

**Transnet Property**

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP]**

**FOR THE PROVISION OF APPOINTMENT OF PROPERTY VALUERS FOR LAND AND BUILDING, BUILDING PLANT, EQUIPMENT AND MACHINERY AT ADHOC BASIS FOR A PERIOD OF 3 YEARS**

<b>RFP NUMBER</b>	<b>TPNT/NAT/1674 (T)</b>
<b>ISSUE DATE:</b>	<b>16 NOVEMBER 2021</b>
<b>CLOSING DATE:</b>	<b>15 DECEMBER 2021</b>
<b>CLOSING TIME:</b>	<b>12:00 PM</b>
<b>BID VALIDITY PERIOD:</b>	<b>180 Business Days from Closing Date</b>

**MANDATORY RETURNABLE DOCUMENTS:**

- Submit proof of Central Supplier Database (CSD) Registration (Provide recent copy)
- Professional Indemnity (10-Million-Rand minimum)
- Submit a valid COIDA certificate or its agencies.
- Registered with South African Council of property valuers (Provide a valid certificate) and proof of registration as a Professional Valuer.
- Minimum of 3 reference letters of Ports Property Valuations
- Submit fully completed Pricing Data and pricing schedule.
- No late tenders will be accepted

**SCHEDULE OF BID DOCUMENTS**

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**RFP ANNEXURES:**

- ANNEXURE A .SPECIFICATIONS
- ANNEXURE B MASTER AGREEMENT
- ANNEXURE C.TRANSNET'S GENERAL BID CONDITIONS
- ANNEXURE DTRANSNET'S SUPPLIER INTEGRITY PACT
- ANNEXURE E NON-DISCLOSURE AGREEMENT

**RFP FOR THE PROVISION OF APPOINTMENT OF PROPERTY VALUERS FOR LAND AND BUILDING, BUILDING PLANT, EQUIPMENT AND MACHINERY AT ADHOC BASIS FOR A PERIOD OF 3 YEARS****SECTION 1: SBD1 FORM****PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET PROPERTY, A DIVISION TRANSNET SOC LTD</b>							
BID NUMBER:	TPNT/NAT/1674 (T)	ISSUE DATE:	16 NOVEMBER 2021	CLOSING DATE:	15 DECEMBER 2021	CLOSING TIME:	12H00
DESCRIPTION	<b>FOR THE PROVISION OF APPOINTMENT OF PROPERTY VALUERS FOR LAND AND BUILDING, BUILDING PLANT, EQUIPMENT AND MACHINERY AT ADHOC BASIS FOR A PERIOD OF 3 YEARS</b>						
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>							
Transnet Tender Box (Located Outside Commissioner Street Entrance)							
150 Commissioner Street, Carlton Centre							
Johannesburg							
2000							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>				<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	Risben Khoza			CONTACT PERSON			
TELEPHONE NUMBER				TELEPHONE NUMBER			
FACSIMILE NUMBER				FACSIMILE NUMBER			
E-MAIL ADDRESS	<a href="mailto:risben.khoza@transnet.net">risben.khoza@transnet.net</a>			E-MAIL ADDRESS			
<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 IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>			
<b>1</b> ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	<b>2</b> ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<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 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 WWW.SARS.GOV.ZA. 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: \_\_\_\_\_

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

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

**SECTION 2 : NOTICE TO BIDDERS****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>	<b>FOR THE PROVISION OF APPOINTMENT OF PROPERTY VALUERS FOR LAND AND BUILDING, BUILDING PLANT, EQUIPMENT AND MACHINERY AT ADHOC BASIS FOR A PERIOD OF 3 YEARS</b>
<b>TENDER ADVERT</b>	All Transnet 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>	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. To download RFP and Annexures: <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> Once the tender has been located in the list, click on the 'Tender documents' tab and process to download all uploaded documents.
<b>COMMUNICATION</b>	Any addenda to the RFP or clarifications will be published on the e-tender portal and Transnet website. Bidders are required to check the e-tender portal or Transnet website prior to finalising their bid submissions for any changes or clarifications to the RFP. Transnet 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.
<b>ISSUE DATE</b>	Bidders are to note that the RFP documents will be available for download from <b>16 November 2021</b>
<b>BRIEFING SESSION</b>	No – Compulsory/Non-compulsory
<b>CLOSING DATE</b>	<b>12:00 pm on Tuesday 15 DECEMBER 2021</b> Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
<b>BID OPENING</b>	A public opening <b>will not</b> be held for this bid, however Respondents will be provided with a copy of the opening register indicating the names of the Respondents, upon request.
<b>VALIDITY PERIOD</b>	<b>180 Business Days from Closing Date</b> 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 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. With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 11.12

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

## 2 FORMAL BRIEFING

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 7 [*Communication*] below:

## 3 PROPOSAL SUBMISSION

Proposals must be addressed on the cover as follows:

RFP No:	TPNT/NAT/1674 (T)
Description:	FOR THE PROVISION OF APPOINTMENT OF PROPERTY VALUERS FOR LAND AND BUILDING, BUILDING PLANT, EQUIPMENT AND MACHINERY AT ADHOC BASIS FOR A PERIOD OF 3 YEARS
Closing date and time:	Tuesday 15 DECEMBER 2021 at 12h00
Closing address:	TRANSNET TENDER BOX (LOCATED OUTSIDE COMMISSIONER STREET ENTRANCE) CARLTON CENTRE 150 COMMISSIONER STREET JOHANNESBURG

## 4 RFP INSTRUCTIONS

- 4.1 The measurements of the "tender slot" are 350mm wide x 200mm high. Bid responses which are larger than the dimensions mentioned must be split into two or more files and clearly marked. **Transnet will not be held responsible if bid documents do not comply with the mentioned dimensions and Respondents experience difficulty in submitting their bids as a result.**
- 4.2 It should also be noted that the above tender box is located outside Commissioner Street Entrance in Carlton Centre and is accessible to the public 24 hours , 7 days a week.
- 4.3 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 4.4 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is also required. This second set must be a copy of the original signed Proposal.
- 4.5 Both sets of documents are to be submitted to the address specified, and Respondents must ensure that the original and copies (where applicable) are identical in all respects.
- 4.6 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 4.7 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.
- 4.8 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 Transnet 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.

Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE score card as per the B-BBEE Preferential Procurement Regulations, 2017 preference point scoring.

## 6 COMMUNICATION

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to **Risben Khoza** before **12:00 pm on 30 November 2021** substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the **Nomathamsanqa Ndongeni**, email [nomathamsanqa.ndongeni@transnet.net](mailto:nomathamsanqa.ndongeni@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 Transnet 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.

## 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.

## 10 DISCLAIMERS

Respondents are hereby advised that Transnet is 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 Transnet 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 [**15 December 2021**];
- 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 at Transnet's discretion be more advantageous 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 Transnet 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 Transnet 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 Transnet's 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**

Respondents 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 to Transnet 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 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.

**Transnet urges its clients, suppliers and the general public to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS:**



**You can choose to be Anonymous or Non-Anonymous on ANY of the platforms**  
**PLEASE RETAIN YOUR REFERENCE NUMBER**

				
	<p><b>AI Voice Bot "Jack"</b> 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.</p>	<p><b>What's App</b> Speak to an Agent via What's App.</p>	<p><b>Speak to an Agent</b> Speak to an Agent via the platform with no call or data charge</p>	<p><b>Telegram</b> Speak to an Agent via Telegram</p>
 <b>0800 003 056</b>	 <b>086 551 4153</b>	 <b>reportit@ethicshelpdesk.com</b>	 <b>*120*0785980808#</b>	

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

### **1 BACKGROUND**

For The Provision Of Appointment Of Property Valuers For Land And Building, Building Plant, Equipment And Machinery At ADHOC Basis For A Period Of 3 Years.

### **2 EXECUTIVE OVERVIEW**

Transnet Property a division of Transnet SOC Ltd hereby invites tenders for the establishment and appointment of Panel of Valuers to render Valuation Services required owned by the Transnet SOC Ltd for a period of three (3) years.

The Principles are contained in the General Standards apply to Valuations. This Standard only includes modifications, additional requirements or specific examples of how the General Standards apply for Valuations to which this Standard Applies.

This document serves as a Valuation Brief to the Appointed Property Valuer whom will establish the Market Value and Rental Value of Land and Improvements, Plant, Equipment and Machinery and Optimized Replacement Cost Value on the Identified Properties taking into account all the necessary factors.

### **3 SCOPE OF REQUIREMENTS**

Refer to **Annexure A** for a detailed scope of works

### **4 GREEN ECONOMY / CARBON FOOTPRINT**

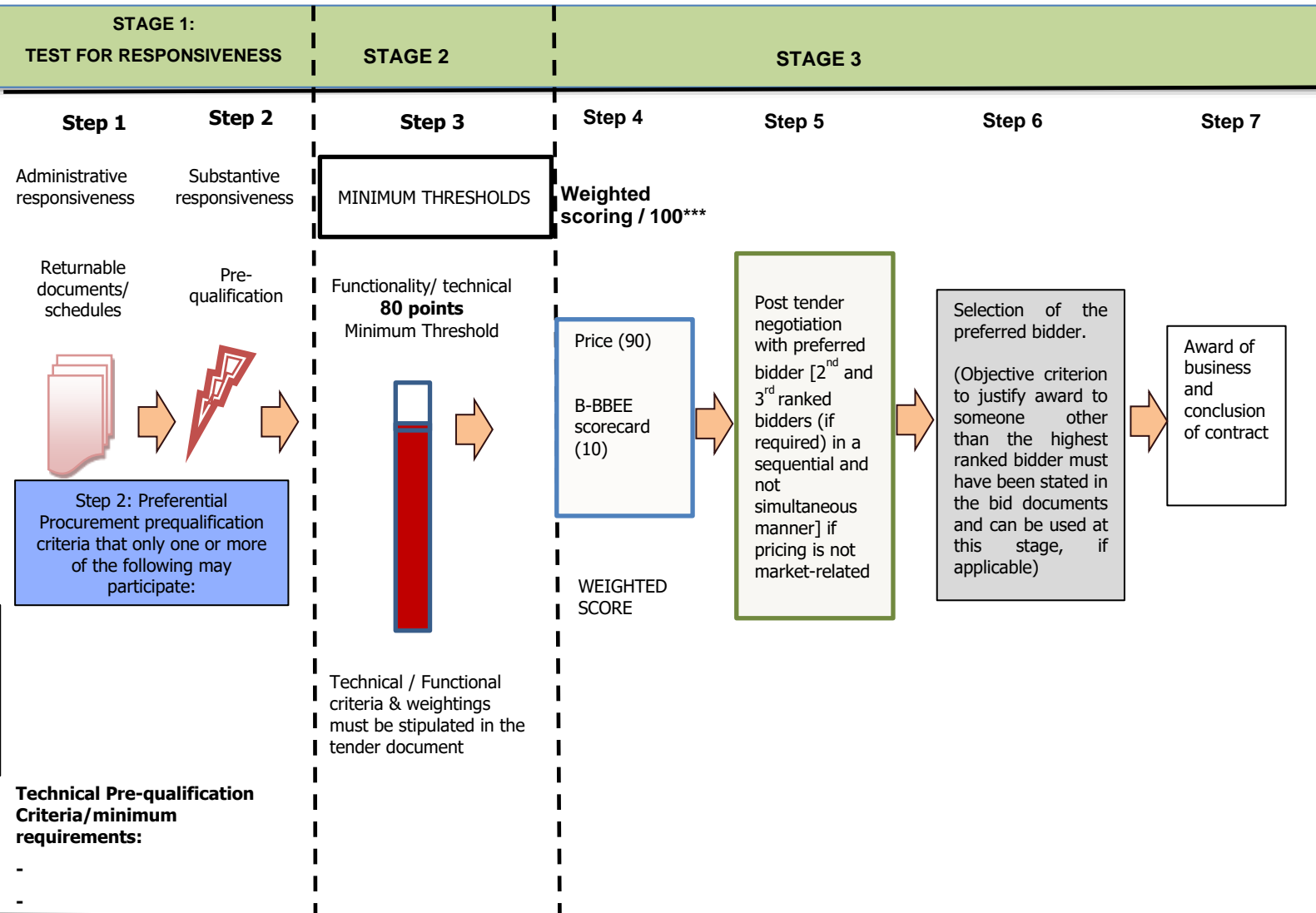
Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

### **5 GENERAL SERVICE PROVIDER OBLIGATIONS**

- 5.1 The Service provider(s) shall be fully responsible to Transnet 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**

Transnet will utilise the following methodology and criteria in selecting a preferred Service provider:



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).

