

C1.1 Form of Offer & Acceptance

Offer

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

Maintenance, Repairs and Servicing of HVAC (Heating, Ventilation and Air Conditioning) in the Port of Ngqura for a period of Thirty-Six (36) months.

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 15% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.



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Contract Number: TNPA/2022/05/0448/4474/RFQ

Description of Works: Maintenance, Repairs & Servicing of HVAC (Heating, Ventilation and Air Conditioning) at the Port of Ngqura for a Period of Thirty-Six (36) Months

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

Name &
signature of
witness

(Insert name and address of
organisation)

Date

Tenderer's CIDB registration number:

Acceptance

By signing this part of this Form of Offer and Acceptance, the *Employer* identified below accepts the tenderer's Offer. In consideration thereof, the *Employer* shall pay the *Contractor* the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the *Employer* and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- | | |
|---------|--|
| Part C1 | Agreements and Contract Data, (which includes this Form of Offer and Acceptance) |
| Part C2 | Pricing Data |
| Part C3 | Service Information |

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date of award.

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Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

**for the
Employer**

Name &
signature of
witness

*(Insert name and address of
organisation)*

Date



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Schedule of Deviations

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

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For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf of *(Insert name and address of organisation)*

Transnet SOC Ltd (REGISTRATION NO.1990/000900/30), trading through its Operating Division, Transnet National Ports Authority
Port of Ngqura
Port Elizabeth
6100

Name & signature of witness

Date

C1.2 Contract Data

Part one - Data provided by the *Employer*

The NEC 3rd Edition Engineering and Construction 2005 as published by Thomas Telford Ltd a wholly owned subsidiary of the Institution of Civil Engineers (UK) shall apply to and from the General Conditions of Contract for this contract. This publication is available and Tenderers must obtain copies at their own cost.

The General Conditions of Contract make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the general conditions of contract.

The General Conditions of Contract shall be read in conjunction with the variations, amendments and additions set out in the Contract Specific Data below. Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies.

Clause	Statement	Data
1	General The <i>conditions of contract</i> are the core clauses and the clauses for main Option: Dispute resolution Option and secondary Options	<p>A: Priced contract with price list</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2 Changes in the law</p> <p>X18: Limitation of liability</p> <p>X19: Task Order</p> <p>Z: <i>Additional conditions of contract</i></p>
	of the NEC3 Term Service Contract (June 2005) (and amended June 2006 and April 2013)	
10.1	The <i>Employer</i> is:	Transnet SOC Ltd (Registration No. 1990/000900/30)

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Address

Registered address:

**Transnet Corporate Centre
Waterfall Business Estate
9 Country Estate Drive
Midrand
1662**

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

**Transnet SOC Ltd
(Registration No. 1990/000900/30)
trading through its operating division
Transnet National Ports Authority
eMendi Admin Building, Klub Road
Port of Ngqura
6001**

0.1	The <i>Project Manager is</i> (name):	Thandekile Bomali
	Address	Transnet National Ports Authority (TNPA), eMendi Administration Building, Klub Road, Port of Ngqura, Neptune Road, Coega, Port Elizabeth, 6001
	Tel	(+27 41) 507 8671
	e-mail	Thandekile.Bomali@transnet.net
11.2(2)	The Affected Property is	TNPA Port of Ngqura Buidings
11.2(13)	The <i>service is</i>	Maintenance & Servicing of the HVAC (Heating, Ventilation and Air Conditioning) at the Port of Ngqura for a Period of 36 Months.
11.2(14)	The following matters will be included in the Risk Register	All risks identified as per the Part C3: Service Information
11.2(15)	The Service Information is in	Part C3: Service Information
12.2	The <i>law of the contract</i> is the law of	The Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 (two) weeks

