



Transnet National Ports Authority

Tender Number: TNPA/2022/02/0109/RFQ

Description of the Works: Refurbishment to Steel Structures at Sand Bypass Facility A – Berth in the Port of Durban, for a Period of Six (6) 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	
		B: Priced contract with bill of quantities
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X2 Changes in the law
		X7: Delay damages
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Engineering and Construction Contract June 2005 (amended June 2006 and April 2013)	
10.1	The <i>Employer</i> is:	Transnet SOC Ltd (Registration No. 1990/000900/30)
	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 SOC Ltd (Registration No. 1990/000900/30) trading through its operating division Transnet National Ports Authority Queens Warehouse 237 Mahatma Ghandi Road Port of Durban 4001



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10.1	The <i>Project Manager</i> is:	Siphelele Njani
	(Name)	
	Address	218 Hlanganani Building 11 Methven Road Maydon Wharf Durban, 4001
	Tel	(031) 361 7070
	e-mail	Siphelele.Njani@transnet.net
10.1	The <i>Supervisor</i> is:	Dhesigan Pillay
	(Name)	
	Address	223 Hlanganani Building 11 Methven Road Maydon Wharf Durban, 4001
	Tel No.	(031) 361 3513
	e-mail	Dhesigan.pillay @transnet.net
11.2(13)	The <i>works</i> are	Refurbishment to Steel Structures at Sand Bypass Facility A – Berth Port of Durban
11.2(14)	The following matters will be included in the Risk Register	1. Working in an operational area. 2. Working in high voltages area 3. Working too close to operational machinery
11.2(15)	The <i>boundaries of the site</i> are	Within the boundaries of Port of Durban
11.2(16)	The Site Information is in	Part C4
11.2(19)	The Works Information is in	Part C3
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	No additional data is required for this section of the <i>conditions of contract</i>.
3	Time	



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11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	Six (6) months from the starting date.
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met key date
		1 Refurbishment to steel structures at Sand bypass facility A- berth Port of Durban 31 March 2023
30.1	The <i>access dates</i> are	Part of the Site Date
		1 Once all SHEQ requirement are approved Variable
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	2 weeks of the Contract Date.
31.2	The <i>starting date</i> is	01 November 2022
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	2 (Two) weeks.
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	
4	Testing and Defects	
42.2	The <i>defects date</i> is	52 (fifty two) weeks after Completion of the whole of the <i>works</i>.
43.2	The <i>defect correction period</i> is	2 weeks
5	Payment	
50.1	The <i>assessment interval</i> is monthly on the	25th (twenty fifth) day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand.



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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 Rand Merchant Bank (RMB).

6 Compensation events

60.1(13) The *weather measurements* to be recorded for each calendar month are,

the cumulative rainfall (mm)

the number of days with rainfall more than 10 mm
the number of days with minimum air temperature less than 0 degrees Celsius

the number of days with snow lying at 08:00 hours South African Time

and these measurements: mm

The place where weather is to be recorded (on the Site) is: **Port of Durban**

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at: **Durban Weather Station**

and which are available from: **South African Weather Service 012 367 6023 or info3@weathersa.co.za.**

7	Title	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>Employer's</i> risks	None
84.1	The <i>Employer</i> provides these insurances from the Insurance Table	



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1	Insurance against:	Loss of or damage to the <i>works</i>, Plant and Materials is as stated in the Insurance policy for Contract Works/ Public Liability.
	Cover / indemnity:	to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are:	as stated in the insurance policy for Contract Works / Public Liability
2	Insurance against:	Loss of or damage to property (except the <i>works</i>, Plant and Materials & Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising out of or in connection with the performance of the Contract as stated in the insurance policy for Contract Works / Public Liability
	Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are	as stated in the insurance policy for Contract Works / Public Liability
3	Insurance against:	Loss of or damage to Equipment (Temporary Works only) as stated in the insurance policy for contract Works and Public Liability
	Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are:	As stated in the insurance policy for Contract Works / Public Liability
4	Insurance against:	Contract Works SASRIA insurance subject to the terms, exceptions and conditions of the SASRIA coupon
	Cover / indemnity	Cover / indemnity is to the extent provided by the SASRIA coupon
	The deductibles are	The deductibles are, in respect of each and every theft claim, 0,1% of the contract value subject to a minimum of R2,500 and a maximum of R25,000.



Note:

The deductibles for the insurance as stated above are listed in the document titled "Certificate of Insurance: Transnet (SOC) Limited Principal Controlled Insurance."

84.1 The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is

The *Contractor* must comply at a minimum with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.

The *Contractor* provides these additional Insurances

- 1 Where the contract requires that the design of any part of the *works* shall be provided by the *Contractor* the *Contractor* shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been affected**
- 2 Where the contract involves manufacture, and/or fabrication of Plant & Materials, components or other goods to be incorporated into the *works* at premises other than the site, the *Contractor* shall satisfy the *Employer* that such plant & materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication and transportation to the site.**
- 3 Should the *Employer* have an insurable interest in such items during manufacture, and/or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any sub-contractor**
- 4 Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R 5 000 000.**



5 The insurance coverage referred to in 1, 2, 3, and 4 above shall be obtained from an insurer(s) in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and the duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.

84.2 The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is

Whatever the *Contractor* requires in addition to the amount of insurance taken out by the *Employer* for the same risk.

