



TRANSNET NATIONAL PORTS AUTHORITY

TENDER NUMBER: TNPA/2022/10/1246/14484/RFP

DESCRIPTION OF THE SERVICES: THE PROVISION OF PROFESSIONAL SERVICE PROVIDER FOR PROJECT MANAGEMENT SERVICES IN THE PORT OF DURBAN AND RICHARDS BAY FOR A PERIOD OF TWENTY-FOUR (24) MONTHS

C1.2 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	A: Priced contract with activity schedule
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1 Price adjustment for inflation
		X2 Changes in the law
		X7: Delay damages
		X9 Transfer of rights
		X10 <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		Z: Additional conditions of contract
	of the NEC3 Professional Services Contract (June 2005) (amended June 2006 and April 2013)	
10.1	The <i>Employer</i> is (Name):	Transnet SOC Ltd
	Address	Registered address: Transnet Corporate Centre 138 Eloff Street Braamfontein Johannesburg 2000
	Having elected its Contractual Address for the purposes of this contract as:	Transnet National Ports Authority 237 Mahatma Ghandi, Queens Warehouse Durban 4001
11.2(9)	The <i>services</i> are	Provision of Professional Service Provider for Project Management Services in the Ports of Durban and Richards Bay for a period of twenty-four (24) months

11.2(10) The following matters will be included in the Risk Register

- Availability of the historical project information
- Availability of the key stockholder for data review and collection.

11.2(11)	The Scope is in	Part C3.1: The Scope of the Contract Document		
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.		
13.1	The <i>language of this contract</i> is	English		
13.3	The <i>period for reply</i> is	2 (two) weeks		
13.6	The <i>period for retention</i> is	5 (five) years following Completion or earlier termination.		
2	The Parties’ main responsibilities			
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to		<i>access date</i>
		1	15 January 2023	01 February 2023
3	Time			
31.2	The <i>starting date</i> is	01 January 2023		
11.2(3)	The <i>completion date</i> for the whole of the services is	30 December 2025		
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	2 (two) weeks of the Contract Date.		
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	2 (two) weeks.		
4	Quality			
40.2	The quality policy statement and quality plan are provided within	2 (two) weeks of the Contract Date.		
41.1	The <i>defects date</i> is	N/A		
5	Payment			
50.1	The <i>assessment interval</i> is on the	25 th day of each successive month.		
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount	
		Economy air fares	Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.	

		Car hire not exceeding group B	Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.
		Accommodation	Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.
51.1	The period within which payments are made is	Payment will be affected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.	
51.2	The <i>currency of this contract</i> is the	South African Rand (ZAR).	
51.5	The <i>interest rate</i> is	The prime lending rate of the Standard Bank of South Africa.	
6	Compensation events	No additional data required for this section of the <i>conditions of contract</i>.	
7	Rights to material	No additional data required for this section of the <i>conditions of contract</i>.	
8	Indemnity, insurance and liability		
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are		
	Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination
	failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Professional Indemnity insurance for not less than R5 000 000.00 (Five Million Rands) in respect of each claim, without limit to the number of claims	108 Weeks



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	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	General Third Party Liability Insurance for all amounts falling within the excess of the policy, currently R50 000.00 (Fifty Thousand Rand) each and every claim, and/or for all amounts in excess of the policy limits as detailed in the policy document or whatever the <i>Consultant</i> deems desirable in respect of each claim, without limit to the number of claims	0 Weeks
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Consultant</i> arising out of and in connection with this contract for any one event is that which is prescribed by the Compensation for Occupation Injuries and Diseases Act No. 130 of 1993 as amended.	0 Weeks
	Motor Vehicle Liability Insurance	Comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity for an amount of not less than R 5 000 000.00 (Five Million)	
81.1	The <i>Employer</i> provides the following insurances	Professional Indemnity insurance in respect of failure of the <i>Consultant</i> to use the skill and care normally used by Professionals providing services similar to the services General Third-Party Liability cover in respect of death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	

