

**TRANSNET NATIONAL PORTS AUTHORITY**

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP] [SERVICES]**

**FOR THE FLUSHING AND CLEANING OF STORM – WATER RETICULATION SYSTEM ON AN “AS AND WHEN” REQUIRED BASIS IN THE PORT OF DURBAN FOR A PERIOD OF THIRTY-SIX (36) MONTHS**

<b>RFP NUMBER:</b>	<b>TNPA/2023/09/0005/42454/RFP</b>
<b>ISSUE DATE:</b>	<b>17 NOVEMBER 2023</b>
<b>NON - COMPULSORY BRIEFING SESSION:</b>	<b>30 NOVEMBER 2023 VIA TEAMS at 10:00 am</b>
<b>CLOSING DATE:</b>	<b>13 DECEMBER 2023</b>
<b>CLOSING TIME:</b>	<b>14:00</b>
<b>BID VALIDITY PERIOD:</b>	<b>180 BUSINESS DAYS FROM CLOSING DATE</b>

**Note to the bidders:**

**Bidders 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 Bidder can upload 30mb per upload and multiple uploads are permitted.**

**Technical Pre-qualification Criteria/minimum requirements**

Tenderer must submit copy of valid schedule trades and occupations bylaw permit by eThekweni Municipality.

**SCHEDULE OF BID DOCUMENTS**

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ANNEXURE D TRANSNET’S SUPPLIER INTEGRITY PACT

ANNEXURE E NON-DISCLOSURE AGREEMENT

ANNEXURE F TECHNICAL EVALUATION

**RFP FOR THE FLUSHING AND CLEANING OF STORM – WATER RETICULATION SYSTEM ON AN “AS AND WHEN” REQUIRED BASIS IN THE PORT OF DURBAN FOR A PERIOD OF THIRTY-SIX (36) MONTHS.****SECTION 1: SBD1 FORM****PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET NATIONAL PORTS AUTHORITY, A DIVISION TRANSNET SOC LTD</b>							
BID NUMBER:	TNPA/2023/09/0005/42454/RFP	ISSUE DATE:	17 November 2023	CLOSING DATE:	13 December 2023	CLOSING TIME:	14:00
DESCRIPTION	FOR THE FLUSHING AND CLEANING OF STORM – WATER RETICULATION SYSTEM ON AN “AS AND WHEN” REQUIRED BASIS IN THE PORT OF DURBAN FOR A PERIOD OF THIRTY-SIX (36) MONTHS.						
<b>BID RESPONSE DOCUMENTS SUBMISSION</b>							
<b>RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED</b> (please refer to section 2, paragraph 3 for a detailed process on how to upload submissions): <a href="https://transnetenders.azurewebsites.net">https://transnetenders.azurewebsites.net</a>							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>				<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	Winile Xhakaza			CONTACT PERSON	Winile Xhakaza		
E-MAIL ADDRESS	<a href="mailto:TNPATenderEnquiriesER@transnet.net">TNPATenderEnquiriesER@transnet.net</a>			E-MAIL ADDRESS	<a href="mailto:TNPATenderEnquiriesER@transnet.net">TNPATenderEnquiriesER@transnet.net</a>		
<b>SUPPLIER INFORMATION</b>							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:			<b>OR</b>	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No			B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	

Respondent's Signature

Date &amp; Company Stamp

<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]</b>			
<b>1</b> ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	<b>2</b> ARE YOU A FOREIGN BASED SUPPLIER FOR THE SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER QUESTIONNAIRE BELOW ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<p><b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.</b></p>			

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. TAX COMPLIANCE REQUIREMENTS</b>
<p>1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

(Proof of authority must be submitted e.g. company resolution)

DATE: \_\_\_\_\_

**SECTION 2 : NOTICE TO BIDDERS****1 INVITATION TO BID**

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**].

<b>DESCRIPTION</b>	FOR THE FLUSHING AND CLEANING OF STORM – WATER RETICULATION SYSTEM ON AN "AS AND WHEN" REQUIRED BASIS IN THE PORT OF DURBAN FOR A PERIOD OF THIRTY-SIX (36) MONTHS. [ <b>the Services</b> ]
<b>TENDER ADVERT</b>	All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders.
<b>RFP DOWNLOADING</b>	<p>This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> free of charge.</p> <p>To download RFP and Annexures:</p> <ul style="list-style-type: none"> <li>• Click on "Tender Opportunities";</li> <li>• Select "Advertised Tenders";</li> <li>• In the "Department" box, select Transnet SOC Ltd.</li> </ul> <p>Once the tender has been in the list, click on the "Tender documents" tab and process to download all uploaded documents.</p> <p>The RFP may also be downloaded from the Transnet Portal at <a href="https://transnetetenders.azurewebsites.net">https://transnetetenders.azurewebsites.net</a> (please use <b>Google Chrome</b> to access Transnet link/site) free of charge (refer to section 2, paragraph 3 below for detailed steps)</p>
<b>COMMUNICATION</b>	<p>Transnet will publish the outcome of this RFP on the National Treasury e-tender portal and Transnet website with 10 days after the award has been finalised. All unsuccessful bidders have a right to request for reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form</p> <p>Any addenda to the RFP or clarifications will be published on the e-tender portal and Transnet website. Bidders are required to check the e-tender portal or Transnet website prior to finalising their bid submissions for any changes or clarifications to the RFP.</p> <p>Transnet will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.</p>
<b>BRIEFING SESSION</b>	<p>Yes, Non-compulsory Briefing session will be held on <b>30 November 2023</b> at 10:00am</p> <p><a href="#">Click here to join the meeting</a></p> <p>Refer to paragraph 2 for details.</p>
<b>CLOSING DATE</b>	<p><b>14:00 on Wednesday 13 December 2023</b></p> <p>Bidders must ensure that bids are uploaded timeously onto the system. Generally, if a bid is late, it will not be accepted for consideration.</p> <p><b>Bidders 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 Bidder can upload 30mb per upload and multiple uploads are permitted.</b></p>

<b>VALIDITY PERIOD</b>	<p><b>180 Business Days from Closing Date</b></p> <p>Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.</p> <p>Should a bidder fail to respond to a request for extension of the validity period before it expires, that bidder will be excluded from tender process.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 10.12</p>
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Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

## 2 FORMAL BRIEFING

A non-compulsory RFP briefing will be conducted at **Via Microsoft Team on Thursday 30 November 2023 at 10:00am** [10 O'clock] for a period of  $\pm 2$  (two) hours. The briefing session will start punctually, and information will not be repeated for the benefit of prospective Respondents joining late. Bidders must join the briefing session via this link:

[Click here to join the meeting](#)

- 2.1 Despite the briefing session being non-compulsory, Transnet nevertheless encourages all Respondents to attend. Transnet will not be held responsible if any Respondent who did not attend the **non-compulsory** session subsequently feels disadvantaged as a result thereof.
- 2.2 Respondents are encouraged to bring a copy of the RFP to the RFP briefing.

## 3 PROPOSAL 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/ Portal ([transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net)) Please use **Google Chrome** to access Transnet link/site);
- 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.
- No late submissions will be accepted. The bidder guide can be found on the Transnet Portal [transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net)

#### 4 RFP INSTRUCTIONS

- 4.1 Please sign documents [sign, stamp and date the bottom of each page] before uploading them on the system. The person or persons signing the submission must be legally authorised by the respondent to do so.
- 4.2 All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 4.3 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 4.4 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 12 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

#### 5 JOINT VENTURES OR CONSORTIUMS

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If at the time of the bid submission such a JV or consortium agreement has not been concluded, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

- Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE score card (a consolidated B-BBEE Status Level verification certificate) Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Section 4.1 of the specific goals Claim Form.

## 6 COMMUNICATION

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to [Winile Xhakaza] before **12:00 pm on 08 December 2023**, substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the name of delegated individual (Winile Xhakaza), at email [TNPATenderEnquiriesER@transnet.net](mailto:TNPATenderEnquiriesER@transnet.net) on any matter relating to its RFP Proposal.
- 6.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 6.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.
- 6.5 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
- 6.6 Transnet will publish the outcome of this RFP in the National Treasury e-tender portal and Transnet website with 10 days after the award has been finalised. Respondents are required to check the National Treasury e-tender Portal and Transnet website for the results of the tender process. All unsuccessful bidders have a right to request Transnet to furnish individual reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form

## 7 CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidence. In this regard Respondents 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 related to this RFP or the subsequent contract, written approval must be obtained from Transnet.

## 8 COMPLIANCE

The successful Respondent [hereinafter referred to as the **Service provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

## 9 EMPLOYMENT EQUITY ACT

Respondents must comply with the requirements of the Employment Equity Act 55 of 1998 applicable to it including (but not limited to) Section 53 of the Employment Equity Act.

## 10 DISCLAIMERS

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

- 10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 10.4 award a contract in connection with this Proposal at any time after the RFP's closing date;

- 10.5 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;
- 10.6 split the award of the contract between more than one Service provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 10.7 cancel the bid process;
- 10.8 validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- 10.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 10.10 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 10.11 to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- 10.12 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the outcome of the tender has been published the outcome of the bid process on the National Treasury e-tender Portal and Transnet website. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods at their quoted price.

Note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

## **11 LEGAL REVIEW**

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business. A material deviation from the Standard terms or conditions could result in disqualification.

## **12 SECURITY CLEARANCE**

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the Services and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of **CONFIDENTIAL/ SECRET/TOP SECRET**. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

## **13 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE**

Respondents 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. Respondents must register on the CSD prior to submitting their bids. Business may not be awarded to a Respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD.

