><b>Years of experience:</b> They have &gt;15 years experience in Land Use Management.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Masters Degree.</p> <p><b>Years of experience:</b> They have &gt;12 years relevant on-the-job Heritage experience.</p>	<p><b>Qualifications:</b> They are in possession of a relevant Masters Degree.</p> <p><b>Years of experience:</b> They have &gt;12 years relevant on-the-job Environmental monitoring experience.</p>



## **T2.2-04: Evaluation Schedule – Company Previous Experience**

### **Note to tenderers:**

Tenderers are required to demonstrate previous experience in supplying Environmental Assessment Practitioner (EAP) services on Environmental Impact Assessments (EIAs) or Basic Assessment for major infrastructure projects. The tenderer shall supply a list/table and description of major infrastructure projects, capital value and undertakings that the Key Person identified in T2.2-02 was involved in, and a sufficiently detailed reference list, contact details of existing and previous customers, clients and/or peers who can verify their previous experience.

For the purposes of scoring - this means that the

- **Environmental Assessment Practitioner (EAP)**
- **Town Planner**

must demonstrate their experience (as evident in the CV submitted).

### **Index of documentation attached to this schedule:**

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The scoring of the Previous Experience will be as follows:

	<b>Previous Experience of the EAP (15)</b>
<b>Score 0</b>	The tenderer has submitted no information.
<b>Score 20</b>	The tenderer has submitted inadequate information. The list of previous projects includes no descriptions, and the reference list is incomplete.  The EAP has experience in conducting $\leq 5$ EIAs/BAs for major infrastructure projects.
<b>Score 40</b>	From the list of projects and references provided it can be ascertained that the EAP has limited experience with EIAs/BAs.  The EAP has experience in conducting $>6$ but $\leq 11$ EIAs/BAs for major infrastructure projects.
<b>Score 60</b>	From the list of projects and references provided it can be ascertained that the EAP has satisfactory experience with EIAs/BAs.  The EAP has experience in conducting $>12$ but $\leq 17$ EIAs/BAs for major infrastructure projects.
<b>Score 80</b>	From the list of projects and references provided it can be ascertained that the EAP has extensive experience in EIAs of a varied nature.  The EAP has experience in conducting $>18$ but $\leq 23$ EIAs/BAs for major infrastructure projects.
<b>Score 100</b>	From the list of projects and references provided it can be ascertained that the EAP has outstanding experience with EIAs/BAs. The EAP has previously worked projects similar that described in this tender.  The EAP has experience in conducting $> 24$ EIAs/BAs for major infrastructure projects.

Tenderers are required to demonstrate previous experience in supplying Town Planning services in Landuse Management for major infrastructure projects. The tenderer shall supply a list/table and description of major infrastructure projects, capital value and undertakings that the Key Person identified in T2.2-02 was involved in, and a sufficiently detailed reference list, contact details of existing and previous customers, clients and/or peers who can verify their previous experience.

	<b>Previous Experience of Town Planner (15)</b>
<b>Score 0</b>	The tenderer has submitted no information.
<b>Score 20</b>	The tenderer has submitted inadequate information. The list of previous projects includes no descriptions, and the reference list is incomplete.  The Town Planner has experience in conducting $\leq 5$ Land Use Management for major infrastructure projects.
<b>Score 40</b>	From the list of projects and references provided it can be ascertained that the Town Planner has limited experience with Land Use Management.  The Town Planner has experience in conducting $>6$ but $\leq 11$ Land Use Management for major infrastructure projects.
<b>Score 60</b>	From the list of projects and references provided it can be ascertained that the Town Planner has satisfactory experience with Land Use Management.  The Town Planner has experience in conducting $>12$ but $\leq 17$ Land Use Management for major infrastructure projects.
<b>Score 80</b>	From the list of projects and references provided it can be ascertained that the Town Planner has extensive experience in Land Use Management of a varied nature.  The Town Planner has experience in conducting $>18$ but $\leq 23$ Land Use Management for major infrastructure projects.
<b>Score 100</b>	From the list of projects and references provided it can be ascertained that the Town Planner has outstanding experience with Land Use Management. The Town Planner has previously worked projects similar that described in this tender.  The Town Planner has experience in conducting $> 24$ Land Use Management for major infrastructure projects.

## PART T2.2 05: METHOD STATEMENT

Document reference	Title	No of page
T2.2	This cover page	1
	<i>Evaluation Schedule: Method Statement</i>	2
Total number of pages		3

## T2.2-05: Evaluation Schedule: Method Statement

### Note to tenderers:

Method statement - The tenderers must sufficiently demonstrate the approach/methodology that will be employed to cover the scope of the project.

- The Method Statement must respond to the Scope of Works (the Works Information) and outline the proposed methodology, including that relating to the programme, relevant legislation, practicality, quality, health and safety, risk and environmental considerations.
- The Method Statement should articulate what added value the Tenderer will provide in achieving the stated objectives for the project(s).
- The Tenderer must as such explain his/her understanding of the objectives of the assignment and the Employer's stated and implied requirements, highlight the issues of importance, and explain the technical approach they would adopt to address them.
- The Method Statement should also correlate with the Tenderer's quality plan outlining the processes, procedures and associated resources, applied by whom and when, to meet the requirements and indicate how risks will be managed and what contribution can be made regarding value management.

The Method statement shall include the following as a minimum of the critical elements in terms of Scope of Work but not limited to the following:

1. How the Tenderer plans to collate initial data from the Client/Employer.
2. Technical approach to the project.
3. How is the Tenderer planning to resource the project.
4. Tenderer good understanding of the Scope of Works.
5. Tenderer to elaborate on how external services will be sourced.
6. Demonstrate how Client approvals will be facilitated.
7. Manage the integration of the preliminary design to form the basis for the initial viability assessment of the project.
8. Demonstration of how the Multicriteria Analysis will be developed.
9. Tenderer demonstrate how to Conduct and record the appropriate planning, co-ordination and management of meetings.
10. Tenderer to demonstrate how they will Manage and monitor the timeous submission by the team of all plans and documentation to obtain the necessary statutory approvals.
11. Tenderer to demonstrate how to establish responsibilities and monitor the information flow between the teams.

The table below will be used as guidelines for scoring / evaluating the method statement submitted by the Tenderer:

<b>POINTS (20) TOWN PLANNER</b>	
<b>Score 0</b>	The tenderer has submitted no information to determine a score.
<b>Score 20</b>	The methodology approach is generic and not specific project objectives of this project. The methodology approach only cover <b>(any of the 4)</b> critical aspects of the of the work.
<b>Score 40</b>	The methodology approach is generic and not specific project objectives of this project. The methodology approach only cover <b>(any of the 8)</b> critical aspects of the of the work.
<b>Score 60</b>	The methodology approach is specifically tailored to address the specific project objectives <b>(covers all critical aspects)</b> . The methodology is sufficiently flexible to accommodate changes that may occur during execution.
<b>Score 80</b>	The methodology approach is specifically tailored to address the specific project objectives and more <b>(covers all critical aspects and make provision of timeframes)</b> . The methodology approach presented by the tenderer indicates a good understanding of the project objectives and it is in line with the schedule and provide detail explanation on how the project will be managed in line with the schedule. The approach does also explain how time risk allowance is calculated.
<b>Score 100</b>	The methodology approach is specifically tailored to address the specific project objectives and more <b>(covers all critical aspects and make provision of the timeframes and the proposed resources for completion of project)</b> . The methodology approach details ways to improve the project outcomes and the quality of the outputs. The methodology approach presented by the tenderer indicates a good understanding of the project objectives and it is in line with the schedule and provide detail explanation on how the project will be managed in line with the schedule. The approach does also explain how time risk allowance was calculated.

