

## **Transnet Port Terminals**

an Operating Division **TRANSNET SOC LTD**

[Registration Number 1990/000900/30]

## **REQUEST FOR PROPOSAL (RFP)**

**SUPPLY, DELIVERY AND FITMENT OF STS COPEX SPARES AT CAPE TOWN CONTAINER  
TERMINALS FOR A ONCE OF PERIOD.**

<b>RFP NUMBER</b>	<b>: ICLM CT 491/TPT</b>
<b>ISSUE DATE</b>	<b>: 31 MAY 2023</b>
<b>CLOSING DATE</b>	<b>: 30 JUNE 2023</b>
<b>CLOSING TIME</b>	<b>: 12h00 pm</b>
<b>TENDER VALIDITY PERIOD</b>	<b>: 120 days from closing date</b>

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## T1.1 TENDER NOTICE AND INVITATION TO TENDER

### SECTION 1: NOTICE TO TENDERERS

#### 1. INVITATION TO TENDER

Responses to this Tender [hereinafter referred to as a **Tender**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as a Tenderer].

<b>DESCRIPTION</b>	<b>Supply, Delivery and Fitment STS Copex Spares for a once-off period</b>
<b>TENDER DOWNLOADING</b>	<b>This Tender may be downloaded directly from the National Treasury eTender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> and the Transnet website at <a href="https://transnetetenders.azurewebsites.net">https://transnetetenders.azurewebsites.net</a> (please use Google Chrome to access Transnet link) <b>FREE OF CHARGE.</b></b>

<b>COMPULSORY TENDER CLARIFICATION MEETING</b>	No briefing session will be held
<b>CLOSING DATE</b>	<b>12:00pm on (2023/06/30)</b> Tenderers must ensure that tenders are uploaded timeously onto the system. <b>If a tender is late, it will not be accepted for consideration.</b>

#### 2. TENDER SUBMISSION

Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.

a) The Transnet e-Tender Submission Portal can be accessed as follows:

Log on to the Transnet eTenders management platform website (<https://transnetetenders.azurewebsites.net>);

- Click on "ADVERTISED TENDERS" to view advertised tenders;
- Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
- Click on "SIGN IN/REGISTER" - to sign in if already registered;
- Toggle (click to switch) the "Log an Intent" button to submit a bid;
- Submit bid documents by uploading them into the system against each tender selected.
- **Tenderers are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting.**

**Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Tenderer can upload 30mb per upload and multiple uploads are permitted.**

- b) The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.
- c) Submissions must not contain documents relating to any Tender other than that shown on the submission.

### **3. CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidentiality. In this regard Tenderers 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 gleaned from provision of the Works, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

### **4. DISCLAIMERS**

Tenderers are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this Tender and/or its receipt of a tender offer. In particular, please note that Transnet reserves the right to:

- 4.1. Award the business to the highest scoring Tenderer/s unless objective criteria justify the award to another tenderer.
- 4.2. Not necessarily accept the lowest priced tender or an alternative Tender;
- 4.3. Go to the open market if the quoted rates (for award of work) are deemed unreasonable;
- 4.4. Should the Tenderers be awarded business on strength of information furnished by the Tenderer, which after conclusion of the contract is proved to have been incorrect, Transnet reserves the right to terminate the contract;
- 4.5. Request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 4.6. Not accept any changes or purported changes by the Tenderer to the tender rates after the closing date;
- 4.7. Verify any information supplied by a Tenderer by submitting a tender, the Tenderer/s hereby irrevocably grant the necessary consent to the Transnet to do so;

- 4.8. Conduct the evaluation process in parallel. The evaluation of Tenderers at any given stage must therefore not be interpreted to mean that Tenderers have necessarily passed any previous stage(s);
- 4.9. Unless otherwise expressly stated, each tender lodged in response to the invitation to tender shall be deemed to be an offer by the Tenderer. The Employer has the right in its sole and unfettered discretion not to accept any offer.
- 4.10. Not be held liable if tenderers do not provide the correct contact details during the clarification session and do not receive the latest information regarding this RFP with the possible consequence of being disadvantaged or disqualified as a result thereof.
- 4.11. Transnet reserves the right to exclude any Tenderers from the tender process who has been convicted of a serious breach of law during the preceding 5 [five] years including but not limited to breaches of the Competition Act 89 of 1998, as amended. Tenderers are required to indicate in tender returnable [clause 12 on T2.1.2-08], [**Breach of Law**] whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.
- 4.12. Transnet reserves the right to perform a risk analysis on the preferred tenderer to ascertain if any of the following might present an unacceptable commercial risk to the employer:
- unduly high or unduly low tendered rates or amounts in the tender offer;
  - contract data of contract provided by the tenderer; or
  - the contents of the tender returnables which are to be included in the contract.

5. Transnet will not reimburse any Tenderer for any preparatory costs or other work performed in connection with this Tender, whether or not the Tenderer is awarded a contract.

## 6. NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Tenderer 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. The CSD can be accessed at <https://secure.csd.gov.za/>. Tenderer are required to provide the following to Transnet in order to enable it to verify information on the CSD:

Supplier Number..... and Unique registration reference number.....(**Tender Data**)

**Transnet urges its clients, suppliers and the general public  
to report any fraud or corruption to  
TIP-OFFS ANONYMOUS: 0800 003 056 OR [Transnet@tip-offs.com](mailto:Transnet@tip-offs.com)**

## T1.2 TENDER DATA

The conditions of tender are the Standard Conditions of Tender as contained in Annex C of the CIDB Standard for Uniformity in Engineering and Construction Works Contracts. The Standard for Uniformity in Construction Procurement was first published in Board Notice 62 of 2004 in Government Gazette No 26427 of 9 June 2004. It was subsequently amended in Board Notice 67 of 2005 in Government Gazette No 28127 of 14 October 2005, Board Notice 93 of 2006 in Government Gazette No 29138 of 18 August 2006, Board Notice No 9 of 2008 in Government Gazette No 31823 of 30 January 2009, Board Notice 86 of 2010 in Government Gazette No 33239 of 28 May 2010, Board Notice 136 of 2015 in Government Gazette 38960 of 10 July 2015 and Board Notice 423 of 2019 in Government Gazette No 42622 of 8 August 2019.

This edition incorporates the amendments made in Board Notice 423 of 2019 in Government Gazette 42622 of 8 August 2019. (see [www.cidb.org.za](http://www.cidb.org.za)).

The Standard Conditions of Tender make several references to Tender data for detail that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.

Each item of data given below is cross-referenced in the left-hand column to the clause in the Standard Conditions of Tender to which it mainly applies.

Clause	Data
C.1.1	The Employer is <b>Transnet SOC Ltd (Reg No. 1990/000900/30)</b>
C.1.2	The tender documents issued by the Employer comprise:  <b>Part T: The Tender</b>  Part T1: Tendering procedures T1.1 Tender notice and invitation to tender T1.2 Tender data  Part T2 : Returnable documents T2.1 List of returnable documents T2.2 Returnable schedules  <b>Part C: The contract</b>  Part C1: Agreements and contract data C1.1 Form of offer and acceptance C1.2 Contract data (Part 1 & 2) C1.3 Form of Securities  Part C2: Pricing data C2.1 Pricing instructions C2.2 Price Schedule  Part C3: Scope of work C3.1 Goods Information
C.1.4	The Employer's agent is: Sourcing Specialist  Name: Maanda Manari

Address:	Ben Schoeman Dock, Duncan Road, Paarden Eiland, Admin Building, Cape Town Container Terminals
Tel No.	021 449 5273
E – mail	Maanda.manari@transnet.net

C.2.1 Only those tenderers who submit the following essential documents will be considered:

**1. Stage One – Administrative and Substantive Evaluation**

Bidders who passed the administrative and substantive evaluation will be progressed to the next stage of evaluation

**2. Stage Two – Technical Evaluation:**

Bidders who passed or meet the minimum technical threshold of 80 points will be progressed to the next stage of evaluation