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

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
<ul style="list-style-type: none"> <li>Whether the Bid has been lodged on time</li> </ul>	Section 1 paragraph 3

<ul style="list-style-type: none"> <li>Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time</li> </ul>	<i>Section 5</i>
<ul style="list-style-type: none"> <li>Verify the validity of all returnable documents</li> </ul>	<i>Section 5</i>
<ul style="list-style-type: none"> <li>Verify if the Bid document has been duly signed by the authorised respondent</li> </ul>	<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:

<b>Check for substantive responsiveness</b>	<b>RFP Reference</b>
<ul style="list-style-type: none"> <li>Whether any general pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>All sections including: Section 2 paragraphs 2.2, 6, 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>

***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 80 points for Technical Criteria

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

Refer **Annexure B** for detailed Technical Criteria.

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

Thresholds	Minimum Threshold
Technical / functionality	80 points

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

- Respondents are to note that Transnet may not award a contract if the price offered is not market-related. In this regard, Transnet 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 Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

6.6 **STEP SEVEN: Award of business and conclusion of contract**

- Immediately after approval to award the contract has been received, the successful or preferred 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**

Respondents are required to complete the table below:

No	Deliverable/Description of Services	Resource Designation/ Title of Resource	Salary Band equivalent in accordance with DPSA "Hourly Fee Rates for Consultants"	No of Resources	Resource Rate per Hour (excl. VAT)	Total (excl. VAT) [ZAR]
1	Per Scope of Work	Senior Valuer	.....	.....		
2	Per Scope of Work	Junior Valuer	.....	.....		
<b>TOTAL PRICE, exclusive of VAT:</b>						
<b>VAT 15% (if applicable)</b>						
<b>Total Inclusive of VAT (where applicable)</b>						

Respondents are to note that Transnet will round off final pricing scores to the nearest 2 (two) decimal places.

**Notes to Pricing:**

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may-
  - (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
  - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP;
  - (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.
 If a market-related price is not agreed with the Respondent scoring the third highest points, Transnet must cancel the RFP.
- b) Prices must be quoted in South African Rand inclusive of VAT.
- c) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- d) Rates proposed must be aligned with the Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA);
- e) Quantities given are estimates only. Any orders resulting from this RFP will be on an "as and when required" basis.
- f) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis
- g) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for the contract duration. [Not to be confused with bid validity period Section 2, clause 1]

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

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

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

**1. DISCLOSURE OF CONTRACT INFORMATION****PRICES TENDERED**

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices and preferences claimed 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)), as required per National Treasury Instruction Note 01 of 2015/2016.

**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)**

Transnet is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Transnet 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						

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

**2. PRICE REVIEW**

The successful Respondent(s) [the Service provider] will be obliged to submit to an annual price review. Transnet will be benchmarking this price offering(s) against the lowest price received as per a benchmarking exercise. If the Service provider’s price(s) is/are found to be higher than the benchmarked price(s), then the Service provider shall match or better such price(s) within 30 [thirty] calendar days, failing which the contract may be terminated at Transnet’s discretion or the particular item(s) or service(s) purchased outside the contract.

**3. “AS AND WHEN REQUIRED” CONTRACTS**

3.1 Purchase orders will be placed on the Service provider(s) from time to time as and when Goods/Services are required.

3.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.

3.3 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

\_\_\_\_\_

3.4 Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays.

\_\_\_\_\_

**4. SERVICE LEVELS**

4.1 An experienced account representative(s) is required to work with Transnet’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.

4.2 Transnet will have quarterly reviews with the Service provider’s account representative on an on-going basis.

4.3 Transnet reserves the right to request that any member of the Service provider’s team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.

4.4 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 quality/quantity/specifications
- b) On-time delivery

If the Service provider does not achieve this level as an average over each quarter, Transnet will receive a 1.5% [one and a half per cent] rebate on quarterly sales payable in the next quarter

4.5 The Service provider must provide a telephone number for customer service calls.

4.6 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days’ notice to the Service provider of its intention to do so.

**Acceptance of Service Levels:**

<b>YES</b>	
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<b>NO</b>	
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**5. TOTAL COST OF OWNERSHIP AND CONTINUOUS IMPROVEMENT INITIATIVES**

5.1 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 Transnet in its 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 Transnet’s operating divisions 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 5.2 below.

5.2 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.

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**6. RISK**

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

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

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**6.2 Continuity of supply:**

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

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

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

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

---



---

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

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

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

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

**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 Transnet decide to enter into Post Tender Negotiations with highest ranked bidder(s).

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

I/We hereby offer to supply/provide the abovementioned Goods/Services at the prices quoted in the schedule of prices 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 Transnet's:

- (i) Master Agreement (which may be subject to amendment at Transnet's discretion if applicable);
- (ii) General Bid Conditions; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet 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 Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet 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

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

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

with Transnet's Letter of award, shall constitute a binding contract between Transnet 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 2 [two] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, 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 Transnet 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, failure to meet Subcontracting, 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 Transnet 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

Transnet requires 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. \_\_\_\_\_

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

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

(ii) Registered name of company / C.C. \_\_\_\_\_

(iii) Full name(s) of director/member(s)                      Address/Addresses                      ID Number(s)

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**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 Transnet 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>
Submit proof of Central Supplier Database (CSD) Registration (Provide recent copy)	
Professional Indemnity (10-Million-Rand minimum)	
Submit a valid COIDA certificate or its agencies.	
Registered with South African Council of property valuers (Provide a valid certificate) and proof of registration as a Professional Valuer.	
Minimum of 3 reference letters of Ports Property Valuations	
Submit fully completed Pricing Data and pricing schedule.	

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

**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>RETURNABLE DOCUMENTS USED FOR SCORING</b>	<b>SUBMITTED [Yes or No]</b>
Detailed company proposal	
Valuation written reference letters on Company letterhead	
Expertise and Professional Qualifications	
Project Plan	
Detailed company proposal	
Valuation written reference letters on Company letterhead	

**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>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>	<b>SUBMITTED [Yes or No]</b>
Receipt for payment of RFP documents, where a bid fee is applicable [Section 2, paragraph 1]	
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 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 : B-BBEE Preference Claim Form	
SECTION 10 : Certificate of attendance of compulsory / non-compulsory Site Meeting / RFP Briefing	
SECTION 11 : SBD 9 - Certificate Of Independent Bid Determination	
Proof of subcontracting arrangement <i>[Delete if not applicable]</i>	
SECTION ..... : Job-Creation Schedule	
SECTION ..... : SBD 5 (NIPP)	
SECTION ..... : Protection of Personal Information	

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 Respondent's Signature

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 Date & Company Stamp

**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 Transnet with such renewals as and when they become due, Transnet 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 Transnet may have for damages against the Respondent.

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: \_\_\_\_\_

**SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, MASTER AGREEMENT & 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, Transnet SOC Ltd 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	Transnet’s General Bid Conditions
2	Master Agreement and SLA attached
3	Transnet’s Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications and drawings attached to this RFP

**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 Transnet 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 Transnet’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. Transnet 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 Transnet facilities/sites and any and all relevant information relevant to the Goods/Services as well as Transnet information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet 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 Transnet sources, other than information formally received from the designated Transnet 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 Transnet 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 Transnet 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 Transnet;
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 the Transnet Group 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 Transnet;
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 Transnet in the past 10 years. I further declare that if they were a former employee or board member of Transnet 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
10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

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

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

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

Indicate nature of relationship with Transnet:

\_\_\_\_\_

\_\_\_\_\_

***[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 Transnet. Information provided in the declarations may be used by Transnet 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 Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

**DECLARATION OF INTEREST REGARDING PERSONS EMPLOYED BY THE STATE (SBD4)**

12. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
- the bidder is employed by the state; and/or
  - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

**13. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:**

- 13.1. Full Name of bidder or his or her representative: .....
- 13.2. Identity Number: .....
- 13.3. Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....

<sup>1</sup> "State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

<sup>2</sup> "Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

13.4. Company Registration Number: .....

13.5. Tax Reference Number: .....

13.6. VAT Registration Number: .....

13.7. Are you or any person connected with the bidder presently employed by the state?	<b>YES / NO</b>
13.7.1. If so, furnish the following particulars:	
Name of person / director / trustee / shareholder/ member:	.....
Name of state institution at which you or the person connected to the bidder is employed :	.....
Position occupied in the state institution:	.....
Any other particulars:	.....
13.8. If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?	<b>YES / NO</b>
13.8.1. If yes, did you attached proof of such authority to the bid document? (Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.	<b>YES / NO</b>
13.8.2. If no, furnish reasons for non-submission of such proof:	.....
13.9. Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?	<b>YES / NO</b>
13.9.1. If so, furnish particulars:	.....
13.10. Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?	<b>YES / NO</b>
13.10.1. If so, furnish particulars:	.....
13.11. Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?	<b>YES / NO</b>
13.11.1. If so, furnish particulars:	.....
13.12. Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?	<b>YES / NO</b>
13.12.1. If so, furnish particulars:	.....

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

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

The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 14 below.

**14. Full details of directors / trustees / members / shareholders.**

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

**BREACH OF LAW**

15. 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 Transnet SOC Ltd 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



**SECTION 9 : B-BBEE PREFERENCE POINTS CLAIM FORM**

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [**B-BBEE**] Status Level of Contribution.

Transnet will award preference points to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

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

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

1.2 The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the 90/10 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

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

	<b>POINTS</b>
<b>PRICE</b>	<b>80/90</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>20/10</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

**2. DEFINITIONS**

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ

of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"**
- i) the B-BBEE status level certificate issued by an authorised body or person;
  - ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
  - iii) any other requirement prescribed in terms of the B-BBEE Act.
- (j) **"QSE"** means a Qualifying Small EEnterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$80/20 \qquad \qquad \qquad \text{or} \qquad \qquad \qquad 90/10$$

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \qquad \qquad \qquad \text{or} \qquad \qquad \qquad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

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

$P_t$  = Comparative price of bid under consideration

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

$$PS = 80 \left( 1 + \frac{Pt - P_{\max}}{P_{\max}} \right) \text{ OR } PS = 90 \left( 1 + \frac{Pt - P_{\max}}{P_{\max}} \right)$$

Where:

$P_s$  = Points scored for the price of Bid under consideration

$P_t$  = Price of Bid under consideration

$P_{\max}$  = Price of highest acceptable Bid

**4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION**

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

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

<b>Enterprise</b>	<b>B-BBEE Certificate &amp; Sworn Affidavit</b>
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a> .]
<b>EME<sup>3</sup></b>	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

- 4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 4.6 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

<sup>3</sup> In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a sworn affidavit as the generic codes are not applicable to them.

4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

**5. BID DECLARATION**

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

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

6.1 B-BBEE Status Level of Contribution: . = .....(maximum of 10 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**7. SUB-CONTRACTING**

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

(Tick applicable box)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE.

(Tick applicable box)

YES		NO	
-----	--	----	--

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company

- (Pty) Limited  
[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
 .....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional Supplier/Service provider
- Other Suppliers/Service providers, e.g. transporter, etc.  
[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations, 2017 which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
  - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
  - (f) forward the matter for criminal prosecution.

<p><b>WITNESSES</b></p> <p>1. ....</p> <p>2. ....</p>
---

<p>.....</p> <p><b>SIGNATURE(S) OF BIDDERS(S)</b></p> <p>DATE: .....</p> <p>ADDRESS.....</p>
--

**SECTION 11: SBD 9- CERTIFICATE OF INDEPENDENT BID DETERMINATION**

1. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds. Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
2. Transnet will take all reasonable steps to prevent abuse of the supply chain management system and to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
3. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
4. In order to give effect to the above, the following certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

---

Respondent's Signature

---

Date & Company Stamp

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_  
 (Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_  
 (Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:  
 (Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, 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
6. 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>4</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a. prices;
  - b. geographical area where product or service will be rendered (market allocation)
  - c. methods, factors or formulas used to calculate prices;

<sup>4</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.

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

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

- 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 bid; or
  - f. bidding with the intention not to win the bid.
8. 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 products or services to which this bid invitation relates.
9. 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.
10. 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.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**(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 ..... . **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:

<b>Total number and value of new jobs created</b>	<b>Total number of new jobs</b>	<b>Total rand value of new jobs created</b>

(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:

	<b>Total number of new jobs</b>	<b>Total rand value of new jobs</b>
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:

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

(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 12: 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 DTI 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 13: PROTECTION OF PERSONAL INFORMATION**

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. Transnet 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 “Transnet” and the Data subject is the “Respondent”. Transnet 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. Transnet 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 Transnet.
5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet 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. Transnet 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 Transnet and/or its authorised appointed third parties.
7. Furthermore, Transnet 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, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.
8. Transnet 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. Transnet 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

---

Respondent's Signature

---

Date & Company Stamp

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 Transnet 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 Transnet 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 Transnet'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 Transnet 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 Transnet, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

C3: Scope of Services

## 1. Scope

### 1.1. Background

Transnet Property a division of Transnet SOC Ltd hereby invites tenders for the establishment and appointment of Panel of Valuers to render Valuation Services required owned by the Transnet SOC Ltd for a period of three (3) years.