<b>POINTS (20) EAP</b>	
<b>Score 0</b>	The tenderer has submitted no information to determine a score.
<b>Score 20</b>	The methodology approach is generic and not specific project objectives of this project. The methodology approach only cover ( <b><u>any of the 4</u></b> ) critical aspects of the of the work.
<b>Score 40</b>	The methodology approach is generic and not specific project objectives of this project. The methodology approach only cover ( <b><u>any of the 8</u></b> ) critical aspects of the of the work.
<b>Score 60</b>	The methodology approach is specifically tailored to address the specific project objectives ( <b><u>covers all critical aspects</u></b> ). The methodology is sufficiently flexible to accommodate changes that may occur during execution.
<b>Score 80</b>	The methodology approach is specifically tailored to address the specific project objectives and more ( <b><u>covers all critical aspects and make provision of timeframes</u></b> ). The methodology approach presented by the tenderer indicates a good understanding of the project objectives and it is in line with the schedule and provide detail explanation on how the project will be managed in line with the schedule. The approach does also explain how time risk allowance is calculated.
<b>Score 100</b>	The methodology approach is specifically tailored to address the specific project objectives and more ( <b><u>covers all critical aspects and make provision of the timeframes and the proposed resources for completion of project</u></b> ). The methodology approach details ways to improve the project outcomes and the quality of the outputs. The methodology approach presented by the tenderer indicates a good understanding of the project objectives and it is in line with the schedule and provide detail explanation on how the project will be managed in line with the schedule. The approach does also explain how time risk allowance was calculated.



## T2.2-06: Authority to submit a Tender

Indicate the status of the tenderer by ticking the appropriate box hereunder. The tenderer must complete the certificate set out below for his category of organisation or alternatively attach a certified copy of a company / organisation document which provides the same information for the relevant category as requested here.

A - COMPANY	B - PARTNERSHIP	C - JOINT VENTURE	D - SOLE PROPRIETOR

### A. Certificate for Company

I, \_\_\_\_\_, chairperson of the board of directors of \_\_\_\_\_, hereby confirm that by resolution of the board taken on \_\_\_\_\_ (date), Mr/Ms \_\_\_\_\_, acting in the capacity of \_\_\_\_\_, was authorised to sign all documents in connection with this tender offer and any contract resulting from it on behalf of the company.

Signed

Date

Name

Position

Chairman of the Board of Directors

### B. Certificate for Partnership

We, the undersigned, being the **key partners** in the business trading as \_\_\_\_\_ hereby authorise Mr/Ms \_\_\_\_\_, acting in the capacity of \_\_\_\_\_, to sign all documents in connection with the tender offer for Contract \_\_\_\_\_ and any contract resulting from it on our behalf.

Name	Address	Signature	Date
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NOTE: This certificate is to be completed and signed by the full number of Partners necessary to commit the Partnership. Attach additional pages if more space is required.

### C. Certificate for Joint Venture

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms \_\_\_\_\_, an authorised signatory of the company \_\_\_\_\_, acting in the capacity of lead partner, to sign all documents in connection with the tender offer for Contract \_\_\_\_\_ and any contract resulting from it on our behalf.

This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

**Furthermore we attach to this Schedule a copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners.**

Name of firm	Address	Authorising signature, name (in caps) and capacity

#### D. Certificate for Sole Proprietor

I, \_\_\_\_\_, hereby confirm that I am the sole owner of the business trading as \_\_\_\_\_.

Signed

Date

Name

Position

Sole Proprietor

## **T2.2-07: Record of Addenda to Tender Documents**

**The tenderer hereby confirms that the following communications were received from the Employer before the submission of this tender offer, amending the tender documents and have been taken all the Addenda into account in this tender offer:**

	<b>Date</b>	<b>Title or Details of Addenda</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		
<b>6</b>		
<b>7</b>		
<b>8</b>		
<b>9</b>		
<b>10</b>		

Attach additional pages if more space is required.

## **T2.2-08 Letter/s of Good Standing with the Workmen's Compensation Fund**

Attached to this schedule is the Letter/s of Good Standing.

- 1.
- 2.
- 3.
- 4.

Name of Company/Members of Joint Venture:

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## T2.2-09: Evaluation Schedule: Risk Management

Tenderers to review the potential risks associated with the Scope of Services. Demonstrate and outline measures to evaluate and mitigate the perceived risk elements relating to design, construction, procurement, interfaces and commissioning of the scope taking into account the cost, schedule, quality, health and safety and the environment. The tenderer to comprehensively complete a detailed initial risk register with the potential risk associated with the scope. Furthermore, the tenderer shall indicate % probability, % impact, and mitigation plan as the minimum.

Risk category	Details of risk	% Probability	% Impact	Mitigation plan	Where implemented	Results of implementation

The scoring of the risk management will be as follows:

	<b>Risk Management</b>
<b>No Response (Score 0)</b>	The tenderer has submitted no information to determine a score
<b>Not Acceptable (Score 20)</b>	Information supplied is totally insignificant/inadequate to the inherent risks and measures to mitigate the required standard of service.
<b>Poor (score 40)</b>	Poor response/answer/solution lack convincing evidence relating to risk management strategies to meet the employer's requirements.
<b>Satisfactory (score 60)</b>	Satisfactory response/answer/solution to the inherent risks associated with the scope of services and the evaluation and mitigation objectives, given evidence that the employer's requirements will be met.
<b>Good (score 80)</b>	Good response/answer/solution gives real confidence that the tenderer has clearly identified and evaluated inherent risks and excellent mitigation strategies associated with the key deliverables of the project.
<b>Very good (score 100)</b>	Beside identifying and evaluating the inherent risks associated with the project, the evaluation and mitigations are approached in an innovative and efficient way, indicating that the tenderer has an outstanding knowledge to meet the key deliverables of the project.





## T2.2-10 Proposed Sub Consultants:

**Tenderer to note that any deviations from this list of proposed sub-consultants will be subject to acceptance by the Employer's Agent in terms of the Conditions of Contract. Please also read the applicable Z Clauses in the Contract Data by Employer.**

Provide information of the Sub-consultants below:

	<b>Name of proposed Sub-consultants</b>	<b>Proposed Sub-consultant : National Treasury Central Supplier Database Registration Number</b>	<b>Nature and extent of work</b>	<b>B-BBEEE Certificates or Sworn Affidavit attached to this schedule? Yes/No</b>	<b>Amount of work sub-consulted in Rands (excl. 15% Vat)</b>	<b>Percentage (%) of the sub-consulted amount in terms of the tendered total of the prices.</b>
<b>1</b> .						
<b>2</b> .						
<b>3</b> .						
<b>4</b> .						
<b>5</b> .						
<b>6</b> .						