**For this purpose, the attached SBD 1 form must be completed and submitted as a Essential returnable document by the closing date and time of the bid.**

**14 TAX COMPLIANCE**

Respondents must be compliant when submitting a proposal to Transnet and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Respondents tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

**Transnet urges its clients, suppliers and the general public to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS:**



**Ethics Helpdesk** (Pty) Ltd.  
Ethics Management System™

**You can choose to be Anonymous or Non-Anonymous on ANY of the platforms**  
**PLEASE RETAIN YOUR REFERENCE NUMBER**

				
	<p><b>AI Voice Bot "Jack"</b> Speak to our AI Voice Chat Bot "JACK", you converse with him like chatting to a human, with the option to record a message and speak to an agent at anytime.</p>	<p><b>What's App</b> Speak to an Agent via What's App.</p>	<p><b>Speak to an Agent</b> Speak to an Agent via the platform with no call or data charge</p>	<p><b>Telegram</b> Speak to an Agent via Telegram</p>

0800 003 056

 086 551 4153

 [reportit@ethicshelpdesk.com](mailto:reportit@ethicshelpdesk.com)

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## SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

### 1 BACKGROUND

The Port of Durban requires the services of a competent Service Provider with a proven track record for the flushing and cleaning of storm – water reticulation system on an “as and when” required basis in the Port of Durban for a period of thirty-six (36) months.

### 2 EXECUTIVE OVERVIEW

Whereas Transnet is seeking a partner(s) to provide solutions for its flushing and cleaning of storm – water reticulation system, it also seeks to improve its current processes for providing these Services to its end user community throughout its locations.

The selected Service provider(s) must share in the mission and business objectives of Transnet. These mutual goals will be met by meeting contractual requirements and new challenges in an environment of teamwork, joint participation, flexibility, innovation and open communications. In this spirit of partnership, Transnet and its Service provider(s) will study the current ways they do business to enhance current practices and support processes and systems. Such a partnership will allow Transnet to reach higher levels of quality, service and profitability.

Specifically, Transnet seeks to benefit from this partnership in the following ways:

- 2.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Service provider’s economies of scale and streamlined service processes.
- 2.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Service provider(s).
- 2.3 Transnet must receive proactive improvements from the Service provider with respect to supply/provision of Services and related processes.
- 2.4 Transnet’s overall competitive advantage must be strengthened by the chosen Service provider’s leading edge technology and service delivery systems.
- 2.5 Transnet end users must be able to rely on the chosen Service provider’s personnel for service enquiries, recommendations and substitutions.
- 2.6 Transnet must reduce costs by streamlining its acquisition of Services, including managed service processes on a Group basis.

### 3 SCOPE OF REQUIREMENTS

Transnet National Ports Authority is calling for proposals from experienced service providers with a proven track record for the flushing and cleaning of storm – water reticulation system on an “as & when” required basis in the Port of Durban for a period of thirty-six (36) months.

Also refer to **Annexure A** for the detailed information.

**4 GREEN ECONOMY / CARBON FOOTPRINT**

Transnet wishes to have an understanding of your company’s position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. Please submit details of your entity’s policies in this regard.

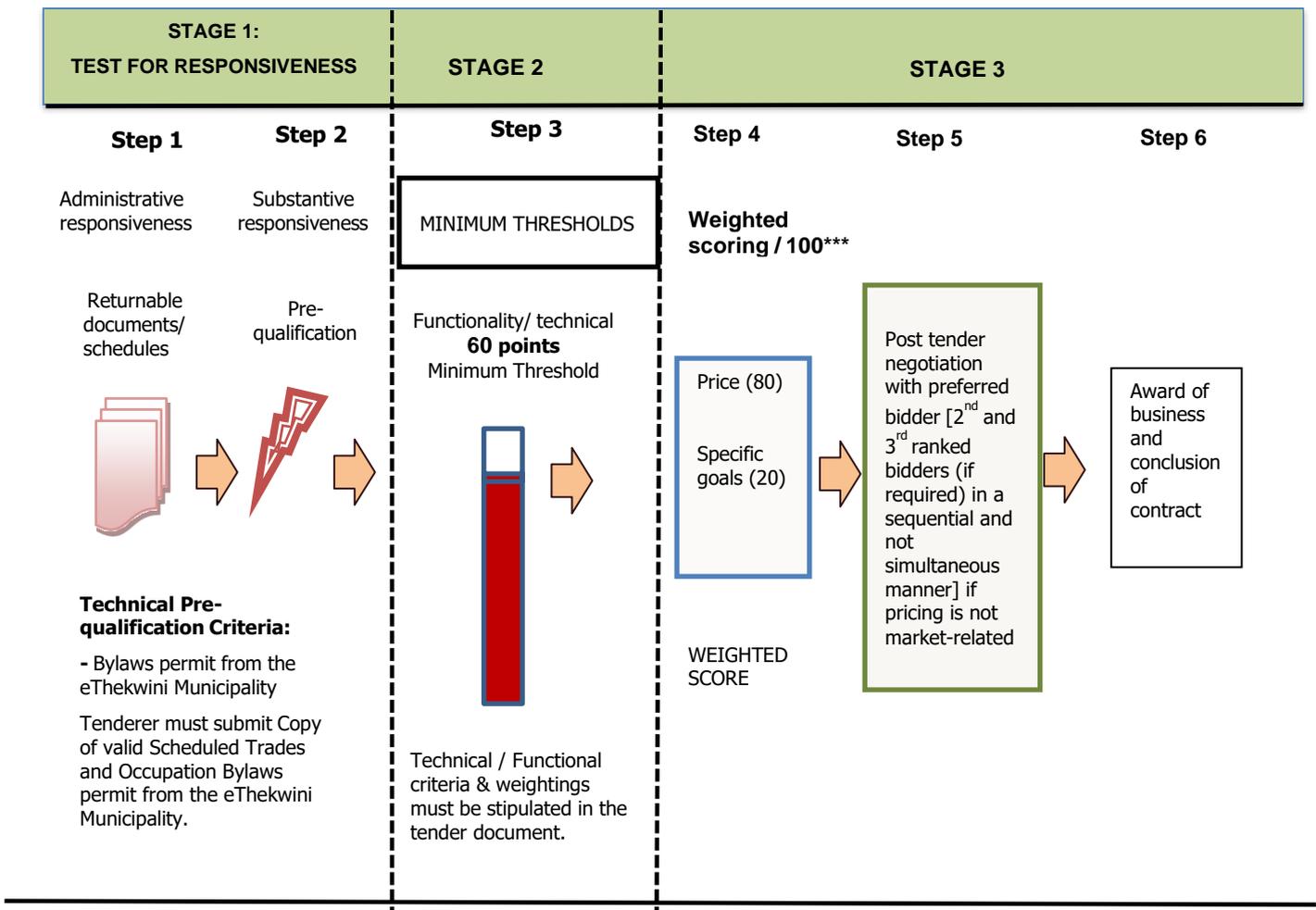
**5 GENERAL SERVICE PROVIDER OBLIGATIONS**

5.1 The Service provider shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

5.2 The Service provider must comply with the requirements stated in this RFP.

**6 EVALUATION METHODOLOGY**

Transnet will utilise the following methodology and criteria in selecting a preferred Service provider:



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different steps of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).

**6.1 STEP ONE: Test for Administrative Responsiveness**

The test for administrative responsiveness will include the following:

<b>Administrative responsiveness check</b>	<b>RFP Reference</b>
<ul style="list-style-type: none"> <li>Whether the Bid has been lodged on time</li> </ul>	Section 1 paragraph 3
<ul style="list-style-type: none"> <li>Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time</li> </ul>	Section 5
<ul style="list-style-type: none"> <li>Verify the validity of all returnable documents</li> </ul>	Section 5
<ul style="list-style-type: none"> <li>Verify if the Bid document has been duly signed by the authorised respondent</li> </ul>	All sections

**The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification**

**6.2 STEP TWO: Test for Substantive Responsiveness to RFP**

The test for substantive responsiveness to this RFP will include the following:

<b>Check for substantive responsiveness</b>	<b>RFP Reference</b>
<ul style="list-style-type: none"> <li>Whether any general and legislation qualification criteria set by Transnet, have been met</li> </ul>	All sections including: Section 2 paragraphs, 2.2, 6, 11.2, General Bid Conditions clause 20
<ul style="list-style-type: none"> <li>Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule</li> </ul>	Section 4
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	All Sections
<ul style="list-style-type: none"> <li>Whether any Technical Pre-qualification Criteria requirements have been met as follows: <ul style="list-style-type: none"> <li>- Bylaws permit from the eThekweni Municipality</li> </ul> Tenderer must submit Copy of valid Scheduled Trades and Occupation Bylaws permit from the eThekweni Municipality. </li> </ul>	Section 3 – Scope of Work Annexure A

**The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation.**

**6.3 STEP THREE: Minimum Threshold 60 points for Technical Criteria**

The test for the Technical and Functional threshold will include the following:

