

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 : 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 Right
		X10: <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		X13: Performance Bond
		X18: Limitation of Liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (June 2005) (amended June 2006 and April 2013)	



NATIONAL PORTS AUTHORITY

TENDER NUMBER: TNPA/2024/01/0007/54253/RFP

DESCRIPTION OF THE SERVICES: PRE-FEASIBILITY STUDIES FOR THE ENTRANCE CHANNEL WIDENING & DEEPENING, ISLAND VIEW BASIN, PIER 1 CONTAINER TERMINAL, INFILL DCT BASIN AND NEW MAYDON WHARF CONTAINER TERMINAL FOR THE PORT OF DURBAN

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 Queens Warehouse 237 Mahatma Gandhi Road Durban 4001		
11.2(9)	The <i>services</i> are	Pre-feasibility studies for entrance channel widening and deepening, island view basin, pier 1 container terminal, infill DCT basin and new Maydon Wharf container terminal for the Port of Durban		
11.2(10)	The following matters will be included in the Risk Register	Damages to unknown services		
11.2(11)	The Scope is in	Part C3.1: Scope of Services		
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 weeks		
2	The Parties’ main responsibilities			
25.2	The <i>Employer</i> provides access to the following persons, places and things	as defined in the Scope		
3	Time			
30.1	The <i>starting date</i> is	03 July 2024		
30.3	Key Dates	Task Description	Start Date	End Date



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		Present Engineering Design Model 3 July 2024 31 July 2024						
		Presenting specialist study outcome 1 Nov 2024 31 Jan 2025 31 July 2025						
		Present Engineering Design and Reports for All Projects 3 July 2024 31 July 2025						
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	02 November 2025						
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	Two (2) weeks from starting date						
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	Four (4) weeks' intervals						
4	Quality							
40.2	The quality policy statement and quality plan are provided within	As defined in the Scope.						
41.1	The <i>defects date</i> is	52 Weeks after Completion of the whole of the service						
5	Payment							
50.1	The <i>assessment interval</i> is on the	25th (Twenty Fifth) day of each successive month.						
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<table><tr><th>Item</th><th>Amount</th></tr><tr><td>Economy air fares</td><td rowspan="3">Expenses/claims/costs pertaining to these items must be specifically and individually approved (in writing) by the <i>Employer</i> before the <i>Consultant</i> incurs any corresponding expense. Expenses will only be paid on a proven cost basis (specifically the submission of a detailed invoices</td></tr><tr><td>Car hire not exceeding group B</td></tr><tr><td>Accommodation – Protea Group or Town Lodge Group or 3 Star equivalent</td></tr></table>	Item	Amount	Economy air fares	Expenses/claims/costs pertaining to these items must be specifically and individually approved (in writing) by the <i>Employer</i> before the <i>Consultant</i> incurs any corresponding expense. Expenses will only be paid on a proven cost basis (specifically the submission of a detailed invoices	Car hire not exceeding group B	Accommodation – Protea Group or Town Lodge Group or 3 Star equivalent
Item	Amount							
Economy air fares	Expenses/claims/costs pertaining to these items must be specifically and individually approved (in writing) by the <i>Employer</i> before the <i>Consultant</i> incurs any corresponding expense. Expenses will only be paid on a proven cost basis (specifically the submission of a detailed invoices							
Car hire not exceeding group B								
Accommodation – Protea Group or Town Lodge Group or 3 Star equivalent								
51.1	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.						
51.2	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 Rand Merchant Bank						



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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 R2 000 000.00 (Two Million Rand) in respect of each claim, without limit to the number of claims	52 Weeks	
	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 R25 000.00 (Twenty Five 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	



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	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.
	Motor Vehicle Liability Insurance	Comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity for an amount of not less than R5 000 000.00
81.1	The <i>Employer</i> provides the following insurances	<p>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 <i>services</i></p> <p>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></p>
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 <i>Employer's</i> Professional Indemnity (PI) and General Third Party Liability policies, the <i>Consultant's</i> liability will be limited to the excesses applicable under the <i>Employer's</i> Professional Indemnity and General Third Party Liability policies as detailed in the policy wordings. The current excesses amount to R2 000 000.00 (Two Million Rand) PI and R25 000.00 (Twenty Five Thousand Rand) General Third Party Liability, respectively, each and every claim. For all matters not covered under the <i>Employer's</i> Professional Indemnity and General Third-Party Liability policies the <i>Consultants</i> liability will be limited to the final total of the Prices.