7						
.						

**The Tenderer is to submit the following documents or copies thereof for each of the proposed sub-consultant(s) with this schedule:**

- Valid B-BBEE Sworn Affidavits or B-BBEE Certificates of each of the proposed sub-consultant(s).

## **T2.2-11 : ANNEX G Compulsory Enterprise Questionnaire**

The following particulars hereunder must be furnished.

In the case of a Joint Venture, separate enterprise questionnaires in respect of each partner/member must be completed and submitted.

**Section 1: Name of enterprise:** \_\_\_\_\_

**Section 2: VAT registration number, if any:** \_\_\_\_\_

**Section 3: CIDB registration number, if any:** \_\_\_\_\_

**Section 4: CSD number:** \_\_\_\_\_

**Section 5: Particulars of sole proprietors and partners in partnerships**

<b>Name</b>	<b>Identity number</b>	<b>Personal income tax number</b>

\* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners

**Section 6: Particulars of companies and close corporations**

Company registration number \_\_\_\_\_

Close corporation number \_\_\_\_\_

Tax reference number: \_\_\_\_\_

**Section 7: The attached SBD4 must be completed for each tender and be attached as a tender requirement.**

**Section 8: The attached SBD 6 must be completed for each tender and be attached as a requirement.**

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The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

- i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- ii) confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- v) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed

Date

Name

Position

Enterprise  
name

## SBD 6.1

### PREFERENCE POINTS CLAIM FORM

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Specific Goals contribution. Transnet will award preference points to companies who provide valid proof of evidence as per the table of evidence in paragraph 4.1 below.

#### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to **not exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.

1.3 Preference points for this bid shall be awarded for:

- (a) Price;
- (b) B-BBEE Status Level of Contribution; and
- (c) Any other specific goal determined in the Transnet preferential procurement policy

1.4 The maximum points for this bid are allocated as follows:

	POINTS
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION Level 1 or 2</b> <b>B-BBEE Level of contributor (1 or 2) - (10)</b> <b>Company majority owned by black women – (10)</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of evidence required for any of the specific goals together with the bid will be interpreted to mean that preference points for that

specific goal are not claimed.

- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"**
  - i) the B-BBBEE status level certificate issued by an authorised body or person;
  - ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
  - iii) any other requirement prescribed in terms of the B-BBEE Act.
- (j) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.
- (l) **"Specific goals"** means targeted advancement areas or categories of persons or groups either previously disadvantaged or falling within the scope of the Reconstruction and Development Programme identified by Transnet to be given preference in allocation of procurement contracts in line with section 2(1) of the

PPFA.

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:  
80/20

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

### 4. EVIDENCE REQUIRED FOR CLAIMING SPECIFIC GOALS

4.1 In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, preference points must be awarded to a bidder for providing evidence in accordance with the table below::

Specific Goals	Acceptable Evidence
B-BBEE Status contributor	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
30% Black Women Owned Entities	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
+50% Black Youth Owned Entities	Certified copy of ID Documents of the Owners and B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Entities Owned by People with Disability (PWD)	Certified copy of ID Documents of the Owners / Doctor's note and /or EEA1 form confirming the disability
Entities/Black People living in rural areas	Entity 's Municipal/ESKOM bill or letter from Induna/chief confirming residential address not older than 3 months.
South African Enterprises	CIPC Certificate
EME or QSE 51% Black Owned	B-BBEE Certificate / Sworn-Affidavit / CIPC Certificate
Entities that are 51 % Black Owned	CI B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Promoting exports Orientated for Job creation	Section..... Job Creation Schedule Returnable documents
Local Content and Local Production	Returnable Local Content and production Annexures
NIPP	NIPP Returnable documents
Creation of new jobs and labour	Section..... Job Creation Schedule Returnable



intensification	documents
<p>The promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to South African Companies which are:</p> <ul style="list-style-type: none"> <li>I. 30% Black Women, 51% Black Youth and 51% Black people with disabilities</li> <li>II. Entities with a specified minimum B-BBEE level (1 and 2)</li> <li>III. EMEs and/or QSEs who are 51% black-owned</li> </ul>	<p>Sub-contracting agreements and Declaration / Joint Venture Agreement and CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate as per DTIC guideline</p>
<p>The promotion of enterprises located in a specific province/region/municipal area for work to be done or services to be rendered in that province/region/municipal area</p>	<p>CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guidelines and Proof Registered address of entity</p>

4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

Enterprise	B-BBEE Certificate & Sworn Affidavit
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	<p>Certificate issued by SANAS accredited verification agency</p> <p>Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned)</p> <p>[Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a>.]</p>
<b>EME<sup>1</sup></b>	<p>Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership</p> <p>Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership</p> <p>Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard</p>

<sup>1</sup> In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a sworn affidavit as the generic codes are not applicable to them.

- 4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 4.6 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

## 5. BID DECLARATION

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## 6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

- 6.1 B-BBEE Status Level of Contribution: . = .....(maximum of 20 points)
- (Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted. ....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....



8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor,, which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
  - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
  - (f) forward the matter for criminal prosecution.

WITNESSES

1. ....
2. ....

.....

SIGNATURE(S) OF BIDDERS(S)

DATE: .....

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>2</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any person

<sup>2</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

**YES/NO**

2.3.1 If so, furnish particulars:

.....  
.....

### 3 DECLARATION

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious

<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder





## **T2.2-12 NON-DISCLOSURE AGREEMENT**

**[..... 2020]**

**Note to tenderers: This Non-Disclosure Agreement is to be completed and signed by an authorised signatory:**

**THIS AGREEMENT** is made effective as of ..... day of ..... 20 ..... by and between:

**TRANSNET SOC LTD**

(Registration No. 1990/000900/30), a company incorporated and existing under the laws of South Africa, having its principal place of business at Transnet Corporate Centre 138 Eloff Street , Braamfontein , Johannesburg 2000

**and**

.....  
.....

(Registration No.....), a private company incorporated and existing under the laws of South Africa having its principal place of business at

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

**WHEREAS**

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Tender Document.

**IT IS HEREBY AGREED**

**1. INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** (hereinafter Tender) means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the **Disclosing Party**] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the **Receiving Party**] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
- 1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
- 1.3.2 was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or
- 1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Tender or for the subsequent performance of any contract between the parties in relation to the Tender.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- 2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- 2.3.2 to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

### **3. RECORDS AND RETURN OF INFORMATION**

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
- 3.3.1 return all written Confidential Information [including all copies]; and
  - 3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

### **4. ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Tender without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

## **5. DURATION**

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Tender and continue thereafter for a period of 5 [five] years.