Eligibility Criteria	Required Information		Proof of accreditation submitted	
<b>Bylaws</b>	Tenderer must submit Copy of valid Scheduled Trades and Occupation Bylaws permit from the eThekweni Municipality.		<b>Yes</b>	<b>No</b>
Criteria	Required Information	Sub-Criteria/ Compliance Measure	Applicable score	Max scores
<b>1. Company Experience</b>	<p><b>Company Experience</b></p> <p>References</p> <p>Tenderer must submit traceable references i.e., reference letter / completion certificate indicating the Company experience in stormwater flushing and cleaning of resultant waste. References must be on the letterhead of company that work was done, references must include the following required information:</p> <p>(1) The description of the project</p> <p>(2) Client Company name</p> <p>(3) Client contact details (email and telephone)</p> <p>(4) Project start and finish dates</p>	<p><b>0</b>= No references submitted, or not relevant to stormwater jetting or not all required information submitted</p> <p><b>20</b>= The Tenderer has submitted one (1) reference letter/completion certificate that is relevant to stormwater jetting.</p> <p><b>40</b>= The Tenderer has submitted two (2) reference letters/completion certificates that are relevant to stormwater jetting.</p> <p><b>60</b>= The Tenderer has submitted three (3) reference letters/completion certificates that are relevant to stormwater jetting.</p> <p><b>80</b>= The Tenderer has submitted four (4) to five (5) reference letters/completion certificates that are relevant to stormwater jetting.</p> <p><b>100</b>= The Tenderer has submitted six (6) or more reference letters / completion certificates that are relevant to stormwater jetting</p>	<p>0</p> <p>4</p> <p>8</p> <p>12</p> <p>16</p> <p>20</p>	<p><b>20</b></p>
<b>2. key personnel</b>	<p><b>Qualification &amp; CVs of Key Personnel</b></p> <p>Tenderer to submit CVs with qualification and contactable references indicating minimum of three (3) years' experience of each key personnel list below:</p> <p>All C.V's submitted must include certificate of qualification.</p> <p><b>Key Personnel</b></p>	<p><b>0</b>= No Response/ CVs submitted not work related/ years of experience not indicated/CV submitted without certificate of qualification or below 3 years.</p> <p><b>20</b>= One (1) key personnel member CVs submitted with three (3) years' experience.</p> <p><b>40</b> = Two (2) key personnel members CVs submitted with three (3) years' experience</p>	<p>0</p> <p>2</p> <p>4</p>	<p><b>10</b></p>

	<p>(1) CV of Project Manager with a minimum NQF 6 qualification</p> <p>(2) CV of Site Foreman with flushing and cleaning of stormwater system experience or training in spill response</p> <p>(3) CV of Safety Officer (SACPCMP) registered</p>	<p><b>60</b> = Three (3) key personnel members CVs submitted with three (3) years' experience.</p>	<p>6</p>	
		<p><b>80</b>= Three (3) key personnel members CVs submitted with four (4) years' experience.</p>	<p>8</p>	
		<p><b>100</b>= Three (3) key personnel members CVs submitted with five (5) or more years' experience.</p>	<p>10</p>	
<p><b>3. Confined space certificate</b></p>	<p>The Tenderer must submit proof of the employees training certificate for working in a confined space, all certificates must be dated and valid.</p>	<p><b>0</b>= No certificate submitted.</p>	<p>0</p>	
		<p><b>20</b>= The Tenderer has submitted one (1) valid training certificate for working in confined spaces.</p>	<p>2</p>	
		<p><b>40</b>= The Tenderer has submitted two (2) valid training certificates for working in confined spaces.</p>	<p>4</p>	
		<p><b>60</b>= The Tenderer has submitted three (3) valid training certificates for working in confined spaces.</p>	<p>6</p>	<p><b>10</b></p>
		<p><b>80</b>= The Tenderer has submitted four (4) valid training certificates for working in confined spaces.</p>	<p>8</p>	
		<p><b>100</b>= The Tenderer has submitted five (5) valid training certificates for working in confined spaces.</p>	<p>10</p>	
<p><b>4. Water Jetting certificate</b></p>	<p>The Tenderer must submit proof of the employees training certificate for Water Jetting operating Training certificate, all certificates must be dated and valid</p>	<p><b>0</b>= No certificate submitted</p>	<p>0</p>	
		<p><b>20</b>= Tenderer has submitted one (1) training certificate Water Jetting operating</p>	<p>2</p>	
		<p><b>40</b>= Tenderer has submitted two (2) training certificates for Water Jetting operating</p>	<p>4</p>	<p><b>10</b></p>
		<p><b>60</b>= Tenderer has submitted three (3) training certificates for handling hazardous materials</p>	<p>6</p>	

		<b>80</b> = Tenderer has submitted four (4) training certificates for Water Jetting operating	8	
		<b>100</b> = Tenderer has submitted five (5) training certificates for Water Jetting operating	10	
<b>5. Availability of equipment</b>  (Vacuum tanker & jetting machine)	The bidder must have proof of key plant and equipment owned/leased by the bidder (Vacuum tanker /jetting machine).  NB: Proof of ownership/lease agreement accompanied by the letter indicating lead time must be attached to claim points	<b>0</b> = No proof of ownership/leasing agreement of vacuum/jetting machine provided	0	<b>10</b>
		<b>20</b> = Only leasing agreement of Jetting or vacuum machine provided.	2	
		<b>40</b> = Only leasing agreement of Jetting and vacuum machine provided.	4	
		<b>60</b> = Proof of ownership for Vacuum and Jetting machine is provided.	6	
		<b>80</b> = Proof of ownership with proof of maintenance plan/service history for Jetting machine.	8	
		<b>100</b> = Proof of ownership with proof of maintenance plan/service history for Jetting and vacuum machine.	10	
<b>6. Safety</b>	<b>Method Statement</b>  documents or required information to ensure SHE compliance in terms of Scope of work which includes these elements:  1.Scope of the work and hazards identified are aligned to risk assessment.  2.Minimum Personal Protective Equipment (PPE) required to complete the job	<b>0</b> = No response or none of the elements met or Information is generic.	0	<b>10</b>
		<b>20</b> = The Tenderer has submitted only one (1) element.	2	
		<b>40</b> = The Tenderer has submitted only two (2) elements.	4	
		<b>60</b> = The Tenderer has submitted any three (3) elements.	6	
		<b>80</b> = The Tenderer has submitted only four (4) elements.	8	

	<p>3. Personnel required and responsibilities</p> <p>4. Resources and equipment required</p> <p>5. Emergency procedures</p>	<p>100= The Tenderer has submitted all 5 elements.</p>	<p>10</p>	
	<p><b>Risk Assessment</b></p> <p>The bidder to submit a detailed Risk Assessment. The information to ensure SHE compliance in terms of Scope of work which <b>includes these elements:</b></p> <p>1. Identify the risks and hazards to which persons may be exposed to.</p> <p>2. Analysis and evaluation of identified risks/ hazards.</p> <p>3. Measures to mitigate, reduce or control the risks and hazards identified with roles and responsibilities for implementation and control.</p> <p>4. Defined Risk Assessment methodology in which risks are quantified.</p> <p>5. Signed Risk assessment by 16.2 or Construction Manager or Construction Supervisor. or Construction Supervisor.</p>	<p>0= No response or none of the elements met or Information is generic.</p> <p>20= The Tenderer has submitted only one (1) element.</p> <p>40= The Tenderer has submitted only two (2) elements.</p> <p>60= The Tenderer has submitted only three (3) elements.</p> <p>80= The Tenderer has submitted only four (4) elements.</p> <p>100= The Tenderer has submitted all five (5) elements.</p>	<p>0</p> <p>2</p> <p>4</p> <p>6</p> <p>8</p> <p>10</p>	<p><b>10</b></p>
	<p><b>Policy, Organisation and Safety and Health Management Involvement</b></p> <p>The Tenderer must submit a policy which includes the following elements:</p> <p>1. Safety and Health Plan</p> <p>2. Signed and dated Safety and Health Policy copy signed by the Chief Executive Officer / Managing Director</p> <p>3. Signed OHS Act 16.2 Appointee Letter</p>	<p>0= No response or none of the elements met or Information is generic.</p> <p>20= The Tenderer has submitted only one (1) element.</p> <p>40= The Tenderer has submitted only two (2) elements.</p> <p>60= The Tenderer has submitted any three (3) elements.</p> <p>80= The Tenderer has submitted only four (4) elements.</p>	<p>0</p> <p>2</p> <p>4</p> <p>6</p> <p>8</p>	<p><b>10</b></p>

	<p>4.Signed relevant SHE legal appointees in terms of Construction Regulations applicable to the Project:</p> <ul style="list-style-type: none"> <li>• SHE Representatives</li> <li>• First Aiders</li> <li>• Risk Assessors</li> </ul> <p>5.Company Safety, Health and Environmental organogram – include names of Legal appointments</p>	<p><b>100</b>= The Tenderer has submitted all five (5) elements.</p>	<p>10</p>	
<p><b>7. Environment</b></p>	<p><b>Environmental Management Plan (EMP):</b></p> <p>The tenderer shall provide a detailed Environment Management Plan (EMP) specific to the scope of the project. The EMP must identify the possible environmental impacts of the proposed activity; and include measures to minimise, mitigate and manage these impacts. The EMP must include but not limited to the following elements:</p> <ol style="list-style-type: none"> <li>1. Dust Management.</li> <li>2. Noise control.</li> <li>3. Management of hazardous chemical and flammable substances.</li> <li>4. Pollution control and spill response.</li> <li>5. Waste Management.</li> <li>6. Environmental education and awareness.</li> <li>7. Housekeeping.</li> <li>8. Environmental Laws and Regulations relevant to the project.</li> <li>9. Occurrence management.</li> <li>10. Management responsibilities.</li> <li>11. Protection of sensitive/ no-go areas.</li> <li>12. Monitoring and reporting.</li> </ol>	<p><b>0</b>= Environmental Management Plan (EMP) for the proposed activities/ key elements not submitted</p> <p><b>20</b>= The tenderer has submitted an EMP with three (3) or less key elements met.</p> <p><b>40</b>= The tenderer has submitted an EMP with four (4) to seven (7) key elements met.</p> <p><b>60</b>= The tenderer has submitted an EMP with eight (8) to nine (9) key elements met.</p> <p><b>80</b>= The tenderer has submitted an EMP with ten (10) to twelve (12) key elements met.</p> <p><b>100</b>= The tenderer has submitted an EMP with all thirteen (13) key elements met.</p>	<p>0</p> <p>2</p> <p>4</p> <p>6</p> <p>8</p> <p>10</p>	<p><b>10</b></p>

	<p>13. The EMP must include an environmental policy signed by Top Management which, as a minimum:</p> <ul style="list-style-type: none"> <li>- Is appropriate given the purpose and context of the tenderer’s business.</li> <li>- Includes a commitment to fulfil the tenderer’s environmental compliance (legal) obligations.</li> <li>- Includes a commitment to the protection of the environment, including prevention of pollution.</li> <li>- Provides framework for setting environmental objectives; and</li> <li>- Includes a commitment to continual improvement.</li> </ul>			
	<b>TOTAL WEIGHT</b>			<b>100</b>

Respondents are to note that Transnet will round off final technical scores to the nearest 2 (two) decimal places for the purposes of determining whether the technical threshold has been met.