82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	For all matters covered under the Employer's Professional Indemnity (PI) and General Third Party Liability policies, the Consultant's liability will be limited to the excesses applicable under the Employer's Professional Indemnity and General Third Party Liability policies as detailed in the policy wordings. The current excesses amounts to R5 000 000.00 (Five Million Rand) PI and R50 000.00 (Fifty Thousand Rand) General Third Party Liability, respectively, each and every claim. For all matters not covered under the Employer's Professional Indemnity and General Third Party Liability policies the Consultants liability will be limited to the final total of the Prices.
9	Termination	No additional data required for this section of the <i>conditions of contract</i> .
10	Data for main Option clause	
A	Priced contract with activity schedule	
21.3	The <i>Consultant</i> prepares forecasts of the total of the <i>expenses</i> at intervals of no longer than	Four (4) weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	Both parties will agree to an <i>Adjudicator</i> as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i>, the Chairman of the Association of Arbitrators (Southern Africa) will appoint an <i>Adjudicator</i>.
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Association of Arbitrators (Southern Africa)
W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	The latest addition of the South African Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	The Chairman of the Association of Arbitrators (Southern Africa)
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	

X1.1	The <i>index</i> is	<p>The "Consumer Price Index (CPI)" for "All Items" as published by Statistics South Africa in Table 1 of the Statistical Release P0141, "Consumer Price Index - Additional Tables".</p> <p>Escalation will only be applicable on the anniversary of the Contract and calculated on the applicable indices at that time and will not change until the next anniversary of the Contract. Escalation will only be applied to all outstanding payments.</p>
	The <i>staff rates</i> are	The <i>staff rates</i> are fixed at the Contract Date and are not variable with changes in salary
X2	Changes in the law	
X2.1	The <i>law of the project</i> is	is the law of the Republic of South Africa subject to the jurisdiction of the courts of South Africa.
X7	Delay damages	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	R2 000.00 per day
X9	Transfer of rights	
		The <i>Employer</i> owns the <i>Consultant</i> rights over any of the material whatsoever prepared for the Services of this Contract by the <i>Consultant</i>. The <i>Consultant</i> provides on request by the <i>Employer's Agent</i>, all documentation in whatever form as required (native's, PDF's, CD's, etc) and all other material items which transfer these rights to the <i>Employer</i>.
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	Muziwokuthula Ntuli
	Address	237 Mahatma Gandhi Road, Durban, 4001
	Tel No	063 407 3625
	e-mail	Muziwokuthula.ntuli@transnet.net
	The authority of the <i>Employer's Agent</i> is	Fully empowered to act on behalf of the <i>Employer</i> for the services covered by the contract.
X12	Termination of rights	No further data required

Z1	Obligations in respect of Joint Venture Agreements
Z1.1	<p>Insert the additional core clause 21.5</p> <p>21.5.1 In the instance that the Consultant is a joint venture, the Consultant shall provide the Employer with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract starting date. The Joint Venture agreement shall contain but not be limited to the following:</p> <ul style="list-style-type: none"> • A brief description of the Contract and the Deliverables; • The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture; • The constituents' interests; • A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents; • Details of an internal dispute resolution procedure; <p>• Written confirmation by all of the constituents:</p> <p>of their joint and several liability to the Employer to Provide the services; proof of separate bank account/s in the name of the joint venture; identification of the leader in the joint venture confirming the authority of the leader to bind the joint venture through the Consultant's representative; Identification of the roles and responsibilities of the constituents to provide the services.</p> <p>• Financial requirements for the Joint Venture:</p> <p>the working capital requirements for the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time; the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture</p>
Z1.2	<p>Insert additional core clause 21.6</p> <p>21.6. The Consultant shall not alter its composition or legal status of the Joint Venture without the prior approval of the Employer.</p>
Z2	Additional obligations in respect of Termination

