

Eswatini Railways

And

Transnet Freight Rail

acting through its operating division of TRANSNET SOC LTD

[hereinafter referred to as Transnet Freight Rail ("TFR")]

[Registration No. 1990/000900/30]

## **REQUEST FOR PROPOSAL [RFP]**

### **FOR THE PROVISION OF FUNDING AND DEVELOPMENT (CONSTRUCTION) OF THE ESWATINI RAIL LINK (ESRL) PROJECT**

<b>RFP REFERENCE:</b>	<b>HOAC HO 38780</b>
<b>ISSUE DATE:</b>	<b>29 August 2022</b>
<b>CLOSING DATE:</b>	<b>30 September 2022</b>
<b>CLOSING TIME:</b>	<b>10:00 AM</b>
<b>BID VALIDITY PERIOD:</b>	<b>180 Business Days from Closing Date</b>

#### **Note to the bidders:**

*Bidders 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. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.*

**SCHEDULE OF BID DOCUMENTS**

<b>Section No</b>	<b>Page</b>
SECTION 1: SBD1 FORM.....	3
SECTION 2 : NOTICE TO BIDDERS .....	4
1 INVITATION TO BID.....	5
2 FORMAL BRIEFING.....	6
3 PROPOSAL SUBMISSION.....	6
4 RFP INSTRUCTIONS .....	7
5 JOINT VENTURES OR CONSORTIUMS .....	7
6 COMMUNICATION .....	7
7 CONFIDENTIALITY .....	7
8 COMPLIANCE .....	8
9 EMPLOYMENT EQUITY ACT .....	8
10 DISCLAIMERS .....	8
11 LEGAL REVIEW .....	9
12 SECURITY CLEARANCE .....	9
13 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE (FOR SOUTH AFRICAN ENTITIES ONLY).....	9
14 TAX COMPLIANCE .....	9
SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS .....	11
1 BACKGROUND.....	11
2 EXECUTIVE OVERVIEW.....	13
3 SCOPE OF REQUIREMENTS.....	14
4 GREEN ECONOMY / CARBON FOOTPRINT .....	17
5 GENERAL SERVICE PROVIDER OBLIGATIONS .....	17
6 EVALUATION METHODOLOGY .....	18
SECTION 4: PRICING AND DELIVERY SCHEDULE .....	25
SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS.....	30
SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, MASTER AGREEMENT & APPLICABLE DOCUMENTS .....	35
SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM .....	36
SECTION 8: RFP CLARIFICATION REQUEST FORM.....	41
SECTION 9: JOB-CREATION SCHEDULE .....	42
SECTION 10: SBD 5.....	44
SECTION 11: PROTECTION OF PERSONAL INFORMATION .....	47

**RFP ANNEXURES:****ANNEXURE A - TECHNICAL CRITERIA**

Funding  
Previous Experience  
Method Statement  
Management & CV's of key personnel  
Health and Safety

ANNEXURE B - GENERAL BID CONDITIONS

ANNEXURE C - SUPPLIER INTEGRITY PACT

ANNEXURE D - NON-DISCLOSURE AGREEMENT

**RFP FOR THE PROVISION OF FUNDING AND DEVELOPMENT (CONSTRUCTION) OF THE  
ESWATINI RAIL LINK (ESRL) PROJECT****SECTION 1: SBD1 FORM****PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF ESWATINI RAILWAYS AND TRANSNET FREIGHT RAIL, A DIVISION TRANSNET SOC LTD</b>							
BID NUMBER:	HOAC HO 38780	ISSUE DATE:	29 August 2022	CLOSING DATE:	30 September 2022	CLOSING TIME:	10:00 AM
DESCRIPTION	<b>FOR THE PROVISION OF FUNDING AND DEVELOPMENT (CONSTRUCTION) OF THE ESWATINI RAIL LINK (ESRL) PROJECT</b>						
<b>BID RESPONSE DOCUMENTS SUBMISSION</b>							
<b>RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED</b> (please refer to section 2, paragraph 3 for a detailed process on how to upload submissions): <a href="https://www.transnet.net">https://www.transnet.net</a>							
<b>FOR ESWATINI ENQUIRIES MAY BE DIRECTED TO:</b>				<b>FOR SOUTH AFRICA ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	Ntokozo Mamba			CONTACT PERSON	Mbuyiswa Sekele		
TELEPHONE NUMBER	00268 233 33015			TELEPHONE NUMBER	011 308 1265		
FACSIMILE NUMBER	N/A			FACSIMILE NUMBER	N/A		
E-MAIL ADDRESS	<a href="mailto:Ntokozo.Mamba@swazirail.co.sz">Ntokozo.Mamba@swazirail.co.sz</a>			E-MAIL ADDRESS	<a href="mailto:Mbuyiswa.Sekele@transnet.net">Mbuyiswa.Sekele@transnet.net</a>		
<b>SUPPLIER INFORMATION</b>							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA		
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		

Respondent's Signature

Date &amp; Company Stamp

<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]</b>			
<b>1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	<b>2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER QUESTIONNAIRE BELOW ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO  <b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.</b>			

## PART B

### TERMS AND CONDITIONS FOR BIDDING

<b>1. TAX COMPLIANCE REQUIREMENTS</b>
1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. 1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS/SRA TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS. 1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE <a href="http://WWW.SARS.GO.ZA">WWW.SARS.GO.ZA</a> OR THROUGH THE SRA WEBSITE <a href="http://WWW.ERS.ORG.SZ">WWW.ERS.ORG.SZ</a> . 1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID. 1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER. 1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE: \_\_\_\_\_

SECTION 2 : NOTICE TO BIDDERS

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**1 INVITATION TO BID**

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**].

<b>DESCRIPTION</b>	FOR THE PROVISION OF FUNDING AND DEVELOPMENT OF THE ESWATINI RAIL LINK (ESRL) PROJECT [The <b>Services</b> ]
<b>TENDER ADVERT</b>	All ESR tenders are registered with Eswatini Public Procurement Regulatory Agency (ESPPRA) and their website is <a href="http://www.sppra.co.sz">www.sppra.co.sz</a> . All TFR tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders.
<b>RFP DOWNLOADING</b>	<p>This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> free of charge.</p> <p>To download RFP and Annexures:</p> <ul style="list-style-type: none"> <li>• Click on "Tender Opportunities";</li> <li>• Select "Advertised Tenders";</li> <li>• In the "Department" box, select "Transnet SOC Ltd."</li> </ul> <p>Once the tender has been located in the list, click on the "Tender documents" tab and process to download all uploaded documents.</p> <p>The RFP may also be downloaded from the ESPRRA on <a href="http://www.sppra.co.sz">www.sppra.co.sz</a> or the Transnet website at <a href="http://www.transnet.net">www.transnet.net</a> free of charge. To access the Transnet eTender portal, please click <a href="#">here</a> (refer to section 2, paragraph 3 below for detailed steps)</p>
<b>COMMUNICATION</b>	<p>Any addenda to the RFP or clarifications will be published on the e-tender portal, ESPRRA and Transnet website. Bidders are required to check the e-tender portal, ESPRRA or Transnet website prior to finalising their bid submissions for any changes or clarifications to the RFP.</p> <p>ESR and TFR will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.</p>
<b>BRIEFING SESSION</b>	<p>Non – compulsory</p> <p>Bidders are required to confirm their attendance and to send their contact details including the number of representatives (where applicable) to the following address: <a href="mailto:Mbuyiswa.Sekele@transnet.net">Mbuyiswa.Sekele@transnet.net</a> by no later than 02 September 2022.</p> <p>This is to ensure that ESR and TFR may make the necessary arrangements for the briefing session.</p> <p>Refer to paragraph 2 for details.</p>
<b>CLOSING DATE</b>	<p><b>10:00 am on Friday 30 September 2022</b></p> <p>Bidders must ensure that bids are uploaded timeously onto the system.</p> <p>As a general rule, if a bid is late, it will not be accepted for consideration.</p> <p><b><i>Bidders 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. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.</i></b></p>
<b>VALIDITY PERIOD</b>	<p><b>180 Business Days from Closing Date</b></p> <p>Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation</p>

	<p>process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 10.12</p>
--	--

Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

## 2 FORMAL BRIEFING

A non-compulsory pre-proposal RFP briefing will be conducted on MS Teams on **06 September 2022**, at 10:00 for a period of ± 3 (three) hours. The briefing session will start punctually and information will not be repeated for the benefit of Respondents connecting late.

Respondents are to send their email addresses to Mbuyiswa Sekele ([Mbuyiswa.Sekele@transnet.net](mailto:Mbuyiswa.Sekele@transnet.net)) by no later than 02 September 2022 so that the invitation/the link for this non-compulsory online TEAMS briefing session can be shared. Following the briefing, the presentation will be made available on the platforms on which the RFP was advertised.

The briefing session will start punctually and information will not be repeated for the benefit of Respondents connecting late.

Despite the briefing session being non-compulsory, Eswatini Railways and TFR nevertheless encourages all Respondents to attend online. Eswatini Railways and TFR will not be held responsible if any Respondent who did not attend the **non-compulsory** online session subsequently feels disadvantaged as a result thereof. Respondents are encouraged to have already downloaded the RFP prior to the online briefing. Respondents are encouraged to read the RFP documents and it's Annexures before the briefing session.

## 3 PROPOSAL SUBMISSION

**TFR will handle all submissions** via their electronic tender submission system, the e-Tender Submission Portal, 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://www.transnet.net>);
- Click on "TENDERS";
- Scroll towards the bottom right hand side of the page;
- On the blue window click on "register on our new eTender Portal";
- 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.
- No late submissions will be accepted. The bidder guide can be found on the Transnet Portal [transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net)

#### 4 RFP INSTRUCTIONS

- 4.1 Please sign documents [sign, stamp and date the bottom of each page] before uploading them on the system. The person or persons signing the submission must be legally authorised by the respondent to do so.
- 4.2 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 4.3 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 4.4 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 13 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

#### 5 JOINT VENTURES OR CONSORTIUMS

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If at the time of the bid submission such a JV or consortium agreement has not been concluded, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Eswatini Railways and TFR through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

#### 6 COMMUNICATION

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to **Mbuyiswa Sekele** ([Mbuyiswa.Sekele@transnet.net](mailto:Mbuyiswa.Sekele@transnet.net)) before **12:00 pm on 23 September 2022**, substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, ESR's and TFR's response to such a query will be published on the e-tender portal and ESPPRA's and Transnet's websites.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat, Prudence Nkabinde, at email [Prudence.Nkabinde@transnet.net](mailto:Prudence.Nkabinde@transnet.net) on any matter relating to its RFP Proposal.
- 6.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 6.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Eswatini Railways and TFR in respect of this RFP between the closing date and the date of the award of the business.
- 6.5 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.