**The minimum threshold for technical/functionality [Step Three] must be met or exceeded for a Respondent’s Proposal to progress to Step Four for final evaluation**

**6.4 STEP FOUR: Evaluation and Final Weighted Scoring**

a) **Price Criteria** [Weighted score 80 points]:

Evaluation Criteria	RFP Reference
<ul style="list-style-type: none"> <li>• Commercial offer</li> </ul>	Section 4

Transnet will utilise the following formula in its evaluation of Price:

$$PS = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where:

Ps = Score for the Bid under consideration

Pt = Price of Bid under consideration  
Pmin = Price of lowest acceptable Bid

- b) **Specific Goals** [Weighted score 20 points]
- Specific goals preference points claim form
  - Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Section 4.1 of the specific goals Claim Form.

#### 6.5 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	60

Evaluation Criteria	Final Weighted Scores
Price	80
Specific goals - Scorecard	20
<b>TOTAL SCORE:</b>	<b>100</b>

#### 6.6 STEP FIVE: Post Tender Negotiations (if applicable)

- Respondents are to note that Transnet may not award a contract if the price offered is not market-related. In this regard, Transnet reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
  - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
  - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.
- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.
- Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

#### 6.7 STEP SIX: Award of business and conclusion of contract

- Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).
- A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

**SECTION 4: PRICING AND DELIVERY SCHEDULE**

Respondents are required to complete the table below:

<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Estimated Quantities</b>	<b>Rate</b>	<b>Total (Rate multiplied by Estimated Quantities)</b>
<b>1</b>	<b>Flush, clean and removal of resultant waste including sand, rubble and debris collection in the stormwater reticulation system, drains, manholes, catch pits, channels and pipes located around the Port of Durban as and when required.</b>				
1.1	Flushing, cleaning and disposal of pipes greater than 110mm but less than 200mm in diameter	m	15000		
1.2	Flushing, cleaning and disposal of pipes greater than 200mm but less than 500mm in diameter	m	80000		
1.3	Flushing, cleaning and disposal of pipes greater than 500mm but less than 1000mm in diameter	m	15000		
<b>2</b>	<b>Video survey of selected cleaned Stormwater and Sewer drains or problematic lines.</b>				
2.1	Video survey of pipes less than 500mm in diameter	m	1000		
2.2	Video survey of pipes above 500mm in diameter	m	1000		
<b>3.</b>	<b>Water samples &amp; Lab test</b>				
3.1	Lab test for Hydrocarbons screening, Phenol, Microbiological Determinants and Acid screening	No.	15		
<b>4.</b>	<b>Safety File (file to be updated yearly) permits</b>	Sum.	1		
	<b>Total excluding VAT</b>				
<b>Total price for 36 Months</b>					
<b>Total Price for Year 1 (Y1) = Grand Total ÷ 3</b>					
<b>Total Price for year (Y2) = (Total Price for year 1 + CPI)</b>					
<b>Total Price for year (Y3) = (Total Price for year 2 + CPI)</b>					
<b>Total contract value excluding VAT = Y1 + Y2 + Y3</b>					
<b>VAT @15%</b>					
<b>Total contract value including VAT</b>					

Respondent's Signature

Date &amp; Company Stamp

- For the first year’s value, we divide total value by 3 years. Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for a period of 12 months.
- Thereafter, adjustment to contract prices for year two (2) and year three (3) proposed by the supplier will be adjusted as per the current rate that will be published by Stats SA, Statistical Release P0141.

Respondents are to note that Transnet will round off final pricing scores to the nearest 2 (two) decimal places.

**Notes to Pricing:**

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may-
- (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
  - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP;
  - (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.

If a market-related price is not agreed with the Respondent scoring the third highest points, Transnet must cancel the RFP.

- b) Prices must be quoted in South African Rand inclusive of VAT.
- c) Any disbursement not specifically priced for will not be considered/accepted by Transnet.
- d) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- e) Quantities given are estimates only. Any orders resulting from this RFP will be on an “as and when required” basis.
- f) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- g) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed a period of 12 months, subject thereafter to adjustment (i.e. after the initial period of 12 months. [Not to be confused with bid validity period Section 2, clause 1]

<b>YES</b>	

- h) Adjustment to contract prices will be applied for on an annual basis for year 2 and year 3 as per the current rate that will be published by Stats SA, Statistical Release P0141.

**DISCLOSURE OF CONTRACT INFORMATION****PRICES TENDERED**

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices of the successful and unsuccessful Respondents inter alia on the National Treasury e-Tender Publication Portal, ([www.etenders.gov.za](http://www.etenders.gov.za)), as required per National Treasury Instruction Note 01 of 2015/2016.

**JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS**

Transnet may also be required to disclose information relating to the subsequent contract i.e. the name of the company, services provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

**DOMESTIC PROMINENT INFLUENTIAL PERSONS (DPIP) OR FOREIGN PROMINENT PUBLIC OFFICIALS (FPPO)**

Transnet is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Transnet shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website <https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP>, Respondents are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.						
<b>Is the Respondent</b> (Complete with a "Yes" or "No")						
<b>A DPIP/FPPO</b>		<b>Closely Related to a DPIP/FPPO</b>		<b>Closely Associated to a DPIP/FPPO</b>		
<b>List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.</b>						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

Respondents declaring a commercial relationship with a DPIIP or FPPO are to note that Transnet is required to annually publish on its website a list of all business contracts entered into with DPIIP or FPPO. This list will include successful Respondents, if applicable.

**1. "AS AND WHEN REQUIRED" CONTRACTS**

- 1.1 Purchase orders will be placed on the Service provider from time to time as and when Services are required.
- 1.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.
- 1.3 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:  
  
\_\_\_\_\_
- 1.4 Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays.

**2. SERVICE LEVELS**

- 2.1 An experienced national account representative(s) is required to work with Transnet’s procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 2.2 Transnet will have quarterly reviews with the Service provider’s account representative on an on-going basis.
- 2.3 Transnet reserves the right to request that any member of the Service provider’s team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 2.4 The Service provider must provide a telephone number for customer service calls.
- 2.5 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days’ notice to the Service provider of its intention to do so.

**Acceptance of Service Levels:**

<b>YES</b>	
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<b>NO</b>	
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**3. RISK**

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Transnet pertaining to potential non-performance by the Respondent, in relation to:

**3.1 Quality and specification of Services delivered:**

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**3.2 Continuity of supply:**

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**3.3 Compliance with the Occupational Health and Safety Act, 85 of 1993:**

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SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_  
Name \_\_\_\_\_

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

2 \_\_\_\_\_  
Name \_\_\_\_\_

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

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS**

I/We \_\_\_\_\_  
[name of entity, company, close corporation or partnership] of [full address]

\_\_\_\_\_ carrying on business trading/operating as \_\_\_\_\_

represented by \_\_\_\_\_

in my capacity as \_\_\_\_\_

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated \_\_\_\_\_ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply/provide the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet’s:

- (i) Master Agreement (which may be subject to amendment at Transnet’s discretion if applicable);
- (ii) General Bid Conditions; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet’s acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of award [the **Letter of Award**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet’s Letter of Award, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the provision of Services within 2 [two] weeks thereafter,

\_\_\_\_\_  
Respondent’s Signature

\_\_\_\_\_  
Date & Company Stamp

Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

Furthermore, I/we agree to a penalty clause/s which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Services due to non-performance by ourselves, , etc.

I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

### **ADDRESS FOR NOTICES**

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The domicilium citandi et executandi shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its domicilium citandi et executandi hereunder:

Name of Entity: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Address: \_\_\_\_\_

### **NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [**the Service provider**] will be informed of the acceptance of its Proposal. Transnet will also publish the outcome of the tender, including successful and unsuccessful bidders, in the National Treasury e-tender portal. Any unsuccessful bidder has a right to request reasons for the bid not to be successful and Transnet has a duty to provide those reasons on receipt of the request from the bidder.

### **VALIDITY PERIOD**

Transnet requires a validity period of 180 Business Days [from closing date] against this RFP, excluding the first day and including the last day.

### **NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [**C.C.**] on whose behalf the RFP is submitted.

(i) Registration number of company / C.C. \_\_\_\_\_

(ii) Registered name of company / C.C. \_\_\_\_\_

(iii) Full name(s) of director/member(s)                      Address/Addresses                      ID Number(s)

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**RETURNABLE DOCUMENTS**

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<b>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFP <u>will</u> result in a Respondent's disqualification.</b>
Returnable Documents Used for Scoring	<b>Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.</b>
Essential Returnable Documents	<b>Failure to provide essential Returnable Documents <u>will</u> result in Transnet affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.</b>

**All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.**

**a) Mandatory Returnable Documents**

Respondents are required to submit with their bid submissions the following **Mandatory Returnable Documents**, and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

<b>MANDATORY RETURNABLE DOCUMENTS</b>	<b>SUBMITTED [Yes/No]</b>
SECTION 4 : Pricing and Delivery Schedule	
- Bylaws permit from the eThekweni Municipality Tenderer must submit Copy of valid Scheduled Trades and Occupation Bylaws permit from the eThekweni Municipality.	