The Principles are contained in the General Standards apply to Valuations. This Standard only includes modifications, additional requirements or specific examples of how the General Standards apply for Valuations to which this Standard Applies.

This document serves as a Valuation Brief to the Appointed Property Valuer whom will establish the Market Value and Rental Value of Land and Improvements, Plant, Equipment and Machinery and Optimized Replacement Cost Value on the Identified Properties taking into account all the necessary factors.

There are five (5) established categories being;

1. **Residential and Commercial Properties**
2. **Port and Specialized Properties**
3. **Agricultural and Game Farm Properties**
4. **Plant, Equipment and Machinery**
5. **Rail and Specialized Properties**

All the properties are held in favor of Transnet SOC Ltd, Please Indicate which category or area you mostly specialize on.

## 2. Section A – Guidance of Land and Buildings Valuation

### 2.1 Category 1: Land and Building valuation

The appointed bidders should demonstrate ability to have independently determined the property values for the following purpose:

- 2.1.1 Rental determination
- 2.1.2 Purchase and Sale Valuations
- 2.1.3 Investment Property Valuations
- 2.1.4 Port Property Valuation
- 2.1.5 Land Development and Development Lease Valuations
- 2.1.6 Replacement and Depreciated Replacement Cost Valuations

- 2.1.7 Servitude Valuations
- 2.1.8 Historical Valuations
- 2.1.9 Building Conditions Assessment
- 2.1.10 Land Expropriation Valuations
- 2.1.11 Acquisition and Alienations of Properties
- 2.1.12 Assets and Assets Verifications

The physical assets which are to be valued would generally be in the following property sectors:

- Industrial buildings e.g. warehouses, manufacturing or processing plants/ factories etc.
- Healthcare Facilities, e.g. specialized medical facilities, Medical equipment manufacture plant.
- Leisure e.g. recreational facilities, lifestyle farming, hostels, hotels, guesthouses and lodges
- Specialized properties, e.g. mines, ports and quarries,
- Agriculture, e.g. livestock, game and dairy, permanent crops, winery, cash crops, silos, cold storage, packing sheds Retail and shopping complexes
- Service stations

### **3. Section B – Guidance of Plant, Machinery and Equipment**

#### **3.1 Category 2: Plant, Equipment and Machinery (PEM) valuation**

Intangible assets fall outside the classification of plant and equipment assets. However, an intangible asset may have an impact on the value of plant and equipment assets. For Example, the value of patterns and dies is often inextricably linked to associated intellectual property rights. Operating software, technical data, production records and patents are further examples of intangible assets that can have an impact on the value of plant and equipment assets, depending on whether or not they are included in the valuation.

##### **3.1.1 Valuation Methodology**

The bidder's attention is drawn to the following Transnet SOC Ltd accepted and internationally recognized definitions of the following valuation methodologies for common understanding and application when undertaking Transnet SOC Ltd valuations. Depending on the Transnet's requirements in the determination of value, the Transnet may require one or a combination of the following valuation approaches which are defined are below:

###### **3.1.1.1 Estimated New Replacement Cost (ENRC)**

The Estimated New Replacement Cost is defined as the cost, as at the date of valuation, of replacing the existing asset with similar characteristics, capabilities and/ or production capacities, inclusive of all reasonable professional fees and installation costs, where applicable. In replacing existing or similar assets we include for all costs of transport, taxes, duties, installation fees and all piping, wiring and other services, foundations, footings and finishes which are

attributable to the asset. The estimated cost of replacing the asset as if new, at prices applicable at the valuation date, inclusive of professional fees and installation costs, but exclusive of any finance charges or the cost of demolition or emergency charges.

### **3.1.1.2 Depreciated Replacement Value (DRV)**

#### **3.1.1.2.1 Depreciated Replacement Value (Reducing Balance)**

The estimated cost of acquiring and installing a new asset or a modern substitute asset having the same productive capacity as that existing, but exclusive of finance charges, is determined. This is then depreciated according to age, obsolescence and condition to obtain the value. This cost is only to assets being part of an operating concern and assumed adequate profitability; it does not necessarily represent the Open Market Value of the asset.

#### **3.1.1.2.2 Depreciated Replacement Value (Straight Line)**

The estimated cost of replacing the asset as if new, at prices applicable at the valuation date, inclusive of fees and installation costs but exclusive of any finance charges or demolition costs is first determined. Depreciated Replacement Cost is a monetary statement of the remaining life of the asset based on the current capital Costs

### **3.1.1.3 Open Market Value (OMV)**

#### **3.1.1.3.1 Open Market Value (In-situ)**

The amount that a buyer should pay for the assets as a whole, in situ, reflecting the fact that the machinery is already installed and commissioned. It is the price that should be paid for the assets in the event that the company is sold as a going concern. To determine this figure, we consider the cost of purchasing a substantially similar machine of a comparable condition, on the open market, then make allowance for transport, installation and commissioning costs.

#### **3.1.1.3.2 Open Market Value (Break-up basis)**

We assume all assets are sold individually for removal from the premises at the expense of the buyer. This value will inform the seller of expected realizations assuming a break-up sale of the assets is to be conducted in an unrestricted manner. No allowance is made for the cost incurred in conducting the sales.

### **3.1.1.4 Forced Sale Value (FSV)**

The Forced Sale Value is the price which might be achieved if the asset was offered for sale as an individual item by auction within a prescribed time period assuming any offer must be accepted.

### 3.1.1.5 Residual Value

The residual value is the expected value of the asset at the end of its useful, economic and financially viable lifespan. Generally this is the scrap value in weight of the asset.

### 3.1.2 Approach to Valuation Method

The following approach shall be adopted by the Valuers in valuing the assets. The specified assets which are to be valued shall be inspected by the Valuer. The Valuer shall take note of the critical data of each and every asset in detail such detail shall not be limited to the following:

- Assets location within the client's functional hierarchy and operational units,
- Asset's functional use,
- Manufacturer name and date of manufacture,
- Suppliers and agents names,
- Description of the physical assets, model number, serial number, capacity and other pertinent details, etc)
- Condition of the assets:
  - maintenance status;
  - record of any performance enhancement/ refurbishment;
  - physical, economic and technological obsolescence, etc
- Ownership details (encumbrances, lease, etc)
- Outstanding capital payments and finance charges for any material and high value assets which are subject to lease or hire purchase arrangements which are to be settled in the short term.
- Reconcile Fixed Asset Registers and Equipment Registers against the data physically captured.

## 4. References

As far as possible the Valuer should liaise with Transnet Property and the Transnet National Ports Authority to ensure an integrated approach to the valuation.

### **Annexure 1: Responsibilities of a Valuer & Basic Contents of the Report**

## **ANNEXURE 1**

### **A. THE RESPONSIBILITIES OF A VALUER AND THE INSTRUCTING PARTY**

By virtue of the fact that a person holds himself out as a Valuer of immovable property and accepts assignments to do valuations he thereby presents himself as a person competent and skilled to render that specially designated service.

#### **1 Acquired status**

Custom has in its own way conferred upon such persons a status which Van den Heever JA in *Herschel v Mrupe* 1954 3 SA 464 (A) 488C-D explained as follows:

Certain functionaries such as sworn appraisers, (as they were then known), notaries and the like have had a kind of patent of credibility and efficiency conferred upon them by public authority. Members of the public are invited to repose confidence and trust in the acts of such persons performed in their respective capacities.

The function of a Valuer is not only to estimate value – there is more to it. His responsibility to perform a specialised operation with care and skill also demands that the processing of his valuation should be carried out according to ethical standards, which underwrite his credibility, efficiency and honesty of purpose. These standards together with a Valuer's ability to perform his function in practice go far towards upholding the status conferred upon him. He consequently assumes a responsibility not to be lightly shouldered.

#### **2 Exercising care and skill**

A Valuer cannot expect to arrive at a logical deduction from the factual data and form a responsible estimate of value unless he exercises diligent care and employs his skill to the best of his ability in making his valuation and compiling his report.

#### **3 Instructing a Valuer and valuation research**

A valuation competently made, can only be as good as the information and facts upon which it is based. It is therefore incumbent on the party instructing the Valuer to brief him in a manner, which will enable him to fulfill his function satisfactorily. The purpose and the effective date on which the valuation is required must be specified. In the absence of the former the Valuer would be entitled to assume that a current market valuation is required and to reaffirm this in his report. When the instructing party has omitted to state a specific date on which the valuation is to be effective the Valuer must declare the date on which his estimate of value is applicable.

It is recognized procedure that when a responsible opinion is sought, adequate information including the known facts and circumstances relating to the problem must be placed before the person being consulted. This practice must be followed when instructing a Valuer. Without the necessary tools he cannot perform his function satisfactorily. The party engaging his services must therefore place all the available data at his disposal. If the courts are sometimes faced with difficulties because adequate information has not been supplied by a Valuer in giving evidence, then the problems with which a Valuer has to contend when he is inadequately instructed can be appreciated.

The instructing party, whether or not to he knows the facts relating to the property to be valued, is usually in a position to gather them. Detailed information should be presented to the Valuer as comprehensively as possible. If he is not adequately instructed, he could be left groping in the dark and unknowingly labour under a misapprehension or proceed on misguided facts.

Sometimes a verbal request for a valuation identifies the subject property only. The details supplied are not only inadequate but a request made in this manner displays little regard for a Valuer's responsibilities and the intricacies of his function, unless it is followed up with detailed information and instructions.

There are, however, instances where a Valuer has personal knowledge of the property to be valued. Many Valuers correctly build up a bank of information about properties in general in certain localities. This advantage does not necessarily ensure that he has all the facts at his disposal.

A Valuer is sometimes pushed to complete and deliver a valuation because it is urgently required. The instructing party may also indicate that because of lack of time he is not able to supply all the necessary details, which suggests that he expects the Valuer to conduct his own investigation of the facts relating to the subject property.

Caution is necessary in instances of this nature. Even when a Valuer considers that he is of his own account sufficiently well informed he would be wise to check the facts he knows with the instructing party and if necessary get him to confirm them.

A Valuer, although adequately instructed, must nevertheless be knowledgeable about title deeds, endorsements thereon, diagrams and deeds office methods and searching procedure which includes sectional plans and the terms of "use agreements" which apply in the case of a valuation of a unit held under sectional title and also the "contents of contract" relating to the share block company concerned.

No matter what documentary information he has to hand, he never knows when he may have to make use of that knowledge. He is not only required to estimate value; he must also have regard to his reputation by ensuring that he has all the information necessary and knows how to interpret it in order to perform his function adequately.

#### 4 The dangers of inadequate data

Physical and natural attributes, the shortcomings or advantages, which have or are likely to have a bearing on the utility or potentiality of the subject property, should, where known, be disclosed to the Valuer. For instance, building improvements may have been erected on pilings because of the nature of the subsoil; a basement may suffer from seepage of water; there may be marketable deposits on or under the surface of the land; a farmer who is a riparian owner may be experiencing the ill effects of pollution in the stream, although the cause may originate from sources beyond his control; there may be evidence of mineral substances and the like which are potentially exploitable.

Although competent Valuers are capable of summing up a property, their observations can be reinforced when they have been supplied with all the necessary data. Area measurements of land under irrigation and those portions claimed to be irrigable as well as those, which have been contoured, are all vital to a Valuer.

The range covered is by no means complete but it suffices to show the extent to which a Valuer should augment inadequate briefing by undertaking his own research.

#### 5 Rights

Where there are separate rights in land a Valuer should be informed of them. Full particulars of riparian rights, of leases, both registered and unregistered, should be supplied. Usufructs and fideicommissa should be clarified and bona fide possessors or occupiers should be disclosed as well as rights in connection with trees, crops, share-croppers and temporary improvements, quotas or permits. It is stressed again that the list is not complete, but it is indicative of the kind of information which should be supplied to the Valuer if it is applicable to the property he is required to value.

#### 6 Building improvements

Unless the instructing party comprehensively lists improvements the Valuer can only gather these particulars from personal observation and inquiry during his inspection of the property. He must then note the details himself. Even though the information, or some of it, has been supplied to the Valuer, he must nevertheless check it. The procedure requires taking measurements or obtaining them from authentic scaled plans, recording the specifications, the condition of the structures and the adequacy of their functional utility. In addition, he must establish which of the improvements are permanent and which are temporary.