## **6. PRINCIPAL**

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Tender and in complying with the terms of this Agreement.

## **7. ADEQUACY OF DAMAGES**

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

## **8. PRIVACY AND DATA PROTECTION**

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Tender and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Tender and against accidental loss or destruction of, or damage to such data held or processed by them.

## **9. GENERAL**

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further

exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

Signed

Date

Name

Position

Tenderer

## T2.2-13: TENDER DECLARATION FORM

NAME OF COMPANY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify  
that:

1. Transnet has supplied and we have received appropriate tender offers to any/all questions (as applicable) which were submitted by ourselves for tender clarification purposes;
2. we have received all information we deemed necessary for the completion of this Tender;
3. at no stage have we received additional information relating to the subject matter of this tender from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the tender documents;
4. we are satisfied, insofar as our company is concerned, that the processes and procedures adopted by Transnet in issuing this TENDER and the requirements requested from tenderers in responding to this TENDER have been conducted in a fair and transparent manner; and
5. furthermore, we acknowledge that a direct relationship exists between a family member and/or an owner / member / director / partner / shareholder (unlisted companies) of our company and an employee or board member of the Transnet Group as indicated below:

[Respondent to indicate if this section is not applicable]

FULL NAME OF OWNER/MEMBER/DIRECTOR/

PARTNER/SHAREHOLDER:

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate nature of relationship with Transnet:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Failure to furnish complete and accurate information in this regard may lead to the disqualification of your response and may preclude a Respondent from doing future business with Transnet]

We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet (other than any existing and appropriate business relationship with Transnet) which could unfairly advantage our company in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

6. We accept that any dispute pertaining to this tender will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. (Refer "Important Notice to respondents" below).
7. We further accept that Transnet reserves the right to reverse a tender award or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

For and on behalf of ..... duly authorised thereto
Name:
Signature:
Date:

## IMPORTANT NOTICE TO RESPONDENTS

- Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of tenders exceeding R5,000,000.00 (five million S.A. Rand) in value. Should a Respondent have any material concern regarding an tender process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.
- It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).
- An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net)
- For transactions below the R5, 000,000.00 (five million S.A. Rand) threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.
- All Respondents should note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a bidder on its List of Excluded Bidders.

## T2.2-14: REQUEST FOR PROPOSAL – BREACH OF LAW

NAME OF COMPANY: \_\_\_\_\_

I / We \_\_\_\_\_ do hereby certify that **I/we have/have not been** found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Tenderer is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

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---

---

DATE OF BREACH:

---

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Tenderer from the tendering process, should that person or company have been found guilty of a serious breach of law, tribunal or regulatory obligation.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF TENDERER

## **T2.2-15: Certificate of Acquaintance with Tender Documents**

NAME OF TENDERING ENTITY:

---

---

1. By signing this certificate I/we acknowledge that I/we have made myself/ourselves thoroughly familiar with, and agree with all the conditions governing this RFP. This includes those terms and conditions of the Contract, the Supplier Integrity Pact, Non-Disclosure Agreement etc. contained in any printed form stated to form part of the documents thereof, but not limited to those listed in this clause.
2. I/we furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any TENDER/contract condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.
3. I/we understand that the accompanying Tender will be disqualified if this Certificate is found not to be true and complete in every respect.
4. For the purposes of this Certificate and the accompanying Tender, I/we understand that the word "competitor" shall include any individual or organisation, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) has been requested to submit a Tender in response to this Tender invitation;
  - b) could potentially submit a Tender in response to this Tender invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Services as the Tenderer and/or is in the same line of business as the Tenderer
5. The Tenderer has arrived at the accompanying Tender independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive Tendering.
6. In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- 
- a) prices;
  - b) geographical area where Services will be rendered [market allocation]
  - c) methods, factors or formulas used to calculate prices;
  - d) the intention or decision to submit or not to submit, a Tender;
  - e) the submission of a Tender which does not meet the specifications and conditions of the TENDER; or
  - f) Tendering with the intention not winning the Tender.
7. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Services to which this TENDER relates.
8. The terms of the accompanying Tender have not been, and will not be, disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official Tender opening or of the awarding of the contract.
9. I/We am/are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to Tenders and contracts, Tenders that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation. In addition, Tenderers that submit suspicious Tenders may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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SIGNATURE OF TENDERER

## **T2.2-16 Service Provider Integrity Pact**

**Important Note: All potential tenderers must read this document and certify in the RFP Declaration Form that that have acquainted themselves with, and agree with the content.**

**The contract with the successful tenderer will automatically incorporate this Integrity Pact and shall be deemed as part of the final concluded contract.**

### **INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

The Contractor (hereinafter referred to as the "Tenderer/Service Providers/Contractor")

## **PREAMBLE**

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Tenderers/Service Providers/Contractors.

In order to achieve these goals, Transnet and the Tenderer/Service Provider/Contractor hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Tenderer's/Service Provider's/Contractor's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and/or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Tenderers/Service Providers/Contractor's will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

## **1 OBJECTIVES**

- 1.1 Transnet and the Tenderer/Service Provider/Contractor agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence/unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
  - a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
  - b) Enable Tenderers/Service Providers/Contractors to abstain from bribing or participating in any corrupt practice in order to secure the contract.

## **2 COMMITMENTS OF TRANSNET**

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Tenderer, either for themselves or for any person, organisation or third

party related to the contract in exchange for an advantage in the tendering process, Tender evaluation, contracting or implementation process related to any contract.

- 2.2 Transnet will, during the registration and tendering process treat all Tenderers/ Service Providers/Contractor with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Tenderers/ Service Providers/Contractors the same information and will not provide to any Tenderers/Service Providers/Contractors confidential/additional information through which the Tenderers/Service Providers/Contractors could obtain an advantage in relation to any tendering process.
- 2.3 Transnet further confirms that its employees will not favour any prospective Tenderers/Service Providers/Contractors in any form that could afford an undue advantage to a particular Tenderer during the tendering stage, and will further treat all Tenderers/Service Providers/Contractors participating in the tendering process in a fair manner.
- 2.4 Transnet will exclude from the tender process such employees who have any personal interest in the Tenderers/Service Providers/Contractors participating in the tendering process.

### 3 OBLIGATIONS OF THE TENDERER / SERVICE PROVIDER

- 3.1 Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours or benefits.
  - a) Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.
  - b) Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.
  - c) Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.
  - d) Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special



privileges, personal favours, benefit or services. Such favours will be considered to constitute corruption.