**b) Returnable Documents Used for Scoring**

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b>RETURNABLE DOCUMENTS USED FOR SCORING</b>	<b>SUBMITTED [Yes or No]</b>
Respondent's valid proof of evidence to claim points for compliance with Specific Goals' requirements as stipulated in Section 9 of this RFP	
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP (Valid B-BBEE certificate or Sworn- Affidavit as per DTIC guidelines)	
Company Experience	
Management & CVs of Key Personnel	
Proof of availability of equipment	
Method Statement, Risk Assessment and Policy, Organisation and Safety and Health Management Involvement for Compliance to Health and Safety	
Environmental Management Plan (EMP)	

**c) Essential Returnable Documents:**

Over and the above the requirements of section (a) and (b) mentioned above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>	<b>SUBMITTED [Yes or No]</b>
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
Section 1: SBD1 Form	
SECTION 5 : Proposal Form and List of Returnable documents	
SECTION 6 : Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7 : RFP Declaration and Breach of Law Form	
SECTION 8: RFP Clarification Request Form	
SECTION 9: Specific Goals Points Claim Form	
SECTION 10: Protection of Personal Information	

**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [**the Agreement**] and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

---

 Respondent's Signature

---

 Date & Company Stamp

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, MASTER AGREEMENT & APPLICABLE DOCUMENTS**

**By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such term or condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:**

1	Transnet’s General Bid Conditions
2	Master Agreement and schedule 1- schedule of requirements
3	Transnet’s Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications

**Note:** Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor onto the Transnet vendor master database.

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. 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. A material deviation from any term or condition may result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond on, before submitting the bid. **The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.**

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

\_\_\_\_\_  
Respondent’s Signature

\_\_\_\_\_  
Date & Company Stamp

**SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM**

NAME OF ENTITY: \_\_\_\_\_

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

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];
3. We have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Services as well as Transnet information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. At no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner;
6. We have complied with all obligations of the Bidder/Supplier as indicated in the Transnet Supplier Integrity which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Transnet;
7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid;
8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of Transnet;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Transnet in the past 10 years. I further declare that if they were a former employee or board member of Transnet in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFP; and
10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

\_\_\_\_\_  
Respondent's Signature\_\_\_\_\_  
Date & Company Stamp

FULL NAME OF OWNER/MEMBER/DIRECTOR/  
 PARTNER/SHAREHOLDER/EMPLOYEE:

ADDRESS:

---



---

Indicate nature of relationship with Transnet:

---



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**[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet. Information provided in the declarations may be used by Transnet and/or its affiliates to verify the correctness of the information provided]**

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

**BIDDER’S DISCLOSURE (SBD4)**

**12 PURPOSE OF THE FORM**

12.1 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.

12.2 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.

**13 Bidder’s declaration**

13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state?

**YES/NO**

13.1.1. 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 State institution

<sup>1</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.


13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

**YES/NO**

13.2.1. If so, furnish particulars:

.....  
 .....

13.3 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 not they are bidding for this contract?

**YES/NO**

13.3.1. If so, furnish particulars:

.....  
 .....

**14 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:

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 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>2</sup> will not be construed as collusive bidding.

14.4 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,

<sup>2</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.

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.

14.5 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.

14.6 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.

14.7 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 12, 13 and 14 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.

#### **BREACH OF LAW**

We further hereby certify that I/we (the bidding entity and/or any of its directors, members or partners) **have/have not been** [delete as applicable] 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 Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

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 Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

For and on behalf of	AS WITNESS:
duly authorised hereto	
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

\_\_\_\_\_  
 Respondent's Signature

\_\_\_\_\_  
 Date & Company Stamp



**SECTION 9 : SPECIFIC GOALS 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 specific goals Contribution. Transnet will award preference points to companies who provide valid proof of evidence of as per the table below.

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF SPECIFIC GOALS, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.**

**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;
- (b) B-BBEE Status Level of Contributor; and
- (c) Any other specific goal determined in Transnet preferential procurement policy.

**1.4** The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>SPECIFIC GOALS FOR THIS TENDER</b>	<b>20</b>
B-BBEE Status Level of Contributor 1 or 2 (10.00)	
30% Black women Owned entities (5.00)	
51% Black owned EMEs/ QSEs (5.00)	
Non-Compliant and/or B-BBEE Level 3-8 contributors (0.00)	
<b>Total points for Price and Specific Goals must not exceed</b>	<b>100</b>

**1.5** Failure on the part of a bidder to submit proof of evidence for any of the specific goals together with the bid will be interpreted to mean that preference points 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) **"Ownership"** means 51% black ownership
- (e) **"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;
- (f) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (h) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (i) **"Price"** includes all applicable taxes less all unconditional discounts.
- (j) "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.
- (k) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (l) **"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.
- (m) **"Specific goals"** means targeted advancement areas or categories of persons or groups either previously disadvantaged or falling within the scope of the Reconstruction and Development Programme identified by Transnet to be given preference in allocation of procurement contracts in line with section 2(1) of the PPPFA.

### 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:

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

Where

- $P_s$  = Points scored for comparative price of bid under consideration
- $P_t$  = Comparative price of bid under consideration
- $P_{\min}$  = Comparative price of lowest acceptable bid

In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, the following preference points must be awarded to a bidder who provides the relevant required evidence for claiming points

Selected Specific Goal	Number of points allocated (80/20)
B-BBEE Level of contributor (1 or 2)	10.00
51% Black owned EMEs/QSEs	5.00
30% Black women Owned entities	5.00
Non-Compliant and/or B-BBEE Level 3-8 contributors	0

**4. EVIDENCE REQUIRED FOR CLAIMING SPECIFIC GOALS**

**4.1** In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, preference points must be awarded to a bidder for providing evidence in accordance with the table below:

Specific Goals	Acceptable Evidence
B-BBEE	B-BBEE Certificate / Sworn- Affidavit (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
30% Black Women Owned Entities	B-BBEE Certificate / Sworn- Affidavit (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
EME or QSE 51% Black Owned	B-BBEE Certificate / Sworn-Affidavit

**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>3</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

**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 status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

**4.5** A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents 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 status level 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 Transnet or 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	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

**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	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with any of the following enterprises:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

**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

- Close corporation
- Company
- (Pty) Limited
- [TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional Service provider
- Other 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, qualifies 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 or any other matter required in terms of the Preferential Procurement Regulations, 2022 which will affect or has affected the evaluation of a bid 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.

<p><b>WITNESSES</b></p> <p>1. ....</p> <p>2. ....</p>
---

<p>.....</p> <p><b>SIGNATURE(S) OF BIDDERS(S)</b></p> <p>DATE: .....</p> <p>ADDRESS.....</p>
--

**SECTION 10: PROTECTION OF PERSONAL INFORMATION**

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 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. Transnet will process all information by the Respondent 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.
3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is “Transnet” and the Data subject is the “Respondent”. Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information 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.
4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
6. Transnet further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.
8. Transnet 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 this RFP (physically, through a computer or any other form of electronic communication).
9. Transnet shall notify the Respondent in writing of any unauthorised access to information, 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 Respondent must

---

Respondent's Signature

---

Date & Company Stamp

take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet’s possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

**Respondents are required to provide consent below:**

<b>YES</b>		<b>NO</b>	
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12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject’s personal information included in its submission and thereby indemnifying Transnet against 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 the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent’s authorised representative: \_\_\_\_\_

Should a Respondent have any complaints or objections to processing of its personal information, by Transnet, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

# **ANNEXURE A - SCOPE OF SERVICES**

**TRANSNET NATIONAL PORTS AUTHORITY**  
**WORK SPECIFICATION**  
**FLUSHING AND CLEANING OF STORMWATER RETICULATION SYSTEMS "AS & WHEN"**  
**REQUIRED IN THE PORT OF DURBAN**

**1. SCOPE OF WORK**

The purpose of this contract "Work" shall include the flushing, cleaning, and removal of resultant waste collected from the stormwater reticulation system as and when required around the Port of Durban.

**2. BACKGROUND**

Stormwater drains need to be cleaned and maintained due to rubble and debris that block stormwater system. During heavy pours of rain, drains get blocked up resulting in pools of water on the road (water ponds).

**3. DURATION OF CONTRACT**

The contract period will be 36 months "as and when required" from the date of the contractor being notified of the acceptance of this tender or the monetary value is reached whichever comes first.

**4. SUPERVISION**

Tenderer or a responsible person empowered to act for him shall be constantly on the site to supervise and receive the instructions of the Engineer.

**5. TO BE SUPPLIED BY THE CONTRACTOR**

Tenderer shall supply all necessary material, labor, tools, plant, PPE, demarcating signage skips including waste disposal and transport required for the proper completion of the works. Safety plan must be provided showing how safety will be managed.

**6. TO BE SUPPLIED BY TRANSNET NATIONAL PORTS AUTHORITY**

Transnet National Ports Authority will supply the necessary on-site quality control and supervision.

**7. INFORMATION TO BE OBTAINED ON SITE**

The tenderer shall visit the site of the proposed work and acquaint themselves with the nature of the work, the conditions under which the work is to be performed, means of access to the site, any limitations or other authorities and in general with all matters that may influence or affect the contract and shall be deemed to have allowed in his tender for any additional cost involved due to the foregoing, as no claims for any extras in connection with the position or nature of the work will be entertained.

**TRANSNET NATIONAL PORTS AUTHORITY**  
**WORK SPECIFICATION**  
**FLUSHING AND CLEANING OF STORMWATER RETICULATION SYSTEMS "AS & WHEN"**  
**REQUIRED IN THE PORT OF DURBAN**

**8. ACT 85 OF 1993**

**8.1 HANDING OVER SITE TO THE CONTRACTOR**

For the purposes of the Occupational Health and Safety Act 1993 (Act No 85 of 1993) the site (place of work) is transferred for the duration of the contract to the control of the Contractor as if it were his/her property. As employer he is in every respect responsible for the compliance of the provision of this Act, as well as the application of General Administration Regulations 13 to the employees of Transnet National Ports Authority who visit the site. All works/contractors will be subject to the Act and control of the relevant Transnet National Ports Authority Risk Official.