## 7 Restrictions

All restrictions appertaining to the use of the land must be taken into account. The Valuer should, however, establish (if he has not already been informed) what the possibilities are for their removal. Attempts to do so (as well as the outcome thereof) should be disclosed to the Valuer and researched by him. He should also be informed of any known infringements of the restrictions and of any encroachments. Where a non-conforming use applies, the Valuer's attention must be drawn to it. If the subject property has been rezoned or if its use has been varied with official consent (consent use) and if any town planning restrictions have been officially relaxed, the Valuer should be informed by the instructing party.

## 8 Assessing potential uses

On the balance of probabilities there must be a reasonable prospect that a willing buyer will take a potentiality of the subject property into consideration. A Valuer who has been made aware of an alleged potentiality must investigate the prospects of its being brought to reality and that it is not merely wishful thinking.

## 9 Access and egress

When the property to be valued is subject to a servitude of right of way, of necessity, the instructing party should advise the Valuer and supply him with the full particulars. That having been done, it is over to the Valuer to apply his knowledge of the implications of access and egress in making his valuation.

## B. LAND AND ITS POTENTIALITIES

The potentiality of a piece of land and its future use lie in its capacity for the exploitation and development of those of its attributes that have not yet materialised or have not been brought to actuality.

It is therefore understood that land is not valued only by reference to the use to which it is being put at the time when its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939 2 All ER 317 (PC) 321 H].

### 1 The effects of statutory control

The future use of land in the Republic has become largely regulated by legislative enactments. The Physical Planning Acts 88 of 1967 and 125 of 1991 present a pattern designed towards ultimately achieving the optimum use to which land can be put in the national interest. Allied to that purpose is the Subdivision of Agricultural Land Act 70 of 1970, which fits into place in the overall pattern, and in many respects the National Roads Act 54 of 1971.

These statutes and approved town planning schemes constitute instruments of control not only over the future use of land in specified areas but also over a variation in the existing use thereof as well as subdivision.

Control over use does not necessarily deprive land of its potentialities but regard must be had to the limits and restrictions placed on use by law.

Land, which escapes the curbs imposed by law often, has a potentiality capable of exploitation. Provided its potentiality is a lawful one, its effects on the market value of the land concerned will vary according to the circumstances of each case but there are certain basic requirements in that regard which must be observed.

## 2 Underdeveloped potentiality

Unexploited potentiality need not always have value. A latent potential which can be economically developed should, however, be taken into consideration. It has been held that 'the potentiality of an added advantage due to the existing possibilities of development is a proper subject for consideration' in the valuation process [Katzoff v Glaser 1948 4 SA 630 (T) quoting Halsbury's Laws of England 4th ed vol 6 par 43].

The advantage of further exploitation of a potential use should, however, not be confused with that which has already been transformed into a reality nor should it be regarded as a separate potentiality because 'it is the possibilities of the land and not its realised possibilities, that must be taken into consideration' [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939 2 All ER 317 (PC) 321 H 322B].

The part of the potentiality already realised can have the effect of detracting from, or enhancing the attractiveness of the undeveloped part of the potentiality. The lapse of time for instance, between the initial development and subsequent further development, during which circumstances and conditions have altered, is frequently the cause. The character of the improvements effected in the first stage may, for example, no longer be in keeping with the type of development called for later in order to exploit the full potentiality of the land to a maximum degree at a given date.

In the circumstances described above a potentiality, which is expended in part only, while leaving further exploitation to be undertaken at a later date, must be considered as a whole when taking into account the effects thereof on the market value of the property. When considering this aspect the relationship must be taken into consideration.

## 3 Misguided optimism

The recognition of the possibilities, which the lawful use of land offers, should be realistic. Misguided optimism can lead to a distorted and unbalanced view of its potentialities. It may not always be easy for a Valuer to establish what potentialities present themselves. There are signs, however, in many instances to direct him. The most usual among them are considered under subsequent headings but it is emphasised here that in making a valuation the value of the potentiality must be ascertained on such materials as are available to him, and without indulging in feats of the imagination [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Division Office Vizagapatam 1939 2 All ER 317 (PC) 322B 323H].

When a Valuer has established that the land he is valuing has a potentiality and he has verified that the nature thereof has lucrative possibilities he should not overlook the fact that when taking such qualities into account he is required to make out a case that there is a reasonable prospect of their being brought to actuality.

#### 4 Basic essentials

It does not follow that because a property has a potential use it necessarily has a bearing on its market value. It should create an appeal to a prospective purchaser and be reasonably and realistically possible to accomplish. Consequently a Valuer must at least establish, upon a balance of probabilities, that the property has potential uses to which it is reasonably capable of being put in the future and that a willing buyer and a willing seller would take such potential uses into account in fixing the price [Thanam v Minister of Lands 1970 4 SA 85 (D) 85F-G]. The fact that its potentiality has not been exploited does not detract from the extent to which it could possibly influence the market value of the land.

The lapse of time before a potentiality ripens requires well-reasoned consideration as the extent of its influence on the market value of the land depends, among other considerations, upon the possibility of being able to exploit it immediately, within the near future, over an extended period, or possibly not at all [Krause v SAR&H 1948 4 SA 554 (O) 559-560].

It stands to reason therefore that a potentiality which can be exploited to advantage without much delay exercises a greater influence on market value than one in respect of which a possible buyer will have to bide time in order to gain from the prospective advantage. For example, there would be no obstacle in the way of the physical development of an urban site all ready zoned for flats but, if in the locality concerned there was no immediate demand for residential units of that nature, a prospective buyer could regard the potentiality as a deferred possibility and grade his offer to purchase accordingly.

##### 4.1 Latent potentials

Hypothetical, speculative or remote potentialities are not likely to attract or influence prospective purchasers of the land. When it is apparent that large capital sums will be required in order to investigate and exploit a potentiality, which is dubious, its possibilities should be treated with reserve. That does not mean that a possible purchaser with adequate financial resources would necessarily be deterred from displaying an interest in a potential of real substance which has definite prospects of profitable exploitation, but the fact remains that unless the circumstances are exceptional, a Valuer should have regard to the point of view that a potentiality demanding considerable capital expenditure is a factor which is not easily bridged. The greater the cost of exploration, the more difficult it becomes to realise the potentiality of the land (Ilovo Sugar Estates Ltd v SAR&H 1947 1 SA 58 (D) 67-68].

#### 4.2 The effect of delayed exploitation

When the exploitation of a potentiality is likely to extend beyond a reasonable period of time before it can be brought to actuality, it gives a semblance of unreality to the figures of cost and profit. The possibility that a potentiality will not be ripe for development for many years to come must consequently throw an uncertain light on present estimates of development costs, which in turn will filter through to affect the ultimate profitability, which the potentiality currently offers.

#### 4.3 Land with more than one potentiality

Some properties have more than one potential use. Prospective buyers may each have a different use in mind, and the degree of influence each may have on the market value of the land may vary. A Valuer in considering each separately would possibly arrive at a different valuation in each instance.

It has, however, been established that in respect of a potentiality the value is not a proportional part of the assumed value of the whole undertaking, but is merely the price, enhanced above the bare value of the ground, which possible intending purchasers would give [Cedar Rapids Manufacturing and Power Co v Lacoste [1914-1915] All ER Reprint 573-574 (PC)].

It is the market value of the property which is to be determined with all its potentialities and not the sum of the separate potentialities [Bestuursraad van Sebokeng v M & K Trust en Finansiële Mpy (Edms) Bpk 1973 3 SA 376 (A) 395H].

It becomes clear therefore that a potentiality cannot be given a value apart from the land. It is not a separate marketable commodity but a factor, which influences the market value of the land.

According to that principle, a Valuer must consequently determine in his own mind which of the potential uses, if there are several, or what combination of them is likely to contribute best to the most profitable use of the land at the time of valuation and under the then appertaining market conditions and circumstances. Prospective buyers, it will be recalled, are notional or imaginary, and because of this, a Valuer will have to invoke his expertise in exercising his judgment. In doing so calculated potential uses are not the only considerations to be weighed. There is also the question as to which of the potentialities is in greatest demand. The most attractive one may, however, on the surface have little appeal in the market, while one of the others may be much sought after by prospective buyers of the land.

### C. MARKET VALUE

Value dwells only in the minds of men. In estimating market value the facts and circumstances appertaining at the time influence possible buyers and sellers in open competition.

The valuation process consequently calls for skill and experience, without which a Valuer would find it difficult to arrive at a logical deduction from the facts [Pietermaritzburg Corp v SA Breweries Ltd 1911 AD 501 511 516].

A Valuer's awareness of existing market conditions and trends, together with his knowledge of the circumstances and the facts relating to the property concerned, enable him to understand how the buying and selling public think, and through his skill and ex-perience he should be able to recognise the elements most likely to influence intending purchasers.

While a Valuer's skill is composed of the way in which he applies his knowledge, displays his understanding of the circumstances and treats the facts that apply, in demonstrating his expertise he should not treat these factors separately. The co-ordination of all the elements concerned with the property should be considered as they will influence the minds of possible buyers and sellers. The relationship between land and the improve-ments on it, the potentialities of the land and the depreciation aspect represent forces ingrained in the market value concept.

## 1 Supply and demand

There is, however, another element in the general economy, which, although it is univer-sal in character, occupies the minds of prospective property buyers and sellers. It is the matter of supply and demand, which the English Encyclopedic Dictionary describes as the process by which free competition so rules prices as to fully utilise available com-modities.

Adam Smith, author of The Wealth of Nations, believed in the co-ordination of individual effort out of which supply would flow and demand would be adjusted through the agen-cy of competition.

Free and open competition influenced by the economic factors at the time consequently underlines the theory of supply and demand. Competition stimulates the market for a sought-after commodity. When such commodity is in short supply its market has further impetus because demand exceeds supply. The same agency on the other hand holds the market for the commodity in check while it is in regular supply: in other words while there exists a state of balance between supply and demand. In the extreme when there is no demand, there is no market.

Land as a commodity remains confined to an area circumscribed by our country's de-fined boundaries. It is consequently not the commodity (land) as such but the purpose for which it can be used and the manner in which that purpose is being or can be ex-ploited to which the factors of supply and demand are related.

Because land has so many uses its demand for a particular use may sometimes be slug-gish whilst, where its use is for another purpose, demand may be brisk.

In property the forces of supply and demand must therefore be considered in relation to its utility and the need it supplies for those who want it for the use assigned to it.

The utility of a property is confined to its locality as it is there where it is or can be ex-ploited to best advantage in keeping with the local circumstances. The demand for it is, however, not necessarily localised; it can come from outside.

When a Valuer has occasion to refer to the cogency of supply and demand he must look at it in the correct perspective.

It does not follow for instance that because there is a strong demand for industrial property in a growing industrial complex that the same demand exists in a locality where industrial development lacks impetus. While there may be a demand for single-dwelling residential property in a district experiencing substantial population growth it does not follow automatically that the demand for excessive office accommodation which has been built up in the same environment will receive a similar shot in the arm.

Beadle CJ, in *Metal Pressing and Enamelling Co (Pty) Ltd v Commissioner of Taxes* 1970 4 SA 602(RA) 604, said:

In commercial parlance a 'demand' for a product means the same thing as a 'market' for the product. Anything, therefore, which increases the 'market' for the product ipso facto increases the 'demand' for the product.

Money as a medium of exchange facilitates the buying and selling of property. Its availability and the cost of borrowing, because it exercises an influence on market value, consequently becomes a force to be reckoned with when considering the effects of supply and demand on property values. Reality establishes that there are economic considerations, which take a hand in regulating the supply and demand for property.

Operating on credit is an accepted way of business that also extends to the property field. As credit involves the use of money at a cost, which is interest, the rate thereof is in turn governed by the supply and demand for money.

Moderate interest rates usually indicate that money is readily available; high interest rates normally reflect its general scarcity.

The demand for a commodity is stimulated by the want for it. The credit system is therefore an accessory to satisfying that want which constitutes a healthy economic approach provided it is wisely exercised.

As property is the subject under consideration a firm occupancy demand is always important because it satisfies one of the wants of an investor, but the cost of satisfying it must be realistically warranted in the long run. It is this precept, which introduces the question of liquidity

and the various investment channels into which money flows. Many of these sources look to property as an outlet for their funds; they buy for cash. Private investors, however, frequently need to rely on mortgage finance or to a degree on borrowed money. Bearing in mind that rental and capital growth is also relevant, the higher the cost of borrowing becomes, the slower the growth potential develops. This can reach unrealistic proportions if excessive borrowing at an unwarranted interest rate is resorted to as ultimately the loan could lead to the elimination of the capital growth potential. In brief the above are some of the economic factors, which affect the supply and demand for property.