#### 7 CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidence. In this regard Respondents 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 related to this RFP or the subsequent contract, written approval must be obtained from Transnet and Eswatini Railway.

## **8 COMPLIANCE**

The successful Respondent [hereinafter referred to as the **Service provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

## **9 EMPLOYMENT EQUITY ACT**

Respondents must comply with the requirements of the Employment Equity Act 55 of 1998 applicable to it including (but not limited to) Section 53 of the Employment Equity Act or the Eswatini Employment Act, 1980 and Industrial Act, 2000- as amended in 2014.

## **10 DISCLAIMERS**

Respondents are hereby advised that Eswatini Railways and TFR are not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Eswatini Railways and TFR reserves the right to:

- 10.1 modify the RFP's Goods/Services and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 10.4 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.5 award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;
- 10.6 split the award of the contract between more than one Supplier/Service provider, should it be advantageous to Eswatini Railways and TFR's in terms of, amongst others, cost or developmental considerations;
- 10.7 cancel the bid process;
- 10.8 validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Eswatini Railways and TFR to do so;
- 10.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 10.10 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 10.11 to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- 10.12 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods/Services at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to



advise whether they would still be prepared to provide the required Goods/Services at their quoted price, even after they have been issued with a Letter of Regret.

Note that Eswatini Railways and TFR will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

## 11 LEGAL REVIEW

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Eswatini Railways and TFR Legal Counsel, prior to consideration for an award of business. A material deviation from the Standard terms or conditions could result in disqualification.

## 12 SECURITY CLEARANCE

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the Goods/Services and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of **CONFIDENTIAL/ SECRET/TOP SECRET**. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

## 13 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE (FOR SOUTH AFRICAN ENTITIES ONLY)

Respondents from South Africa 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. Respondents must register on the CSD prior to submitting their bids. Business may not be awarded to a Respondent who has failed to register on the CSD. **Only foreign suppliers with no local registered entity need not register on the CSD.**

***For this purpose, the attached SBD 1 form must be completed and submitted as a mandatory returnable document by the closing date and time of the bid.***

## 14 TAX COMPLIANCE

Respondents must be compliant when submitting a proposal and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991). It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with Eswatini Revenue Services (ERS) OR South African Revenue Service (SARS) to meet the Respondents tax obligations.

**The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.**

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

**Eswatini Railways and Transnet Freight Rail urges its clients, suppliers and the general public to report any fraud or corruption to****TIP-OFFS ANONYMOUS: +27 86 551 4153**Ethics Helpdesk (Pty) LTD.  
Ethics Management System™**You can choose to be Anonymous or Non-Anonymous on ANY of the platforms**  
**PLEASE RETAIN YOUR REFERENCE NUMBER****AI Voice Bot "Jack"**

Speak to our AI Voice Chat Bot "JACK", you converse with him like chatting to a human, with the option to record a message and speak to an agent at anytime.

**What's App**

Speak to an Agent via What's App.

**Speak to an Agent**

Speak to an Agent via the platform with no call or data charge

**Telegram**

Speak to an Agent via Telegram

**0800 003 056****086 551 4153****reportit@ethicshelpdesk.com****\*120\*0785980808#**

### SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

#### 1 BACKGROUND

In 2012 the Eswatini and South African Governments initiated a project of mutual interest, the Eswatini Rail Link ("ESRL"), that would enhance the capacity of the eastern seaboard GFB system and deliver significant socio-economic benefits to Eswatini, South Africa and the SADC region.

This initiative was cemented by the signing of a Memorandum of Understanding between the governments of Eswatini and South Africa on the 2nd of August 2012. On the 22nd of November 2014, an Inter-rail Memorandum of Understanding was signed to cement the relationship at business and technical levels between Eswatini Railways and TFR, followed by an Inter-rail Memorandum of Agreement in 2015 for the project feasibility study.

The approved FEL- 2 study recommended that a proposed Davel – Lothair – Sidvokodvo (or alternative junction) link presents the best alternative route from the coalfields to the east coast deep water port of Richards Bay. The link will open opportunities in future to develop a connection from Phuzumoya (Eswatini) to the port of Maputo. Further studies on the coal line by the project team (2015) identified an operational solution that passes through the Ermelo yard with minimal impact to the coal export service. The operational solution proved to be more technically viable and less capital intensive than the original link from Davel.

Further outcomes of the study recommend operationalizing the link at 75 wagon trains rather than the initially proposed 150 wagon trains. The compromise alignment geometry (1:80 ruling gradient and 300m minimum radius for curves) allows the passage of 100 wagon trains. Capacity identified for the total project route goes up to 26mtpa initially, thereafter with gradual ramp ups. The link line will also cater for an increase in demand on other commodities (Magnetite, Phosphate, Timber, Sugar Cane, Vermiculite, etc.) currently running from Komatipoort to Richards Bay.

The ESRL project, also known as the "New Link", is a green-field railway development of approximately 150 km between Lothair, in South Africa, and Sidvokodvo in Eswatini. The ESRL project anchors the development of a GFB corridor, and the figure below depicts the GFB corridor as underpinned by the ESRL project.

The scope of this assignment is to evaluate the ownership, commercial, funding options and development for the "New Link" project. As this programme involves cross-border activities, a thorough analysis of all options and implications thereof is necessary. A service provider is required to explore various options available to ensure bankability of the programme, provide funding and execute the project.

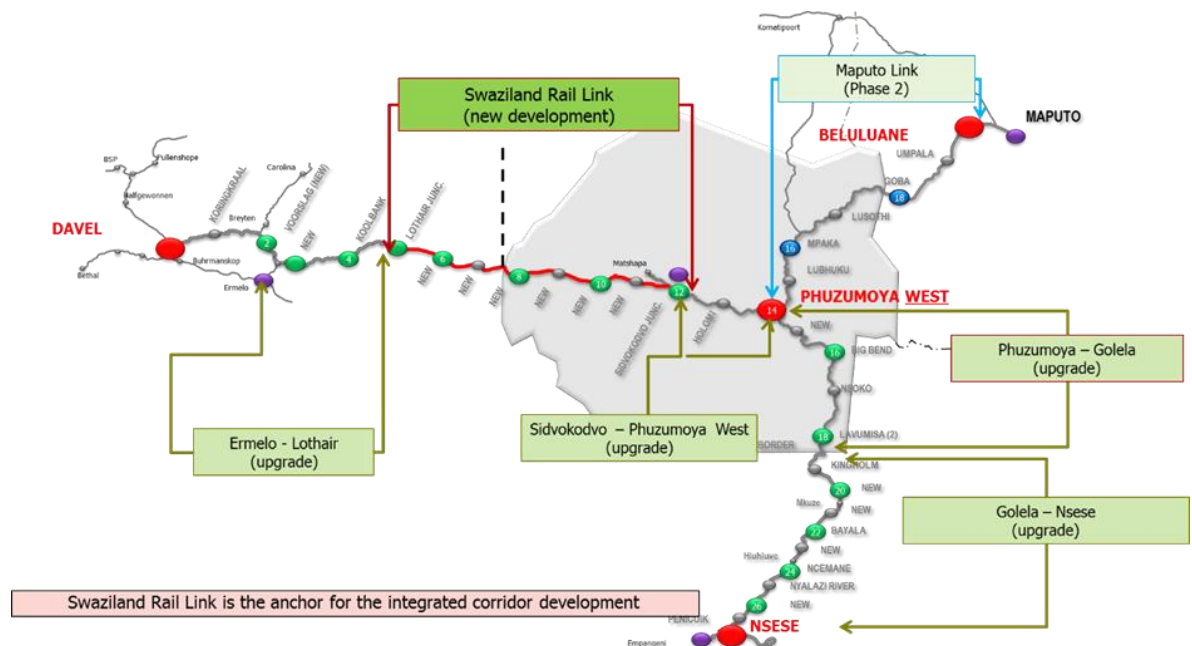


Diagram 1: Envisaged General Freight Corridor as underpinned by the ESRL project

The magnitude of the programme and cross border complexities necessitated an integrated approach, hence the team adopted the PLP methodology outlined in Figure 1 below, since inception to date. All issues that might have a financial, legal and commercial impact on the programme either directly or indirectly need to be assessed so that pro-active steps can be taken in a timely manner.