**8.2 SPECIAL REQUIREMENTS**

Service provider shall pay special attention and compliance to Transnet National Ports Authority SHE Specification, a copy of which is included with this tender. Contractor to also submit a SHE files to risk department for assessment and approval.

**8.3 SAFETY HEALTH AND ENVIRONMENT FILE REQUIREMENTS**

**SHE File is to be kept on site at all times. The file as to contain amongst others:**

- ❖ Principal Contractors Organogram
- ❖ Letter Of Good Standing with Compensation Fund
- ❖ Notification Letter of Construction Work ~ Department of Labor (If Applicable)
- ❖ Appointments
- ❖ Induction: Employees and Visitors: Staff Medical Certificates
- ❖ Principal Contractor's SHEQ Policy
- ❖ Health & Safety Plan, Integrated Legal Register, Client Specification
- ❖ Fall Protection Plan (If Applicable)
- ❖ Risk Assessments: Method Statements: Safe Operating Procedures
- ❖ Incidents / Accidents Register and Investigation Reports
- ❖ Health And Safety Training Records - Induction Records and Toolbox Talks
- ❖ Emergency Contact Telephone Numbers
- ❖ Business Continuity Plan Including Emergency Plan
- ❖ Documented Proof of Daily Toolbox Safety Talks/ DSTI
- ❖ Inspections Checklist
- ❖ All Registers
- ❖ Welfare Facilities
- ❖ Electrical Compliance
- ❖ Mandatary Agreement
- ❖ Communication Plan
- ❖ Training Records and Competency Certificates
- ❖ General (Section 37(2), Site Access Certificate

**TRANSNET NATIONAL PORTS AUTHORITY**  
**WORK SPECIFICATION**  
**FLUSHING AND CLEANING OF STORMWATER RETICULATION SYSTEMS "AS & WHEN"**  
**REQUIRED IN THE PORT OF DURBAN**

**8.4 ENVIRONMENTAL MANAGEMENT PLAN**

**The EMP must include, but not limited to the following sections detailing the environmental risks/possible impacts and management controls (mitigation measures) pertaining to the risks listed in the section:**

- Site establishment including contractor's site camp.
- Protection of sensitive/no-go areas.
- Management of hazardous chemicals and flammable substances.
- Pollution control & Spill response.
- Waste Management.
- Environmental education and awareness.
- Protection of marine species and birds.
- Removal of project waste and debris from the marina waters.
- Decommissioning of site camp.
- Monitoring and auditing
- Record keeping.
- The sample must be analyzed at a SANAS Accredited facility.
- The waste must be managed, classified, assessed for disposal and disposed in terms of the following:
  - National Environmental Management Waste Act (Act 59 of 2008);
  - Waste Classification and Management Regulations (No.R.634).
  - National Norms and Standards for the assessment of waste for landfill disposal (No.R.635)
  - National Norms and Standards for disposal of waste to land (No.R.636)
  - Other applicable environmental laws, legislation, and by-laws.

**9. CLEARING OF SITE**

All excess and discarded material shall be disposed of at a designated skip located at site. The service provider must provide and ensure while working on site the discarded material shall be placed in the waste container or skip to avoid ground or water pollution. The work will not be deemed to be complete unless the site is cleared to the satisfaction of the Engineer. Burying of discarded material will not be tolerated. All relevant legislation pertaining "WASTE" must be adhered to.

**All rubble and Debris must be cleared from site daily and site to be left clean on completion of all work.**

**TRANSNET NATIONAL PORTS AUTHORITY**  
**WORK SPECIFICATION**  
**FLUSHING AND CLEANING OF STORMWATER RETICULATION SYSTEMS "AS & WHEN"**  
**REQUIRED IN THE PORT OF DURBAN**

**10. WORK SPECIFICATIONS**

- Company signage must always be displayed when work is taking place.
- Working hours Monday-Friday are 07:00am – 15:30pm
- Weekend and working after hours to be approved by project leader.
- Work area to be correctly demarcated.
- All rubble and Debris must be cleared from site and site to be left clean.
- Work area to be demarcated according to the latest construction regulation.
- Tenderer to arrange safe traffic flow procedure must be in place when working on roads
- All gear applied, installed, erected, or utilized to conform to manufacturer's specifications.
- All work to be completed by a relevantly qualified tradesperson.
- Tenderer to comply with All Local and Regional municipal by-laws.
- PPE to be always utilized.
- All S.H.E guidelines to be always adhered to.
- Tenderer to arrange testing of water samples within Stormwater drains if contamination is found.
- Tenderer should collect the samples and send it to the accredited Laboratory to be analyzed for the following group of compounds:
  - (a) Hydrocarbons screening (b)Phenol
  - (c) Microbiological Determinants (d)Acid screening
- Tenderer to supply water for their jetting/cleaning machinery to flush the entire system starting from the heads of each branch line including all manholes along the reticulation system to the discharge points as and when required around the Port of Durban.
- Tenderer to pump out water ponds on the road and discharge on existing manhole within the area.
- Tenderer to make arrangement for induction and accesses to other Company sites where stormwater system runs through.
- All environmental issues regarding floating booms, drain sock, oil absorber (Peatsorb) etc. must be utilized by the de-sludging company along with an accepted Environmental Management Plan (EMP).
- The Environmental Management Plan (EMP) must be passed by the TNPA environmental department before the commencement of work. All environmental issues to be over-seen by TNPA environmental Department.
- Tenderer to supply an air testing machine for testing air before entering or working in a manhole.
- Contingency plan for contaminated water entering the Harbor via these stormwater discharge points in case of emergency must be addressed in the Environmental Management Plan EMP.
- Tenderer to video survey drains that are blocked or problematic including sewer lines and hand TNPA the DVD copies of the selected surveyed section. DVD to contain all relevant information on screen.
- Re-instate stormwater manhole covers on completion.
- Tenderer to provide a work program to TNPA one week before any work commences.
- All plant and equipment must be available to Transnet throughout the contract.
- All vehicles under this project must be always roadworthiness during the period of this contract.

**TRANSNET NATIONAL PORTS AUTHORITY**  
**WORK SPECIFICATION**  
**FLUSHING AND CLEANING OF STORMWATER RETICULATION SYSTEMS "AS & WHEN"**  
**REQUIRED IN THE PORT OF DURBAN**

**11 BILL OF QUANTITIES**

Item	Description	Unit	Estimated Quantities	Rate	Total
<b>1</b>	<b>Flush, clean and removal of resultant waste including sand, rubble and debris collection in the stormwater reticulation system, drains, manholes, catch pits, channels and pipes located around the Port of Durban as and when required.</b>				
1.1	Flushing, cleaning and disposal of pipes greater than 110mm but less than 200mm in diameter	m	15000		
1.2	Flushing, cleaning and disposal of pipes greater than 200mm but less than 500mm in diameter	m	80000		
1.3	Flushing, cleaning and disposal of pipes greater than 500mm but less than 1000mm in diameter	m	15000		
<b>2</b>	<b>Video survey of selected cleaned Stormwater and Sewer drains or problematic lines.</b>				
2.1	Video survey of pipes less than 500mm in diameter	m	1000		
2.2	Video survey of pipes above 500mm in diameter	m	1000		
<b>3.</b>	<b>Water samples &amp; Lab test</b>				
3.1	Lab test for Hydrocarbons screening, Phenol, Microbiological Determinants and Acid screening	No.	15		
<b>4.</b>	<b>Safety File (file to be updated yearly) permits</b>	Sum	1		
	<b>Total excluding VAT</b>				

<b>Total price for 36 Months</b>	
<b>Total Price for Year 1 (Y1) = Grand Total ÷ 3</b>	
<b>Total Price for year (Y2) = (Total Price for year 1 + CPI )</b>	
<b>Total Price for year (Y3) = (Total Price for year 2 + CPI )</b>	
<b>Total contract value excluding VAT = Y1 + Y2 + Y3</b>	

For the first year's value, we divide total value by 3 years. No CPI involved as there will be no inflation in year one (1).

For the second year's value, we take the value of year one (1) and multiply it by the CPI rate (whatever rate the supplier propose) and add that inflation value.

For the third year value, we take the value of year two (2) and multiply it by the CPI rate (whatever rate the supplier propose) and add that inflation value. Then add, year one (1), year two (2) and year three (3) which makes the total contract value for three (3) years – thirty six (36) months, **excluding VAT**

# **ANNEXURE B – MASTER AGREEMENT**



**MASTER AGREEMENT**

entered into by and between

**TRANSNET SOC LTD**

and

**TBA**

**FOR THE FLUSHING AND CLEANING OF STORM – WATER RETICULATION SYSTEM ON “AS AND WHEN REQUIRED BASIS IN THE PORT OF DURBAN FOR A PERIOD OF THIRTY-SIX (36) MONTHS.**

**AGREEMENT NUMBER: TNPA/2023/09/0005/42454/RFP**

**COMMENCEMENT DATE: TBA**

**EXPIRY DATE: TBA**

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SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

## 1 INTRODUCTION

This Agreement is entered into by and between:

**Transnet SOC Ltd** [Registration Number 1990/000900/30] whose registered address is **138 Eloff, Street, Braamfontein, Johannesburg, 2000**, Republic of South Africa [**Transnet**]

and

..... [Registration Number .....] whose registered address is  
..... [**the Service Provider**].