- 3.2 The Tenderer/Service Provider/Contractor commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its Tender or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Tenderer/Service Provider/Contractor commits to the following:
- a) The Tenderer/Service Provider/Contractor will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the tendering process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the tendering process; and
  - b) The Tenderer/Service Provider/Contractor will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the tendering process, or to any person, organisation or third party related to the contract in exchange for any advantage in the tendering, evaluation, contracting and implementation of the contract.
- 3.3 The Tenderer/Service Provider/Contractor will not collude with other parties interested in the contract to preclude a competitive Tender price, impair the transparency, fairness and progress of the tendering process, Tender evaluation, contracting and implementation of the contract. The Tenderer / Service Provider further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Tenderer/Service Provider/Contractor will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Tenderers/Service Providers/Contractors. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the tendering process.
- 3.5 The Tenderer/Service Provider/Contractor will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Tenderer/Service Provider/Contractor will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- 3.6 A Tenderer/Service Provider/Contractor of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or tendering process. Similarly, the Tenderer / Service Provider / Contractor of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or tendering process.
- 3.7 The Tenderer/Service Provider/Contractor will not misrepresent facts or furnish false or forged documents or information in order to influence the tendering process to the advantage of the Tenderer/Service Provider/Contractor or detriment of Transnet or other competitors.
- 3.8 Transnet may require the Tenderer/Service Provider/Contractor to furnish Transnet with a copy of its code of conduct. Such code of conduct must address the compliance programme for the implementation of the code of conduct and reject the use of bribes and other dishonest and unethical conduct.
- 3.9 The Tenderer/Service Provider/Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Tenderer/Service Provider/Contractor confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Transnet as follows:
- a) Human Rights
- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
  - Principle 2: make sure that they are not complicit in human rights abuses.
- b) Labour
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
  - Principle 4: the elimination of all forms of forced and compulsory labour;
  - Principle 5: the effective abolition of child labour; and
  - Principle 6: the elimination of discrimination in respect of employment and occupation.
- c) Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
  - Principle 8: undertake initiatives to promote greater environmental responsibility; and
  - Principle 9: encourage the development and diffusion of environmentally friendly technologies.
- d) Anti-Corruption
- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

#### **4 INDEPENDENT TENDERING**

- 4.1 For the purposes of that Certificate in relation to any submitted Tender, the Tenderer declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Tenderer, whether or not affiliated with the Tenderer, who:
- a) has been requested to submit a Tender in response to this Tender invitation;
  - b) could potentially submit a Tender in response to this Tender invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Goods and Services as the Tenderer and/or is in the same line of business as the Tenderer.
- 4.2 The Tenderer has arrived at his submitted Tender independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive tendering.
- 4.3 In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- a) prices;
  - b) geographical area where Goods or Services will be rendered [market allocation];
  - c) methods, factors or formulas used to calculate prices;
  - d) the intention or decision to submit or not to submit, a Tender;
  - e) the submission of a Tender which does not meet the specifications and conditions of the RFP; or
  - f) tendering with the intention of not winning the Tender.

- 4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her tender relates.
- 4.5 The terms of the Tender as submitted have not been, and will not be, disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official Tender opening or of the awarding of the contract.
- 4.6 Tenderers are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to Tenders and contracts, Tenders that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.
- 4.7 Should the Tenderer find any terms or conditions stipulated in any of the relevant documents quoted in the Tender unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Tender. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

## **5 DISQUALIFICATION FROM TENDERING PROCESS**

- 5.1 If the Tenderer/Service Provider/Contractor has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Tenderer/Service Provider/Contractor into question, Transnet may reject the Tenderer's / Service Provider's / Contractor's application from the registration or tendering process and remove the Tenderer/Service Provider/Contractor from its database, if already registered.
- 5.2 If the Tenderer/Service Provider/Contractor has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Tenderer/Service Provider /Contractor from future tendering processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst

others the number of transgressions, the position of the transgressors within the company hierarchy of the Tenderer/Service Provider/Contractor and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

- 5.3 If the Tenderer/Service Provider/Contractor can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

## **6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)**

- 6.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Tender shall be awarded to a Tenderer whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Tenderer should it be established, at any time, that a tenderer has been restricted with National Treasury by another government institution.
- 6.2 All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual (CPM included) are included herein by way of reference. Below follows a condensed summary of this restriction procedure.
- 6.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website.
- 6.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "prima facie" (i.e. on the face of it) case has been established.
- 6.5 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to restricting a company/person from future

business, Transnet may decide to terminate some or all existing contracts with the company/person as well.

6.6 A Service Provider or Contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

6.7 Grounds for blacklisting include: If any person/Enterprise which has submitted a Tender, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Tender or contract:

- a) Has, in bad faith, withdrawn such Tender after the advertised closing date and time for the receipt of Tenders;
- b) has, after being notified of the acceptance of his Tender, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Tender documents;
- c) has carried out any contract resulting from such Tender in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

6.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National

Treasury's database of Restricted Service Providers or Register of Tender Defaulters.

- 6.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

## **7 PREVIOUS TRANSGRESSIONS**

- 7.1 The Tenderer/Service Provider/Contractor hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Tenderer's/Service Provider's/Contractor's database or any tendering process.
- 7.2 If it is found to be that the Tenderer/Service Provider/Contractor made an incorrect statement on this subject, the Tenderer/Service Provider/Contractor can be rejected from the registration process or removed from the Tenderer/Service Provider/Contractor database, if already registered, for such reason (refer to the Breach of Law Returnable Form contained in the document.)

## **8 SANCTIONS FOR VIOLATIONS**

- 8.1 Transnet shall also take all or any one of the following actions, wherever required to:
- a) Immediately exclude the Tenderer/Service Provider/Contractor from the tendering process or call off the pre-contract negotiations without giving any compensation to the Tenderer/Service Provider/Contractor. However, the proceedings with the other Tenderer/Service Provider/Contractor may continue;
  - b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Tenderer/Service Provider/Contractor;
  - c) Recover all sums already paid by Transnet;
  - d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Tenderer/Service Provider/Contractor, in order to recover the payments, already made by Transnet, along with interest;
  - e) Cancel all or any other contracts with the Tenderer/Service Provider/Contractor; and



- f) Exclude the Tenderer/ Service Provider/Contractor from entering into any Tender with Transnet in future.

## **9 CONFLICTS OF INTEREST**

9.1 A conflict of interest includes, inter alia, a situation in which:

- a) A Transnet employee has a personal financial interest in a tendering / supplying entity; and
- b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:

- a) Private gain or advancement; or
- b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any Tender committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Tenderer/Service Provider/Contractor has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s)/ member(s)/director(s)/partner(s)/shareholder(s) and a Transnet employee/ member of Transnet's Board of Directors in respect of a Tender which will be considered for the Tender process, the Tenderer/Service Provider/ Contractor:

- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
- b) must notify Transnet immediately in writing once the circumstances has arisen.

9.4 The Tenderer/Service Provider/Contractor shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Tenderer/Service Provider/Contractor.

## **10 DISPUTE RESOLUTION**

10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Tenderer / Service Provider / Contractor. When a dispute arises between Transnet and its Tenderer / Service Provider / Contractor, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on



which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
- b) **Perjury:** where a Tenderer / Service Provider / Contractor make a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a Tenderer / Service Provider / Contractor makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a Tenderer / Service Provider / Contractor abuses the court process in order to gain a competitive advantage during a Tender process.