In the valuation process regard must therefore be had not only to the commercial supply and demand factors but also to the extent to which it is tempered by the availability of money and the borrowing and receiving interest rates prevailing at the time of valuation. Valuers should consequently follow the movement of interest rates, which fluctuate in sympathy with economic trends and sway the thinking of prospective buyers and sellers.

## 2 Various aspects of value

Market value is the amount a willing buyer would be likely to pay a willing seller in the open market. It is a concept with many facets, all of which must be grasped if there is to be a clear understanding of what the term implies.

A variety of expressions used to depict different kinds of value have come into existence. Some require elucidation and are defined below. There are also one or two valuation terms, which are explained.

### 2.1 Value in use

Value in use (current or existing use value) is the utility value of a property. It is what it would cost to replace the property, if the owner occupier were deprived of its use, with a similar property elsewhere, and it includes costs of acquisition. It does not, however, follow that anyone else would buy the property for the same amount [Pietermaritzburg Corp v SA Breweries Ltd 1911 AD 501 522].

### 2.2 Value in exchange

This expression refers to the amount of money, which the property can be exchanged or sold for [Pietermaritzburg Corp v SA Breweries Ltd 1911 AD 501 522].

### 2.3 Temporary value

Market value is temporary value; it fluctuates (Katzoff v Glaser 1948 4 SA 630 (T) 638).

### 2.4 Fair value

When fair value has to be determined it has been held that 'fair value' in relation to property is the 'fair market value of the property as at the date of acquisition thereof' [Kommissaris van Binnelandse Inkomste v Anglo American (OFS) Housing Co Ltd 1960 3 SA 642 (A); Van Thiel's Wire Industries (Pty) Ltd v Commissioner for Inland Revenue 1954 4 SA 69 (D) 69E].

## 2.5 Subjective and objective values

Value is of a subjective nature when the property has a special significance to someone for personal reasons best known to himself. Objective value is based on the facts relating to the property. It has no regard for sentimental or personal attachment to the property or its value in use. It is determined in open market competition among those who desire it.

## 2.6 Capitalised value

The reasonably calculated expected future nett income flow of an investment property discounted to its present value, when capitalised at the prevailing rate sought by prudent investors, represents the estimated capitalised value of the property at that time.

## 2.7 Utility value

The usefulness of land in satisfying a human need is a material factor in determining its value. Its utility is consequently one of the ingredients embodied in the value concept. In itself utility makes no impact on capitalised value in that it is expressive of productivity. In respect of property not sought for its investment potential, utility reflects the property's usefulness in satisfying a human need, for instance in the case of home ownership. In this regard it becomes a factor to be considered when estimating market value.

## 2.8 Intrinsic value

An intrinsic quality is an attribute inherent in a property per se. Its characteristics are inanimate and can have a bearing on the market value of the land. In itself an intrinsic quality in land is not subject to supply and demand as it cannot be isolated. Its potentiality must be given consideration when estimating the market value of the property in which it is ingrained [see Hirschman v Minister of Agriculture 1972 2 SA 887 (A) 891 D-E]. It is stressed, however that intrinsic value, is not necessarily market value.

## 2.9 Highest and best use

The optimum likely use to which land can be most advantageously exploited within the confines of all the restrictions imposed upon its use by law, due regard being had to the possibility of their modification or removal, is referred to as its highest and best use.

## 2.10 Arm's length transaction

An arm's length transaction is generally understood to be a voluntary transaction completely devoid of subjective elements.

### 2.11 Plottage

Plottage is a value consideration representing a degree of enhancement in the individual value of each of two or more sites which can be lawfully exploited together and where the combined use advantage is greater than that of each of them separately.

## 3 The 'willing-buyer-willing-seller' basis

A Valuer must visualise notional buyers and sellers, none of whom are under any compulsion to buy or to sell in the open market, on the basis that both parties are able and willing to conclude a sale on terms that are usual at the time. Consequently, those which would tend towards a higher offer and those which would tend towards a lower offer, must be weighed in the process of determining upon a practical basis, what a willing buyer would be likely to offer and a willing seller to accept [Margate Hotel (Pty) Ltd v Town Council of the Borough of Margate 1961 1 SA 384 (N) 388C-E].

Until reaching agreement both the buyer and the seller should, during objective and impersonal bargaining, have taken stock of the circumstances relating to the property concerned.

In order to recognise the circumstances which apply to the property being valued, a Valuer, in arriving at his estimate of market value, must therefore 'take into consideration the potentialities of the land; the uses and purposes to which it may be put, its lucrative possibilities; all the considerations which would induce a prospective buyer to offer a higher price than the land would otherwise be likely to command. At the same time any disadvantages and features which would be likely to depreciate the price, must be taken into consideration' [Margate Hotel (Pty) Ltd v Town Council of the Borough of Margate 1961 1 SA 384 (N) 388C-E].

The reliance to be placed on a Valuer's estimate of the price a willing buyer and a willing seller would, in the circumstances, be likely to agree upon will depend largely upon his ability to recognise the elements emphasised above and to correlate them with the facts and particulars ascertainable about the property, always having regard to the various facets of market value which, unless they are fully comprehended and have been observed, can lead a Valuer unwittingly to stray from the purpose which his valuation is intended to serve.

The 'willing-buyer-willing-seller' basis should consequently not be treated merely as an expression to convey market value. There is more to it than that; it has an in-depth significance in the valuation process.

### 3.1 When a buyer or a seller is willing

"Willing", according to the Shorter Oxford Dictionary, means disposed to consent or comply, ready to do (what is specified or implied) without reluctance; this implies without pressure being brought to bear and without compulsion.

A 'willing seller' is 'one who is a free agent' not a person willing to sell his property without reserve for any price he can obtain for it [Davies Law of Compulsory Purchase and Compensation 116-117]. Cripps, in Compulsory Acquisition of Land at 4-181-4-182 summarised it as follows:

A 'willing seller' does not mean a person willing to sell without reserve for any price that he can obtain, but one who is willing to sell making the most, in the circumstances, of his property; and the most in the circumstances he can make of his property cannot be determined without consideration of the circumstances, and, in particular, cannot be ascertained, while excluding the consideration of the known wants of a probable purchaser.

Occasions arise, however, when an owner is not in fact a willing seller but is compelled, in the valuation process, to be regarded as one. When land is taken by the state by virtue of statutory powers, as is the case in expropriation, the owner if unwilling to part with his land is in effect under compulsion to do so for a consideration to be determined. In these circumstances a Valuer must nevertheless regard him as a willing seller.

A Valuer should consequently 'not take into consideration any disinclination of the person interested to part with his land' [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939].

A similar situation presents itself when valuations are made for fiscal purposes, such as municipal valuations and the like.

A prospective purchaser is also a free agent. If he so wishes he can make an offer for a property. His offer, even when not accepted by the owner, nevertheless establishes his willingness to be a purchaser. A Valuer confronting such a situation when drawing comparisons between various sales should not disregard an unacceptable offer currently made as a pointer to market value without having investigated the circumstances under which it was made and the reason why it was refused, especially if he has reason to believe that it was made sincerely, genuinely, without compulsion and with an objective motive.

This coincides with the view of Lord Romer in the Sri Raja case, in which he said, that the wish of a particular purchaser, though not his compulsion, might always be taken into consid-

eration for what it is worth [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisonal Officer Vizagapatam 1939 2 All ER317 (PC) 312C].

In Bonnet v Department of Agricultural Credit and Land Tenure 1974 3 SA 737 (T) Bliss AJ remarked: After all, what better testimony could be placed before a Court than the fact that, before expropriation was even mooted, there was a willing purchaser who was aware of the potential attaching to, and had made an offer to purchase, the very prop-erty in question [748E].

It does not follow of course that it is the value to the purchaser that matters but his of-fer does not warrant being excluded from consideration without considerable thought, especially when comparable sales are not freely available.

### 3.2 "Rare" buyers

The question is sometimes raised whether the sale of a property to a 'rare' buyer, usual-ly with considerable capital resources, is in fact a reliable indication of the general mar-ket value of other properties in the locality concerned.

A Valuer who is dubious about regarding a sale of this nature as a fair indication of mar-ket value at the time can take a lead from a summary of what Rabie J said in the origi-nal record in Estate Marks v City Council of Pretoria [Tvl provincial division -unreported, confirmed in Es-tate Marks v Pretoria City Council 1969 3 SA 227 (A) 250A]:

The evidence satisfies me that there are various kinds of buyers. . On the evidence, which I have heard, there is no justification for excluding buyers of the allegedly 'rare' kind. There may not be many individuals who buy land on the basis of the allegedly 'ra-re' buyer, but the evidence is that large institutions are investing in land on an increasing scale and that they are satisfied with a lesser yield than private investors. I can see no reason for excluding the insti-tutional investor, and I agree with the submission of plain-tiffs' counsel that the hypothetical purchaser of plaintiffs' properties or some of them might well have been an institutional inves-tor rather than a private individual.

It follows therefore that when other properties are compared with sales of that calibre they should, in accordance with the general principles of comparison, have similar char-acteristics and qualities and be located in a like neighbourhood and surroundings.

## 4 The open market

Although in the case of shares, wool, metals, produce and other transportable commodities, regular bulletins and frequent quotations are often made available to keep buyers and sellers informed of the prices being obtained in the open market, no like facilities exist for reporting regular sales of immovable property except where a local authority makes available lists of properties sold from time to time in its area.

With the advent of computerised deeds office land registers however, Valuers are becoming increasingly able to research recent sales on a national basis. The pulse of the property market cannot however, be felt as readily as that of other marketable commodities and, although there is no 'market place' in the form that the expression normally implies, there nevertheless exists an 'open market' in which operators can negotiate, bargain, buy and sell. The open market exists 'under conditions enabling every person desirous of purchasing to come in and make an offer and if the proper steps are taken to advertise the property and let all likely purchasers know that the land is in the market' [Inland Revenue Commissioners v Clay 1914 3 KB 466].

The proviso that it should be made known through suitable media that a property is for sale, relates to a procedure which is commonly used, especially among estate agents and land auctioneers.

Since 1914, when the definition referred to above was first advanced, a much wider process has evolved as many properties, which have not been advertised, or openly offered, frequently change hands.

It is submitted therefore that, at present, it is more readily understood that an open market exists under conditions enabling every person desirous of purchasing immovable property to make an offer on terms and conditions which are not abnormal but which are usual in a voluntary sales transaction.

Unless the open market test is acknowledged in these wider terms a vast number of sales which could be usefully considered by a Valuer employing the method of comparable sales would have to be disregarded once it has been established that it was not widely known that a sale could be negotiated.

Support for this broader view is to be found in *Jacobs v Minister of Agriculture* 1972 4 SA 608 (W) 615D where Colman J indicated that every relevant transaction not shown to have been abnormal must be given due weight as a pointer to value.

The question arises whether, in determining the open market value of a property, the matter of payment of the purchase price in cash, in contrast with instalment payments, should be regarded as an abnormal or unusual term or condition. It has been held that in open market

transactions the instalment provision is a normal basis to accept [Bon-net v Department of Agricultural Credit and Land Tenure 1974 3 SA 737 (T) 737D].

It should also be observed that as the open market is widespread it cannot be confined to a limited area. 'The relevant price is the price at the place where the thing was sold. . Under modern conditions the existence of a market for land at a place other than the site, is of frequent occurrence' [Katzoff v Glaser 1948 4 SA 630 (T) 636-637]. For exam-ple, it is well known that when a township at a coastal resort is opened the stands are frequently sold at various centres all over the Republic.

#### D. THE PRINCIPLE OF COMPARABLE SUBSTITUTION

Normally a prospective purchaser is not likely to pay more for a particular property than the price at which he can buy a comparable substitute property, which satisfies his re-quirements equally well.

The same reasoning applies in the market valuation process. A Valuer must take his cue from the prices being obtained in the open market for properties, which can be regard-ed as rea-sonable substitutes for the one being valued. He can then compare those with similar features in order to obtain a realistic pointer to the value of the subject property.

While the element of comparison remains at the root of the valuation process, the max-im of comparable substitution represents the culminating point of balance at which one property compares favourably with another on the grounds of functional utility at a par-ticular point in time in the open market.

The principle is invoked in the valuation process by assembling details of like properties re-cently sold which are regarded as suitable for comparison with the one being valued. Thereaf-ter a narrowing down operation becomes necessary in order to sort out from the sales record-ed those properties which are characteristic of the attributes of the one be-ing valued.

In this way only those recent sales, which are relevant, present the Valuer with a selec-tion of reasonable substitutes.

The substitution principle consequently dominates the comparison process.