Technical Criteria	% Weightings
<p><b><u>Experience and Verification</u></b>  The Service Provider shall be required to have a proven track record in the supplying of these spares.  The service provider shall, on a company letterhead, assure TPT that they can provide the supplying of the following components as per scope of Work:</p> <p><b>Supporting documents - Three (3) written references which shall be used to verify the Service Provider's previous performance and service delivery. Kindly note that the references must specifically set out whether the service provider is experienced in the capacities as set out above.</b></p>	<ul style="list-style-type: none"> <li>• <b>30% of points</b> = Three (3) Signed written references issued by respondent's client (different clients) in the supply spares according to SOW</li> <li>• <b>20% of points</b> = Two (2) Signed written references issued by respondent's client (different clients) in the supply spares according to SOW</li> <li>• <b>10% of points</b> = One (1) Signed written references issued by respondent's client (different clients) in the supply spares according to SOW</li> </ul> <p><b>Zero points</b> = Zero (0) written references issued by respondent's client (different clients) in the supply spares according to SOW</p>
<p><b><u>Delivery Lead time of Spares</u></b>  The Service Provider shall be required to indicate their delivery lead time for components/parts from start of given RFQ.</p> <p><b>Supporting documents – Confirmation, on company letterhead, that the Service Provider can provide the</b></p>	<p><b>30% of points</b> = Deliver spares between 5 – 10 Weeks</p> <p><b>20% of points</b> = Deliver spares between 11 – 16 Weeks</p> <p><b>10% of points</b> = Deliver spares between 17 – 22 Weeks</p> <p><b>Zero% of points</b> = Deliver spares between 23 and about.</p>

<b>abovementioned requirement for verification purposes.</b>	
<b><u>Warranty and Guarantee</u></b> Service Provider to provide confirmation, on company letterhead, on the duration of the warranty of their components or parts.	<b>20% of points</b> = 18 Months warranty and guarantee <b>10% of points</b> = 12 Months warranty and guarantee <b>Zero% of points</b> = 0 warranty and guarantee
<b><u>Risk Assessments</u></b> The respondent must submit a generic risk assessment, based on the attached Energy chain replacement services aligned to the scope of work. The risk assessment should as a minimum, give detail of the following elements: safety; health; environment and quality.	<b>20 points</b> = risk assessment covers all 4 elements <b>10 points</b> = risk assessment covers 3 of the 4 elements <b>Zero points</b> = risk assessment covers 2 of the 4 elements or no risk assessment submitted.

Minimum technical evaluation threshold is 80 points

**Any tenderer that fails to meet the stipulated minimum technical evaluation criteria will be regarded as an unacceptable tender.**

C.2.12	No alternative tender offers will be considered.
C.2.13.3	Each tender offer shall be in the <b>English Language</b> .
C.2.13.5 C.2.15.1	<p>The Employer's details and identification details that are to be shown on each tender offer are as follows:</p> <p>Identification details:</p> <ul style="list-style-type: none"> <li>The tender documents must be uploaded with: <ul style="list-style-type: none"> <li>Name of Tenderer: <b>(insert company name)</b></li> <li>Contact person and details: <b>(insert details)</b></li> <li>The Tender Number: <b>ICLM CT 491/TPT</b></li> <li>The Tender Description: <b>Supply, Delivery and Fitment of STS Copex Spares for a once-off period</b></li> </ul> </li> </ul> <p>Documents must be marked for the attention of: <b>Employer's Agent: Maanda Manari</b></p>
C.2.13.9	Telephonic, telegraphic, facsimile or e-mailed tender offers will not be accepted.
C.2.15	<p>The closing time for submission of tender offers is:</p> <p>Time: <b>12:00pm</b> on the <b>30 JUNE 2023</b> <b>(Date)</b></p>



Location: The Transnet e-Tender Submission Portal:  
(<https://transnetetenders.azurewebsites.net>);

**NO LATE TENDERS WILL BE ACCEPTED**

C.2.16 The tender offer validity period is **120 days** after the closing date. Tenderers are to note that they may be requested to extend the validity period of their tender, on the same terms and conditions, if Transnet's internal evaluation and governance approval processes has not been finalised within the validity period.

C.2.23 The tenderer is required to submit with his tender:

1. A valid Tax Clearance Certificate issued by the South African Revenue Services.  
**Tenderers also to provide Transnet with a TCS PIN to verify Tenderers compliance status.**
2. A **valid B-BBEE Certificate** from a Verification Agency accredited by the South African Accreditation System [**SANAS**], or a **sworn affidavit** confirming annual turnover and level of black ownership in case of all EMEs and QSEs with 51% black ownership or more together with the tender;
3. Proof of registration on the Central Supplier Database;

**Note:** Refer to Section T2.1 for List of Returnable Documents

C.3.11. Only tenders that are administratively and substantively responsive will be evaluated further in accordance with the 80/20 preference points systems :

80 where the financial value of one or more responsive tenders received have a value equal to or below R50 million, inclusive of all applicable taxes,

Up to 100 minus W<sub>1</sub> tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed. **Should the BBBEE rating not be provided, tenderers with no verification will score zero points for preferencing.**

**Note:** Transnet reserves the right to carry out an independent audit of the tenderers scorecard components at any stage from the date of close of the tenders until completion of the contract.

C.3.13 Tender offers will only be accepted if:

1. The tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;
2. the tenderer does not appear on Transnet's list for restricted tenderers and National Treasury's list of Tender Defaulters;
3. the tenderer has fully and properly completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the

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tenderer's ability to perform the contract in the best interests of the Employer or potentially compromise the tender process and persons in the employ of the state.

4. Transnet reserves the right to award the tender to the tenderer who scores the highest number of points overall, unless there are **objective criteria** which will justify the award of the tender to another tenderer. Objective criteria include but are not limited to the outcome of a due diligence exercise to be conducted. The due diligence exercise may take the following factors into account inter alia;

the tenderer:

- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- b) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- c) has the legal capacity to enter into the contract,
- d) is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
- e) complies with the legal requirements, if any, stated in the tender data and
- f) is able, in the option of the employer to perform the contract free of conflicts of interest.

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C.3.17 The number of paper copies of the signed contract to be provided by the Employer is 1 (one).

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### **T2.1.1- 01: Previous Experience**

#### **Note to tenderers:**

Tenderers are required, as per the scope of work, to submit the necessary documentation for the evaluation and for compliance to the criteria. The Supplier is, as a requirement, to satisfy the following:

Tenderers shall be required to have a proven track record in the supplying of these spares.

The supplier shall, on a company letterhead, assure TPT that they can provide the supplying of the following components as per scope of Work:

**Supporting documents - Three (3) written references which shall be used to verify the Service Provider's previous performance and service delivery. Kindly note that the references must specifically set out whether the service provider is experienced in the capacities as set out above**

#### **Attached submissions to this schedule:**

.....

.....

.....

.....

.....

Signed

Date

.....

.....

Name

Position

.....

.....

Tenderer

.....

## T2.1.1- 02: Delivery lead time

### Note to tenderers:

The Supplier shall be required to indicate their delivery lead time for components/parts from start of given RFQ.

**Supporting documents – Confirmation, that the Supplier can provide the abovementioned requirement for verification purposes.**

Description of goods	Comply with lead time as per tender document (Yes/ No)	Indicate your delivery lead time
<b>Trolley Motor:</b> DC MOTOR AEG 160M38 +LLK 55KW, 200V 1800RPM S3, 80% ED, FORCE VENT. CA/CA, IP55 IC0666 IS.H IMB3, H.T		
<b>Hoist Brake:</b> Pintsch Bubenzer D-57548 Kirchen-Wehbach, SB 28-710x30-301/8 BB, 14400Nm, 246kg		
<b>Energy Chain:</b> Chain Type – 4040RHD.25.250.0		
<b>Hoist Coupling</b>		

Signed

Date

Name

Position

Tenderer

## T2.1.1- 03: Warrantees and Guarantees

### Note to tenderers:

Tenderers are required, as per the scope of work, to submit the necessary documentation for the evaluation and for compliance to the criteria. The Supplier is, as a requirement, to satisfy the following:

Guarantees and Warrantees - The Supplier/tenderer is required to indicate on the schedule what guarantee period is offered for all items listed on the table below and also as much detail as possible on the extent of the guarantee. The guarantee can be a manufacturer's certificate or written letter/confirmation with the manufacturer's letter head, stating the guarantee and the conditions there of. Transnet prefers twelve (12) months guarantee as a minimum.

Item	Guarantee Offered	Description of Guarantee
<b>Trolley Motor:</b> DC MOTOR AEG 160M38 +LLK 55KW, 200V 1800RPM S3, 80% ED, FORCE VENT. CA/CA, IP55 IC0666 IS.H IMB3, H.T		
<b>Hoist Brake:</b> Pintsch Bubenzer D-57548 Kirchen-Wehbach, SB 28-710x30-301/8 BB, 14400Nm, 246kg		
<b>Energy Chain:</b> Chain Type – 4040RHD.25.250.0		
<b>Hoist Coupling</b>		

### Attached submissions to this schedule:

.....  
.....  
.....  
.....  
.....