## 11 GENERAL

- 11.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 11.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 11.3 The validity of this Integrity Pact shall cover all the tendering processes and will be valid for an indefinite period unless cancelled by either Party.
- 11.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 11.5 Should a Tenderer/Service Provider/Contractor be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Tenderer/Service Provider/Contractor to report this behaviour directly to a senior Transnet official/employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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I ..... duly authorised by the tendering entity, hereby certify that the tendering entity are **fully acquainted** with the contents of the Integrity Pact and further **agree to abide by it** in full.

Signature .....

Date .....

## **T2.2-17 Agreement in terms of Protection of Personal Information Act, 4 of 2013 ("POPIA")**

### **1. PREAMBLE AND INTRODUCTION**

- 1.1. The rights and obligation of the Parties in terms of the Protection of Personal Information Act, 4 of 2013 ("POPIA") are included as forming part of the terms and conditions of this contract.

### **2. PROTECTION OF PERSONAL INFORMATION**

- 2.1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. of 2013 "(POPIA)":  
consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
- 2.2. The Operator will process all information by the Transnet in terms of the requirements contemplated in Section 4(1) of the POPIA:  
Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
- 2.3. The Parties acknowledge and agree that, in relation to personal information of Transnet and the information of a third party that will be processed pursuant to this Agreement , the Operator is (... insert name of Tenderer/Contractor) hereinafter Operator and the Data subject is "Transnet". Operator will process personal information only with the knowledge and authorisation of Transnet and will treat personal information and the information of a third party which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.
- 2.4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Agreement and the Operator is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
- 2.5. In terms of this Agreement, the Operator acknowledges that it will obtain and have access to personal information of Transnet and the information of a third party and agrees that it shall only process the information disclosed by Transnet in terms of this Agreement and

only for the purposes as detailed in this Agreement and in accordance with any applicable law.

- 2.6. Should there be a need for the Operator to process the personal information and the information of a third party in a way that is not agreed to in this Agreement, the Operator must request consent from Transnet to the processing of its personal information or and the information of a third party in a manner other than that it was collected for, which consent cannot be unreasonably withheld.
- 2.7. Furthermore, the Operator will not otherwise modify, amend or alter any personal information and the information of a third party submitted by Transnet or disclose or permit the disclosure of any personal information and the information of a third party to any third party without prior written consent from Transnet.
- 2.8. The Operator shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to the services offered to Transnet in terms of this Agreement (physically, through a computer or any other form of electronic communication).
- 2.9. The Operator shall notify Transnet in writing of any unauthorised access to personal information and the information of a third party , cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Operator must inform Transnet of the breach as soon as it has occurred to allow Transnet to take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and the information of a third party and to restore the integrity of the affected personal information as quickly as is possible.
- 2.10. Transnet may, in writing, request the Operator to confirm and/or make available any personal information and the information of a third party in its possession in relation to Transnet and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA.
- 2.11. Transnet may further request that the Operator correct, delete, destroy, withdraw consent or object to the processing of any personal information and the information of a third party

relating to the Transnet or a third party in the Operator's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations .

- 2.12. In signing this addendum that is in terms of the POPIA, the Operator hereby agrees that it has adequate measures in place to provide protection of the personal information and the information of a third party given to it by Transnet in line with the 8 conditions of the POPIA and that it will provide to Transnet satisfactory evidence of these measures whenever called upon to do so by Transnet.

**The Operator is required to provide confirmation that all measures in terms of the POPIA are in place when processing personal information and the information of a third party received from Transnet:**

YES		NO	
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- 2.13. Further, the Operator acknowledges that it will be held liable by Transnet should it fail to process personal information in line with the requirements of the POPIA. The Operator will be subject to any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that Transnet submitted to it.
- 2.14. Should a Tenderer have any complaints or objections to processing of its personal information, by Transnet, the Tenderer can submit a complaint to the InformationRegulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

### 3. **SOLE AGREEMENT**

- 3.1. The Agreement, constitute the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this and no amendment/variation/change shall be of any force and effect unless reduced to writing and signed by or on behalf of both parties.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2021

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**XXXXX (Pty) Ltd**



(Operator)

Authorised signatory for and on behalf of **Xxxx (Pty) Ltd** who warrants that he/she is duly authorised to sign this Agreement.

AS WITNESSES:

1. Name: \_\_\_\_\_

Signature:

\_\_\_\_\_

2. Name: \_\_\_\_\_

Signature:

\_\_\_\_\_

## T2.2-18: Insurance provided by the Consultant

Clause 81.1 in NEC3 Professional Services Contract (June 2005)(amended June 2006 and April 2013) requires that the Consultant provides the insurance stated in the insurance table except any insurance which the Employer is to provide as stated in the Contract Data.

Please provide the following details for insurance which the Consultant is still to provide. Notwithstanding this information all costs related to insurance are deemed included in the tenderer's rates and prices.

<b>Insurance against (See clause 81.1 of the PSC)</b>	<b>Minimum amount stated in the Contract Data &amp; Name of Insurance Company</b>	<b>Cover</b>	<b>Premium</b>
Liability of the Consultant for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the services	The amount stated in the Contract Data		
Liability for death of or bodily injury to a person (not an employee of the Consultant) or loss of or damage to property resulting from an action or failure to take action by the Consultant	The amount stated in the Contract Data for any one event		
Liability for death of or bodily injury to employees of the Consultant arising out of and in the course of their employment in connection with this contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event		
(Other)			

## **T2.2-19: Three (3) years audited financial statements**

Attached to this schedule is the last three (3) years audited financial statements of the single tenderer/members of the Joint Venture.

NAME OF COMPANY/IES and INDEX OF ATTACHMENTS:

.....

.....

.....

.....

.....

.....

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.....

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## C1.1 FORM OF OFFER & ACCEPTANCE

### Offer

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

The Appointment of Service Provider to Obtain Developmental Rights from Local Authority and Undertake Environmental Authorization Process for the Establishment of Staff Quarters on a Portion of Erf 356, Coega, Port of Ngqura for a Duration of 18 Months

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 NEC3 PSC Consultant 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	R.....
Value Added Tax @ 15% 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 NEC3 PSC Consultant in the conditions of contract identified in the Contract Data.