## 1 The comparison method

When a market valuation is required this method becomes the vehicle for processing the facts in order to arrive at a logical deduction from them. The comparison method or the market data approach, as it is frequently referred to, is no exception to this valuation rule.

It has been established by the courts in actions involving market value disputes that comparable transactions afford a sound basis for arriving at a satisfactory guide in de-termining market value [Minister of Water Affairs v Mostert 1966 4 SA 690 (A) 723F], and the comparison method has been readily accepted as a sound valuation principle [Estate Marks v Pretoria City Council 1969 3 SA 227 (A) 253H-254B]. It need not be la-boured therefore that the prices paid for comparable properties in the neighbourhood are the usual evidence as to the market value [Cripps Compulsory Acquisition of Land at 4-031].

The object of the comparison method is to enable a Valuer to arrive at a norm, which will serve as a guide in estimating the market value of the subject property. By analysing his selection of comparable properties currently sold on the basis of the ordinary voluntary sales standard he should be able to deduce a reliable yardstick to assist him in his valuation.

A norm is a standard of comparison derived from a typical example. It must not be confused with an average, which is simply an arithmetical calculation, which, if used in price comparisons, can result in misleading conclusions being reached.

### 1.1 Price and value

As a norm arrived at in the comparison process is derived from prices currently being paid for comparable properties it does not necessarily follow that price and value mean the same thing.

While there is a tendency to assume this the inference nevertheless cannot be regarded as absolute as the reliance placed on sale prices depends not only on the nature of the property sold but also on the circumstances and the conditions of sale.

Except when there are exceptional features attached to a property or the circumstances and conditions of sale are abnormal, the price paid in an open market transaction can ordinarily be assumed to reflect market value at a specific date, which is the date of sale. If it relates to the sale of a comparable property price and value can usually be equated, provided that the price paid was obtained in a bona fide arm's length transaction.

Other than a description of a property and the price paid for it, the conditions of sale and the circumstances under which it was concluded are not always available. Most sales usually represent an arm's length transaction and suitable comparables are normally selected from among those recently recorded. It therefore often becomes difficult for a Valuer to establish if there are any of them which embody abnormal features and which should for that reason be regarded as unsuitable for purposes of comparison.

When a Valuer has reason to follow this line an obligation is imposed on him to establish the facts which have caused him to disregard a particular sale, as was made clear by Colman J in *Jacobs v Minister of Agriculture* 1972 4 SA 608 (W) 615C when he said:

If there were any abnormal features of the transaction, it is for the party who wishes the Court to disregard the price reflected therein to prove those features’.

It is, however, remarkable how news and views, spread via the grapevine, frequently enable an alert Valuer to find reasons to look more closely into the conditions under which a particular sale was concluded. In practice this information is not easily obtained especially in the case of an abnormal transaction as it is generally closely guarded. If a Valuer can obtain it authentically he has facts to guide him, but rumor is not sufficient-

There is, however, a realistic alternative approach, which was referred to in the above-mentioned case:

Every relevant transaction, not shown to have been abnormal, must be given due weight as a pointer to value. And when the price paid in a particular sale seems to be consistent with the prices paid in others, its probative effect is thereby strengthened [615D].

It should be noted that the judge referred to relevant transactions. The observation is significant as a property sold and used as a comparable example must have the characteristics of a reasonable comparable substitute for the property being valued if it is to be relevant.

The alternative referred to above brings custom and reality into a balanced perspective. The buying public interested in property is not altogether unacquainted with prices being paid for properties in general and is thereby influenced in making decisions. A consistency pattern, which adjusts itself to the times, can therefore be regarded as a fair basis for selecting comparables. When a Valuer in comparing sales finds that prices being obtained currently, once they have been adjusted to a common basis of comparison are reasonably close to one another the consistency pattern establishes the reliability of the examples. A sale, which stands out as an exception, is obviously one for closer investigation. It does not necessarily mean that an exception represents an abnormal sale but, when there are a reasonable number of sales available, which reflect a pattern of consistency, a reliable norm can usually be obtained by confining the selection of comparables to them.

## 1.2 Unusual type sales

When a Valuer observes that the price paid for a particular property with comparable characteristics is so much higher or lower than others being considered, the inconsistency may not necessarily be due to abnormal conditions of sale. The state and condition of the property when sold or some unique feature or extraordinary characteristic attaching to it could be responsible for the price difference. The circumstances under which the sale took place could also have influenced the price paid.

Upon investigating a sale, which does not appear to conform to the more-or-less normal market, pattern revealed in other comparable sales a variety of reasons for the inconsistency could present themselves. When the Valuer has established the cause and comes to the conclusion that a particular sale cannot realistically be taken into account in arriving at the norm he is endeavouring to establish, he will have satisfied the requirement that he must prove his case. Among the several instances, which may be the cause of inconsistency, are the following:

#### 1.2.1 Property exchanges

In this type of transaction, even though the parties accept the respective values as being in fair proportion, the consideration agreed upon for each individual property may not necessarily be indicative of its market value. If upon investigation of the transaction the Valuer is unable to reconcile the exchange value apportioned to each of the properties with the consistent pattern of prices being paid in the market at the time when the exchange took place, the transaction would for that reason not be of much help to the Valuer in the comparison process.

#### 1.2.2 Family transactions

In a family property transaction a price adjustment for sentimental reasons does not warrant a sale of this nature being included among others being used for comparison purposes. As this may not always be the case it is a question of the Valuer satisfying himself whether or not the price paid is consistent with the pattern of prices being obtained in the market at the time of the transaction.

#### 1.2.3 Insolvency or deceased estate sales

When it has been established that there was an urgent necessity for disposing of a comparable property, for instance in cases of insolvency or in order to wind up a deceased estate or when a forced sale has taken place, it is generally effected by public auction. The implications thereof have already been reviewed. On the other hand if the property has been disposed of by private treaty (a forced sale accepted) a Valuer should follow the procedure of establishing whether or not the price obtained was consistent with normal market trends.

#### 1.2.4 Transfer duty payments

When transfer duty has been paid on an amount, which differs from that of the declared purchase price the Valuer should endeavour to ascertain the reason for the variation before categorically accepting the sale as a comparable transaction.

#### 1.2.5 Company transactions

Before the sale of a property concluded by way of a share transaction can be validly considered for purposes of comparison certain details must be known. They are necessary for the

purpose of establishing at what amount the value of the property was taken in arriving at the price paid for the shares in the company and loan accounts respectively.

The ideal position is that the Valuer should inspect the sale contract and copies of the company's audited accounts and balance sheet. These documents are, however, rarely available. Nevertheless in many instances an authentic statement can be obtained to satisfy the Valuer that items such as undistributed profits, investments allowances or accumulated loss, if any, as well as shareholders' loan accounts, tax provisions, contingent liabilities, cash and the like have been taken care of, apart from the amount apportioned to the value of the property disposed of, in arriving at the sale price of the shares in the company.

These items indicate why it is essential that the actual amount, which has been obtained for the property, should be authentically established. Without this information the Valuer has no means of determining whether or not the amount allocated to the property warrants considering it as a comparable.

#### 1.2.6 Expropriation awards

When a property has been expropriated the amount received by the owner is arrived at either by way of legal proceedings or through the medium of a negotiated settlement or as a result of a straightforward offer and acceptance.

Because a thorough investigation has been made and the presented facts considered by a court or an arbitrator in legal proceedings, as the case may be, the market value of the property as determined cannot be disregarded as a helpful guide in the comparison process. The facts and the time factor must, of course, be relevant.

Although the aggregate compensation award may include an amount for actual financial loss suffered by the owner and a solatium, the actual market value finding relating to the property is usually separately stated in the judgment.

When it comes to considering whether prices offered and accepted or resulting from negotiations are reliable indicators of market value cognisance can be taken of what Fagan JA said in *Union Government v Jackson* 1956 2 SA 398 (A) 425A-B:

The fact remains that they were paid in transactions of a very special type, not the ordinary voluntary sales between parties who have a free choice whether or not they will consider the bargain at all. To equate them therefore with the prices obtainable at such sales -which are the proper test of 'fair market value' -is an assumption that, in the absence of evidence that they do correspond, is not necessarily correct.

On the same subject Cripps [4-193] says:

The sales must also be sales on a free market, and sales by agreement to an acquiring authority having compulsory powers are not reliable evidence of value on the open market since they would not, generally, satisfy the assumption of a willing seller derived from the statutory requirement of market value.

It is apparent, therefore, that while transactions of this nature may not be of some guidance in the comparison process, in the absence of a full disclosure of the facts, which because of privacy are not always available, it is questionable whether they pre-sent sound examples unless their comparability can be substantiated in the light of the facts when known.

### 1.3 Pre- and post-valuation sales

The property market does not fluctuate daily. In a normal transaction in the open market the price obtained for the property at the date of sale can ordinarily be regarded as a reasonable reflection of the established market trend at that time.

If the prices paid for comparable properties are to serve the intended purpose they consequently cannot be confined only to the pre-valuation period. Contemporary sales suitable for comparison with property being valued, whether they have taken place before or after the valuation date, should be considered provided they are relevant and have been concluded under market conditions similar to and not divergent from the relevant time period. The degree of relevance is influenced by the incidence of time. The closer the date of sale is to the valuation date the stronger is its effectiveness.

It goes without saying that a Valuer might not know about post-valuation sales. If necessary he can, however, refer to any of them, which are relevant in an addendum to his valuation or in giving evidence.

According to Rabie J it is permissible to have regard to post-expropriation sales if they are reasonable comparable [Estate Marks v City Council of Pretoria 14 May 1968 Tvl provincial division -unreported].

In a subsequent case Bliss AJ in taking a similar line, said:

I am entitled to have regard to such sales if they are reasonably comparable, and also that I am similarly entitled to have regard to pre-expropriation sales, if they are reasonably comparable. As a safeguard, however, I will require that pre- or post-expropriation sales must be correlated with the expropriation period by means of suitable evidence, which indicates to what extent prices or values have increased or decreased between the date of those sales and the expropriation period. Care should also be exercised in regard to unusual factors, if any, which might have resulted in the escalation of prices, such as for example, the establishment of a large factory after the expropriation period (Bonnet v Department of Agricultural Credit and Land Tenure 1974 3 SA 737 (T) 753E-F).

### 1.4 Area identification

When the property to be valued has been described and its situation is known the Valuer is in a position to localise the area in which his search for comparable sales must be conducted.

#### 1.4.1 Locality grouping - urban

In urban and peri-urban areas where town planning schemes are in operation the recognition of the prescribed use of each and every defined and registered piece of land is elementary. The necessary information can readily be obtained from the scheme provisions.

The recognition of a zoned area is the initial stage in the search for comparable properties. There is often a locality distinction within a zoned area. In a retail trading area the difference is sometimes noticeable from one street to another or from block to block. It is consequently not only the zone use, which must be identified, but also the trade impact grouping within it.

Town planning does not limit zoned areas to one of each kind of use. When no sales or too few are recorded in the area in which the subject property is situated it is permissible to draw on sales which have currently taken place in other localities zoned the same within a similar environment and having a standing similar to the subject property, provided there is no marked difference in the zone restrictions.

## **ANNEXURE 2**

### MOTIVATED VALUATION REPORT

#### BASIC CONTENTS OF REPORT

The valuation report should at all times comply with the current standards as laid down by the International Valuation Standards Committee (IVCS).

#### 1. INTRODUCTION

- (i) The clients brief and purpose of the valuation, including definitions of value applicable.
- (ii) Declarations of interest.
- (iii) The date(s) of valuation.
- (iv) The date of inspection of the subject property.

2. TITLE DEED INFORMATION. (Depending on what valuation method is used)

- (i) Title Deed (number, date registered and office of registration)
- (ii) Full description of property in terms of the Deed.
- (iii) Conditions in the lease that may have an influence on the value of the property.
- (iv) Registered rights against the property that may influence the value of the property.
- (v) Surveyor diagram(s) of property.
- (vi) Area required for purpose of the valuation.
- (viii) Date of acquisition by owner.
- (ix) All relevant title conditions (including servitudes, endorsements and caveats).
- (x) Mineral Rights – if applicable.
- (xi) Any unregistered rights and how it impacts on value.

3. LEASE INFORMATION.

- (i) Lease contract details.
- (ii) Period of lease. (Options if any).
- (iii) Full description of the property in terms of the lease.
- (iv) All improvements on the property.
- (v) Lease area(s).
- (vi) Conditions of the lease that may have an impact on the value / rental.
- (viii) Usage of the property. (Use limitations in lease).

4. LOCAL, PROVINCIAL AND CENTRAL GOVERNMENT INFORMATION.

- (i) Local Authority.
- (ii) Town Planning information (Zoning, structure plans, special development frame-works, site development plans, etc.).
- (iv) Municipal Valuation (including the date of valuation, effective date, rates and tax-es payable).