Signed

Date

Name

Position

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Tenderer

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## **T2.1.1- 04: Risk Assessment**

### **Note to tenderers:**

Tenderers are required, as per the scope of work, to submit the necessary documentation for the evaluation and for compliance to the criteria. The Supplier is, as a requirement, to satisfy the following:

The respondent must submit a generic risk assessment, based on the attached Energy chain replacement services aligned to the scope of work. The risk assessment should as a minimum, give detail of the following elements: safety; health; environment and quality.

### **Attached submissions to this schedule:**

.....  
.....  
.....  
.....  
.....

Signed

Date

Name

Position

Tenderer

### T2.1.2-01: Authority to submit a Tender

Indicate the status of the tenderer by ticking the appropriate box hereunder. The tenderer must complete the certificate set out below for his category of organisation or alternatively attach a certified copy of a company / organisation document which provides the same information for the relevant category as requested here.

A - COMPANY	B - PARTNERSHIP	C - JOINT VENTURE	D - SOLE PROPRIETOR

#### A. Certificate for Company

I, \_\_\_\_\_ chairperson of the board of directors \_\_\_\_\_  
\_\_\_\_\_, hereby confirm that by resolution of the board taken  
on \_\_\_\_\_(date), Mr/Ms \_\_\_\_\_, acting in the capacity  
of \_\_\_\_\_, was authorised to sign all documents in connection  
with this tender offer and any contract resulting from it on behalf of the company.

Signed

Date

Name

Position

Chairman of the Board of Directors



## B. Certificate for Partnership

We, the undersigned, being the **key partners** in the business trading as \_\_\_\_\_

\_\_\_\_\_ hereby authorise Mr/Ms \_\_\_\_\_

acting in the capacity of \_\_\_\_\_, to sign all documents in connection with the tender offer for Contract \_\_\_\_\_ and any contract resulting from it on our behalf.

Name	Address	Signature	Date

**NOTE:** This certificate is to be completed and signed by the full number of Partners necessary to commit the Partnership. Attach additional pages if more space is required.

### C. Certificate for Joint Venture

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms

\_\_\_\_\_, an authorised signatory of the company \_\_\_\_\_

\_\_\_\_\_, acting in the capacity of lead partner, to sign

all documents in connection with the tender offer for Contract \_\_\_\_\_

\_\_\_\_\_ and any contract resulting from it on our behalf.

This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

Furthermore we attach to this Schedule a copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners.

Name of firm	Address	Authorising signature, name (in caps) and capacity

**D. Certificate for Sole Proprietor**

I, \_\_\_\_\_, hereby confirm that I am the sole owner of the  
business trading as \_\_\_\_\_.

Signed

Date

Name

Position

Sole Proprietor

### T2.1.2-02: Record of Addenda to Tender Documents

This schedule as submitted confirms that the following communications received from the Purchaser before the submission of this tender offer, amending the tender documents, have been taken into account in this specific tender offer:

	Date	Title or Details
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

## **T2.1.2-01 Agreement in terms of Protection of Personal Information Act, 4 of 2013 ("POPIA")**

### **1. PREAMBLE AND INTRODUCTION**

- 1.1. The rights and obligation of the Parties in terms of the Protection of Personal Information Act, 4 of 2013 ("POPIA") are included as forming part of the terms and conditions of this contract.

### **2. PROTECTION OF PERSONAL INFORMATION**

- 2.1. 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.
- 2.2. The Operator will process all information by the Transnet 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.
- 2.3. The Parties acknowledge and agree that, in relation to personal information of Transnet and the information of a third party that will be processed pursuant to this Agreement , the Operator is (... insert name of Tenderer/Contractor) hereinafter Operator and the Data subject is "Transnet". Operator will process personal information only with the knowledge and authorisation of Transnet and will treat personal information and the information of a third party 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.
- 2.4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Agreement and the Operator is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
- 2.5. In terms of this Agreement, the Operator acknowledges that it will obtain and have access to personal information of Transnet and the information of a third party and agrees that it shall only process the information disclosed by Transnet in terms of this Agreement and only for the purposes as detailed in this Agreement and in accordance with any applicable law.
- 2.6. Should there be a need for the Operator to process the personal information and the information of a third party in a way that is not agreed to in this Agreement, the Operator must request consent from Transnet to the processing of its personal information or and the information of a third party in a manner other than that it was collected for, which consent cannot be unreasonably withheld.

- 2.7. Furthermore, the Operator will not otherwise modify, amend or alter any personal information and the information of a third party submitted by Transnet or disclose or permit the disclosure of any personal information and the information of a third party to any third party without prior written consent from Transnet.
- 2.8. The Operator 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 the services offered to Transnet in terms of this Agreement (physically, through a computer or any other form of electronic communication).
- 2.9. The Operator shall notify Transnet in writing of any unauthorised access to personal information and the information of a third party , 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 Operator must inform Transnet of the breach as soon as it has occurred to allow Transnet to take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and the information of a third party and to restore the integrity of the affected personal information as quickly as is possible.
- 2.10. Transnet may, in writing, request the Operator to confirm and/or make available any personal information and the information of a third party in its possession in relation to Transnet and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA.
- 2.11. Transnet may further request that the Operator correct, delete, destroy, withdraw consent or object to the processing of any personal information and the information of a third party relating to the Transnet or a third party in the Operator's s possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations .
- 2.12. In signing this addendum that is in terms of the POPIA, the Operator hereby agrees that it has adequate measures in place to provide protection of the personal information and the information of a third party given to it by Transnet in line with the 8 conditions of the POPIA and that it will provide to Transnet satisfactory evidence of these measures whenever called upon to do so by Transnet.

**The Operator is required to provide confirmation that all measures in terms of the POPIA are in place when processing personal information and the information of a third party received from Transnet:**

<b>YES</b>	
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<b>NO</b>	
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2.13. Further, the Operator acknowledges that it will be held liable by Transnet should it fail to process personal information in line with the requirements of the POPIA. The Operator will be subject to 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 Transnet submitted to it.

2.14. Should a Tenderer have any complaints or objections to processing of its personal information, by Transnet, the Tenderer 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

### 3. **SOLE AGREEMENT**

3.1. The Agreement, constitute the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this and no amendment/variation/change shall be of any force and effect unless reduced to writing and signed by or on behalf of both parties.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2021

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

.....(Pty) Ltd

(Operator)

Authorised signatory for and on behalf of ..... who warrants that he/she is duly authorised to sign this Agreement.

#### AS WITNESSES:

1. Name: \_\_\_\_\_ Signature: \_\_\_\_\_

2. Name: \_\_\_\_\_ Signature: \_\_\_\_\_

## **T2.1.2-04: Capacity and Ability to meet Delivery Schedule**

### **Note to tenderers:**

The Tenderer is required to demonstrate to the Purchaser that he has sufficient current and future capacity to carry out the work as detailed in the Goods Information and that he has the capacity and plans in place to meet the required delivery schedule as required. To this end, the following must be provided by the Tenderer:

A schedule detailing the following:

- Maximum quantity of work concurrently performed by the Tenderer in the recent past in order to illustrate his potential capacity to design, fabricate and/or construct work of a similar nature
- Current and future work on his order book, showing quantity and type of equipment
- Quantity of work for which the Tenderer has tenders in the market or is currently tendering on
- The work as covered in this Goods Information, planned and scheduled as per the Tenderer's capacities and methods but meeting the required delivery schedule.

### **Index of documentation attached to this schedule:**

.....
.....
.....
.....
.....
.....
.....



## **T2.1.2-05: ANNEX G Compulsory Enterprise Questionnaire**

The following particulars hereunder must be furnished.

In the case of a Joint Venture, separate enterprise questionnaires in respect of each partner/member must be completed and submitted.

**Section 1: Name of enterprise:** \_\_\_\_\_

**Section 2: VAT registration number, if any:** \_\_\_\_\_

**Section 3: CIDB registration number, if any:** \_\_\_\_\_

**Section 4: CSD number:** \_\_\_\_\_

**Section 5: Particulars of sole proprietors and partners in partnerships**

Name	Identity number	Personal income tax number

\* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners

### **Section 6: Particulars of companies and close corporations**

Company registration number \_\_\_\_\_ Close

corporation number \_\_\_\_\_

Tax reference number: \_\_\_\_\_

**Section 7: The attached SBD4 must be completed for each tender and be attached as a tender requirement.**

**Section 8: The attached SBD 6 must be completed for each tender and be attached as a requirement.**

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

- i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- ii) confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- v) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed

Date

Name

Position

Enterprise  
name

## SBD 6.1

### 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).

#### 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 **not exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 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:

	POINTS
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>20</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 defined 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 Enterprise as defined 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 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis: 80/20

$$P_s = 80 \cdot \left( 1 - \frac{P_t - P_{\min}}{P_t - P_{\min}} \right)$$

Where

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

Pt = Comparative price of bid under consideration  
Pmin = Comparative price of lowest acceptable bid

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

4.1 preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

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

Enterprise	B-BBEE Certificate & Sworn Affidavit
<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>1</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

<sup>1</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.