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9	Termination	No additional data required for this section of the <i>conditions of contract</i>
10	Data for main Option clause	
G A	Priced contract with Activity Schedule	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than (change accordingly)	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 (Southern Africa) will appoint an <i>Adjudicator</i>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	The Chairman of 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 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	The Chairman of the Association of Arbitrators (Southern Africa)
	<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 	
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.4	The <i>index</i> is	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". The base date to calculate CPI is 13 May 2024 which is the closing date of the bid.
	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	



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X2.1	The <i>law of the project</i> 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 Completion of the whole of the <i>services</i> are	R3 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 <i>Services</i> 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	Selvan Pillay
	Address	Queens Warehouse 237 Mahatma Gandhi Road Durban 4001
	Tel No.	TBA
	Email Address	TBA
	The authority of the <i>Employer's Agent</i> is	The <i>Employers Agent</i> is delegated to carry out all the actions of the <i>Employer</i> in this contract with the exception of those required by clauses 51.1, 90, 91 and 92 (Termination)
X11	Termination by the <i>Employer</i>	
X11.1	The <i>Employer</i> may terminate the <i>Consultant's</i> obligation to Provide the <i>Services</i> for a reason not stated in this contract by notifying the <i>Consultant</i> .	
X11.2	If the <i>Employer</i> terminates for a reason not stated in contract, an additional amount is due on termination which is 5% of the difference between:	The forecast of the final total of the prices in the absence of termination and The total of the other amounts and costs included in the amount due on termination
X13	Performance Bond	
X13.1	The amount of the performance bond is	5% of total of the Prices including VAT



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X18	Limitation of liability
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to: Nil
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to: The Cost of correcting the Defect.
X18.3	The <i>end of liability date</i> is Five (5) Years after Completion of the whole of the <i>services</i>.
Z	<i>Additional conditions of contract</i>
Z1:	The <i>additional conditions of contract</i> are 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 <i>Consultant</i> is a joint venture, the <i>Consultant</i> shall provide the <i>Employer</i> 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 <i>starting date</i>. 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> <ol style="list-style-type: none"> i. of their joint and several liability to the <i>Employer</i> to Provide the <i>services</i>. ii. proof of separate bank account/s in the name of the joint venture. iii. identification of the leader in the joint venture confirming the authority of the leader to bind the joint venture through the <i>Consultant's</i> representative. iv. Identification of the roles and responsibilities of the constituents to provide the <i>services</i>. <ul style="list-style-type: none"> • Financial requirements for the Joint Venture: <ol style="list-style-type: none"> i. 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; ii. the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture;
Z1.2	<p>Insert additional core clause 21.6</p> <p>21.6. The <i>Consultant</i> shall not alter its composition or legal status of the Joint Venture without the prior approval of the <i>Employer</i>.</p>
Z2	Additional obligations in respect of Termination



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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 font		<p><i>Clause 90.5 is added as an additional clause</i> 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	Additional obligations in respect of Termination	
		<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)'</p>
Z4	Right Reserved by Transnet to Conduct Vetting through SSA	
Z4.1		<p>The <i>Employer</i> reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any <i>Consultant</i> 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.
Z5	Additional Clause Relating to Collusion in the Construction Industry	