### NOW THEREFORE, IT IS AGREED:

- 1.1 Transnet hereby appoints the Service Provider to provide, and Transnet undertakes to accept the provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements / Work Orders issued as a schedule to this Agreement; and
- 1.2 the Service Provider hereby undertakes to provide the Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

## 2 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 **Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.
- 2.4 **Business Day(s)** means Mondays to Fridays between 08:00 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Cession** refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party.
- 2.6 **Commencement Date** means 01 February 2024, notwithstanding the signature date of this Agreement;
- 2.7 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans,

For the flushing and cleaning of storm – water reticulation system on as and when required basis in the Port of Durban for a period of thirty-six (36) months.

formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

- a) information relating to methods of operation, data and plans of the disclosing Party;
- b) the contents of this Agreement;
- c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
- e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- f) information relating to the past, present and future research and development of the disclosing Party;
- g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- h) information contained in the software and associated material and documentation belonging to the disclosing Party;
- i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- j) commercial, financial and marketing information;
- k) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- l) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- m) information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
- n) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.8 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;

2.9 **Expiry Date** means end of contract;

2.10 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

For the flushing and cleaning of storm – water reticulation system on as and when required basis in the Port of Durban for a period of thirty-six (36) months.

- 2.11 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.12 **Party** means either one of these Parties;
- 2.13 **Price(s)** means the agreed Price(s) for the Services to be purchased from the Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.14 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services
- 2.15 **Service(s)** means flushing and cleaning of storm – water reticulation system on “as and when” required basis in the Port of Durban for a period of thirty-six (36) months, pursuant to the Work Order(s) in terms of this Agreement;
- 2.16 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.17 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.18 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.19 **Schedule of Requirements** means Schedule 1 hereto;
- 2.20 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service provider the Services or any part thereof or material used in the provision of the Services or any part thereof;
- 2.21 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.22 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.23 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.24 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.
- 2.25 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Provision, Fees and costs for the provision of the Service to Transnet, which may be appended to this Agreement from time to time.

### 3 INTERPRETATION

- 3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be

construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

- 3.2 Any term, word or phrase used in this Agreement, other than those defined under the clause heading "Definitions" **shall** be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and vice versa.
- 3.4 A reference to natural persons incorporates a reference to legal persons and vice versa.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

#### **4 NATURE AND SCOPE**

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 334 [Amendment and Change Control]. A Party will advise the other Party within fourteen [14] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

#### **5 AUTHORITY OF PARTIES**

- 5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to:
  - a) enter into an agreement in the name of the other; or
  - b) give any warranty, representation or undertaking on the other's behalf; or

- c) create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

## **6 DURATION/TERM AND CANCELLATION**

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is 01 February 2024 and the duration shall be for a thirty-six [36] months period, expiring on 31 January 2027, unless:
  - a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
  - b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2 Notwithstanding clause 222 [Breach and Termination], either Party may cancel this Agreement without cause by giving thirty [30] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## **7 RISK MANAGEMENT**

- 7.1 Where Transnet determines appropriate, within two [2] weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.
- 7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period.

## **8 TRANSNET'S OBLIGATIONS**

- 8.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to provide the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.
- 8.2 The Service Provider shall give Transnet reasonable notice of any information it requires.
- 8.3 Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

## **9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 9.1 The Service Provider shall:
  - a) respond promptly to all complaints and enquiries from Transnet;

- b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of services;
- c) conduct its business in a professional manner which will reflect positively upon the Service Provider and the Service Provider's services;
- d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the delivery of the Services and keep such records for at least five [5] years from the date of each such transaction;
- e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and ancillary Services and the conduct of the business and activities of the Service Provider;
- f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;
- g) observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid 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 the procurement event leading to this Agreement and this Agreement itself;
- h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- i) ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

9.2 The Service Provider acknowledges and agrees that it shall at all times:

- a) render the supply of the Services and ancillary Services [if applicable] and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;

- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- g) treat all enquiries from Transnet in connection with the supply of the Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Services or ancillary Services to Transnet;
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
- o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

## **10 SERVICE PROVIDER'S PERSONNEL**

- 10.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.

- 10.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 10.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 10.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.
- 10.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

## **11 SUBCONTRACTING**

- 11.1 The Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.
- 11.2 If the Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Service Provider up to 10% of the value of the contract.
- 11.3 Where the Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Service Provider [main contractor] and the subcontractor.
- 11.4 Should Transnet approve the Service Provider's subcontracting arrangement, the Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 11.5 The Service Provider may not subcontract in such a manner that the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.6 The Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Service Provider, unless the contract is subcontracted to an Exempted Micro Enterprise [EME] that has the capability and ability to execute the Subcontract.

## **12 PAYMENT TO SUB-CONTRACTORS**

- 12.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Service Provider, subject to the following conditions:
- a) Receipt of an undisputed invoice from the sub-contractor; and
  - b) Receipt of written confirmation from the Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.
- 12.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.
- 12.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.
- 12.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Service Provider, whatsoever.

## **13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS**

### **13.1 B-BBEE Scorecard**

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
  - (i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data [underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status] which Transnet may request on written notice within thirty [30] calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 223.
- e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 223 shall apply.

### **13.2 Green Economy/Carbon Footprint**

- a) The Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

## **14 PENALTIES**

### **14.1 Penalties for Non-compliance to Service Level Agreement**

Where the Service Provider fails to provide the Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at R750.00 per day.

## **15 FEES AND EXPENSES RELATING TO SERVICES**

- 15.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 15.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 15.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
  - a) are agreed by Transnet in advance;
  - b) are incurred in accordance with Transnet's standard travel and expenses policies;
  - c) are passed on to Transnet at cost with no administration fee; and
  - d) will only be reimbursed if supported by relevant receipts.
- 15.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## **16 INVOICES AND PAYMENT**

- 16.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 16.2 Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Services ordered, in terms of clause 16.5 below.
- 16.3 Transnet may, pending an investigation, withhold any payments to the Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 16.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.

- 16.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within thirty [30] calendar days after date of receipt by Transnet of the Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 16.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7 The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Service Provider's Services**] provided to Transnet until Transnet has paid in full for the Service Provider's Services, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Service provider's Services until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Service Provider's Services shall pass from the Service Provider to Transnet on provision of the Service Provider's Services by the Service Provider's to Transnet.

## 17 PRICE ADJUSTMENTS

- 17.1 Prices for Services supplied in terms of this Agreement shall be subject to review as indicated in the Schedule of Requirements/Works Order annexed hereto.
- 17.2 No less than two [2] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Services.
- 17.3 Pursuant to clause 17.2 above, the Service Provider shall keep full and accurate records of all costs associated with the supply of the Services to Transnet, in a form to be approved in writing by Transnet. The Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- 17.4 Should Transnet and the Service Provider fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 31 of the Master Agreement [Dispute Resolution].
- 17.5 If during the period of this Agreement Transnet can purchase similar Services of a like quality from another Service provider at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Services purchased hereunder from the Service Provider, Transnet may notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Price of the Services purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within thirty [30] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other Service provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.

- 17.6 If during the period of this Agreement the Service Provider sells any materials which are the same as, equivalent to, or substantially similar to the Services herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Service Provider has an opportunity to adjust its Price for the Services purchased hereunder within thirty [30] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from any other such Service provider, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within thirty [30] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Service Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

## **18 WARRANTIES APPLICABLE TO SERVICES**

- 18.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;
  - b) it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
  - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
  - d) it will procure licences for Transnet in respect of all Third-Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
  - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 18.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 18.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 18.3 The Service Provider warrants that for a period of ninety [90] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within thirty [30] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such timescale, Transnet will be entitled to employ a third party to do so in place of the

Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

- 18.4 The Service Provider will remedy any defect within thirty [30] calendar days of being notified of that defect by Transnet in writing.
- 18.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.
- 18.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 18.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 34 [Amendment and Change Control].
- 18.7 The Service Provider undertakes to comply with South Africa’s general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 18.8 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

## 19 THIRD PARTY INDEMNITY

The Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause **Error! Reference source not found.** above.

## 20 TOTAL OR PARTIAL FAILURE TO PERFORM

- 20.1 In the case of Services to be specially provided for it, if Transnet at any time ascertains that:
  - a) No provisioning of the Services specified in a Purchase Order has commenced and there is little or no prospect, in Transnet’s opinion, that manufacturing will commence within a reasonable time; or
  - b) Provision of any of the Services is being or is likely to be delayed beyond the promised providing date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised providing rate(s) or time(s),then Transnet may, irrespective of the cause of the delay, by notice to the Service provider, cancel as from a future date specified in such notice the whole or any part of this Agreement or Purchase Order in respect of which the services to be provided have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.
- 20.2 The Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed

Services. Where an integral or essential part of the work has not been completed, the amount to be paid to the Service Provider will be calculated on the basis of Transnet's enrichment. The Service Provider shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.

- 20.3 Whenever, in any case not covered by clause 20.1 above, the Service provider fails or neglects to execute the work or to deliver any portion of the Services as required by the terms of this Agreement or Purchase Order, Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Services, and in such event, the provision of the remaining portion shall remain subject in all respects to these conditions.

## 21 RIGHTS ON CANCELLATION

- 21.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 200 [Total or Partial Failure to Perform], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Service provider the difference between the cost of such Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Service Provider's default.
- 21.2 Any amount which may be recoverable from the Service Provider in terms of clause 21.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider.

## 22 BREACH AND TERMINATION

- 22.1 Termination in accordance with clause 6 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 22.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 22.3 To the extent that any of the Deliverables and property referred to in clause 22.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 22.4 In the event that this Agreement is terminated by the Service Provider under clause 6 [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**<sup>2</sup> [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any services and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on provision of such

services or materials, the Service Provider will promptly provide such services and materials to Transnet or as it may direct.

- 22.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within thirty [30] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 22.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts;
  - b) its winding-up or dissolution;
  - c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
  - d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 22.7 Transnet may terminate this Agreement at any time within two [2] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 22.8 Notwithstanding this clause 222, Transnet may cancel this Agreement without cause by giving thirty [30] calendar days prior written notice thereof to the Service Provider, or
- 22.9 The provisions of clauses 2 [Definitions], 18 [Warranties], 21 [Rights on Cancellation], 26 [Confidentiality], 28 [Limitation of Liability], , 31 [Dispute Resolution] and 35.1 [Governing Law] shall survive termination or expiry of this Agreement.