- 4.3 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 statuslevel certificates in terms of the specialized scorecard contained in the B-BBEE Codesof Good Practice.
- 4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the biddocuments 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 statuslevel than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 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 20 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	
-----	--	----	--



## 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

Y Partnership/Joint Venture / Consortium

Y One person business/sole propriety

Y Close corporation

Y Company

Y (Pty) Limited

[TICK APPLICABLE  
BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
.....  
.....

8.6 COMPANY CLASSIFICATION

Y Manufacturer

Y Supplier

Y Professional Supplier/Service provider

Y 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, qualify 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,, 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.

WITNESSES

1. ....
2. ....

.....

SIGNATURE(S) OF BIDDERS(S)

DATE: .....



## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South

Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>2</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of institution	State

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or

<sup>2</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....  
.....

### 3 DECLARATION

I, \_\_\_\_\_ the \_\_\_\_\_ undersigned,  
(name)..... in submitting  
the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 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>3</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 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.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 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.

<sup>3</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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF  
PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING  
ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO  
BE FALSE.

.....Signature  
Date

.....Position  
Name of bidder



## **T2.1.2-06 NON-DISCLOSURE AGREEMENT**

**[..... 2020]**

**Note to tenderers: This Non-Disclosure Agreement is to be completed and signed by an authorised signatory:**

**THIS AGREEMENT** is made effective as of ..... day of ..... 20 ..... by and between:

**TRANSNET SOC LTD**

(Registration No. 1990/000900/30), a company incorporated and existing under the laws of South Africa, having its principal place of business at Transnet Corporate Centre 138 Eloff Street , Braamfontein , Johannesburg 2000

**and**

.....  
.....

(Registration No. ....), a private company incorporated and existing under the laws of South Africa having its principal place of business at

.....  
.....  
.....  
.....

**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 Tender 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** (hereinafter Tender) 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 Tender or for the subsequent performance of any contract between the parties in relation to the Tender.
- 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 Tender 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 Tender 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 Tender 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 Tender 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 Tender 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.

Signed

Date

Name

Position

Tenderer

## T2.1.2-07: RFP DECLARATION FORM

NAME OF COMPANY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify that:

1. Transnet has supplied and we have received appropriate tender offers to any/all questions (as applicable) which were submitted by ourselves for tender clarification purposes;
2. we have received all information we deemed necessary for the completion of this Tender;
3. at no stage have we received additional information relating to the subject matter of this tender from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the tender documents;
4. we are satisfied, insofar as our company is concerned, that the processes and procedures adopted by Transnet in issuing this tender and the requirements requested from tenderers in responding to this tender have been conducted in a fair and transparent manner; and
5. furthermore, we acknowledge that a direct relationship exists between a family member and/or an owner / member / director / partner / shareholder (unlisted companies) of our company and an employee or board member of the Transnet Group as indicated below: [Respondent to indicate if this section is not applicable]

FULL NAME OF OWNER/MEMBER/DIRECTOR/

PARTNER/SHAREHOLDER:

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate nature of relationship with Transnet:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Failure to furnish complete and accurate information in this regard may lead to the disqualification of your response and may preclude a Respondent from doing future business with Transnet]

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 company in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

6. We accept that any dispute pertaining to this tender will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. (Refer "Important Notice to respondents" below).
7. We further accept that Transnet reserves the right to reverse a tender award or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.
8. We have acquainted ourselves and agree with the content of T2.1.2-10 "Service Provider Integrity Pact".

For and on behalf of  .....  duly authorised thereto
Name:
Signature:
Date:

#### **IMPORTANT NOTICE TO TENDERERS**

- Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of tenders exceeding R5,000,000.00 (five million S.A. Rand) in value. Should a Tenderer have any material concern regarding an tender process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.
- It is incumbent on the Tenderer to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).
- An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net)
- For transactions below the R5,000,000.00 (five million S.A. Rand) threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.
- All Tenderers should note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a tenderer on its List of Excluded Bidders.

### **T2.1.2-08: REQUEST FOR PROPOSAL – BREACH OF LAW**

NAME OF COMPANY: \_\_\_\_\_

I / We \_\_\_\_\_ do hereby certify that  
**I/we have/have not been** 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 Tenderer is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

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 Tenderer from the tendering process, should that person or company have been found guilty of a serious breach of law, tribunal or regulatory obligation.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF TENDER

## **T2.1.2-10 Service Provider Integrity Pact**

**Important Note: All potential tenderers must read this document and certify in the RFP Declaration Form that they have acquainted themselves with, and agree with the content.**

**The contract with the successful tenderer will automatically incorporate this Integrity Pact and shall be deemed as part of the final concluded contract.**

### **INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

The Contractor (hereinafter referred to as the "Tenderer/Service Providers/Contractor")

## **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 Tenderers/Service Providers/Contractors.

In order to achieve these goals, Transnet and the Tenderer/Service Provider/Contractor hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Tenderer's/Service Provider's/Contractor'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 Tenderers/Service Providers/Contractor's 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 Tenderer/Service Provider/Contractor 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 Tenderers/Service Providers/Contractors 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 Tenderer, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the tendering process, Tender evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and tendering process treat all Tenderers/ Service Providers/Contractor with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Tenderers/ Service Providers/Contractors the same information and will not provide to any Tenderers/Service Providers/Contractors confidential/additional information through



which the Tenderers/Service Providers/Contractors could obtain an advantage in relation to any tendering process.

- 2.3 Transnet further confirms that its employees will not favour any prospective Tenderers/Service Providers/Contractors in any form that could afford an undue advantage to a particular Tenderer during the tendering stage, and will further treat all Tenderers/Service Providers/Contractors participating in the tendering process in a fair manner.
- 2.4 Transnet will exclude from the tender process such employees who have any personal interest in the Tenderers/Service Providers/Contractors participating in the tendering process.

### 3 OBLIGATIONS OF THE TENDERER / SERVICE PROVIDER

- 3.1 Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours or benefits.
  - a) Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.
  - b) Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.
  - c) Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.
  - d) Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefit or services. Such favours will be considered to constitute corruption.
- 3.2 The Tenderer/Service Provider/Contractor commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its Tender or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Tenderer/Service Provider/Contractor commits to the following:
  - a) The Tenderer/Service Provider/Contractor 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 tendering process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the tendering process; and
  - b) The Tenderer/Service Provider/Contractor 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 tendering process, or to any person, organisation or third party related to the contract in exchange for any advantage in the tendering, evaluation, contracting and implementation of the contract.

- 3.3 The Tenderer/Service Provider/Contractor will not collude with other parties interested in the contract to preclude a competitive Tender price, impair the transparency, fairness and progress of the tendering process, Tender evaluation, contracting and implementation of the contract. The Tenderer / Service Provider further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Tenderer/Service Provider/Contractor will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Tenderers/Service Providers/Contractors. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the tendering process.
- 3.5 The Tenderer/Service Provider/Contractor will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Tenderer/Service Provider/Contractor 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 Tenderer/Service Provider/Contractor 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 tendering process. Similarly, the Tenderer / Service Provider / Contractor of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or tendering process.
- 3.7 The Tenderer/Service Provider/Contractor will not misrepresent facts or furnish false or forged documents or information in order to influence the tendering process to the advantage of the Tenderer/Service Provider/Contractor or detriment of Transnet or other competitors.
- 3.8 Transnet may require the Tenderer/Service Provider/Contractor 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 Tenderer/Service Provider/Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Tenderer/Service Provider/Contractor 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 TENDERING**

4.1 For the purposes of that Certificate in relation to any submitted Tender, the Tenderer declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Tenderer, whether or not affiliated with the Tenderer, who:

- a) has been requested to submit a Tender in response to this Tender invitation;
- b) could potentially submit a Tender in response to this Tender invitation, based on their qualifications, abilities or experience; and
- c) provides the same Goods and Services as the Tenderer and/or is in the same line of business as the Tenderer.