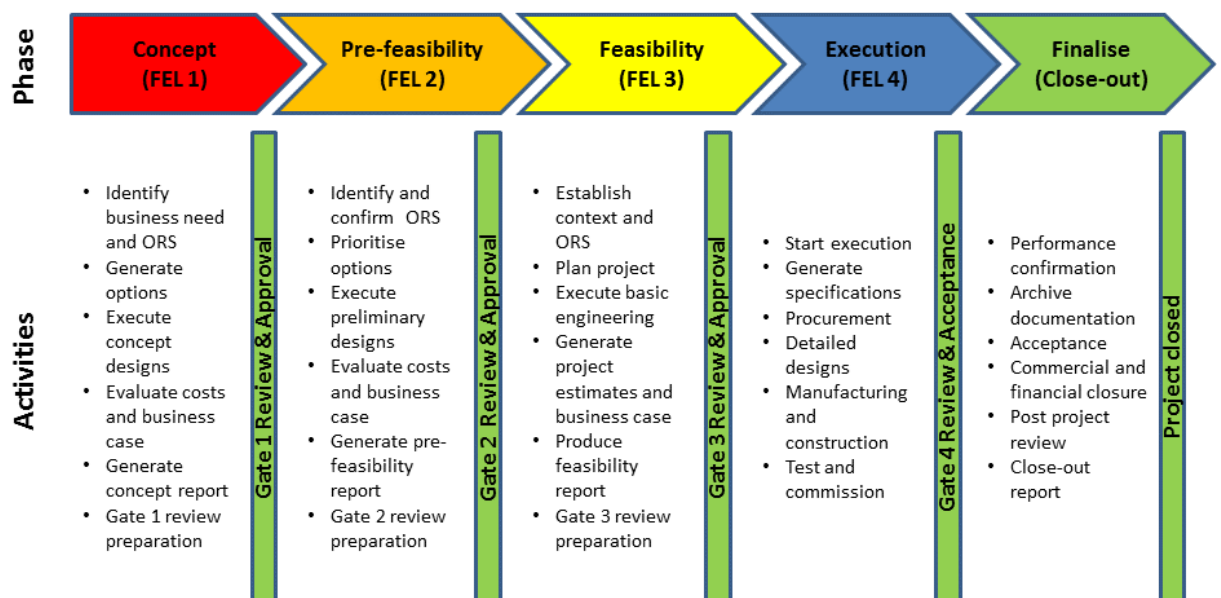


Figure 1: Transnet's Programme Phases

A joint Eswatini Railways / TFR working team has been established to address, amongst other issues, the following aspects of the programme:

- Engineering designs of the rail link: the outputs of this team was the complete set of engineering requirements for building the rail link.
- Construction cost estimates of the rail link: a detailed bill of materials and cost estimates was produced. This covered all major activities related to building the rail link.
- Environmental impact assessment: the assessment of the EIA along the selected route of the programme was completed. This team performed all the work that resulted in the necessary authority being granted to build the rail link along the selected route.
- Identification, costing and acquisition of the land that will be required to build the rail link has been advanced by the project team.

The legal, risk, stakeholder impact and operational aspects of the rail link are also being addressed by the working team. The appointed service provider will be required to use the outputs of the working team as input to the work that they (the service provider) have to deliver.

## 2 EXECUTIVE OVERVIEW

The selected Service provider(s) must share in the mission and business objectives of Eswatini Railways and TFR. These mutual goals will be met by meeting contractual requirements and new challenges in an environment of teamwork, joint participation, flexibility, innovation and open communications. In this spirit of partnership, Eswatini Railways, TFR, and its Service provider(s) will study the current ways they do business to enhance current practices and support processes and systems. Such a partnership will allow Eswatini Railways and TFR to reach higher levels of quality, service and profitability.

Specifically, the partners on this project, Eswatini Railways and TFR, seek to benefit from this partnership in the following ways:

- 2.1 The partners must receive reduced cost of acquisition and improved service benefits resulting from the Supplier/Service provider's economies of scale and streamlined service processes.
- 2.2 The partners must achieve appropriate availability that meets user needs while reducing costs for both partners and the chosen Service provider(s).
- 2.3 The partners must receive proactive improvements from the Service provider with respect to supply/provision of Goods/Services and related processes.
- 2.4 The partner's overall competitive advantage must be strengthened by the chosen Service provider's leading-edge technology and service delivery systems.
- 2.5 The partners end users must be able to rely on the chosen Service provider's personnel for service enquiries, recommendations and substitutions.

### 3 SCOPE OF REQUIREMENTS

#### **NB: Participation at risk**

Eswatini Railways and TFR have spent a substantial amount of capital to develop the ESRL programme to its current status. Due to funding constraints it is therefore desirable for the initial outstanding activities pre-project implementation (construction) as contained in this RFP document to be completed at risk. To this end, respondents are required to:

- Detail the facility to be employed to participate at risk;
- Specify the terms and conditions applicable to the facility.

The main deliverables of this assignment can be summarised as follows:

- i. Update business case of the ESRL programme.
- ii. Update financial model of the ESRL programme.
- iii. Project structuring.
- iv. Financial analysis.
- v. Risk analysis.
- vi. Funding options to ensure bankability.
- vii. Advise and secure **funding** for the programme.
- viii. Complete the Geotechnical Investigations to 100% as per the PLP guidelines.
- ix. Complete the Engineering Designs to 100% as per the PLP guidelines.
- x. **Execute and construct** the ESRL project.
- xi. Compile and assist the project team in preparing for and presenting to the various governance committees within Eswatini Railways and TFR.

#### **The Service Provider must address the following financial and commercial requirements:**

- Identify the most optimal funding structure
- Prepare a funding model
- Assist with the capital raising process on the basis of a 100% off-balance sheet funded solution;
- Provide tax and accounting opinions on the proposed structure
- Prepare a risk register and mitigation strategies
- Aggregate the most optimal funding sources inclusive of risk packages to negate political and commercial risk
- Prepare the Programme Information Memorandum (PIM) for market sounding purposes
- Assist the ESRL Project in updating the business case and any other such documents as required to satisfy all internal approvals

This is to be done by refining and building on the FEL-3 findings, costing and concept engineering, with a view to providing a solid base for developing the new ESRL. The solution shall align with ESR and TFR technical requirements.

**Legal, regulatory and compliance requirements:**

- a. Assist the ESRL Project in identifying and defining the most optimal funding structure, such as PPP, PSP, etc.;
- b. Assist the ESRL Project with all legal agreements pertaining to the agreed funding structure;
- c. Ensure that the ESRL Project is compliant with the PPP/ PSP regulations / laws; and
- d. Assist the ESRL Project with preparation of documents for ministerial approvals.

**Project Financial Modelling**

The service provider will be expected to carry out the following in updating the financial model:

- a. Justifiable investment tenor (ensure equitable investment return for the parties in the SPV);
- b. Validation of the existing situation with respect to:
  - Freight volumes;
  - Distances;
  - Product mix;
  - Customers and contracts;
  - Macroeconomic drivers/variables;
  - Identification of potential opportunities both green fields and brown fields not yet captured by the existing operations;
  - Scenario analysis / Modelling on the viability of PSP Project should be explored taking into account both the existing flow and potential flow;
  - Accurately capture operational costs;
  - All project development cost including professional fees are to be included in the cost bucket; Sensitivity analysis on freight volumes and the impact thereof should be clearly addressed;
  - Review of the detailed data and assumptions governing the model produced by Eswatini Railways and TFR or any associated advisers;
  - Expected returns (required internal rate of return on equity, operations cash flow generation potential);
  - Update of model adjusted for multiple scenarios (Base Case, Downside Case, Upside Case) and valuation purposes.

The above feed directly into an assessment of what the most reasonable expectations should be for the performance of the PPP/PSP Project, post-capital investment.

Furthermore, the Service Provider will be expected to address the following project development/EPC requirements which include; undertaking the investigation, design, procurement, equipment installation, civil works, testing and commissioning for the execution of the Works in accordance with the stipulations of Contract Documents. Generally, the Project shall be designed, constructed and tested according to the relevant railway codes, specifications, standards, typical and reference drawings, Eswatini Railways and TFR standards. Following are some of the activities to be undertaken by the service provider:

**Geotechnical Engineering Scope:**

It is required that the Consultant performs a detailed geotechnical engineering study for the Lothair – Sidvokodvo railway line. The study shall be done in detail and to 100% as per PLP guidelines. This means that

the study shall inform structural and geometric design work activities. The geotechnical study shall include fieldwork, laboratory testing, evaluation and reporting.

**Borrow Pit Geotechnical Engineering Scope:**

It is required that the Consultant performs a detailed geotechnical engineering study of the potential borrow pits for the Lothair – Sidvokodvo railway line in support of the EIA process. The study shall be done in detail and to 100% as per PLP guidelines. The geotechnical study shall include fieldwork, laboratory testing, evaluation, design and reporting.

**Structural Engineering Scope:****(i) Bridges**

The Consultant is required to perform detailed design of the following bridges to 100% as per Transnet Project Life Cycle Process (PLP) guideline:

- Incrementally launched viaducts – 9
- In-situ cast viaducts – 19
- Bridges – 28
- Underpasses – 31
- Cattle creeps - 25

In completion of the abovementioned requirements, the Consultant should also produce Bridge Design Drawings for Construction along with a Bill of Quantities (BoQ) for all the above. A list of bridges indicating their chainage, type and span length will be provided. Rail over road bridges shall be designed for a maximum axle load of 30 tonnes. The designs of all shall comply with the Transnet Bridge code (1983), TMH 7 and any other relevant internationally accepted bridge standard.

**(ii) Culverts**

It is required that the Consultant performs hydrological and hydraulic analysis for all proposed culverts between Lothair and Sidvokodvo. This shall be done to determine the final culvert sizes along with producing culvert design drawings to 100% for Construction purposes as per Transnet Project Life Cycle Process (PLP) guideline. It is also required that the Consultant produce Bill of Quantities along with a comprehensive design report for all culverts. The culverts shall be designed to accommodate a maximum axle loading of 30 tonnes and flood return period of 50 years shall be used. The SANRAL Drainage Manual shall be used as a guide along with any other accepted drainage design standard.

**Perway & Civil Design**

The Consultant shall perform detailed Perway and civil design to 100% as per the Transnet PLP guidelines. The detailed designs should be accompanied by design drawings for Construction purposes. The rail formation (layerworks and subsurface drainage systems) shall be designed to 26t/axle standard as per the Transnet S410 specification. The Perway superstructure shall be of S standard (see TFR Track Maintenance Manual).

- Curves are to be designed to achieve a minimum of 300m radii.
- Gradients to be no steeper than 1:120 in the direction of Lothair – Sidvokodvo and minimum 1:66 in the direction of Sidvokodvo – Lothair.



- Design of 3000m crossing loops at maximum gradient of 1:800 based on train dynamics.
- Design of bridges and culverts.
- All of the above designs should allow for the installation of OHTE equipment and train authorisation equipment.
- Construction drawings should then be produced for the new lines, loops, bridges and culverts.
- The design criteria and assumptions will be provided.