---

Signature(s)

Name(s)

Capacity

**for the  
tenderer:**

Name &  
signature of  
witness

(Insert name and address of  
organisation)

Date

---

## 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 Consultant 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 Services

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 and conditions of contract 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 of contract. Unless the tenderer (now the NEC3 PSC Consultant) 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:**

Transnet SOC (Ltd)

Name &  
signature of  
witness

Date

## Schedule of Deviations

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	<hr/>	<hr/>
Name	<hr/>	<hr/>
Capacity	<hr/>	<hr/>
On behalf of	<div>(Insert name and address of organisation)</div> <hr/>	<div>Transnet SOC (Ltd)</div> <hr/>
Name & signature of witness	<hr/>	<hr/>
Date	<hr/>	<hr/>



## C1.2 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		<b>A: Priced contract with activity schedule</b>
	dispute resolution Option and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X1: Price adjustment for inflation</b>
		<b>X2: Changes in the law</b>
		<b>X4: Parent company guarantee</b>
		<b>X5: Sectional Completion</b>
		<b>X7: Delay damages</b>
		<b>X13: Performance Bond</b>
		<b>X17: Low performance damages</b>
		<b>X18: Limitation of liability</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Professional Services Contract (June 2005) (amended June 2006 and April 2013)	<b>Any Additional clauses that might be relevant to the contract, however they should be reasonable.</b>





Transnet National Ports Authority

Tender Number: TNPA/2023/05/0008/28476/RFP

Description of Services: The Appointment of Service Provider to Obtain Developmental Rights from Local Authority and Undertake Environmental Authorization Process for the Establishment of Staff Quarters on a Portion of Erf 356, Coega, Port of Ngqura for a Duration of 18 Months

10.1 The *Employer* is (Name): **Transnet SOC Ltd**

Address

Registered address:  
**Transnet Corporate Centre**  
**138 Eloff Street**  
**Braamfontein**  
**Johannesburg**  
**2000**

Having elected its Contractual Address for the purposes of this contract as:

**Transnet National Ports Authority**

11.2(9)	The <i>services</i> are	The Appointment of Service Provider to Obtain Development Rights from Local Authority and Undertake Environmental Authorization Process for the Establishment of Staff Quarters on a Portion of Erf 356, Coega, Port of Ngqura for a Duration of 18 months.	
11.2(10)	The following matters will be included in the Risk Register	Resource change by the Service Provider should have equal skills and competences as the resource being replaced. Potential Risk identified should be listed and added in a Risk Register.	
11.2(11)	The Scope is in	Part C3.1: The Scope of the Contract Document	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	2 (two) weeks	
13.6	The <i>period for retention</i> is	Retention not Applicable	
2	The Parties’ main responsibilities		
25.2	The <i>Employer</i> provides access to the following persons, places, and things	access to	access date
		1	
		2	
		3	
3	Time		
31.2	The <i>starting date</i> is	TBA	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	TBA	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date



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		1	
		2	
		3	
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>2 (two) weeks of the Contract Date. Please note that at no stage the contractor would commence with work if the submitted programme has not been accepted by the PM.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>4 (four) weeks.</b>	
<b>4</b>	<b>Quality</b>		
40.2	The quality policy statement and quality plan are provided within	<b>2 (two) weeks of the Contract Date.</b>	
41.1	The <i>defects date</i> is	<b>26/52 weeks after Completion of the whole of the services.</b>	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is on the	<b>18<sup>th</sup> day of each successive month.</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		<b>Economy air fares</b>	<b>Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.</b>
		<b>Car hires not exceeding group B</b>	<b>Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.</b>
		<b>Accommodation</b>	<b>Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.</b>
51.1	The period within which payments are made is	<b>Payment will be affected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand (ZAR).</b>	
51.5	The <i>interest rate</i> is	<b>The prime lending rate of the Rand Merchant Bank of South Africa.</b>	
<b>6</b>	<b>Compensation events</b>	<b>No additional data required for this section of the conditions of contract.</b>	



**7 Rights to material** **No additional data required for this section of the *conditions of contract*.**

**8 Indemnity, insurance, and liability**

81.1 The amounts of insurance and the periods for which the *Consultant* maintains insurance are

Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination
failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	<b>Professional Indemnity insurance for not less than R10 000 000.00 (Ten Million Rand) in respect of each claim, without limit to the number of claims</b>	<b>52 Weeks</b>
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<b>General Third-Party Liability Insurance for all amounts falling within the excess of the policy, currently R50 000.00 (Fifty Thousand Rand) each and every claim, and/or for all amounts in excess of the policy limits as detailed in the policy document or whatever the <i>Consultant</i> deems desirable in respect of each claim, without limit to the number of claims</b>	<b>0 Weeks</b>



	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	<b>The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Consultant</i> arising out of and in connection with this contract for any one event is that which is prescribed by the Compensation for Occupation Injuries and Diseases Act No. 130 of 1993 as amended.</b>
	Motor Vehicle Liability Insurance	<b>Comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity for an amount of not less than R 10 000 000.00</b>
81.1	The <i>Employer</i> provides the following insurances	<p><b>Professional Indemnity insurance in respect of failure of the <i>Consultant</i> to use the skill and care normally used by Professionals providing services similar to the services</b></p> <p><b>General Third-Party Liability cover in respect of death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i></b></p>
82.1	The <i>Consultant's</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	<p><b><i>For all matters covered under the Employer's Professional Indemnity (PI) and General Third-Party Liability policies, the Consultant's liability will be limited to the excesses applicable under the Employer's Professional Indemnity and General Third Party Liability policies as detailed in the policy wordings. The current excesses amount to R5 000 000.00 (Five Million Rand) PI and R50 000.00 (Fifty Thousand Rand) General Third Party Liability, respectively, each and every claim. For all matters not covered under the Employer's Professional Indemnity and General Third-Party Liability policies the Consultants liability will be limited to the final total of the Prices.</i></b></p> <p><b><i>(User note: the value in red must be determined by a risk assessment of the potential risk exposure relating to this specific contract – delete this note)</i></b></p>



<b>9</b>	<b>Termination</b>	<b>No additional data required for this section of the conditions of contract.</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>	<b>Refer to Pricing Data C2.2 Activity Schedule</b>
21.3	The <i>Consultant</i> prepares forecasts of the total of the <i>expenses</i> at intervals of no longer than	..... weeks.
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is	Both parties will agree to an <i>Adjudicator</i> as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i> , the Chairman of the Association of Arbitrators (Southern Africa) will appoint an <i>Adjudicator</i> .
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Association of Arbitrators (Southern Africa)
W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	The latest addition of the South African Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	Gqeberha, Eastern Cape, South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> <li>if the Parties cannot agree a choice or</li> <li>if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	The Chairman of the Association of Arbitrators (Southern Africa)
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price adjustment for inflation</b>	<b>No additional data is required for this Main Option</b>
X1.1	The <i>index</i> is	.
	The <i>staff rates</i> are	
<b>X2</b>	<b>Changes in the law</b>	<b>No additional data is required for this Main Option</b>
X2.1	The <i>law of the project</i> is	.
<b>X4</b>	<b>Parent company guarantee</b>	<b>No additional data is required for this Main Option</b>



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X5	Sectional Completion: To			
X5.1	The completion date for each section of the services is:	section	description	completion date
		1		
		2		
		3		
X7	Delay damages:			
X7.1	Delay damages for late Completion of the whole of the services are	5% of the contract value per day.		
X13	Performance bond			
X13.1	Amount of performance bond: 5% of the contract value			
X17	Low performance damages:			
X17.1	Low performance damages fees: 5% of the activity value day.			
X18	Limitation of liability			
X18.1	The Consultant's liability to the Employer for indirect or consequential loss is limited to:			
		Nil		



X18.2 The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to:

**The cost of correcting the defect (The Total of the Prices)**

X18.3 The *end of liability date* is

**2 (Two) years after Completion of the whole of the services.**

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**Z Additional conditions of contract**

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The *additional conditions of contract* are

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**Z1 Obligations in respect of Joint Venture Agreements**

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Z1.1

Insert the additional core clause 21.5

21.5.1 In the instance that the Consultant is a joint venture, the Consultant shall provide the Employer 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 starting date.