4.2 The Tenderer has arrived at his submitted Tender 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 tendering.

- 4.3 In particular, without limiting the generality of paragraph 5 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 Tender;
  - e) the submission of a Tender which does not meet the specifications and conditions of the RFP; or
  - f) tendering with the intention of not winning the Tender.
- 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 tender relates.
- 4.5 The terms of the Tender as submitted have not been, and will not be, disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official Tender opening or of the awarding of the contract.
- 4.6 Tenderers are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to Tenders and contracts, Tenders 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.
- 4.7 Should the Tenderer find any terms or conditions stipulated in any of the relevant documents quoted in the Tender unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Tender. 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.

## **5 DISQUALIFICATION FROM TENDERING PROCESS**

- 5.1 If the Tenderer/Service Provider/Contractor has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Tenderer/Service Provider/Contractor into question, Transnet may reject the Tenderer's / Service Provider's / Contractor's application from the registration or tendering process and remove the Tenderer/Service Provider/Contractor from its database, if already registered.
- 5.2 If the Tenderer/Service Provider/Contractor has committed a transgression through a violation of section 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 Tenderer/Service Provider /Contractor from future tendering 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 Tenderer/Service Provider/Contractor 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 Tenderer/Service Provider/Contractor 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 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)**

- 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 Tender shall be awarded to a Tenderer 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 Tenderer should it be established, at any time, that a tenderer 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 (CPM included) 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 Service Provider or Contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

- 6.7 Grounds for blacklisting include: If any person/Enterprise which has submitted a Tender, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Tender or contract:
- a) Has, in bad faith, withdrawn such Tender after the advertised closing date and time for the receipt of Tenders;
  - b) has, after being notified of the acceptance of his Tender, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Tender documents;
  - c) has carried out any contract resulting from such Tender 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) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
  - h) has litigated against Transnet in bad faith.
- 6.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Service Providers or Register of Tender Defaulters.
- 6.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

## **7 PREVIOUS TRANSGRESSIONS**

- 7.1 The Tenderer/Service Provider/Contractor 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 Tenderer's/Service Provider's/Contractor's database or any tendering process.

- 7.2 If it is found to be that the Tenderer/Service Provider/Contractor made an incorrect statement on this subject, the Tenderer/Service Provider/Contractor can be rejected from the registration process or removed from the Tenderer/ Service Provider/Contractor database, if already registered, for such reason (refer to the Breach of Law Returnable Form contained in the 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 Tenderer/Service Provider/Contractor from the tendering process or call off the pre-contract negotiations without giving any compensation the Tenderer/Service Provider/Contractor. However, the proceedings with the other Tenderer/Service Provider/Contractor may continue;
- b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Tenderer/Service Provider/Contractor;
- c) Recover all sums already paid by Transnet;
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Tenderer/Service Provider/Contractor, in order to recover the payments, already made by Transnet, along with interest;
- e) Cancel all or any other contracts with the Tenderer/Service Provider/Contractor; and
- f) Exclude the Tenderer/ Service Provider/Contractor from entering into any Tender with Transnet in future.

## **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 tendering / 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 Tender committee member or any person involved in the sourcing process must be declared in a prescribed form.

- 9.3 If a Tenderer/Service Provider/Contractor 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 Tender which will be considered for the Tender process, the Tenderer/Service Provider/ Contractor:

- 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 Tenderer/Service Provider/Contractor 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 Tenderer/Service Provider/Contractor.

## 10 DISPUTE RESOLUTION

10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Tenderer / Service Provider / Contractor. When a dispute arises between Transnet and its Tenderer / Service Provider / Contractor, 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 blacklisting 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 Tenderer / Service Provider / Contractor make a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a Tenderer / Service Provider / Contractor makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a Tenderer / Service Provider / Contractor abuses the court process in order to gain a competitive advantage during a Tender 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 tendering 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 Tenderer/Service Provider/Contractor be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Tenderer/Service Provider/Contractor 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.

---

I .....duly authorised by the tendering entity, hereby certify that the tendering entity are **fully acquainted** with the contents of the Integrity Pact and further **agree to abide by it** in full.

Signature .....

Date .....

### **T2.1.2-11 : Supplier Code of Conduct**

Transnet SOC Limited aims to achieve the best value for money when buying or selling goods and obtaining services. This however must be done in an open and fair manner that supports and drives a competitive economy. Underpinning our process are several acts and policies that any supplier dealing with Transnet must understand and support. These are:

- The Transnet Procurement Policy – A guide for Tenderers.
- Section 217 of the Constitution - the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act (PFMA);
- The Broad Based Black Economic Empowerment Act (BBBEE)
- The Prevention and Combating of Corrupt Activities Act (PRECCA); and
- The Construction Industry Development Board Act (CIDB Act).

This code of conduct has been included in this contract to formally appraise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

### **Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices**

Transnet is in the process of transforming itself into a self-sustaining State Owned Enterprise, actively competing in the logistics industry. Our aim is to become a world class, profitable, logistics organisation. As such, our transformation is focused on adopting a performance culture and to adopt behaviours that will enable this transformation.

#### **1. Transnet SOC Limited will not participate in corrupt practices. Therefore, it expects its suppliers to act in a similar manner.**

- Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with, and payments to, our suppliers.
- Employees must not accept or request money or anything of value, directly or indirectly, from suppliers.
- Employees may not receive anything that is calculated to:
  - Illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
  - Win or retain business or to influence any act or decision of any person involved in sourcing decisions; or
  - Gain an improper advantage.

- There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts. (0800 003 056).

**2. Transnet SOC Limited is firmly committed to the ideas of free and competitive enterprise.**

- Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust practices.
- Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing BBBEE spend (fronting).

**3. Transnet's relationship with suppliers requires us to clearly define requirements, to exchange information and share mutual benefits.**

- Generally, suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
  - Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
  - Collusion;
  - Failure to disclose accurate information required during the sourcing activity (ownership, financial situation, BBBEE status, etc.);
  - Corrupt activities listed above; and
  - Harassment, intimidation or other aggressive actions towards Transnet employees.
- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the supplier is expected to participate in an honest and straight forward manner.
- Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

## Conflicts of Interest

A conflict of interest arises when personal interests or activities influence (or appear to influence) the ability to act in the best interests of Transnet SOC Limited.

- Doing business with family members.
- Having a financial interest in another company in our industry

Where possible, contracts will be negotiated to include the above in the terms of such contracts. To the extent such terms are not included in contractual obligations and any of the above code is breached, then Transnet reserves its right to review doing business with these suppliers.

I, \_\_\_\_\_ of \_\_\_\_\_  
(insert name of Director or as per Authority (insert name of Company)  
Resolution from Board of Directors)

hereby acknowledge having read, understood and agree to the terms and conditions set out in the "Transnet Supplier Code of Conduct."

Signed this on day \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
Signature

### **T2.1.3- 01: Financial**

#### **Note to tenderers:**

The tenderer is required to submit/ attach three (3) years audited financial statement.

#### **Attached submissions to this schedule:**

.....  
.....  
.....  
.....  
.....

Signed

Date

Name

Position

Tenderer



## C1.1 Form of Offer & Acceptance

### Offer

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

### **Supply, Delivery and Fitment of STS Copex Spares for a once-off period**

The tenderer, identified in the Offer signature block, has 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.

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 Supplier 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	<b>R</b>
	Value Added Tax @ 15% is	<b>R</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<b>R</b>
	(in words)	

This Offer may be accepted by the Purchaser 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 Supplier in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

**For the  
tenderer:**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

<sup>1</sup> This total is required by the *Purchaser* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.



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## Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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	Scope of Work: Goods Information including Supply Requirements

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 Purchaser 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 Purchaser's Supply Manager (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 starting date as set out in Clause 30.1 of the Contract Data by Purchaser.

Unless the tenderer (now Supplier) within five working days of the date of such receipt notifies the Purchaser 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  
Purchaser**

Transnet Port Terminals, Ben Schoeman Dock. Duncan Road, Paarden Eiland, 7405

(Insert name and address of organisation)

Name &  
signature of  
witness

Date



Transnet Port Terminals  
 Contract Number: ICLM CT 491/TPT  
 Contract Title: Supply, Delivery and Fitment of STS Copex Spares for a once-off period

## Schedule of Deviations to be completed by the Purchaser prior to contract award

Note:

1. 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 Purchaser 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 Purchaser 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 Purchaser 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.