Furthermore, the development of the Eswatini Rail Link will unlock a general freight railway corridor with a carrying capacity of approximately 36 million tonnes per annum. Eswatini Railways and TFR are seeking **owners of freight**, and related parties, who would be interested in utilizing this "new railway capacity". Prospective bidders are requested to highlight the commodities intended to be railed on this corridor, the anticipated annual volumes and 5-year projections starting from 2026, including commodity origins and destinations.

Eswatini Railways and TFR anticipate the development of the new railway corridor to increase the need for freight wagons and locomotives to service customer needs. Respondents are required to demonstrate experience and ability in the supply of **rolling stock**.

#### 4 GREEN ECONOMY / CARBON FOOTPRINT

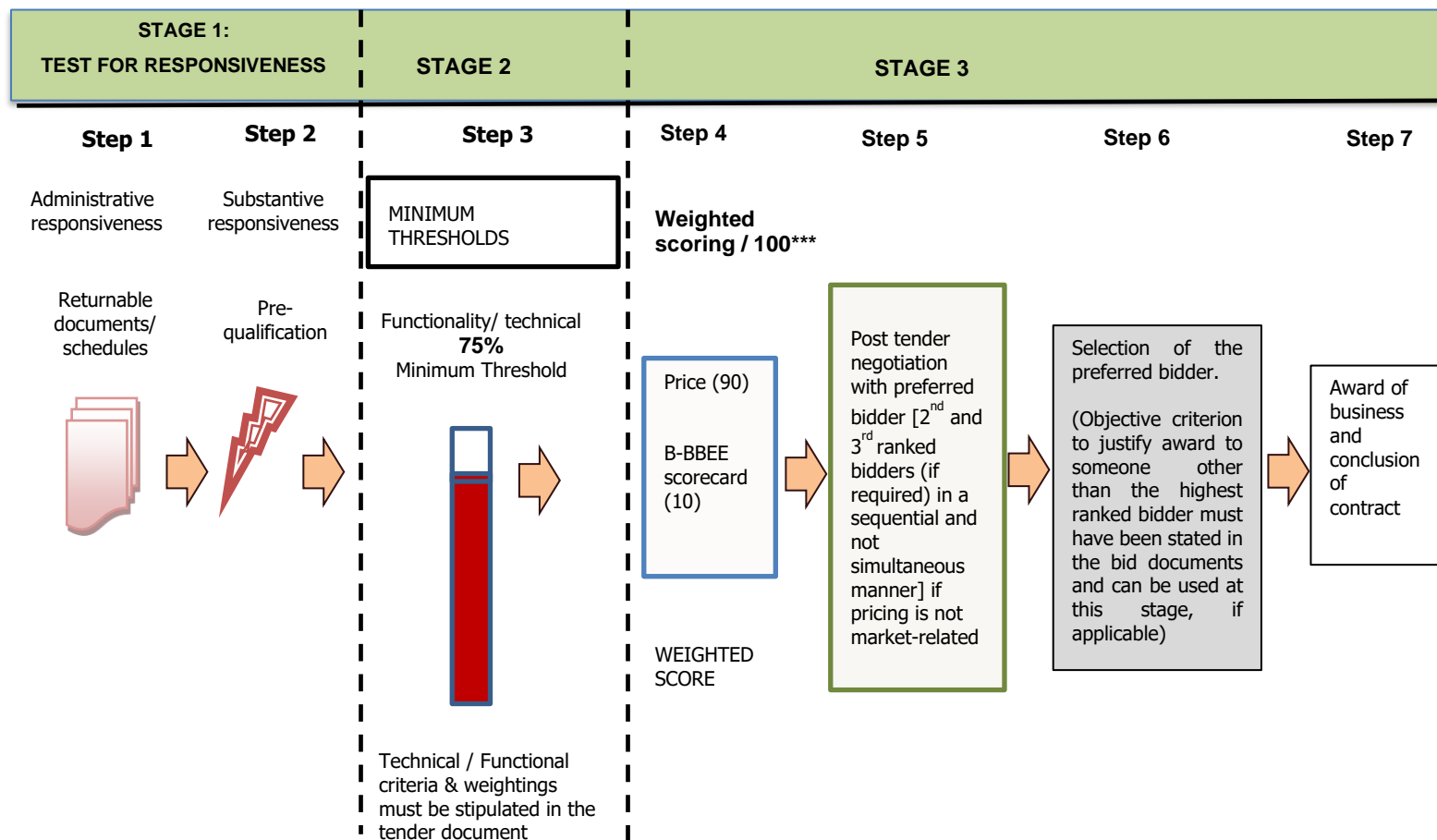
Eswatini Railways and TFR wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

#### 5 GENERAL SERVICE PROVIDER OBLIGATIONS

- 5.1 The Service provider(s) shall be fully responsible to Eswatini Railways and TFR for the acts and omissions of persons directly or indirectly employed by them.
- 5.2 The Service provider(s) must comply with the requirements stated in this RFP.

**6 EVALUATION METHODOLOGY**

Eswatini Railways and TFR will utilise the following methodology and criteria in selecting a preferred Service provider:

**6.1 STEP ONE: Test for Administrative Responsiveness**

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
• Whether the Bid has been lodged on time	<i>Section 1 paragraph 3</i>
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	<i>Section 5</i>
• Verify the validity of all returnable documents	<i>Section 5</i>
• Verify if the Bid document has been duly signed by the authorised respondent	<i>All sections</i>

***The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification***

**6.2 STEP TWO: Test for Substantive Responsiveness to RFP**

The test for substantive responsiveness to this RFP will include the following:

Check for substantive responsiveness	RFP Reference
<ul style="list-style-type: none"> <li>Whether any general and legislation qualification criteria (excluding preferential procurement), have been met</li> </ul>	<i>All sections including: Section 2 paragraphs, 10.2, General Bid Conditions clause 20</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule</li> </ul>	<i>Section 4</i>
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	<i>All Sections</i>
<ul style="list-style-type: none"> <li>Whether any Technical eligibility criteria set have been met as follows: Respondents are to provide the following for the construction portion of the project: <ul style="list-style-type: none"> <li>For South African and Eswatini Respondents, CIDB Grading of 9CE/CIC Grading of CS1</li> <li>For International Respondents, relevant and valid Construction Industry certification required for Contractors. [Respondent to provide the framework which governs the provided certification]</li> </ul> </li> </ul>	<i>Section 3 – Scope of Work</i>

***The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation***

**6.3 STEP THREE: Minimum Threshold of 75 points for Technical Criteria**

The test for the Technical and Functional threshold will include the following:

**REFER TO ANNEXURE A FOR THE DETAILED TECHNICAL CRITERIA AND SCORING GUIDE**

<b>Funding</b>	<b>Funding Phase</b>		
	The tender must Submit the following as a minimum		
	Facility amount	2	<b>20</b>
	Type of funding	2	
	Drawdown profile	1	
	Currency	1	
	Term	1	
	Availability period	2	
	Repayment	2	
	Capital grace	2	
	Interest grace	2	
	Base interest grace	2	
	Margin	1	
	Debt Service Coverage Ratio (DSCR)	1	
	Debt Service Reserve Account (DSRA)	1	

<b>Evaluation Schedule:</b>  <i>Previous Experience</i>	<b>The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience and qualifications to provide the required service</b>			<b>20</b>
	The tenderer must demonstrate their relevant experience with regards to the Funding and Construction of similar works as detailed in the Works Information, and to this end shall supply a sufficiently detailed reference list with contact details of existing customers and also indicate their previous experience with reference to:			
	Funding of rail infrastructure projects	5		
	Construction of rail infrastructure projects	5		
	Evidence of project completion i.e. Completion Certificates. References to substantiate experience indicated showing:  <ul style="list-style-type: none"><li>• Project description</li><li>• Customer name and contact details</li><li>• Contract value and duration</li><li>• Project Status</li></ul>	10		
<b>Evaluation Schedule:</b>  <i>Method Statement</i>	<b>The tenderer must sufficiently demonstrate the approach/methodology that he/she will employ to cover the scope of the project.</b>			<b>10</b>
	<b>Submit the following as a minimum with your tender:</b>			
	The method statement must respond to the scope of work (the Works Information) and outline the proposed methodology relating to the Programme, quality, health and safety environmental considerations and, risks and mitigations associated with the project.	3		
	The method statement should articulate what value add the tenderer will provide in achieving the stated objectives for the project.	2		
	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	2		

	risks will be managed and what contribution can be made regarding value management.		
	Method of construction and commissioning Process: Tender should narratively demonstrate the approach to site establish, pre-construction activities and meetings, interfaces with other discipline including the client, construction logistics, commissioning procedures and handover.	3	
<b>Evaluation Schedule: Management &amp; CV's of key personnel</b>	<b>The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience and qualifications to provide the required service</b>		
	Organizational structure to include a clear indication of roles and responsibilities and specific function of each team member		<b>15</b>
	<b>Qualification and experience of key staff required but not limited to:</b>		
	<b>Design Phase</b>		
	Senior Railway Engineer/ Team leader	2	
	Railway Track Design Engineer	2	
	Railway Signal & Telecoms Engineer	2	
	Railway Operational Specialist	2	
	Railway Bridge/Structural Engineer	2	
	Hydrologist	2	
	Geotechnical Engineer	2	
	Environmental Specialist	1	
	<b>Construction Phase</b>		<b>15</b>
	Senior Project Manager	2	
	Site Engineers	2	
	Drainage/Structural Engineer	1	
	Materials Engineer	1	
	Trackwork Engineers	2	
	Planning Engineers	1	
	Senior Surveyor	1	
	Quantity Surveyor	1	
	Assistant Engineers	1	
	Foremen	2	
	Environmental, Health and Safety Manager	1	
	<b>Transaction Advisory Phase</b>		<b>10</b>
	Lead Transaction Advisor	4	
	Financial Advisor	3	
	Legal Advisor	3	

<b>Evaluation Schedule (Health and Safety)</b>	<b>Submit the following documents as a minimum with your tender</b>		<b>10</b>
	<b>Health and Safety</b>		
	Valid letter of good standing with insurance body	1	
	Project specific Health and Safety Plan.	2	
	Signed and dated company Health and Safety Policy	1	
	Roles and responsibilities of legal appointees, including but not limited to Safety Officer.	1	
	List of job categories for project and competencies required per category and develop a training Matrix for all employees who will be working on the project.	1	
	Overview of Risk Assessment process with project specific examples.	1	
	One year synopsis of SHE incidents, description, type and action taken	1	
	Completed Safety Questionnaire (templates attached)	1	
	Completed Health and Safety Cost Breakdown (template attached)	1	

*See **Annexure A** for the detailed evaluation criteria*

*Respondents must complete and submit **Annexure B** which must be labelled 'Technical Response'. A Respondent's compliance with the minimum functionality/technical threshold will be measured by the supporting evidence contained in **Annexure B**.*

*Respondents are to note that Transnet will round off final technical scores to the nearest 2 (two) decimal places for the purposes of determining whether the technical threshold has been met.*

***The minimum threshold for technical/functionality [Step Three] must be met or exceeded for a Respondent's Proposal to progress to Step Four for final evaluation***

#### 6.4 STEP FOUR: Evaluation of Financial Model

Eswatini Railways and TFR will conduct an assessment of the Respondents intended funding model. The key areas are detailed below and will be utilised to determine the viability of each proposal submitted in this process.