The Joint Venture agreement shall contain but not be limited to the following:

- A brief description of the Contract and the Deliverables.
- The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture.
- The constituents' interests.
- A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents.
- Details of an internal dispute resolution procedure.



• Written confirmation by all of the constituents:

- i. of their joint and several liability to the Employer to Provide the services;
- ii. proof of separate bank account/s in the name of the joint venture;
- iii. identification of the leader in the joint venture confirming the authority of the leader to bind the joint venture through the Consultant's representative.
- iv. Identification of the roles and responsibilities of the constituents to provide the services.

• Financial requirements for the Joint Venture:

- i. 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;
- ii. the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture

Z1.2	<p>Insert additional core clause 21.6</p> <p>21.6. The Consultant shall not alter its composition or legal status of the Joint Venture without the prior approval of the Employer.</p>
<b>Z2</b>	<b>Additional obligations in respect of Termination</b>
Z2.1	<p>The following will be included under core clause 90.1: In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and</p> <p>Under the second main bullet, insert the following additional bullets after the last sub-bullet:</p> <ul style="list-style-type: none"> <li>• commenced business rescue proceedings</li> <li>• repudiated this Contract</li> </ul>
Z2.2	<p>Clause 90.5 is added as an additional clause Where all or part of the Services are suspended for a period of six months or more either party may terminate the Contract by notifying the other.</p>
<b>Z3</b>	<b>Right Reserved by the Employer to Conduct Vetting through SSA</b>





Z3.1

The Employer reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any Consultant who has access to National Key Points for the following without limitations:

1. Confidential – this clearance is based on any information which may be used by malicious, opposing or hostile elements to harm the objectives and functions of an organ of state.
2. Secret – clearance is based on any information, which may be used by malicious, opposing or hostile elements to disrupt the objectives and functions of an organ of state.
3. Top Secret – this clearance is based on information, which may be used by malicious, opposing or hostile elements to neutralise the objectives and functions of an organ of state.

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**Z4 Additional Clause Relating to the Employer's rights to take appropriate action**

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Z4.1	<b>The contract award is made without prejudice to any rights the Employer may have to take appropriate action later with regard to:</b>	Any declared, exposed or confirmed tender rigging.
Z4.1.1		The Consultant further undertakes: not to give or cause any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract.
Z 4.1.2		To comply with all laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering to which it or the Employer is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
Z4.1.3		The Consultant's breach of this clause constitutes grounds for terminating the Consultant's obligation to Provide the Services or taking any other action as appropriate against the Consultant (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.
Z4.1.4		If the Consultant is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices, including but not limited to the making of offers (directly or indirectly), payments, gifts, gratuity, commission or benefits of any kind, which are in any way whatsoever in connection with the contract with the Employer, the Employer shall be entitled to terminate the contract forthwith and take any other action as appropriate against the Consultant (including civil or criminal action).
Z4.2	<b>The contract award is made without prejudice to any rights the Employer may have to take appropriate action later with regard to:</b>	Politically Exposed Persons including any allegations with regards to State Capture.
Z4.3	<b>The contract award is made without prejudice to any rights the Employer may have to take appropriate action later with regard to:</b>	Blacklisting by any State Entity on the National Treasury database.
<b>Z5</b>	<b>Protection of Personal Information Act</b>	
Z5.1		The Employer and the Consultant are required to process information obtained for the duration of the Contract in a manner that is aligned to the Protection of Personal



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Information Act.



<b>Z6</b>	<b>Time</b>
Z6.1	<p>Clause 33.2. is added as an additional clause.</p> <p>The Employer may at any time suspend part or all of the services. As a consequence, if the Consultant is required to demobilise and then remobilise its staff and equipment, the Consultant will be reimbursed at cost. The Consultant will be required to reduce and mitigate all its costs during the period of suspension and will be entitled to compensation only to the extent that it can demonstrate it has incurred costs which were not capable of being mitigated.</p>
<b>Z7</b>	<b>Compensation Events</b>
Z7.1	<p>Clause 61.4: The first bullet point is amended to read as follows: arises from the fault, error, negligence or default of the Consultant.</p>
<b>Z8</b>	<b>Limitation of liability</b>
Z8.1	<p>Add to core clause 82.1 and X18</p> <p>For the avoidance of doubt the parties expressly agree that the total liability of the Consultant to the Employer applies jointly and severally across all organisations comprising of the Consultant.</p>
<b>Z9</b>	<b>Additional clauses relating to cession of rights</b>
Z9.1	<p>The Consultant shall not cede any rights under this contract without the approval of the Employer.</p>
Z9.2	<p>The Employer may on written notice to the Consultant cede and assign its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Employer.</p>
<b>Z10</b>	<b>Additional clauses relating to interpretation of the law</b>
Z10.1	<p>Add to core clause 12.3 Any extension, concession, waiver or relaxation of any action by the Parties, the Employers' Agent or Adjudicator does not constitute a waiver of rights and does not give rise to an Estoppel or Lien, unless the Parties agree otherwise and confirm such an agreement in writing.</p>
<b>Z11</b>	<b>Employer's Step in rights</b>
Z11.1	<p>If the <i>Consultant</i> defaults by failing to comply with his obligations and fails to remedy such default within 2 weeks of the notification of the default by the <i>Employer's Agent</i>, the <i>Employer</i>, without prejudice to his other rights, powers and remedies under the</p>



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contract, may remedy the default either himself or procure a third party (including any *sub-consultant* or supplier of the *Consultant*) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the *Consultant*.

Z11.2

The *Consultant* co-operates with the *Employer* and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the *Consultant* under the contract or otherwise for and/or in connection with any subsequent *works*) and generally does all things required by the *Employers' Agent* to achieve this end.

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## C1.2 Contract Data

### Part two - Data provided by the *Consultant*

The tendering consultant is advised to read both the NEC3 Professional Services Contract (April 2013) and the relevant parts of its Guidance Notes (PSC3-GN) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 151 to 159 of the PSC3 Guidance Notes.

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>Consultant's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
Info.		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.....
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	
11.2(10)	The following matters will be included in the Risk Register/ <b>Potential Risk that may be identified by the Bidder should be included in the risk register</b>	



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Description of Services: The Appointment of Service Provider to Obtain Developmental Rights from Local Authority and Undertake Environmental Authorization Process for the Establishment of Staff Quarters on a Portion of Erf 356, Coega, Port of Ngqura for a Duration of 18 Months

11.2(13)	The <i>staff rates</i> are:	<b>name/designation</b>	<b>rate</b>
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		1	
		2	
		3	
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>item</b>	<b>amount</b>
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is ..... (in figures)		
	..... (in words), excluding VAT		