84.2 The insurance against loss of or damage to the works, Plant and Materials as stated in the insurance policy for contract works and public liability selected from:

Principal Controlled Insurance policy for Contract OR Project Specific Insurance for the contract

9	Termination	There is no additional Contract Data required for this section of the <i>conditions of contract</i>.
10	Data for main Option clause	
B	Priced contract with Bill of Quantities	No additional data is required for this Option.



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60.6 The *method of measurement* is **The Bill of Quantities have been measured in accordance with SANS 1200 unless indicated otherwise.**

11 Data for Option W1

W1.1 The *Adjudicator* is **Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the *Adjudicator*, the Chairman of the Association of Arbitrators will appoint an *Adjudicator*.**

W1.2(3) The *Adjudicator nominating body* is: **The Chairman of the Association of Arbitrators (Southern Africa)**

If no *Adjudicator nominating body* is entered, it is: **the Association of Arbitrators (Southern Africa)**

W1.4(2) The *tribunal* is: **Arbitration**

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 **Durban, KwaZulu Natal, South Africa**

The person or organisation who will choose an arbitrator

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is **The Chairman of the Association of Arbitrators (Southern Africa)**

12 Data for secondary Option clauses

X2 Changes in the law No additional data is required for this Option

X7 Delay damages

X7.1 Delay damages for Completion of the whole of the *works* are **R2000.00 per day**



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X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	Nil The deductible of the relevant insurance policy
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 cost of correcting the Defect
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate	The Total of the Prices
X18.4	is limited to:	
X18.5	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 excluded matters, is limited to:	1 year after Completion of the whole of the works
	The <i>end of liability date</i> is	1 year after completion
Z	<i>Additional conditions of contract are:</i>	
Z2	Local Production and Content Obligations	
Z2.1	In terms of Local Production and Content (SBD 6.2), Annexure A and Annexure C of the Returnable Schedule T2.2-03 Eligibility Criteria Schedule: Declaration Certificate of Local Production and Content, the <i>Contractor</i> has undertaken to fulfil its obligations of the Local Production and Content for the following designated sectors: 1. Steel/Aluminium Local Production Content and Components	



Z2.2	<p>The <i>Contractor</i> is required to note that the <i>Employer</i>, the Department of Trade and Industry [DTI] and/or the body appointed by the DTI as the verification authority for local content may conduct compliance audits with regard to the Local Production and Content requirements as prescribed in Regulation 8 of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act no. 5 of 2000.</p>
Z2.3	<p>The <i>Contractor</i> is required to continuously update Declarations C, D and E of the Local Production and Content Declaration commitments with the actual local content values for the duration of the contract.</p> <p>The <i>Contractor</i> shall report to the <i>Employer</i> on a monthly basis during the term of the Contract, the amounts spend on Local Production and Content for the designated sectors for the duration of the contract.</p>
Z2.4	<p>The <i>Contractor</i> must refer to Schedule A attached to the Returnable Schedule T2.2-03 Eligibility Criteria Schedule: Declaration Certificate of Local Production and Content concerning non-compliance penalties applicable to Local Production and Content.</p>
Z2.5	<p>Breach of Local Production and Content commitments provides the <i>Employer</i> cause to terminate the contract.</p>



Z5 Additional clauses relating to Joint Venture

Z5.1 Insert the additional core clause 27.5

27.5. In the instance that the *Contractor* is a joint venture, the *Contractor* 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 Date.

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

- **A brief description of the Contract and the Deliverables.**
- **The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;**
- **The constituent's interests;**
- **A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;**
- **Details of an internal dispute resolution procedure;**
- **Written confirmation by all of the constituents:**
 - i. **of their joint and several liabilities to the *Employer* to Provide the Works;**
 - ii. **identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the *Contractor's* representative;**
 - iii. **Identification of the roles and responsibilities of the constituents to provide the Works.**
- **Financial requirements for the Joint Venture:**



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

Z5.2

Insert additional core clause 27.6

27.6. The *Contractor* shall not alter its composition or legal status of the Joint Venture without the prior approval of the *Employer*.

Z6 Additional obligations in respect of Termination

Z6.1

The following will be included under core clause 91.1:

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

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

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

Z6.2 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"

Z6.3

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

Z7 Right Reserved by the Employer to Conduct Vetting through SSA

**Z7.1**

The *Employer* 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.

**Z8 Additional Clause
Relating to Collusion in
the Construction
Industry**

Z8.1

The contract award is made without prejudice to any rights the *Employer* may have to take appropriate action later with regard to any declared tender rigging including blacklisting.

**Z9 Protection of Personal
Information Act**

Z9.1

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.



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C1.2 Contract Data

Part two - Data provided by the *Contractor*

The tendering *Contractor* is advised to read both the NEC3 Engineering and Construction Contract - June 2005 (with amendments June 2006 and April 2013) and the relevant parts of its Guidance Notes (ECC3-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 156 to 158 of the ECC3 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>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(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	



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		CV's (and further key persons data including CVs) are appended to Tender Schedule entitled.
11.2(14)	The following matters will be included in the Risk Register	
31.1	The programme identified in the Contract Data is	
B	Priced contract with bill of quantities	
11.2(21)	The <i>bill of quantities</i> is in	
11.2(31)	The tendered total of the Prices is	(in figures) (in words), excluding VAT