It is estimated that the development of the Eswatini Rail Link and the upgrade of the adjacent rail networks will cost ZAR29 billion (based on 2016 estimates). Eswatini Railways and TFR are seeking partners who will be able to invest

in the project and it is therefore important to both entities through this process to determine which proposal is commercially viable and presents the most beneficial terms.

Respondents are requested to furnish the following information:

Information Required	Description
Facility amount	Total amount available for the project.
Type of funding	Details of whether the type of funding is a grant, loan, equity, etc.
Drawdown profile	The period over which an investor's pledged investment is requested and in how many instalments.
Currency	Applicable currency for the funds.
Term	Term of the financing
Availability period	Set period during which a borrower may draw down a loan.
Repayment	Period for repayment of funds.
Capital grace	The period of time at the beginning of a loan during which the debtor only has to make limited paybacks.
Interest grace	The period between the end of a billing cycle and the date your payment is due.
Base interest rate	Percentage value that central banks set as a guide for the financial sector as to define the price of credit in a country.
Margin	Applicable margin
Debt Service Coverage Ratio (DSCR)	Indicates ability of a Respondent to use its operating income to repay all its debt obligations.
Debt Service Reserve Account (DSRA)	Facility where funds are deposited to cover future debt service.

Respondents are requested to also provide the following information:

- Proposed transaction structure.
- Respondent's requirements from Eswatini Railways and TFR to proceed with investing in the project.
- Any indicative terms and conditions that the Respondent may have.
- The key points that should be taken into consideration when structuring this transaction.

*Respondents must complete and submit **Annexure C** which must be labelled 'Funding Proposal'. All information provided must be supported by the relevant documentation which will aid an informed assessment of the proposal.*

### **SUMMARY: Applicable Thresholds and Final Evaluated Weightings**

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

Thresholds	Minimum Threshold
Technical / functionality	75%

#### 6.5 **STEP FIVE: Post Tender Negotiations (if applicable)**

- Respondents are to note that Eswatini Railways and TFR may not award a contract if the price offered is not market related. In this regard, Eswatini Railways and TFR reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
  - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
  - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.
- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.
- Should Eswatini Railways and TFR conduct post tender negotiations, Respondents will be requested to provide their best and final offers to TFR based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).
- Over and above the negotiating of prices with the preferred bidder to get a market-related price, Transnet may engage preferred bidder(s) to negotiate reduced rates before or after the award of business to achieve cost effectiveness in all its contracts.

#### 6.6 **STEP SIX: Objective Criteria (if applicable)**

Eswatini Railways and TFR reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder. The objective criteria Eswatini Railways and TFR may apply in this bid process include:

- all Risks identified during a risk assessment exercise/probity check (which may be conducted by an authorised third party) that would be done to assess all risks, including but not limited to:
  - the financial stability of the bidder based on key ratio analysis, which would include, but not be limited to Efficiency, Profitability, Financial Risk, Liquidity, Acid Test, and Solvency;
  - a due diligence to assess functional capability and capacity. This could include a site visit;
  - A commercial relationship with a Domestic Prominent Influential Person (DPIP) or Foreign Prominent Public Official (FPPO) or an entity of which such person or official is the beneficial owner; and
  - Reputational and Brand risks

#### 6.7 **STEP SEVEN: Award of business and conclusion of contract**

- Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).
- A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.



**SECTION 4: PRICING AND DELIVERY SCHEDULE****1. DISCLOSURE OF CONTRACT INFORMATION****PRICES TENDERED**

Respondents are to note that, on award of business, Transnet and Eswatini Railways are required to publish the tendered prices of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, ([www.etenders.gov.za](http://www.etenders.gov.za)) and Eswatini Public Procurement Regulatory Agency as required per National Treasury Instruction Note 01 of 2015/2016 and Section 45 of the Public Procurement Act No. 7 of 2011 (the Act) respectively.

**JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS**

Transnet may also be required to disclose information relating to the subsequent contract i.e. the name of the company, goods/services provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

**DOMESTIC PROMINENT INFLUENTIAL PERSONS (DPIP) OR FOREIGN PROMINENT PUBLIC OFFICIALS (FPPO)**

Eswatini Railways and TFR are free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Eswatini Railways and TFR shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website <https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP>, Respondents are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.						
<b>Is the Respondent</b> (Complete with a "Yes" or "No")						
<b>A DPIP/FPPO</b>		<b>Closely Related to a DPIP/FPPO</b>		<b>Closely Associated to a DPIP/FPPO</b>		
<b>List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.</b>						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						

Respondent's Signature

Date &amp; Company Stamp

3						
---	--	--	--	--	--	--

Respondents declaring a commercial relationship with a DPIIP or FPPO are to note that TFR is required to annually publish on its website a list of all business contracts entered into with DPIIP or FPPO. This list will include successful Respondents, if applicable.

## 2. IMPORTED CONTENT

The Respondents must state hereunder the value and percentage of the imported content as well as the country of origin in respect of each item tendered for:

RFP ITEM NO / DESCRIPTION.	VALUE	% COST	COUNTRY OF ORIGIN

Note: Where more than one country is applicable to one item, the Respondents must furnish this information separately.

## 3. EXCHANGE AND REMITTANCE

The attention of the Respondents is directed to clause 17 *[Exchange and Remittance]* of the General Bid Conditions. If Transnet is requested by the Respondent to effect payment overseas direct to the Respondent's principal or supplier/service provider, which is not a registered South African Company please complete the details below, using the rate of exchange published by the South African Reserve Bank 7 [seven] calendar days before the closing date of this RFP:

3.1 ZAR 1.00 [South African currency] being equal to \_\_\_\_\_ *[foreign currency]*

3.2 \_\_\_\_\_ % in relation to tendered price(s) to be remitted overseas by Transnet

3.3 \_\_\_\_\_ [Name of country to which payment is to be made]

3.4 Beneficiary details:

Name [Account holder] \_\_\_\_\_

Bank [Name and branch code] \_\_\_\_\_

Swift code \_\_\_\_\_

Country \_\_\_\_\_

3.5 \_\_\_\_\_ [Applicable base date of Exchange Rate used]

Respondents are advised that should a contract be awarded for deliveries on an "as and when required" basis, any future remittance(s) to overseas principals/service providers, as instructed above, will be based on an agreed rate of exchange related to the contractual price of the Goods/Services at that time.

Respondents should note that Transnet would prefer to receive fixed price offers expressed in South African Rand [ZAR].

## 4. EXPORT CREDIT AGENCY SUPPORTED FINANCE

In order to finance its payment obligations under a future contract where foreign transactions are involved, TFR may consider raising debt financing [an **ECA Facility**] from one or more banks or financial institutions, with the benefit of export credit agency [**ECA**] credit support to be provided by an ECA.

Under such circumstances the successful Respondent will agree to undertake:

- a) to provide [and/or cause the Parent/OEM to provide, as applicable] to Transnet and the banks and financial institutions that may participate in the ECA Facility all such assistance as an importer of Goods and/or Services, which are eligible for ECA credit supported finance by an ECA, is generally required to provide for the purposes of obtaining ECA support;
- b) not to do or [as Supplier of the relevant eligible Goods or services] omit to do anything, which may adversely affect Transnet's prospects of qualifying for or, once obtained, maintaining ECA credit support by an ECA in respect of an ECA Facility.

All cost, expenses, charges and liabilities incurred by Transnet in establishing an ECA Facility with credit support from an Export Credit Agency, may be for the account of Transnet.

## 5. NATIONAL RAILWAY SAFETY REGULATOR ACT

In compliance with the National Railway Safety Regulator Act, 16 of 2002, the successful Respondent [**the Supplier**] shall ensure that the Goods to be supplied to Eswatini Railways and TFR, under the terms and conditions of a contract between the parties, adhere to railway safety requirements and/or regulations [as applicable]. Permission for the engagement of a subcontractor by the Supplier, as applicable, both initially and during the course of a contract, shall be subject to a review of the capability of the proposed subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its subcontractor shall grant Eswatini Railways and TFR access, during the term of the contract, to review any safety-related activities, including the coordination of such activities across all parts of the organisation.

**Accepted:**

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

## 6. SERVICE LEVELS

- 6.1 An experienced national account representative(s) is required to work with Eswatini Railways and TFR's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 6.2 Eswatini Railways and TFR will have quarterly reviews with the Supplier/Service provider's account representative on an on-going basis.
- 6.3 Eswatini Railways and TFR reserves the right to request that any member of the Supplier/Service provider's team involved on the account be replaced if deemed not to be adding value for Eswatini Railways and TFR.
- 6.4 The Service provider guarantees that it will achieve a 95% [ninety-five per cent] service level on the following measures:
  - a) Random checks on compliance with all applicable regulatory requirements
  - b) Random checks on compliance with quality/quantity/specifications
  - c) On-time delivery
- 6.5 The Supplier/Service provider must provide a telephone number for customer service calls.
- 6.6 The Service Provider will enter into project specific Service Level Agreements which need to be adhered to.