2	The <i>Contractor's</i> main responsibilities	(If the optional statement for this section is not used, no data will be required for this section)
21.1	The <i>Contractor</i> submits a first plan for acceptance within	2 (two) weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	01 November 2022
30.1	The <i>service period</i> is	Thirty-six (36) months
4	Testing and defects	52 (fifty two) weeks after Completion of the whole of the <i>works</i>.
5	Payment	
50.1	The <i>assessment interval</i> is	25th (twenty fifth) day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	Payment will be effected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.
51.4	The <i>interest rate</i> is	The prime lending rate of the Standard Bank South Africa.
6	Compensation events	No additional data required for this section of the conditions of contract
7	Use of Equipment Plant and Materials	No additional data is required for this section of the <i>conditions of contract</i>.
8	Risks and insurance	
80.1	These are additional <i>Employers</i> risks	None
84.1	The minimum limit of indemnity for insurance in respect of loss and damage to property (except goods, plant and materials and equipment) and liability for bodily injury or death of a person (not an employee of the <i>Service Provide</i>) caused by activity in connection with this contract for any one event is:	Whatever <i>Contractor</i> deems necessary as the <i>Employer</i> is not carrying this indemnity.



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84.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act.
84.1	The <i>Contractor</i> liability to the <i>Employer</i> for indirect or consequential loss including loss of profit, revenue and goodwill, is limited to:	The total of the prices.
84.1	For any one event, the <i>Contractor</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employers</i> property is limited to:	The total of the prices.
84.1	The <i>Contractor</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to:	The total of the prices.
9	Termination	There is no Contract Data required for this section of the <i>conditions of contract</i>.
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i>, the chairman of the Association of Arbitrators will appoint an <i>Adjudicator</i>.
W1.2(3)	The <i>Adjudicator nominating body</i> is: If no <i>Adjudicator nominating body</i> is entered, it is	The Association of Arbitrators (Southern Africa)
W1.4(2)	The <i>tribunal</i> is:	Arbitration



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W1.4(5) The *arbitration procedure* is

The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)

The place where arbitration is to be held is

Port Elizabeth, Eastern Cape, South Africa

The person or organisation who will choose an arbitrator

The Chairman of the Association of Arbitrators (Southern Africa)

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is

12 Data for secondary Option clauses

X1 Price adjustment for inflation

X1.1 The *base date* for indices is

One Month before Tender Closing Date.

The proportions used to calculate the Price Adjustment Factor are:

proportion	linked to index for	Index prepared by
0.40	Labour (People)	The consumer Price Index (CPI) for "All Items" in Table 1 (Consumer price indices for the total country) of the Statistical Release P0141 "Consumer Price Index - Additional Tables" published by Statistics South Africa.



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0.15

**Material
(Mechanical)**

**The
"Mechanical
Engineering"
index in
Table 5
(Mechanical
and
Electrical
Engineering
Input Price
Indices) of
the
Statistical
Release
P0151.1
"Constructio
n Materials
Price
Indices"
published by
Statistics
South Africa.**



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		0.15	Material (Electrical)	The "Electrical Engineering" index in Table 5 (Mechanical and Electrical Engineering Input Price Indices) of the Statistical Release P0151.1 "Constructio n Materials Price Indices" published by Statistics South Africa.
		0.15	Non- adjustable	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	Nil.		
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to		The deductible of the relevant insurance policy	
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to		The cost of correcting the defect.	
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to		Total of the Prices.	



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X18.5 The *end of liability date* is **2 years after the end of the *service period*.**

X19 Task Order

X19.5 The *Contractor* submits a Task Order programme to the *Service Manager* within **3 days of receiving the Task Order**

Z Additional conditions of contract

Z1 Obligations in respect of Termination

Z1.1 The following will be included under core clause 91.1:

In the second main bullet, after the word 'partnership' add 'joint venture whether incorporated or otherwise (including any constituent of the joint venture)'; and

Under the second main bullet, insert the following additional bullets after the last sub-bullet:

- commenced business rescue proceedings (R22)
- repudiated this Contract (R23)

Z1.2 Termination Table The following will be included under core clause 90.2 Termination Table as follows:

Amend "A reason other than R1 – R21" to "A reason other than R1 – R23"

Z1.3 Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."

Z2 Right Reserved by Transnet to Conduct Vetting through SSA



Z2.1

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

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

Z3 Additional clause relating to Collusion in the Construction Industry

Z3.1

The contract award is made without prejudice to any rights Transnet may have to take appropriate action later with regard to any declared bid rigging including blacklisting.