Z2.1		<p>The following will be included under core clause 90.1: In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and</p> <p>Under the second main bullet, insert the following additional bullets after the last sub-bullet:</p> <ul style="list-style-type: none"> • commenced business rescue proceedings • repudiated this Contract
Z2.2		<p>Clause 90.5 is added as an additional clause Where all or part of the Services are suspended for a period of six months or more either party may terminate the Contract by notifying the other.</p>
Z3	Right Reserved by the Employer to Conduct Vetting through SSA	
Z3.1		<p>The Employer reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any Consultant who has access to National Key Points for the following without limitations:</p> <ol style="list-style-type: none"> 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.
Z4	Additional Clause Relating to the Employer's rights to take appropriate action	

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

Z5.1		The Employer and the Consultant are required to process information obtained for the duration of the Contract in a manner that is aligned to the Protection of Personal Information Act.
Z6	Time	
Z6.1		<p>Clause 33.2. is added as an additional clause.</p> <p>The Employer may at any time suspend part or all of the services. As a consequence, if the Consultant is required to demobilise and then remobilise its staff and equipment, the Consultant will be reimbursed at cost. The Consultant will be required to reduce and mitigate all its costs during the period of suspension and will be entitled to compensation only to the extent that it can demonstrate it has incurred costs which were not capable of being mitigated.</p>
Z7	Compensation Events	
Z7.1		Clause 61.4: The first bullet point is amended to read as follows: arises from the fault, error, negligence or default of the Consultant.
Z8	Limitation of liability	
Z8.1		<p>Add to core clause 82.1 and X18</p> <p>For the avoidance of doubt the parties expressly agree that the total liability of the Consultant to the Employer applies jointly and severally across all organisations comprising of the Consultant.</p>
Z9	Additional clauses relating to cession of rights	
Z9.1		The Consultant shall not cede any rights under this contract without the approval of the Employer.
Z9.2		The Employer may on written notice to the Consultant cede and assign its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Employer.
Z10	Additional clauses relating to interpretation of the law	

Z10.1	Add to core clause 12.3 Any extension, concession, waiver or relaxation of any action by the Parties, the Employers' Agent or Adjudicator does not constitute a waiver of rights and does not give rise to an Estoppel or Lien, unless the Parties agree otherwise and confirm such an agreement in writing.	
Z11	Employer's Step in rights	
Z11.1	If the Consultant defaults by failing to comply with his obligations and fails to remedy such default within 2 weeks of the notification of the default by the Employer's Agent, the Employer, without prejudice to his other rights, powers and remedies under the contract, may remedy the default either himself or procure a third party (including any sub-consultant or supplier of the Consultant) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the Consultant.	
Z11.2	The Consultant co-operates with the Employer and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the Consultant under the contract or otherwise for and/or in connection with any subsequent works) and generally does all things required by the Employers' Agent to achieve this end.	
Z1	Z11 The first assessment interval	<p>In the event the Consultant is not loaded on the Employer's data base, the Employer's Agent first assessment of the amount due will be done once the Consultant has been successfully loaded as a vendor on the Employer's data base following submitting all valid updated documents.</p> <p>Therefore, on NEC PSC Clause 50.1 the following text is removed in its entirety "and is no later than the assessment interval after the starting date"</p>

C1.2 Contract Data

Part two - Data provided by the *Consultant*

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

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>Consultant's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
Info.		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.....
11.2(3)	The <i>completion date</i> for the whole of the services is	TBA
11.2(13)	The <i>staff rates</i> are:	name/designation rate
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to access date

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		1		
		2		
		3		
31.1	The programme identified in the Contract Data is			
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount	
A	Priced contract with activity schedule			
11.2(14)	The <i>activity schedule</i> is in			
11.2(18)	The tendered total of the Prices is(in figures)		
	(in words), excluding VAT		
G	Term contract			
11.2(25)	The <i>task schedule</i> is in			