- 6.7 Failure of the Service provider to comply with the service level agreements will give Eswatini Railways and TFR the right to cancel the contract in whole, without penalty to Eswatini Railways and TFR, giving 30 [thirty] calendar days' notice to the Supplier/Service provider of its intention to do so.

**Acceptance of Service Levels:**

<b>YES</b>	
------------	--

<b>NO</b>	
-----------	--

**7. TOTAL COST OF OWNERSHIP AND CONTINUOUS IMPROVEMENT INITIATIVES**

- 7.1 Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with Eswatini Railways and TFR in their continuous improvement initiatives to reduce the total cost of ownership [TCO], which will reduce the overall cost of transportation Goods/Services and related logistics provided by Eswatini Railways within Eswatini and TFR within South Africa to the ultimate benefit of all end-users.

**Accepted:**

<b>YES</b>	
------------	--

<b>NO</b>	
-----------	--

If "yes", please specify details in paragraph 8.2 below.

- 7.2 Respondents must briefly describe their commitment to TCO and continuous improvement initiatives and give examples of specific areas and strategies where cost reduction initiatives can be introduced. Specific areas and proposed potential savings percentages should be included. Additional information can be appended to the Respondent's Proposal if there is insufficient space available below.

---



---

**8. RISK**

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Eswatini Railways and TFR pertaining to potential non-performance by the Respondent, in relation to:

**8.1 Quality and specification of Goods/Services delivered:**


---



---

**8.2 Continuity of supply:**


---



---

**8.3 Compliance with the Occupational Health and Safety Act, 85 of 1993:**


---



---

**8.4 Compliance with the National Railway Safety Regulator Act, 16 of 2002:**


---



---

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature\_\_\_\_\_  
Date & Company Stamp

**SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS**

I/We \_\_\_\_\_  
 [name of entity, company, close corporation or partnership] of [full address]

\_\_\_\_\_

carrying on business trading/operating as

represented by \_\_\_\_\_

in my capacity as \_\_\_\_\_

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated \_\_\_\_\_ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Eswatini Railways and TFR decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to provide the abovementioned Services in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Eswatini Railways and TFR:

- (i) General Bid Conditions; and
- (ii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Eswatini Railways and TFR should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Eswatini Railways' and TFR's acceptance thereof shall constitute a binding contract between Eswatini Railways, TFR and me/us.

Should Eswatini Railways and TFR decide that a formal contract should be signed and so inform me/us in a letter of award [the **Letter of Award**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Eswatini Railways and TFR's Letter of Award, shall constitute a binding contract between Eswatini Railways, TFR and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of Goods/Services within 3 [three] months thereafter, Eswatini Railways and TFR may, without prejudice to any other legal remedy which it may have,

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

Furthermore, I/we agree to a penalty clause/s which will allow Eswatini Railways and TFR to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Goods/Services due to non-performance by ourselves, etc.

I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Eswatini Railways and TFR with cause for cancellation.

#### **ADDRESS FOR NOTICES**

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Address: \_\_\_\_\_

#### **NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [**the Supplier/Service provider**] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Supplier/Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

#### **VALIDITY PERIOD**

TFR enquires a validity period of 180 Business Days [from closing date] against this RFP, excluding the first day and including the last day.

#### **NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [**C.C.**] on whose behalf the RFP is submitted.

- (i) Registration number of company / C.C. \_\_\_\_\_
- (ii) Registered name of company / C.C. \_\_\_\_\_
- |       |                                    |                   |              |
|-------|------------------------------------|-------------------|--------------|
| (iii) | Full name(s) of director/member(s) | Address/Addresses | ID Number(s) |
|-------|------------------------------------|-------------------|--------------|

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**RETURNABLE DOCUMENTS**

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<b><i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFP <u>will</u> result in a Respondent's disqualification.</i></b>
Returnable Documents Used for Scoring	<b><i>Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.</i></b>
Essential Returnable Documents	<b><i>Failure to provide essential Returnable Documents <u>will</u> result in Eswatini Railways and TFR affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.</i></b>

**All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.**

**a) Mandatory Returnable Documents**

Respondents are required to submit with their bid submissions the following **Mandatory Returnable Documents**, and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

<b>MANDATORY RETURNABLE DOCUMENTS</b>	<b>SUBMITTED [Yes/No]</b>
Section 1: SBD1 Form	
Technical eligibility criteria: Respondents are to provide the following for the construction portion of the project: <ul style="list-style-type: none"> <li>For South African and Eswatini Respondents, CIDB Grading of 9CE or CIC Grading of CS1</li> <li>For International Respondents, relevant and valid Construction Industry certification required for Contractors. [Respondent to provide the framework which governs the provided certification]</li> </ul>	
Annexure C – Funding Proposal	



**b) Returnable Documents Used for Scoring**

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b><u>RETURNABLE DOCUMENTS USED FOR SCORING</u></b>	<b>SUBMITTED [Yes or No]</b>
Annexure A – Technical Response with <u>all</u> supporting documents	
<i><b>Insert any documents to be used for the technical evaluation that will not result in disqualification but a score of zero for that aspect of the technical evaluation, e.g. number of references or CVs required.</b></i>	

**c) Essential Returnable Documents:**

Over and the above the requirements of section (a) and (b) mentioned above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b><u>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</u></b>	<b>SUBMITTED [Yes or No]</b>
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
SECTION 4: Pricing and Delivery Schedule	
SECTION 5: Proposal Form and List of Returnable documents	
SECTION 6: Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7: RFP Declaration and Breach of Law Form	
SECTION 9: Job-Creation Schedule	
SECTION 10: SBD 5 (NIPP)	
SECTION 11: Protection of Personal Information	

**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [**the Agreement**] and fail to present Eswatini Railways and TFR with such renewals as and when they become due, Eswatini Railways and TFR shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which Eswatini Railways and TFR may have for damages against the Respondent.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP & APPLICABLE DOCUMENTS**

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Eswatini Railways and TFR will recognise no claim for relief based on an allegation that the Respondent overlooked any such term or condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:

1	General Bid Conditions
2	Supplier Integrity Pact
3	Non-disclosure Agreement

**Note:** Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor onto the Eswatini Railways and TFR vendor master database.

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Eswatini Railways and TFR's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from any term or condition may result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond on, before submitting the bid. **The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.**

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_  
Name \_\_\_\_\_

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

2 \_\_\_\_\_  
Name \_\_\_\_\_

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

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM**

NAME OF ENTITY: \_\_\_\_\_

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

1. Eswatini Railways and TFR has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];
3. We have been provided with sufficient access to the existing Eswatini Railways and TFR facilities/sites and any and all relevant information relevant to the Goods/Services as well as Eswatini Railways and TFR information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Eswatini Railways and TFR's operations and business requirements and assets used by Eswatini Railways and TFR. Eswatini Railways and TFR will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. At no stage have we received additional information relating to the subject matter of this RFP from Eswatini Railways and TFR sources, other than information formally received from the designated Eswatini Railways and TFR contact(s) as nominated in the RFP documents;
5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Eswatini Railways and TFR in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner;
6. We have complied with all obligations of the Bidder/Supplier as indicated in the Eswatini Railways and TFR Supplier Integrity which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Eswatini Railways and TFR;
7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of Eswatini Railways and TFR including any person who may be involved in the evaluation and/or adjudication of this Bid;
8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of Eswatini Railways and TFR;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Eswatini Railways and TFR in the past 10 years. I further declare that if they were a former employee or board member of Eswatini Railways and TFR in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFP; and

\_\_\_\_\_  
Respondent's Signature\_\_\_\_\_  
Date & Company Stamp

10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/  
PARTNER/SHAREHOLDER/EMPLOYEE:

ADDRESS:

---



---

Indicate nature of relationship with Eswatini Railways and TFR:

---



---

***[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Eswatini Railways and TFR. Information provided in the declarations may be used by Eswatini Railways and TFR and/or its affiliates to verify the correctness of the information provided]***

11. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Eswatini Railways and TFR [other than any existing and appropriate business relationship with Eswatini Railways and TFR] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Eswatini Railways and TFR immediately in writing of such circumstances.

#### **BIDDER'S DISCLOSURE (SBD4)**

### **12 PURPOSE OF THE FORM**

12.1 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.

12.2 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.

### **13 Bidder's declaration**

13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state?

**YES/NO**

13.1.1. 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

<sup>1</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.


13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

**YES/NO**

13.2.1. If so, furnish particulars:

.....  
.....

13.3 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**

13.3.1. If so, furnish particulars:

.....  
.....

#### **14 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:

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 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>2</sup> will not be construed as collusive bidding.

14.4 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

<sup>2</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.

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.

14.5 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.

14.6 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.

14.7 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 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 12, 13 and 14 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.

#### **BREACH OF LAW**

We further hereby certify that *I/we* (the bidding entity and/or any of its directors, members or partners) ***have/have not been*** [delete as applicable] 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 Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

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

NATURE OF BREACH:

---

DATE OF BREACH: \_\_\_\_\_

Furthermore, I/we acknowledge that Eswatini Railways and TFR reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

\_\_\_\_\_  
Respondent's Signature\_\_\_\_\_  
Date & Company Stamp





**SECTION 9: JOB-CREATION SCHEDULE****(Please ensure that you return this schedule with your bid submission)**

The Government has identified State Owned Enterprises sourcing activities as a key enabler to achieve the National Development Plan (NDP) objective of reducing unemployment from the current baseline of 28% to 6%. In order to give effect to these job creation objectives, Respondents are required to provide the following undertaking of new jobs that will be created (either by them or by their subcontractors) should they be awarded this bid.