### For the tenderer:

### For the Purchaser

Signature

Name

Capacity

On behalf  
of

(Insert name and address of organisation)

Transnet SOC Ltd

Name &  
signature  
of witness

Date





## C1.2 SC Contract Data

### Part one - Data provided by the Purchaser

Clause	Statement	Data
1	<b>General</b>	
	The conditions of contract are the core clauses and the clauses for Options	<b>X1: Price adjustment for inflation</b> <b>X2: Changes in the law</b> <b>X3: Delay damages</b> <b>X4: Performance bond</b> <b>X5: Low performance damages</b> <b>X6: Key Performance Indicators</b> <b>Z: Additional conditions of contract</b>
	of the NEC3 Supply Contract (December 2009 and amended April 2013)	
10.1	The Purchaser is (name):  Address	<b>Transnet SOC Ltd</b> <b>(Reg no. 1990/000900/30)</b>  <b>Transnet Port Terminals</b> <b>Cape Town Container Terminals</b> <b>Ben Schoeman Road</b> <b>Paarden Eiland</b> <b>7405</b>
10.1	The Supply Manager is (name):  Address  Tel	<b>[•]</b>  <b>[•]</b>  <b>[•]</b>
11.2(13)	The goods are	<b>[•] Trolley Motor</b> <b>[•] Hoist Brake</b> <b>[•] Energy Chain</b> <b>[•] Hoist Coupling</b>
11.2(13)	The services are	<b>[•]</b>
11.2(14)	The following matters will be included in the Risk Register	<b>[•]</b>
11.2(15)	The Goods Information is in	<b>Part 3: Scope of Supply and all documents and drawings to which it makes reference.</b>



12.2	The law of the contract is the law of	<b>the Republic of South Africa</b>	
13.1	The language of this contract is	<b>English</b>	
13.3	The period for reply is	<b>[4] weeks</b>	
2	<b>The Supplier's main responsibilities</b>	<b>Data required by this section of the core clauses is provided by the Supplier in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.</b>	
3	<b>Time</b>		
30.1	The starting date is.	<b>[•]</b>	
30.1	The delivery date of the goods and services is:	<b>goods and services</b>	<b>delivery date</b>
		<b>1</b>	<b>[•]</b>
		<b>2</b>	<b>[•]</b>
		<b>3</b>	<b>[•]</b>
30.2	The Supplier does not bring the goods to the Delivery Place more than one week before the Delivery Date.	<b>[no data required]</b>	
31.1	The Supplier is to submit a first programme for acceptance within	<b>[•] weeks of the Contract Date.</b>	
32.2	The Supplier submits revised programmes at intervals no longer than	<b>[•] weeks.</b>	
4	<b>Testing and defects</b>		
42	The defects date is	<b>[•] weeks after Delivery.</b>	
43.2	The defect correction period is	<b>[•] weeks</b>	
	except that the defect correction period for	<b>[•] is [•] weeks</b>	
	and the defect correction period for	<b>[•] is [•] weeks</b>	
42.2	The defects access period is	<b>[•] days</b>	
	except that the defect access period for	<b>[•] is [•]</b>	
	and the defect access period for	<b>[•] is [•]</b>	
5	<b>Payment</b>		
50.1	The assessment interval is monthly	<b>On the 25<sup>th</sup> of each successive month.</b>	
51.1	The currency of this contract is the	<b>South African Rand</b>	
51.2	The period within which payments are made is	<b>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.</b>	
51.4	The interest rate is	<b>The prime lending rate of the Standard Bank</b>	



		<b>of South Africa.</b>
6	<b>Compensation events</b>	<b>No additional data is required for this section of the conditions of contract.</b>
7	<b>Title</b>	<b>No additional data is required for this section of the conditions of contract.</b>
8	<b>Risks, liabilities, indemnities and insurance</b>	
80.1	These are additional Purchaser's risks	<b>1. [•]</b> <b>2. [•]</b> <b>3. [•]</b>
84.1	The Purchaser provides these insurances from the Insurance Table	1. Insurance against [•] Cover / indemnity is [•] The deductibles are [•] 2. Insurance against [•] Cover / indemnity is [•] The deductibles are [•]
84.1	The Purchaser provides these additional insurances	<b>[•]</b> 1. Insurance against [•] Cover / indemnity is [•] The deductibles are [•]
84.1	The Supplier provides these additional insurances	1. Insurance against <b>Supply manufacture involving pre-payments. Insurable interest in terms of the pre payments made towards manufacturing of an item. PI exposure Manufacturing 2 – 3 per raw material and/or volume of completed prior to delivery to Transnet including transportation to a Transnet site until off loaded.</b> Cover / indemnity is [•] The deductibles are [•]
84.2	The minimum amount of cover for loss of or damage to any plant and materials provided by the Purchaser is:	<b>[•]</b>



84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the goods, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the Supplier) caused by activity in connection with this contract for any one event is:	<b>whatever the Supplier deems necessary in addition to that provided by the Purchaser.</b>
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the Contractor's common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R [•] ([•] Rands)..</b>
88.1	The Supplier's liability to the Purchaser for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	<b>R0.0 (zero Rand)</b>
88.2	For any one event, the Supplier's liability to the Purchaser for loss of or damage to the Purchaser's property is limited to	<b>Total of the Prices</b>
88.3	The Supplier's liability for Defects due to his design which are not notified before the last defects date is limited to:	<b>The cost of correcting the defect (The Total of the Prices)</b>
88.4	The Supplier's total liability to the Purchaser, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<b>Total of the Prices</b>
88.5	The end of liability date is	<b>After Delivery of the whole of the goods and services.</b>
<b>9</b>	<b>Termination and dispute resolution</b>	
94.1	The Adjudicator is (Name)	<b>Either, state the name of the person selected &amp; complete the contact details below Or, state the person selected from the Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him.</b>
	Address	<b>[•]</b>
	Tel No.	<b>[•]</b>
	Fax No.	<b>[•]</b>
	e-mail	<b>[•]</b>



94.2(3)	The Adjudicator nominating body is:	the Chairman of The Association of Arbitrators (Southern Africa)		
94.4(2)	The tribunal is:	Arbitration		
94.4(5)	The arbitration procedure is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa).		
94.4(5)	The place where arbitration is to be held is	[•] 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 for the time being or his nominee of the Association of Arbitrators (Southern Africa).		
10	Data for Option clauses			
X1	Price adjustment for inflation			
X1.1	The base date for indices is	[•].		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		[•]	non-adjustable	
		1.00		
X2	Changes in the law			
X2.1	A change in the law of	[•] is a compensation event if it occurs after the Contract Date		
X3	Delay damages			
X3.1	Delay damages for Delivery are	Delivery of	amount per day	
X4	Performance bond			
X4.1	The amount of the performance bond is	R [•] (10% of the total of the Prices at the Contract Date).		



X5	Low performance damages		
X5.1	The amounts for low performance damages are:	amount	performance level
		R [•]	for [•]
		R [•]	for [•]
		R [•]	for [•]
		R [•]	for [•]
X6	Key Performance Indicators (not used when Option X12 applies)		
X6.1	The incentive schedule for Key Performance Indicators is in	Annexure [•] to this Contract Data	
X6.2	A report of performance against each Key Performance Indicator is provided at intervals of	[•] months	
Z	The additional conditions of contract are		
Z1	Additional clause relating to Performance Bonds and/or Guarantees		
Z1.1	The Performance Guarantee under X13 above shall be an irrevocable, on-demand performance guarantee, to be issued exactly in the form of the Pro Forma documents provided for this purpose under C1.3 (Forms of Securities), in favour of the Purchaser by a financial institution reasonably acceptable to the Purchaser.		
Z2	Additional clauses relating to Joint Venture		



Z2.1	<p>Insert the additional core clause 27.5</p> <p>27.5. In the instance that the Supplier is a joint venture, the Supplier shall provide the Purchaser 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.</p> <p>The Joint Venture agreement shall contain but not be limited to the following:</p> <p>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:          of their joint and several liabilities to the Purchaser to Provide the Goods;          identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the Supplier's representative;          Identification of the roles and responsibilities of the constituents to provide the Goods.          Financial requirements for the Joint Venture:          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>
Z2.2	<p>Insert additional core clause 27.6</p> <p>27.6. The Supplier shall not alter its composition or legal status of the Joint Venture without the prior approval of the Purchaser.</p>
<b>Z3</b>	<p><b>Additional obligations in respect of Termination</b></p>



Z3.1		<p>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</p> <p>Under the second main bullet, insert the following additional bullets after the last sub-bullet:</p> <ul style="list-style-type: none"> <li>• commenced business rescue proceedings (R22)</li> <li>• repudiated this Contract (R23)</li> </ul>
Z3.2	Termination Table	<p>The following will be included under core clause 90.2 Termination Table as follows:</p> <p>Amend "A reason other than R1 – R21" to "A reason other than R1 – R23"</p>
Z3.3		<p>Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."</p>
<b>Z4</b>	<b>Right Reserved by the Purchaser to Conduct Vetting through SSA</b>	
Z4.1		<p>The Purchaser reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any Supplier who has access to National Key Points for the following without limitations:</p> <p>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.</p> <p>Secret – this 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.</p> <p>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.</p>
<b>Z5</b>	<b>Additional Clause Relating to Collusion and/or Tender Rigging</b>	
Z5.1		<p>The contract award is made without prejudice to any rights the Purchaser may have to take appropriate action later with regard to any collusion and/or tender rigging including blacklisting.</p>





Z6	Protection of Personal Information Act	Personal
Z6.1	The Purchaser and the Supplier 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 Supplier

#### Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (December 2009 with amendments dated April 2013) and the relevant parts of its Guidance Notes (SC3-GN) in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Data is required relevant to the option selected. Complete by hand and in ink.