Z4 Protection of Personal Information Act

Z4.1

The *Employer* and the *Contractor* are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act

C1.2 Contract Data

Part two - Data provided by the *Contractor*

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

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

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

CV's (and further key person's data including CVs) are in

A Priced contract with price list

11.2(12) The *price list* is in

11.2(19) The tendered total of the Prices is **R**.....

PART C2: PRICING DATA

Document reference	Title	No of pages
C2.1	Pricing instructions: Option A	1-2
C2.2	Price List	3-10
C2.3	Total for Contract	11-12

C2.1 Pricing instructions: Option A

The conditions of contract

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 11.2
terms**

- (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.

Measurement and Payment

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.

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

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.**

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.

C2.2 Price List

HVAC Maintenance, Service and Repairs

These are the following lifts that need to be serviced:

C2.2.1 PART A: Preliminary & General

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	PRICE
A	<u>PRELIMINARY AND GENERAL</u>				
A1	<u>Preliminary and General</u> Contractor's contractual obligations to manage and execute the Contract. (Detailed breakdown to be provided upon request for such information):				
A2	<u>Contractor's SHE file and Environmental Management Plan</u> Contractor's Health & Safety and Environmental obligations for the duration of the contract. (Detailed breakdown to be provided upon request for such information):	Sum	1		
	TOTAL PART A				
B	HVAC SERVICES (PLANNED MAINTENANCE)				
B1	HVAC services for the following years: (2 times a year)				
	eMendi building				
B1.1	Year 1 (6 monthly)	No.	2		

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ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	PRICE
B1.2	Year 2 (6 monthly)	No.	2		
B1.3	Year 3 (6 monthly)	No.	2		
	Port Control				
B1.4	Year 1 (6 monthly)	No.	2		
B1.5	Year 2 (6 monthly)	No.	2		
B1.6	Year 3 (6 monthly)	No.	2		
	ACB				
B1.7	Year 1 (6 monthly)	No.	2		
B1.8	Year 2 (6 monthly)	No.	2		
B1.9	Year 3 (6 monthly)	No.	2		
	BRENTON HOUSE				
B1.10	Year 1 (6 monthly)	No.	2		
B1.11	Year 2 (6 monthly)	No.	2		
B1.12	Year 3 (6 monthly)	No.	2		
	SBP-MAIN PUMP STATION				
B1.13	Year 1 (6 monthly)	No.	2		
B1.14	Year 2 (6 monthly)	No.	2		
B1.15	Year 3 (6 monthly)	No.	2		

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ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	PRICE
	BOOSTER PUMP STATIONS 1-3				
B1.16	Year 1 (6 monthly)	No.	2		
B1.17	Year 2 (6 monthly)	No.	2		
B1.18	Year 3 (6 monthly)	No.	2		
	CLEAR WATER INTAKE				
B1.19	Year 1 (6 monthly)	No.	2		
B1.20	Year 2 (6 monthly)	No.	2		
B1.21	Year 3 (6 monthly)	No.	2		
	SUBSTATIONS				
B1.22	Year 1 (6 monthly)	No.	2		
B1.23	Year 2 (6 monthly)	No.	2		
B1.24	Year 3 (6 monthly)	No.	2		
	TOTAL PART B				
C.1	Condition based Maintenance				
	Labour rates and Mark-up Any work not included under part B shall be deemed additional work or non-scheduled items and will be charged at the following rates:				

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Item no.	Resource	After hours Saturday (R/hour)	After hours Sunday or public holidays (R/hour)	Normal hours (R/hour)	Total
C1.1	Lead Electrician				
C1.2	Control and Instrumentation Technician				
C1.3	Electrician assistants(x2)				
C1.4	Site supervisor				

Part D: Mark-up (third party procured items/services)

Cost	Mark-up
R 0 - R 2 000.00	%
R 2 000.01 - R 10 000.00	%
R 10 000.01 - R 50 000.00	%
R 50 000.01 - R 100 000.00	%
Above R100 000.00	%

ITEM NO.	DESCRIPTION	Price
A	TOTAL PART A – Preliminary & General	
B	TOTAL PART B – HVAC Services	
C	TOTAL PART C – Condition based Maintenance	
D	SUB-TOTAL 1	
E	ADD 15% VAT (if applicable)	
F	GRAND TOTAL	