Note that this undertaking is not required if a NIPP obligation is applicable to a Respondent's bid as indicated in Section

**10. Respondents are required to indicate below whether the NIPP obligation is applicable to their bid:**

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

(a) Please indicate total number of new jobs that will be created over the term of the contract:

Total number and value of new jobs created	Total number of new jobs	Total rand value of new jobs created

(b) Of the total number of new jobs created, please indicate the number and value of new jobs to be created for the following designated groups:

	Total number of new jobs	Total rand value of new jobs
Black men		
Black women		
Black Youth		
Black people living in rural or underdeveloped areas or townships		
Black People with Disabilities		

(c) Of the total number of new jobs created, please indicate the number of skilled, semi-skilled and unskilled new jobs that will be created over the term of the contract:

	Total number of Skilled jobs	Total number of Semi-skilled jobs	Total number of Unskilled jobs
Black men			
Black women			
Black Youth			
Black people living in rural or underdeveloped areas or townships			
Black People with Disabilities			
Other			

---

 Respondent's Signature

---

 Date & Company Stamp

- (d) Please indicate the number of new jobs to be created, broken down per quarter over the term of the contract.

**Insert additional tables for each year of the contract period:**

Year 1	Q1	Q2	Q3	Q4
Total number of new jobs				
Number of new jobs for Black men				
Number of new jobs for black women				
Number of new jobs for black youth				
Number of new jobs for black people living in rural or underdeveloped areas or townships				
Number of new jobs for black People with Disabilities				
Number of new jobs for other categories				
Number of new skilled jobs				
Number of new semi-skilled jobs				
Number of new unskilled jobs				

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 10: SBD 5**

This document must be signed and submitted together with your bid

**THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME****INTRODUCTION**

The National Industrial Participation Programme (NIPP), which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIPP requirements. NIPP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

**1. PILLARS OF THE PROGRAMME**

- 1.1 The NIPP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$5 million or other currency equivalent to US\$5 million will have a NIP obligation. This threshold of US\$5 million can be reached as follows:
- (a) Any single contract with imported content exceeding US\$5 million.
  - or
  - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$5 million.
  - or
  - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$5 million.
  - or
  - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$5 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30% of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIPP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIPP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

\_\_\_\_\_  
Respondent's Signature\_\_\_\_\_  
Date & Company Stamp

## 2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

## 3. BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with their bid documentation at the closing date and time of the bid.
- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIPP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:
- Bid number;
  - Description of the goods or services;
  - Date on which the contract was awarded;
  - Name, address and contact details of the contractor;
  - Value of the contract; and
  - Imported content of the contract, if possible.
- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za) for further details about the programme.

## 4. PROCESS TO SATISFY THE NIPP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- a. the contractor and the DTIC will determine the NIPP obligation;
  - b. the contractor and the DTI will sign the NIPP obligation agreement;
  - c. the contractor will submit a performance guarantee to the DTI;
  - d. the contractor will submit a business concept for consideration and approval by the DTI;
  - e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
  - f. the contractor will implement the business plans; and
  - g. the contractor will submit bi-annual progress reports on approved plans to the DTI.
- 4.2 The NIPP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number .....

Closing date: .....

Name of bidder.....

Postal address .....

.....

Signature.....

Name (in print).....

Date.....

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 11: PROTECTION OF PERSONAL INFORMATION (For normal contract)**

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 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. TFR will process all information by the Respondent 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.

3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is TFR and the Data subject is the “Respondent”. TFR will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information 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.
4. TFR reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning TFR.
5. In responding to this bid, TFR acknowledges that it will obtain and have access to personal information of the Respondent. TFR agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
6. TFR further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by TFR and/or its authorised appointed third parties.
7. Furthermore, TFR will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, TFR requires the Respondent to process any personal information disclosed by Eswatini Railways and TFR in the bidding process in the same manner.
8. TFR 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 this RFP (physically, through a computer or any other form of electronic communication).
9. TFR shall notify the Respondent in writing of any unauthorised access to information, 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 Respondent must take all

necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request TFR to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that TFR correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Eswatini Railways and TFR's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

**Respondents are required to provide consent below:**

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying TFR against 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 the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: \_\_\_\_\_

Should a Respondent have any complaints or objections to processing of its personal information, by TFR, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/infoereg/>, click on contact us, click on complaints.IR@justice.gov.za



Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

## T2.2-01: Evaluation Schedule: Funding

<b>Funding</b>	<b>Funding Phase</b>		
	The tender must Submit the following as a minimum		
	Facility amount	2	<b>20</b>
	Type of funding	2	
	Drawdown profile	1	
	Currency	1	
	Term	1	
	Availability period	2	
	Repayment	2	
	Capital grace	2	
	Interest grace	2	
	Base interest grace	2	
	Margin	1	
	Debt Service Coverage Ratio (DSCR)	1	
	Debt Service Reserve Account (DSRA)	1	

### Attached submissions to this schedule:

.....

.....

.....

.....

.....

.....

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

## **T2.2-02: Evaluation Schedule: Previous Experience**

<b>Evaluation Schedule:</b>  <i>Previous Experience</i>	<b>The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience and qualifications to provide the required service</b>		
	The tenderer must demonstrate their relevant experience with regards to the Funding and Construction of similar works as detailed in the Works Information, and to this end shall supply a sufficiently detailed reference list with contact details of existing customers and also indicate their previous experience with reference to:		<b>20</b>
	Funding of rail infrastructure projects	5	
	Construction of rail infrastructure projects	5	
	Evidence of project completion i.e. Completion Certificates. References to substantiate experience indicated showing:  <ul style="list-style-type: none"><li>• Project description</li><li>• Customer name and contact details</li><li>• Contract value and duration</li><li>• Project Status</li></ul>	10	
<b>Evaluation Schedule:</b>  <i>Method Statement</i>	<b>The tenderer must sufficiently demonstrate the approach/methodology that he/she will employ to cover the scope of the project.</b>		
	<b>Submit the following as a minimum with your tender:</b>		<b>10</b>
	The method statement must respond to the scope of work (the Works Information) and outline the proposed methodology relating to the Programme, quality, health and safety environmental considerations and, risks and mitigations associated with the project.	3	
	The method statement should articulate what value add the tenderer will provide in achieving the stated objectives for the project.	2	
	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	2	

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

	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.		
	Method of construction and commissioning Process: Tender should narratively demonstrate the approach to site establish, pre-construction activities and meetings, interfaces with other discipline including the client, construction logistics, commissioning procedures and handover.	3	

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

## **T2.2-03: 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.

<b>Submit the following as a minimum with your tender:</b>		<b>10</b>
The method statement must respond to the scope of work (the Works Information) and outline the proposed methodology relating to the Programme, quality, health and safety environmental considerations and, risks and mitigations associated with the project.	3	
The method statement should articulate what value add the tenderer will provide in achieving the stated objectives for the project.	2	
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.	2	
Method of construction and commissioning Process: Tender should narratively demonstrate the approach to site establish, pre-construction activities and meetings, interfaces with other discipline including the client, construction logistics, commissioning procedures and handover.	3	

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

## T2.2-04: Evaluation Schedule: Staff and Resources

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

1. Staff Qualifications and CV's. (CV's to be not more than 2 pages)
2. Specific experience of individual key staff who will be assigned to deliver the Scope of Services as articulated in the Approach Paper.
3. Staff structure, defined roles and responsibilities.
4. Illustration of how a 'Core EPCM Management Team' will manage the execution of the contract
5. Details of the experience of the staff who will be working on the *services* with respect to:
  - Working with the NEC3 Professional Services Contract Options chosen for this contract to ensure that the Scope of Services is efficiently delivered with the skills and care normally used by professionals providing the Services.
6. Tenderer should also provide their detailed expectation of the Employer team required to complete the Scope of Services. Tenderer's to indicate the desired Employer org chart and functional capabilities, as well as, roles and responsibilities required for stakeholder management.

<b>Evaluation Schedule: Management &amp; CV's of key personnel</b>	<b>The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience and qualifications to provide the required service</b>		
	Organizational structure to include a clear indication of roles and responsibilities and specific function of each team member		<b>15</b>
	<b>Qualification and experience of key staff required but not limited to:</b>		
	<b>Design Phase</b>		
	Senior Railway Engineer/ Team leader	2	
	Railway Track Design Engineer	2	
	Railway Signal & Telecoms Engineer	2	
	Railway Operational Specialist	2	
	Railway Bridge/Structural Engineer	2	
	Hydrologist	2	
	Geotechnical Engineer	2	
	Environmental Specialist	1	
	<b>Construction Phase</b>		
	Senior Project Manager	2	
	Site Engineers	2	
Drainage/Structural Engineer	1		

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

	Materials Engineer	1	15
	Trackwork Engineers	2	
	Planning Engineers	1	
	Senior Surveyor	1	
	Quantity Surveyor	1	
	Assistant Engineers	1	
	Foremen	2	
	Environmental, Health and Safety Manager	1	
	Transaction Advisory Phase		10
	Lead Transaction Advisor	4	
	Financial Advisor	3	
	Legal Advisor	3	

**Attached submissions to this schedule:**

.....

.....

.....

.....

.....

.....

The scoring of the staff and resources of the key persons will be as follows:

	<b>Staff and Resources</b>
<b>No Response (score 0)</b>	The tenderer has submitted no information or inadequate information to determine a score.
<b>Not acceptable (score 20)</b>	The staff qualifications of the key persons do not address project requirements. There is overlapping/misallocation of tasks and responsibilities.
<b>Poor (score 40)</b>	The organization chart is sketchy; the staffing plan is weak in important areas. There is no clarity in allocation of tasks and responsibilities.
<b>Satisfactory (score 60)</b>	The organizational chart is complete and detailed, the technical level and composition of the staffing arrangements are adequate.
<b>Good (score 80)</b>	Besides meeting the "satisfactory" rating, staff are well balanced i.e. they show good co-ordination, complimentary skills, clear and defined duties and responsibilities including a collaborative approach to dealing with consultants employed by the Employer.