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		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.
Z6	Protection of Personal Information Act	The <i>Employer</i> and the <i>Consultant</i> 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.
Z7	Consultant's Responsibility for the Design	
Z7.1		<p>The <i>Consultant</i> shall be fully liable and responsible for the engineering design as Annexed to the Scope, which was produced and provided by Others. The <i>Consultant</i> shall not provide an alternate design.</p> <p>The <i>Consultant</i> shall not change the design in any way whatsoever that contradicts the original design to the point where it alters or changes the basis upon which the provided design was produced. Any minor alterations or amendments to the design during construction are subject to the approval of the <i>Employer's Agent</i>. The <i>Consultant</i> shall take full responsibility for the design.</p>
Z7.2		<p>Failure by the <i>Consultant</i> to take full responsibility for the postulated design shall result in breach of this contract. At contract stage the design provided by Others as Annexed to the Scope, shall become the <i>Consultant's</i> design. As such, the <i>Consultant</i> shall sign off the As-Built drawings after construction and bear the full engineering responsibility in terms of the "Duties of Designer" as described under clause 6, GRN 84 of the Construction Regulations (Act 85 of 1993) for the services.</p> <p>In addition, the <i>Consultant</i> shall provide the services equivalent to Stage 5 as per the Guideline for Services and Processes for Estimating Fees for Persons Registered in terms of the Engineering Profession Act, 2000, Act No.46 of 2000.</p> <p>The <i>Consultant</i> takes on the responsibility of a "registered person" in accordance to the ECSA Code of Conduct.</p>
Z8	Additional Clause Relating to the Employer's rights to take appropriate action	



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Z8.1		Any declared, exposed or confirmed tender rigging.
Z8.1.1		The <i>Consultant</i> 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.
Z8.1.2		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 <i>Employer</i> is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
Z8.1.3		The <i>Consultant's</i> breach of this clause constitutes grounds for terminating the <i>Consultant's</i> obligation to Provide the Services or taking any other action as appropriate against the <i>Consultant</i> (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.
Z8.1.4		If the <i>Consultant</i> 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 <i>Employer</i> , the <i>Employer</i> shall be entitled to terminate the contract forthwith and take any other action as appropriate against the <i>Consultant</i> (including civil or criminal action).
Z8.2	The contract award is made without prejudice to any rights the <i>Employer</i> may have to take appropriate action later with regard to:	Politically Exposed Persons including any allegations with regards to State Capture.
Z8.3	The contract award is made without prejudice to any rights the <i>Employer</i> may have to take appropriate action later with regard to:	Blacklisting by any State Entity on the National Treasury database.
Z9	Time	



Z9.1		<p><i>Clause 33.2. is added as an additional clause.</i></p> <p>The <i>Employer</i> may at any time suspend part or all of the <i>services</i>. As a consequence, if the <i>Consultant</i> is required to demobilise and then remobilise its staff and equipment, the <i>Consultant</i> will be reimbursed at cost. The <i>Consultant</i> 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>
Z10	Compensation Events	
Z10.1		<p>Clause 61.4: The first bullet point is amended to read as follows: arises from the fault, error, negligence or default of the <i>Consultant</i>.</p>
Z11	Limitation of liability	
Z11.1		<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 <i>Consultant</i> to the <i>Employer</i> applies jointly and severally across all organisations comprising of the <i>Consultant</i>.</p>
Z12	Additional clauses relating to cession of rights	
Z12.1		<p>Add to core clause 12.3 Any extension, concession, waiver or relaxation of any action by the Parties, the <i>Employers' Agent</i> or <i>Adjudicator</i> 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.</p>
Z13	Employer's Step-in rights	
Z13.1		<p>If the <i>Consultant</i> 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 <i>Employer's Agent</i>, the <i>Employer</i>, 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 <i>sub-consultant</i> or supplier of the <i>Consultant</i>) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the <i>Consultant</i>.</p>



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Z13.2		The <i>Consultant</i> co-operates with the <i>Employer</i> 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 <i>Consultant</i> under the contract or otherwise for and/or in connection with any subsequent <i>works</i>) and generally does all things required by the <i>Employers' Agent</i> to achieve this end.
Z14	First Assessment Interval	In the event that the <i>Consultant</i> is not loaded on the vendor database, the Employer's Agent's first assessment of the amount due will be done once the Consultant has been successfully loaded as a vendor on the Employer's database following submitting all valid updated documents to the Procurement Officer. 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".

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)¹ 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 152 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 key persons</i> 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(10)	The following matters will be included in the Risk Register	
11.2(13)	The <i>staff rates</i> are:	Refer to Part C2.2
25.2	The <i>Employer</i> provides access to the following persons, places and things	As defined in the Scope of Services
A	Priced contract with activity schedule	
11.2(25)	The activity schedule is in	Refer to Part C2.2

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009