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

Clause	Statement	Data										
10.1	The Supplier is (Name):  Address  Tel No.  Fax No.											
11.2(8)	The Goods Information for the Supplier’s design is in:											
11.2(11)	The tendered total of the Prices is	<b>R, (in words)</b>										
11.2(12)	The price schedule is in:											
11.2(14)	The following matters will be included in the Risk Register											
25.2	The restrictions to access for the Supply Manager and Others to work being done for this contract are											
30.1	The delivery date of the goods and services is:	<table><tr><th>goods and services</th><th>delivery date</th></tr><tr><td><b>1 Trolley Motor</b></td><td><b>5 – 10 weeks</b></td></tr><tr><td><b>2 Hoist Brake</b></td><td><b>5 – 10 weeks</b></td></tr><tr><td><b>3 Energy Chain</b></td><td><b>5 – 10 weeks</b></td></tr><tr><td><b>4 Hoist Coupling</b></td><td><b>5 – 10 weeks</b></td></tr></table>	goods and services	delivery date	<b>1 Trolley Motor</b>	<b>5 – 10 weeks</b>	<b>2 Hoist Brake</b>	<b>5 – 10 weeks</b>	<b>3 Energy Chain</b>	<b>5 – 10 weeks</b>	<b>4 Hoist Coupling</b>	<b>5 – 10 weeks</b>
goods and services	delivery date											
<b>1 Trolley Motor</b>	<b>5 – 10 weeks</b>											
<b>2 Hoist Brake</b>	<b>5 – 10 weeks</b>											
<b>3 Energy Chain</b>	<b>5 – 10 weeks</b>											
<b>4 Hoist Coupling</b>	<b>5 – 10 weeks</b>											

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31.1	The programme identified in the Contract Data is contained in:	
63.2	The percentage for overheads and profit added to the Defined Cost is	%

## **PART C2: PRICING DATA**

### **NEC3 Supply Contract**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions	2
C2.2	The price schedule	1

## C2.1 Pricing assumptions

### 1. The conditions of contract

#### 1.1. How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, December 2009 (SC)(with amendments April 2013) core clauses states:

<b>Identified and defined terms</b>	11	
	11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.
		(12) The Price Schedule is the price schedule unless later changed in accordance with this contract.
<b>Assessing the amount due</b>	50.2	The amount due is
		<ul style="list-style-type: none"> <li>the Price for each lump sum item in the Price Schedule which the Supplier has completed,</li> <li>where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the Supplier has completed by the rate,</li> <li>plus other amounts to be paid to the Supplier,</li> <li>less amounts to be paid by or retained from the Supplier.</li> </ul>
		Any tax which the law requires the Purchaser to pay to the Supplier is included in the amount due.

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of goods and services which can be priced as lump sums or as expected quantities of goods and services multiplied by a rate, or a mix of both.

#### 1.2. Function of the Price Schedule

Clause 53.1 states: "Information in the Price Schedule is not Goods Information". This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, "The Supplier Provides the Goods and Services in accordance with the Goods Information". Hence the Supplier does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

#### 1.3. Preparing the price schedule

It will be assumed that the tendering supplier has read Pages 11 and 12 and Appendix 5 of the SC Guidance Notes before preparing the price schedule. Items in the price schedule may have been inserted by the Purchaser and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the price schedule the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of

entering into this contract.

1 As the Supplier has an obligation to correct Defects (core clause 43.1) and there is no compensation event for this unless the Defect was due to a Supplier's risk, the lump sum Prices and rates must also include for the correction of Defects.

2 If the Supplier has decided not to identify a particular item in the price schedule at the time of tender the cost to the Supplier of doing the work is assumed to be included in, or spread across, the other Prices and rates in the price schedule in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the price schedule if the amount, or quantity, of work within that lump sum item of goods or services later turns out to be different to that which the Supplier estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices and rates tendered by the Supplier in the price schedule are inclusive of everything necessary and incidental to Providing the Goods and Services in accordance with the Goods Information, as it was at the time of tender, as well as correct any Defects not caused by a Purchaser's risk.

5 The Supplier does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of a Purchaser's risk event listed in core clause 80.1.

#### **1.4. Format of the price schedule**

(From Appendix 5 on page 78 of the SC Guidance Notes)

Entries in the first four columns in the price schedule in section C2.2 are made either by the Purchaser or the tendering supplier.

If the Supplier is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering supplier enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the Supplier is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the tendering Supplier enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the Supplier is to be paid an amount for an item proportional to the length of time for which the goods and services are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

## C2.2 the price schedule

Item no	Description	Unit	Quantity	Unit Price	Total Price
1.	<b>Trolley Motor:</b> DC MOTOR AEG 160M38 +LLK 55KW, 200V 1800RPM S3, 80% ED, FORCE VENT. CA/CA, IP55 IC0666 IS.H IMB3, H.T	Each	8		
2.	<b>Hoist Brake:</b> Pintsch Bubenzer D-57548 Kirchen- Wehbach, SB 28-710x30-301/8 BB, 14400Nm, 246kg	Each	4		
3.	<b>Energy Chain:</b> Chain Type – 4040RHD.25.250.0	Each	1		
4.	<b>Hoist Coupling</b>	Each	6		
	<b>SUB-TOTAL</b>				
	<b>VAT</b>				

**GRAND TOTAL**

### NB.

- It is Transnet intension to award to one bidder; however, Transnet reserves the right to evaluate per line item and award per line item.

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## PART 3: GOODS INFORMATION

Document reference	Title	No of pages
	This cover page	1
C3.1	Purchaser's Goods Information	
C3.2	Supplier's Goods Information	
	Total number of pages	



C3.1: PURCHASER’S GOODS INFORMATION

Contents

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**6 General Safety and Compliance Specifications ..... 6**

## 1. Abbreviations and Definitions

SHERQ	- Safety, Health, Environmental, Risk and Quality
SOP	- Standard Operating Procedure
NOSA	- National Occupational Safety Association
TPT	- Transnet Port Terminals
QAP	- Quality Assurance Plan
RFQ	- Request For Quotation
OHS	- Occupational Health and Safety
OHSAS	- Occupational Health and Safety Act of South Africa
SANS	- South African National Standards
The Contractor	- refers to the person whose tender has been accepted and approved
Technical Supervisor	- refers to the supervisor to which the contracted labour is assigned

## 2. BACKGROUND

- 2.1 TPT is seeking to enter into an agreement with the preferred service provider for the Supply & Delivery of CAPITAL SPARE parts, for Transnet SOC Limited, (Reg. No 1990/000900/30) operating as Transnet Port Terminals, (hereinafter referred to as "TPT"), for CTCT on an as and when required basis.

## 3. SCOPE OF REQUIREMENTS

The Service provider will be required to Supply and Deliver Capital spares below:

### 1 CTCT

Item Number	Item	Part Number	Description	Equipment type	Quantity	Comment
RHS 150000 & LHS 1500001	Trolley Motor	610458013	DC MOTOR AEG 160M38 +LLK 55KW, 200V 1800RPM S3, 80%ED, FORCE VENT. CA/CA, IP55 IC0666 IS.H IMB3, H.T	STS	8	Supply
152740	Hoist brake		Pintsch Bubenzer D-57548 Kirchen-Wehbach, SB 28-710x30-301/8 BB, 14400Nm, 246kg	STS	4	Supply
135793	Energy Chain		Chain Type – 4040RHD.25.250.0	STS	1	Supply And Fit
135689	Hoist Coupling	502929213	COUPLING;HOIST	STS	6	Supply

#### 4. Quality and Service

- 4.1 All services supplied to Transnet must be of excellent quality and in compliance with the required specifications. Should the service(s) not be in conformity with the specifications, Transnet serves the right to reject them, obtain the goods or service(s) from other sources of its free choice and debit the difference in cost, if any, to the Service Provider.
- 4.2 The Service Provider shall ensure that its employees tasked with providing the required services to Transnet are competent, and experienced in carrying out its responsibilities as set out in the scope of work herein.
- 4.3 The Service Provider must have roadworthy and licensed vehicles.
- 4.4 The Service Provider must have a permanently manned telephone (place of business/cell phone) and fax machine, to ensure that immediate contact can be made in case of emergency.