5. GENERAL

- (i) Valuation approach.
- (ii) Market inference.
- (iii) Motivation.
- (ix) Calculations.
- (x) Conclusion.
- (xi) Escalation rate.
- (xii) What is included and excluded from the value. (in example VAT, survey and transfer costs, etc.).
- (xiii) General Comments.

Regarding Port Properties the valuation should take into account all factors influencing market rental including but not limited to

- Overview
- Introduction
- Current leases and encumbrances
- Location within the Port
- Limited use as per the National Ports Act regulations
- Bases of Value
- Market Approach
- Income Approach
- Cost Approach
- Special Considerations
- Size of the leased area in relation to other Port Operators

The appointed bidder for Plant, Equipment and Machinery should compile fully motivated valuation report which shall include but not be limited to the following amongst others:

- a) Purpose of valuation
- b) Effective date of valuation
- c) Method of approach to valuation
- d) Process adopted in sourcing market input data for and calculating replacement values and market values
- e) Detailed breakdown of value calculations in soft copy
- f) Market Overview/ economic activities in the industry in relation to the material and high value assets
- g) Functional efficiency, assets condition, maintenance record
- h) Valuation Methodology and motivation for the adopted methods
- i) Determination of value and value conclusion
- j) Valuation certificate

## PART C2: PRICING DATA

Document reference	Title	No of pages
C2.1	Pricing instructions: Option A	1
C2.2	Price List	3
C2.3	Labour Rates	3

## C2.1 Pricing instructions: Option A

### 1.1 The *conditions of contract*

### 1.2 How the contract prices work and assesses it for progress payments

Clause 11 in NEC3 Term Services Contract (TSC), June 2005 (with amendments June 2006 and April 2013) Option A states:

Identified 11  
 and defined  
 terms 11.2

(17) The Price for Services Provided to Date is the total of

- the Price for each lump sum item in the Price List which the *Contractor* has completed and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

(19) The Prices are the amounts stated in the Price column of the Price List, where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

### 1.3 Measurement and Payment

1.3.1 The Price List provides the basis of all valuations of the Price for Services Provided to Date, payments in multiple currencies and general progress monitoring.

1.3.2 The amount due at each assessment date is based on activities and/or milestones completed as indicated on the Price List.

1.3.3 The Price List work breakdown structure provided by the *Contractor* is based on the activity/milestone provided by the Employer. The activities listed by the *Employer* are the minimum activities acceptable and identify the specific activities which are required to achieve Completion. **The Price List work breakdown structure is compiled to the satisfaction of the Employer with any additions and/or amendments deemed necessary.**

1.3.4 The *Contractor's* detailed Price List summates back to the activity/milestone provided by the *Employer* and is sufficient detail to monitor completion of activities related to the operations on the Accepted Plan in order that payment of completed activities may be assessed.

1.3.5 The Prices are obtained from the Price List. The Prices includes for all direct and indirect costs, overheads, profits, risks, liabilities, obligations, etc. relative to the contract.

## C2.2 Price List

### 1. Key Persons\*

Item no	Description	Quantity	Rate/hour*
1.1.	Senior Valuer	1	
1.2.	Junior Valuer	1	

\*The rate should be all inclusive

Item No	Description	Year 1	Year 2	Year 3
2.1	Annual Escalation used in the price list for the 3 years	0%	%	%

## C2.3 Labour Rates

All Rates must be excluding VAT.

### 1. Overtime weekdays and Saturday\*

Item no	Description	Quantity	Rate/hour*
1.3.	Senior Valuer	1	
1.4.	Junior Valuer	1	

### 2. Sundays and Public Holidays

2.1	Senior Valuer	11	
2.2	Junior Valuer	1	

### 3. Travel

3.1	Travelling Costs	1	
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**STANDARD TERMS AND CONDITIONS OF CONTRACT**

**between**

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

**And**

.....

Registration Number .....

**FOR THE PROVISION OF APPOINTMENT OF PROPERTY VALUERS FOR LAND AND BUILDING, BUILDING PLANT, EQUIPMENT AND MACHINERY AT ADHOC BASIS FOR A PERIOD OF 3 YEARS.**

**CONTRACT NUMBER**            **TPNT/NAT/1674 (T)**

**DURATION**                    **Three (03) years**

**COMMENCEMENT DATE**    .....

**EXPIRY DATE**                .....

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**Schedule 1 – SCHEDULE OF REQUIREMENTS**

## **1 SOLE AGREEMENT**

Unless otherwise agreed in writing, these terms [**Terms** and each **Term**] and Transnet's purchase order(s) [**Order** or **Orders**] represent the only conditions upon which Transnet SOC Ltd [**Transnet**] procures Goods/Services [**the Goods/Services**] specified in the Order from the person to whom the Order is addressed [**the Supplier/Service Provider**]. Transnet does not accept any other conditions which the Supplier/Service Provider may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

## **2 CONFORMITY WITH ORDER**

Goods/Services shall conform strictly with the Order. The Supplier/Service Provider shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Supplier/Service Provider warrants that the Goods/Services shall be fit for their purpose and of satisfactory quality.

## **3 DELIVERY AND TITLE**

- 3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier/Service Provider's obligations under the Order.
- 3.2 The Supplier/Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier/Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier/Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.
- 3.3 If on delivery, the Goods/services do not conform to the Order, Transnet may reject the Goods/Services and the Supplier/Service Provider shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Goods/Services at the Supplier/Service Provider's expense within the specified delivery times, without any liability due by Transnet.

## **4 PRICE AND PAYMENT**

- 4.1 Prices specified in an Order cannot be increased. Payment for the Goods/Services shall be made by Transnet against an original undisputed invoice(s) [a Tax Invoice], supporting documentation and month-end statement from the Supplier/Service Provider. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.
- 4.2 Payment of the Supplier/Service Provider's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax

Invoices and any pre-authorised additional expenses incurred, provided that the authorised expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier/Service Provider, taking into account any deduction or set-off and bank charges.

## **5 NON-COMPLIANCE PENALTIES FOR SUBCONTRACTING**

- a) Breach of subcontracting obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.
- b) If the Supplier/Service Provider fails to achieve its subcontracting commitments as per their bid submission ("a **Non-Compliance**"), the Supplier/Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.
- c) Such penalty shall be calculated based on the difference in value between the committed and delivered subcontracting value (i.e. 100% of the undelivered subcontracting value) plus an additional 10% (ten per cent) of such difference.

### **Non-compliance Penalty Certificate:**

- d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.
- e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier/Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
  - the dispute shall be resolved in accordance with the provisions of the Agreement; and
  - if pursuant to that referral, it is determined that the Supplier/Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier/Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

### **Payment of Non-compliance Penalties:**

- f) Subject to Clause (e) above, the Supplier/Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Supplier/Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier/Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- g) The Supplier/Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without

prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

- h) Should the Supplier/Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Supplier/Service Provider from the account of the Supplier/Service Provider in the ensuing month.
- i) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier/Service Provider.

## **6 PROPRIETARY RIGHTS LIABILITY**

If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Goods/Services or any written material provided to Transnet relating to any Goods/Services or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Supplier/Service Provider hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Supplier/Service Provider following a design or process originated and furnished by Transnet. The Supplier/Service Provider shall either

- a) procure for Transnet the right to continue using the infringing Goods/Services; or
- b) modify or replace the Goods/services so that they become non-infringing,

provided that in both cases the Goods/services shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier/Service Provider may remove, with Transnet's prior written consent, such Goods/services and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier/Service Provider shall have no liability in respect of any continued use of the infringing Goods/services after Supplier/Service Provider's prior written request to remove the same.

## **7 PROPRIETARY INFORMATION**

All information which Transnet has divulged or may divulge to the Supplier/Service Provider and any information relating to Transnet's business which may have come into the Supplier/Service Provider's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier/Service Provider as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is

public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Supplier/Service Provider shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

## **8 PROTECTION OF PERSONAL INFORMATION**

a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):

consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA

b) Transnet 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.

c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Supplier/Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:

- i. they process personal information only for the express purpose for which it was obtained;
- ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
- iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
- iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
- v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
- vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;

- vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 9.1. The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- 9.2. Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall mutatis mutandis apply to all authorised third parties who process personal information.
- 9.3. The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 9.4. The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 9.5. The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 9.6. Personal Information security breach:

- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, 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. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.
- b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

## 9 PUBLICITY

The Supplier/Service Provider shall not name Transnet or use its trademarks, service marks [whether registered or not] or Goods in connection with any publicity without Transnet's prior written consent.

## 10 TERMINATION OF ORDER

10.1 Notwithstanding the date of signature hereof, the commencement date of this Order is [REDACTED] and will expire on [REDACTED], unless:

- this Order is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- this Order is extended at Transnet's option for a further period to be agreed by the Parties; or
- the allocated maximum contract value is depleted before the contract expiry date.

10.2 Transnet may cancel this Order in whole or in part at any time upon at least 30 [thirty] days' written notice to the Supplier/Service Provider, or when there is a change in control of the Supplier/Service Provider or the Supplier/Service Provider commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself

into disrepute, on written notice to the Supplier/Service Provider when such work on the Order shall stop.

- 10.3 Transnet shall pay the Supplier/Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier/Service Provider, at the time of termination, and the Supplier/Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier/Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier/Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Supplier/Service Provider had the Order not been terminated.
- 10.4 In the event of termination the Supplier/Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 10.5 If the Goods/services are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier/Service Provider shall compensate Transnet for any costs incurred in obtaining substitute Goods/services or any damage caused due to the failure or delay in the delivery.
- 10.6 Both parties to this agreement reserve the right to terminate this agreement:
- 12.6.1. If the other commits a material breach of this contracts and fails to remedy such breach within a stipulated time frame or within a reasonable time;
  - 12.6.2. There is non-performance from either of the parties; or
  - 12.6.3. If the other party is unable to perform its obligations under this agreement.

## **11 ACCESS**

The Supplier/Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier/Service Provider's employees. The Supplier/Service Provider shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

## **12 WARRANTY**

The Supplier/Service Provider warrants that it is competent to supply the Goods/services in accordance with these Terms to the reasonable satisfaction of Transnet and that all Goods/services delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to *[inter alia]* the Goods/services in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of

any kind. The Supplier/Service Provider hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

### **13 INSOLVENCY**

If the Supplier/Service Provider shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Supplier/Service Provider compounds with its creditors or passes a resolution for the writing up or administration of the Supplier/Service Provider, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

### **14 SUBCONTRACTING**

- 14.1 The Supplier/Service Provider may only enter into a subcontracting arrangement with the approval of Transnet. If the Supplier subcontracts a portion of the contract to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.
- 14.2 Should Transnet approve the Supplier's/Service Provider's subcontracting arrangement, the Supplier/Service Provider and not the sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 14.3 The Supplier/Service Provider may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 14.4 The Supplier/Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Supplier, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the subcontract.

### **15 PAYMENT TO SUB-CONTRACTORS**

- 15.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Supplier/Service Provider, subject to the following conditions:
  - a) Receipt of an undisputed invoice from the sub-contractor; and
  - b) Receipt of written confirmation from the Supplier/Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Supplier/Service Provider, against the required standards.
- 15.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Supplier/Service

provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.

15.3 The Supplier/Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.

15.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Supplier/Service Provider, whatsoever.

## **16 ASSIGNMENT**

The Supplier/Service Provider shall not assign its obligations under an Order without Transnet's prior written consent, which consent shall not be unreasonably withheld or delayed.

## **17 SUPPLIER INTEGRITY PACT**

The Supplier/Service Provider shall observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFQ. The general purpose of the Supplier Integrity Pact is to agree to avoid 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 the procurement event leading to this Agreement and this Agreement itself;

## **18 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.

## **19 NOTICES**

Notices under these Terms shall be delivered by hand to the relevant addresses of the parties in the Order or may be served by facsimile or by email, in which event notice shall be deemed served on acknowledgement of receipt by the recipient.

## **20 LAW**

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South Africa, which rules are deemed incorporated by reference in this clause. The reference to arbitration shall not prevent Transnet referring the matter to any South African courts, having jurisdiction, to which the Supplier/Service Provider hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Supplier/Service Provider in other jurisdictions and/or obtaining interim relief on an urgent basis

from a court of competent jurisdiction pending the decision in other courts or from instituting in any court of competent jurisdiction any proceedings for an interdict or any other injunctive relief. If the Supplier/Service Provider does not have a registered office in the South Africa it will at all times maintain an agent for service of process in South Africa and shall give Transnet the name and address of such agent as such may be amended, in writing, from time to time.