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

---

<b>Very Good (score 100)</b>	Besides meeting the "good" rating, the proposed team is well integrated and several members have worked together extensively in the past.
----------------------------------	---

Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

## **T2.2-05: Evaluation Schedule: Health and Safety Management**

The tenderer must submit the following documents as a minimum with the tender submission:

<b>Evaluation Schedule (Health and Safety)</b>	<b>Submit the following documents as a minimum with your tender</b>		<b>10</b>
	<b>Health and Safety</b>		
	Valid letter of good standing with insurance body	1	
	Project specific Health and Safety Plan in line with Project Specification.	2	
	Signed and dated company Health and Safety Policy	1	
	Roles and responsibilities of legal appointees, including but not limited to Safety Officer.	1	
	List of job categories for project and competencies required per category and develop a training Matrix for all employees who will be working on the project.	1	
	Overview of Risk Assessment process with project specific examples.	1	
	One year synopsis of SHE incidents, description, type and action taken	1	
	Completed Safety Questionnaire (templates attached)	1	
	Completed Health and Safety Cost Breakdown (template attached)	1	

### **Attached submissions to this schedule:**

.....

.....

.....

.....

.....

.....

.....

.....



Tender Number: **HOAC HO 38780**

Description of the Services: **For the Provision of Funding and Development (Construction) of the Eswatini Rail Link (ESRL) Project**

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

## **GENERAL BID CONDITIONS**

**[June 2022]**

## TABLE OF CONTENTS

1	DEFINITIONS .....	3
2	GENERAL .....	3
3	SUBMITTING OF BID DOCUMENTS.....	3
4	USE OF BID FORMS .....	3
5	BID FEES .....	4
6	VALIDITY PERIOD.....	4
7	SITE VISITS / BRIEFING SESSIONS .....	4
8	CLARIFICATION BEFORE THE CLOSING DATE .....	4
9	COMMUNICATION AFTER THE CLOSING DATE .....	4
10	UNAUTHORISED COMMUNICATION ABOUT BIDS.....	4
11	RETURNABLE DOCUMENTS .....	4
12	DEFAULTS BY RESPONDENTS .....	4
13	CURRENCY .....	5
14	PRICES SUBJECT TO CONFIRMATION .....	5
15	ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES .....	5
16	EXCHANGE AND REMITTANCE.....	5
17	ACCEPTANCE OF BID.....	6
18	NOTICE TO UNSUCCESSFUL RESPONDENTS.....	6
19	TERMS AND CONDITIONS OF CONTRACT .....	6
20	CONTRACT DOCUMENTS .....	6
21	LAW GOVERNING CONTRACT.....	6
22	IDENTIFICATION .....	7
23	RESPONDENT'S SAMPLES .....	7
24	SECURITIES.....	7
25	PRICE AND DELIVERY BASIS FOR GOODS .....	7
26	EXPORT LICENCE .....	8
27	QUALITY OF MATERIAL .....	8
28	DELETION OF ITEMS EXCLUDED FROM BID .....	8
29	VALUE-ADDED TAX .....	8
30	IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT .....	8
31	CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS .....	9
32	PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS .....	10
33	BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS .....	10
34	DATABASE OF RESTRICTED SUPPLIERS .....	11
35	CONFLICT WITH ISSUED RFX DOCUMENT .....	11

## 1 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 1.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 3 SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 The Bid Documents must be completed in their entirety and Respondents are required to complete and submit their Bid submissions by uploading them into the system against each tender selected. The bidder guide can be found on the Transnet Portal [transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net).

## 4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.
- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

## **5 BID FEES**

A bid fee is not applicable. The Bid Documents may be downloaded directly from National Treasury's e-Tender Publication Portal at [www.etenders.gov.za](http://www.etenders.gov.za) and may also be downloaded from the Transnet website at [www.transnet.net](http://www.transnet.net) free of charge.

## **6 VALIDITY PERIOD**

- 6.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.

## **7 SITE VISITS / BRIEFING SESSIONS**

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

## **8 CLARIFICATION BEFORE THE CLOSING DATE**

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must upload questions onto the Transnet e-Tender Submission Portal or direct such queries to the contact person listed in the RFX Document in the stipulated manner.

## **9 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the contact person listed in the RFX Document.

## **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Respondents may at any time communicate with the contact person listed in the RFX Document on any matter relating to its Bid but, in the absence of written authority from the **delegated individual (BEC chairperson)**, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

## **11 RETURNABLE DOCUMENTS**

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

## **12 DEFAULTS BY RESPONDENTS**

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

- 12.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 12.2 accept an order in terms of the Bid;
- 12.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 12.4 comply with any condition imposed by Transnet,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

### **13 CURRENCY**

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFP.

### **14 PRICES SUBJECT TO CONFIRMATION**

Prices which are quoted subject to confirmation will not be considered.

### **15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

### **16 EXCHANGE AND REMITTANCE**

- 16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- 16.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.
- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.
- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

## **17 ACCEPTANCE OF BID**

- 17.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

## **18 NOTICE TO UNSUCCESSFUL RESPONDENTS**

- 18.1 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

## **19 TERMS AND CONDITIONS OF CONTRACT**

- 19.1 The Supplier/Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be. Respondents will be afforded an opportunity to withdraw an unacceptable deviation, failing which the respondent will be disqualified.

## **20 CONTRACT DOCUMENTS**

- 20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.
- 20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 20.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance, shall constitute a binding contract until the final contract is signed.

## **21 LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## **22 IDENTIFICATION**

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## **23 RESPONDENT'S SAMPLES**

- 23.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 23.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 23.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.
- 23.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

## **24 SECURITIES**

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.124.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 244 will be for the account of the Supplier/Service Provider.

## **25 PRICE AND DELIVERY BASIS FOR GOODS**

- 25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or



points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

25.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:

- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
- b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [latest ICC Incoterms] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

## **26 EXPORT LICENCE**

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

## **27 QUALITY OF MATERIAL**

Unless otherwise stipulated, the Goods offered shall be NEW i.e. in unused condition, neither second-hand nor reconditioned.

## **28 DELETION OF ITEMS EXCLUDED FROM BID**

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

## **29 VALUE-ADDED TAX**

29.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be inclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

29.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

## **30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

30.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 30.1 (a) above. Failure to comply with clause 30.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Supplier/Service Provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

#### 30.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Supplier/Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

### 31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

#### 31.1 Contract Quantities

- a) It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.
- b) It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.
- c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

#### 31.2 Delivery Period

##### a) Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

##### b) Progress Reports

The Supplier/Service Provider may be required to submit periodical progress reports with regard to the delivery of the Goods/Services.

##### c) Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period,

Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or Partial Failure to Perform the Scope of Supply* section in the Terms and Conditions of Contract will not be applicable in these circumstances.

### **32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS**

#### **32.1 Copyright**

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier/Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

#### **32.2 Drawings and specifications**

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

#### **32.3 Respondent's drawings**

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

#### **32.4 Foreign specifications**

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

### **33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

33.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the designated official of Transnet according to whichever officer is specified in the Bid Documents.

33.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

33.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

33.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

- a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.
  - b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
  - c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
  - d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.
- 33.5 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
- a) funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
  - b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.
- 33.6 The attention of the Respondent is directed to clause 24 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

#### **34 DATABASE OF RESTRICTED SUPPLIERS**

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 Bid shall be awarded to a Bidder 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 Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

#### **35 CONFLICT WITH ISSUED RFX DOCUMENT**

- 35.1 Should a conflict arise between these General Bid Conditions and the issued RFX document, the conditions stated in the RFX document shall prevail.

**ooo000ooo**

**Important Note: All potential bidders must read this document and certify in the RFX Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.**

## **INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

And The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

## **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 Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier'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 Bidders / Suppliers 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 Bidder / Supplier 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 Bidders / Suppliers 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 Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process in a fair manner.
- 2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

### 3 OBLIGATIONS OF THE BIDDER / SUPPLIER

- 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 Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- a) The Bidder / Supplier 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 bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
  - b) The Bidder / Supplier 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 bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier 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 Bidder / Supplier 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 bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

- 3.8 Transnet may require the Bidder / Supplier 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 Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Bidder/Supplier 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 BIDDING**

- 4.1 For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
- a) has been requested to submit a Bid in response to this Bid invitation;
  - b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 4.2 The Bidder has arrived at his submitted Bid 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 bidding.
- 4.3 In particular, without limiting the generality of paragraph 4.2 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 Bid;



- e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
  - f) bidding with the intention of not winning the Bid.
- 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 Bid relates.
- 4.5 The terms of the Bid as submitted 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.
- 4.6 Bidders are 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 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.

## **5 DISQUALIFICATION FROM BIDDING PROCESS**

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of paragraph 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 Bidder / Supplier from future bidding 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 Bidder / Supplier 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 Bidder / Supplier 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 DATABASE OF RESTRICTED SUPPLIERS**

- 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 Bid shall be awarded to a Bidder 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 Bidder should it be established, at any time, that a bidder 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 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 supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- 6.7 Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
  - a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
  - b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
  - c) has carried out any contract resulting from such bid 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) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;
  - h) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
  - i) has litigated against Transnet in bad faith.

## **7 PREVIOUS TRANSGRESSIONS**

- 7.1 The Bidder / Supplier 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 Bidder's / Supplier's database or any bidding process.
- 7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX 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 Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
- b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
- c) Recover all sums already paid by Transnet;
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
- e) Cancel all or any other contracts with the Bidder / Supplier;
- f) Exclude the Bidder / Supplier from entering into any bid with Transnet and other organs of state in future for a specified period; and
- g) If the Supplier subcontracted a portion of the bid to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

## 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 bidding / 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 bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Bidder / Supplier 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 bid which will be considered for the bid process, the Bidder / Supplier:

- 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 Bidder / Supplier 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 Bidder / Supplier.

## 10 DISPUTE RESOLUTION

10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, 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 restriction 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 supplier make a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid 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 bidding 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 Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers 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.

ooo000ooo

## **NON DISCLOSURE AGREEMENT**

**[April 2020]**

**THIS AGREEMENT is made between**

**Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/30]

whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

**and**

**the Company as indicated in the RFP bid response hereto**

**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 Bid 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** 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 Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 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 Bid 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 Bid 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 Bid 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 Bid 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 Bid 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.

**oooOOOooo**