#### 5. Technical Requirements

Service Providers will be evaluated according to the following criteria:

Technical Criteria	% Weightings
<p><b><u>Experience and Verification</u></b></p> <p>The Service Provider shall be required to have a proven track record in the supplying of these spares.</p> <p>The service provider shall, on a company letterhead, assure TPT that they can provide the supplying of the following components as per scope of Work:</p> <p><b>Supporting documents - Three (3) written references which shall be used to verify the Service Provider's previous performance and service delivery. Kindly note that the references must specifically set out whether the service provider is experienced in the capacities as set out above.</b></p>	<ul style="list-style-type: none"> <li>• <b>30% of points</b> = Three (3) Signed written references issued by respondent's client (different clients) in the supply spares according to SOW</li> <li>• <b>20% of points</b> = Two (2) Signed written references issued by respondent's client (different clients) in the supply spares according to SOW</li> <li>• <b>10% of points</b> = One (1) Signed written references issued by respondent's client (different clients) in the supply spares according to SOW</li> <li>• <b>Zero points</b> = Zero (0) written references issued by respondent's client (different clients) in the supply spares according to SOW</li> </ul>
<p><b><u>Delivery Lead time of Spares</u></b></p> <p>The Service Provider shall be required to indicate their delivery lead time for components/parts from start of given RFQ.</p> <p><b>Supporting documents – Confirmation, on company letterhead, that the Service Provider can provide the abovementioned requirement for verification purposes.</b></p>	<p><b>30% of points</b> = Deliver spares between 5 – 10 Weeks</p> <p><b>20% of points</b> = Deliver spares between 11 – 16 Weeks</p> <p><b>10% of points</b> = Deliver spares between 17 – 22 Weeks</p> <p><b>Zero% of points</b> = Deliver spares between 23 and about.</p>
<p><b><u>Warranty and Guarantee</u></b></p> <p>Service Provider to provide confirmation, on company letterhead, on the duration of the warranty of their components or parts.</p>	<p><b>20% of points</b> = 18 Months warranty and guarantee</p> <p><b>10% of points</b> = 12 Months warranty and guarantee</p> <p><b>Zero% of points</b> = 0 warranty and guarantee</p>
<p><b><u>Risk Assessments</u></b></p> <p>The respondent must submit a generic risk</p>	<p><b>20 points</b> = risk assessment covers all 4 elements</p>

assessment, based on the attached Energy chain replacement services aligned to the scope of work. The risk assessment should as a minimum, give detail of the following elements: safety; health; environment and quality.

**10 points** = risk assessment covers 3 of the 4 elements

**Zero points** = risk assessment covers 2 of the 4 elements or no risk assessment submitted.

**1.1.1 Transnet reserves the right to that the tenderer should achieve the threshold of 80% out of 100%.**

**6. General Safety and Compliance Specifications**

- 6.1 Service Provider shall implement and maintain applicable Health, Safety, Quality and Environmental regulations and other relevant standards and regulation, example: NOSA CMB253; applicable SANS codes; OHS Act of 1993 and OHSAS 18001.
- 6.2 Service Provider ensures compliance with TPT SHERQ-RS PRO 027\_ SHERQ Service Provider Specifications Procedure. SHE File will be handed in to TPT SHERQ Department in advance for approval before work commence.
- 6.3 The Service Provider to have a fire watch on duty when hot work is performed.
- 6.4 The Service Provider to declare the structure safe for operation and issue TPT a safe for operation certificate after completion of the work.
- 6.5 Service Provider to ensure that all employees involved in activity is informed of the Hazards and risk they exposed to and all other relevant applicable Safety Work Procedures, Fall Protections Plans, Environmental Plans, Emergency Plans and any other relevant procedures, proof to be submitted to SHERQ with SHE File.
- 6.6 Updated SHE File to be sub-mitted to SHERQ via procurement on award of business in accordance with TPT SHERQ –RS PRO 027 TPT SHERQ Service Providers Specifications Procedure within 14 days from award of business (2 weeks).
- 6.7 The following document is compulsory returnable document for all service provider to supply chain management:
  - 6.7.1. Valid Letter of Good standing
  - 6.7.2. Valid Public Liability Insurance
  - 6.7.3. 37.2 Agreement (TPT CTCT SHEQ-RS FORM 065\_Section 37 (2) Agreement) between TPT & Principle Service Provider
  - 6.7.4. 37.2 Agreement between Principle Service Provider and Sub Service Provider if making use of any.
- 7.8. The following document is compulsory returnable document for service provider that conduct any physical work on site to SHERQ:
  - 6.8.1 SHE File that comply with TPT SHERQ-RS PRO 027 TPT SHERQ Service Provider Specifications Procedure.
- 6.9 Service Provider must ensure that when required to off-load or load any heavy equipment and machinery on the plant that they comply with the following:
  - 6.9.1 An employee when required to off-loaded or load from any flatbed or low bed may physically operate no equipment or machinery.
- 6.10 The following is compulsory returnable documents to service provider that is required to load or off-load any equipment or machinery on TPT site to SHERQ and Supply Chain Management:
  - 6.10.1 Valid Letter of Good Standing
  - 6.10.2 Valid Public Liability insurance

- 6.10.3 37.2 Agreement (TPT CTCT SHEQ-RS FORM 065\_Section 37 (2) Agreement) between TPT & Principle Service Provider
- 6.10.4 37.2 Agreement between Principle Service Provider and Sub Service Provider if making use of any.
- 6.10.5 Safe loading and off-loading specifications
- 6.10.6 Task Base Risk assessment and Method Statement related to task
- 6.10.7 All legal document regarding statutory inspection as per requirement related to OHS Act, other Standards and SANS codes.

### 1.1.2 Specifications:

Applicable Legislation and/or procedures	Description
TPT CTCT SHEQ-RS PRO 060	SHEQ Fire Risk Management Procedure
GRM/SHEQ/STD 009	TNPA Fire Safety Management Manual
TPT CTCT SHEQ-RS PRO 027	TPT SHERQ Service Provider Specifications Procedure.
TPT CTCT SHEQ-RS PRO 065	TPT Fall Protection plan
SANS Codes	Applicable related South African Bureau of Standards' Code of Practice in conjunction with Scope of work.
TPT CTCT SHEQ-RS PRO 009	Waste Management Procedure
TPT CTCT SHEQ-RS PRO 007	Emergency Preparedness and Response
TPT CTCT SHEQ-RS PRO 016	Incident Reporting and Investigation Procedure
ISO 14001	Environmental Management System Environmental Specifications with guidance for use.
ISO 9001	Quality Management System- Requirements
OHSAS 18001	Occupational Health and Safety Management System Requirements
OHSAS 18002	Occupational Health and Safety Management Systems – Guidelines for the Implementation of OHSAS 18001
CMB253	National Occupational Safety Association-NOSA Integrated Management System
OHSACT 85 of 1993	Occupational Health and Safety Act
TPT CTCT SHEQ-RS FORM 077	Contactors SHE File Index
TPT CTCT SHEQ-RS FORM 078	SHE Service Provider File Approval Document
TPT CTCT SHEQ-RS FORM 071	Notification to Provincial Director
TPT CTCT SHEQ-RS FORM 062	Notification of Construction Work

### **To obtain the any Supporting document like:**

- TPT CTCT SHEQ-RS PRO 027\_ SHERQ Service Provider Specifications Procedure.
- TPT CTCT SHEQ-RS FORM 126\_Contactors SHE Site File Index
- TPT CTCT SHEQ-RS FORM 065\_Section 37 (2) Agreement

TPT CTCT SHEQ-RS FORM 077\_Transnet Port Terminals – Saldanha Contactors SHE File Index

### **1.1.3 Contact the following employees at SHERQ Department:**

SHERQ Manager: Elliot Motsoahole

Email: [elliott.motsoahole@transnet.net](mailto:elliott.motsoahole@transnet.net)

Contact number: 021 449 4274

TRANSNET PORT TERMINALS  
TENDER NO: ICLM CT 491/TPT  
DESCRIPTION OF THE GOODS: Supply, Delivery and Fitment of STS Copex Spares for a once-off period