## **21 GENERAL**

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 5, 6, 7, 8 and 10. Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

## **22 COUNTERPARTS**

These Terms and conditions may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by signing any such counterpart.

**Thus signed by the Parties and witnessed on the following dates and at the following places:**

SIGNED for and on behalf of <b>Transnet SOC Ltd</b> duly authorised hereto	SIGNED for and on behalf of ..... duly authorised hereto
Registration Number 1990/000900/30	Registration Number .....
Signature .....	Signature .....
Name: .....	Name:
Position: .....	Position:
Date:	Date:
Place: .....	Place:
AS WITNESS:	AS WITNESS:
Signature .....	Signature .....
Name .....	Name .....

## **GENERAL BID CONDITIONS**

**[October 2021]**

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## 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 their Bid submissions legibly in non-erasable ink.
- 3.3 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.4 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 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**

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document provided the Bid Documents are also made available free of charge on the National Treasury eTender Publication Portal.

## **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 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 Chairperson of the relevant Bid Preparation and Evaluation Committee.

## **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Where Bids are submitted to the Chairperson of the relevant Bid Preparation and Evaluation Committee, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, 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**

- 14.1 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 / intent, 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/Intent, 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 24 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.

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**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.

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# SUPPLIER DECLARATION FORM

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**Please Note:** This Supplier Declaration Form is only to be completed by the successful bidder who is awarded the contract.

Transnet Vendor Management has received a request to load / change your company details onto the Transnet vendor master database. Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents as per Appendix V to the Transnet Official who is intending to procure your company's services / products, to enable us to process this request. Please only submit the documentation relevant to your request.

**Please Note:** Effective **1 April 2016** all organisations, institutions and individuals who wish to provide goods and/or services to organs of the State must be registered on the National Treasury's Central Supplier Database (CSD). This needs to be done via their portal at <https://secure.csd.gov.za/> **before applying to Transnet.**

## General Terms and Conditions:

**Please Note:** Failure to submit the relevant documentation will delay the vendor creation / change process.

Where applicable, the respective Transnet Operating Division processing your application may request further or additional information from your company.

The Service Provider warrants that the details of its bank account ("the nominated account") provided herein, are correct and acknowledges that payments due to the Supplier will be made into the nominated account. If details of the nominated account should change, the Service Provider must notify Transnet in writing of such change, failing which any payments made by Transnet into the nominated account will constitute a full discharge of the indebtedness of Transnet to the Supplier in respect of the payment so made. Transnet will incur no liability for any payments made to the incorrect account or any costs associated therewith. In such an event, the Service Provider indemnifies and holds Transnet harmless in respect of any payments made to an incorrect bank account and will, on demand, pay Transnet any costs associated herewith.

Transnet expects its suppliers to timeously renew their Tax Clearance and B-BBEE certificates (where applicable), as EMEs and QSEs (QSE's with more than 51% ownership) are only expected to supply an affidavit as per (Appendix D and E). These affidavits must be resubmitted on an annual basis as failure to do so may result in the supplier's account being temporarily suspended.

## In addition, please note of the following very important information:

**1. If your annual turnover is less than R10 million**, then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a certified signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R10 million and percentage of black ownership and black female ownership in the company AND / OR B-BBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), or a sworn Affidavit should you feel you will be able to attain a better B-BBEE score. (Appendix D).

**2. If your annual turnover is between R10 million and R50 million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific B-BBEE level based on any 4 of the 7 elements of the B-BBEE score-card, please include your B-BBEE certificate in your submission as confirmation of your status. Or if the Supplier is a QSE with More than 51% black owned, they can submit a sworn affidavit (Appendix E).

**Please Note:** B-BBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent SANAS Member).

**3. If your annual turnover exceeds R50 million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific B-BBEE level based on all seven elements of the B-BBEE generic score-card. Please include your B-BBEE certificate in your submission as confirmation of your status.

**Please Note:** B-BBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent SANAS Member).

4. **The supplier to furnish proof to the procurement department as required in the Fourth Schedule of the Income Tax Act. 58 of 1962** whether a supplier of service is to be classified as an “employee”, “personal service provider” or “labour broker”. Failure to do so will result in the supplier being subject to employee’s tax.
5. **No payments can be made to a vendor until the** vendor has been registered / updated, and no vendor can be registered / updated until the vendor application form, together with its supporting documentation, has been received and processed. No payments can be made to a vendor until the vendor has met / comply with the procurement requirements.
6. From 01 May 2015 only B-BBEE certificates issued by SANAS accredited verification agencies will be valid.

## **PROTECTION OF PERSONAL INFORMATION**

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. of 2013 "(POPIA)":  
  
consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
2. Transnet 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 Supplier Declaration Form, the Responsible party is "Transnet" and the Data subject is the "Respondent". Transnet 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. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Supplier Declaration Form and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
5. In completing this Supplier Declaration form, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by the Respondent in their response to this Supplier Declaration Form for the purpose of registering the Respondent as a Transnet Vendor to facilitate for payment in the execution of the Agreement between Transnet and the Respondent and in accordance with any applicable law.
6. Transnet further agrees that in submitting any information or documentation requested in this Supplier Declaration Form, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, vendor management, 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 Transnet and/or its authorised appointed third parties.
7. Furthermore, Transnet 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, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.
8. Transnet 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 Supplier Declaration Form (physically, through a computer or any other form of electronic communication).

9. Transnet 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 Transnet 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 their identity thereof in terms of the POPIA.
11. The Respondent may further request that Transnet 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 Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
12. In submitting any information or documentation requested in this Supplier Declaration Form, the Respondent is hereby consenting to the processing of their personal information for the purpose of this Supplier Declaration Form 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>
------------	-----------

13. 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 Transnet 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 to it.
14. The Respondent declares that the personal information submitted for the purpose of this Supplier Declaration Form 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 Transnet, 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

## Supplier Declaration Form

**Important Notice:** Effective 1 April 2016 all organisations, institutions and individuals who wish to provide goods and/or services to organs of the State must be registered on the National Treasury Central Supplier Database (CSD). This needs to be done via their portal at <https://secure.csd.gov.za/> **before applying to Transnet.**

CSD Number (MAAA xxxxxx):

Company Trading Name						
Company Registered Name						
Company Registration No Or ID No If a Sole Proprietor						
Company Income Tax Number						
Form of Entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
	Non-profit (NPO's or NPC)	Personal Liability Co	State Owned Co	National Govt	Provincial Govt	Local Govt
	Educational Institution	Specialised Profession	Financial Institution	Foreign International	Foreign Branch Office	

Did your company previously operate under another name?

Yes

No

If **YES** state the previous details below:

Trading Name						
Registered Name						
Company Registration No Or ID No If a Sole Proprietor						
Form of Entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
	Non-profit	Personal Liability Co	State Owned Co	National Govt	Provincial Govt	Local Govt
	Educational Institution	Specialised Profession	Financial Institution	Foreign International	Foreign Branch Office	

Your Current Company's VAT Registration Status

VAT Registration Number

If **Exempted from VAT registration**, state reason and submit proof from SARS in confirming the exemption status

If your business entity is not VAT Registered, please submit a current original sworn affidavit (see example in Appendix I). Your Non VAT Registration must be confirmed annually.

Company Banking Details		Bank Name
Universal Branch Code		Bank Account Number

Company Physical Address		
	Code	
Company Postal Address		
	Code	
Company Telephone number		
Company Fax Number		
Company E-Mail Address		
Company Website Address		

Company Contact Person Name	
Designation	
Telephone	
Email	

Is your company a Labour Broker?		Yes		No	
Main Product / Service Supplied e.g. Stationery / Consulting / Labour etc.					
How many personnel does the business employ?		Full Time		Part Time	
Please Note: Should your business employ more than 2 full time employees who are not connected persons as defined in the Income Tax Act, please submit a sworn affidavit, as per Appendix II.					

Most recent Financial Year's Annual Turnover	<R10Million		>R10Million <R50Million		>R50Million	
--	-------------	--	----------------------------	--	-------------	--

Does your company have a valid B-BBEE certificate?				Yes		No	
What is your Broad Based BEE status (Level 1 to 9)							
Majority Race of Ownership							
% Black Ownership		% Black Women ownership		% Black Disabled person(s) ownership		% Black Youth ownership	
<b>Please Note:</b> Please provide proof of B-BBEE status as per Appendix V. If you qualify as an EME or QSE then provide an affidavit following the examples provided in Appendix III and IV respectively. If you have indicated Black Disabled person(s) ownership, then provide a <b>certified</b> letter signed by a physician, on the physician's letterhead, confirming the disability.							

**By signing below, I hereby verify that I am duly authorised to sign for and on behalf of firm / organisation and that all information contained herein and attached herewith are true and correct**

Name		Designation	
Signature		Date	

**Stamp And Signature Of Commissioner Of Oaths**

Name		Date	
Signature		Telephone No	

Example of an Affidavit or Solemn Declaration as to VAT registration status

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**Affidavit or Solemn Declaration**

I, \_\_\_\_\_ solemnly swear/declare that \_\_\_\_\_  
\_\_\_\_\_ is not a registered VAT vendor and is not required to register as a VAT vendor because the combined value of taxable supplies made by the provider in any 12 month period has not exceeded or is not expected to exceed R1million threshold, as required in terms of the Value Added Tax Act.

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

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

**Commissioner of Oaths**

Thus signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_\_,

the Deponent having knowledge that he/she knows and understands the contents of this Affidavit, and that he/she has no objection to taking the prescribed oath, which he/she regards binding on his/her conscience and that the allegations herein contained are all true and correct.

\_\_\_\_\_  
Commissioner of Oaths

Example of an Affidavit or Solemn Declaration as to number of employees

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**Affidavit or Solemn Declaration**

I, \_\_\_\_\_ solemnly swear/declare that \_\_\_\_\_  
\_\_\_\_\_ employs three or more full time employees, which employees are engaged  
in the business of rendering the services of the organisation and are not connected persons as defined  
in the Income Tax Act.

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

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

**Commissioner of Oaths**

Thus signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_\_,

the Deponent having knowledge that he/she knows and understands the contents of this Affidavit, and  
that he/she has no objection to taking the prescribed oath, which he/she regards binding on his/her  
conscience and that the allegations herein contained are all true and correct.

\_\_\_\_\_  
Commissioner of Oaths

## Example of an Affidavit or Solemn Declaration as to EME B-BBEE Status

**SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE**

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:

- The enterprise is \_\_\_\_\_ % black owned;
- The enterprise is \_\_\_\_\_ % black woman owned;
- The enterprise is \_\_\_\_\_ % black youth owned;
- The enterprise is \_\_\_\_\_ % black disabled owned;
- Based on the management accounts and other information available for the \_\_\_\_\_ financial year, the income did not exceed R10,000,000.00 (ten million rand).

Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	
Less than 51% black owned	<b>Level Four</b> (100% B-BBEE procurement recognition)	

4. The entity is an empowering supplier in terms of the **DTI** Codes of Good Practice.
5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

**Deponent Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths  
Signature & stamp**

## Example of an Affidavit or Solemn Declaration as to QSE B-BBEE Status

**SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE**

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:

- The enterprise is \_\_\_\_\_% black owned;
- The enterprise is \_\_\_\_\_% black woman owned;
- The enterprise is \_\_\_\_\_% black youth owned;
- The enterprise is \_\_\_\_\_% black disabled owned;
- Based on the management accounts and other information available for the \_\_\_\_\_ financial year, the income did not exceed R50,000,000.00 (fifty million rand);
- The entity is an empowering supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) or as amended 3.3 (e) of the DTI Codes of Good Practice. **(Tick appropriate box in table below).**

(a) At least 25% of cost of sales, (excluding labour costs and depreciation) must be procurement from local producers or suppliers in South Africa; for the services industry include labour costs but capped at 15%		(b) Job Creation – 50% of jobs created are for black people, provided that the number of black employees in the immediate prior verified B-BBEE measurement is maintained	
(c) At least 25% transformation of raw material / beneficiation which include local manufacturing, production and /or assembly, and / or packaging		(d) At least 12 days per annum of productivity deployed in assisting QSE and EME beneficiaries to increase their operation or financial capacity	
(e) At least 85% of labour costs should be paid to South African employees by service industry entities			

Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	

5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

**Deponent Signature:** \_\_\_\_\_**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths  
Signature & stamp**

**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 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.
- 3.2 The acceptance and giving of gifts may be permitted provided that:
- a) the gift does not exceed R1 000 (one thousand Rand) in retail value;
  - b) many low retail value gifts do not exceed R 1 000 within a 12 month period;
  - c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
  - d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
  - e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
  - f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
  - g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.
- 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.

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