## **23 CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023**

- 23.1 The Service Provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:
- a) Cession must only be applicable to the transfer of right to payment for services rendered by a Service Provider to an FSP or State Institutions;
  - b) The written request for cession must be by the Service Provider and not a third party; and
  - c) The written request by the Service Provider must be accompanied by the cession agreement.
- 23.2 The Service Provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency and competitiveness.

## **24 FORCE MAJEURE**

- 24.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable

control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.

- 24.2 Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of force majeure. If a Party fails to agree with such modifications proposed by the other Party within ninety [90] calendar days of the act of force majeure first occurring, either Party may thereafter terminate this Agreement with immediate notice.

## **25 PROTECTION OF PERSONAL INFORMATION**

- a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 [“POPIA”]:

consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA

- b) Transnet will process all information by the Respondent 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.

- c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations [if applicable], document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:

- i. they process personal information only for the express purpose for which it was obtained;
- ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
- iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties’ respective obligations under this Agreement;
- iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
- v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;

- vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
  - vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 25.1 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- 25.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party [including sub-contractors and employees] that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall mutatis mutandis apply to all authorised third parties who process personal information.
- 25.3 The Parties shall ensure that any persons authorized to process information on their behalf [including employees and third parties] will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 25.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 25.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 25.6 Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal

information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

- b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

## **26 CONFIDENTIALITY**

26.1 The Parties hereby undertake the following with regard to Confidential Information:

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality

For the flushing and cleaning of storm – water reticulation system on as and when required basis in the Port of Durban for a period of thirty-six (36) months.

relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

26.2 The duties and obligations with regard to Confidential Information in this clause 26 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

26.3 This clause 26 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and five [5] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## **27 INSURANCES**

27.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure

- against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 27.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within thirty [30] calendar days after date of policy renewals.
- 27.3 Subject to clause 27.4 below, if the Service Provider fails to effect adequate insurance under this clause 27, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all the Service Provider's liability.
- 27.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 27.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than thirty [30] calendar days prior written notice to that effect.

## **28 LIMITATION OF LIABILITY**

- 28.1 The Service Provider's liability under this clause 28 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Services or ancillary Services, including the quality of the Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 28.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
  - b) fraud or theft.
- 28.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet or third party to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement.
- 28.4 Subject always to clauses 28.1 and 28.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed one hundred per cent [100%] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 28.5 Subject to clauses 28.1 to 28.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

For the flushing and cleaning of storm – water reticulation system on as and when required basis in the Port of Durban for a period of thirty-six (36) months.

28.6 If for any reason the exclusion of liability in clause 28.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 28.3 above.

28.7 Nothing in this clause 28 shall be taken as limiting the liability of the Parties in respect of clauses 26 [Confidentiality]

**29 NON-WAIVER**

29.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not in any manner be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

29.2 Such failure or neglect shall not in any manner affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

**30 PARTIAL INVALIDITY**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

**31 DISPUTE RESOLUTION**

31.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within ten [10] Business Days of such dispute arising.

31.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

31.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

31.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 311.

31.5 This clause 311 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

31.6 This clause 311 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

**32 ADDRESSES FOR NOTICES**

32.1 The Parties to this Agreement select the physical addresses and fax numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of this Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other:

**a) Transnet**

- (i) For legal notices: .....
- .....
- .....

For the flushing and cleaning of storm – water reticulation system on as and when required basis in the Port of Durban for a period of thirty-six (36) months.

Fax No. ....

Attention: Group Legal Department

(ii) For commercial notices: .....  
.....  
.....

Fax No. ....

Attention: .....

**b) The Service Provider**

(i) For legal notices: .....  
.....  
.....

Fax No. ....

Attention: .....

(ii) For commercial notices: .....  
.....  
.....

Fax No. ....

Attention: .....

32.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.

32.3 Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery;
- b) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day; or
- c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

**33 WHOLE AND ONLY AGREEMENT**

33.1 The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.

33.2 The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in this Agreement, any annexures appended hereto and the Schedule of Requirements/Work Order.

**34 AMENDMENT AND CHANGE CONTROL**

34.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued

For the flushing and cleaning of storm – water reticulation system on as and when required basis in the Port of Durban for a period of thirty-six (36) months.

by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.

34.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 311 [Dispute Resolution].

## **35 GENERAL**

### **35.1 Governing Law**

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

### **35.2 Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 311 [Dispute Resolution] above.

### **35.3 Counterparts**

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

## **36 DATABASE OF RESTRICTED SERVICE PROVIDER**

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 Bid shall be awarded to a Bidder 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 Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

**Thus signed by the Parties and witnessed on the following dates and at the following places:**

For and on behalf of <b>TRANSNET SOC LTD</b> duly authorised hereto	For and on behalf of ..... duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

**SCHEDULE 1 – SCHEDULE OF REQUIREMENTS**

<b>DESCRIPTION</b>	<b>STANDARD TERMS AND CONDITIONS FOR THE FLUSHING AND CLEANING OF STORM – WATER RETICULATION SYSTEM ON AN “AS AND WHEN” REQUIRED BASIS IN THE PORT OF DURBAN FOR A PERIOD OF THIRTY-SIX (36) MONTHS</b>
<b>SERVICE PROVIDER</b>	.....
<b>CONTRACT NUMBER</b>	<b>TNPA/2023/09/0005/42454/RFP</b>
<b>DURATION</b>	<b>THIRTY-SIX (36) MONTHS</b>
<b>COMMENCEMENT DATE</b>	<b>TBA</b>
<b>EXPIRY DATE</b>	<b>TBA</b>

With reference to the Standard Terms and Conditions of Contract, Reference Number TNPA/2023/09/0005/42454/RFP dated ..... , ("Contract") between Transnet SOC Ltd ("Transnet") and ..... (the "Service Provider") pursuant to which you have agreed to perform certain services for and on behalf of Transnet subject to such Contract.

The defined terms in the Contract will, unless otherwise indicated, have the same meaning in this Schedule of Requirements. In consideration of the mutual covenant and agreements contained in the Contract and in this Schedule of Requirements, it is agreed as follows:

**1. Description of the Services**

The scope of services to be performed by the service provider is the for the flushing and cleaning of storm – water reticulation system on an “as and when” required basis in the Port of Durban for a period of thirty-six (36) months.

The details for the services to be provided are as stipulated in clause 2 below.

**2. Scope of Services**

**2.1 Deliverables**

The key deliverables of this project will contain the following:

- a) Service Provider shall supply all necessary material, labour, tools, plant hire, PPE, and demarcating signage’s skips. Safety plan must be provided.
- b) The service provider or responsible person empowered to act for him shall be on site to supervise and receive instructions from the Project manager.
- c) Transnet National Port Authority will supply necessary on-site quality control/supervision
- d) Service provider to supply water for their jetting/cleaning machinery to flush entire system as and when required around the Port of Durban.

**3. Contract Manager/s & Personnel to provide the Services.**

<b>Transnet Contract Manager</b>	
Designation	
Operating Division	
Address	
Telephone	
Email	

<b>Service Provider's Account Manager</b>	
Designation	
Address	
Telephone	
Email	

**4. Performance Review Meetings**

Contract management and performance review meetings will be held as required by Transnet's Contract Manager.

**5. Fees & Disbursements**

5.1 In consideration of the performance of the Services by the Service Provider pursuant to this Work Order, Transnet will pay to it an amount not exceeding R..... (excluding VAT) over the thirty-six (36) months period.

**IN WITNESS** of which this Schedule of Requirements has been duly executed by the parties.

**SIGNED** for and on behalf of

.....

Signature.....

Name.....

Position.....

Date.....

**SIGNED** for and on behalf of

**Transnet SOC Ltd trading through its  
operating division Transnet National  
Ports Authority**

Signature.....

Name.....

Position.....

Date.....

**APPENDIX 1**

**Address for Notices**

Any notice or communications between the parties to be given under this Agreement shall be deemed to have been received at the following times:

- i. by email transmission – when the sender receives confirmation of receipt;
- ii. by hand delivery - immediately upon receipt by the recipient.

Any notice or communications between the parties shall be delivered to the addresses set out below:

**The Service Provider**

**Transnet**

Addressee:

Addressee:

.....

Transnet SOC Ltd

Attention: .....

Attention: Regional Manager-Legal

Physical Address:

Physical Address:

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

45 Bay Terrace  
South Beach  
Durban  
4001

Postal Address:

Postal Address:

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

P.O. Box 1027  
Durban

email:

email:

.....

[Khanyisile.Buthelezi@transnet.net](mailto:Khanyisile.Buthelezi@transnet.net)

Either party may, by a notice given in accordance with this Schedule 1, change its address or email address for the purpose of this Schedule 1.

**APPENDIX 2**

**Non- Disclosure Agreement**

Date: ..... 2023

I (name) .....

Of (address) .....  
.....  
.....

Undertake to Transnet SOC Ltd ("Transnet") that:

1. I shall keep confidential and not to disclose or make available to any third party, except with the express prior written consent of Transnet, any Confidential Information relating to Transnet business, assets, customers or staff which is disclosed to me or to which I may have access during the course of providing Services to Transnet ("my assignment"); and
2. Upon termination of my assignment, I shall return to Transnet all documents, books, discs, tapes or other records (in whatever medium) which I may have in my possession, custody or control and which are the property of Transnet, its customers, staff or agents and any copies thereof.

For the purposes of this Confidentiality Agreement, "Confidential Information" shall mean any information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs of the Transnet Group or its customers, whether in writing, conveyed orally or by machine-readable medium.

I understand that this Confidentiality Agreement shall survive the termination of my assignment.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 20--

(Signature) .....

in the presence of:-

Witness name: .....

Witness Signature: .....

Witness address: .....  
.....

# **Annexure C Transnet General Bid Conditions**



**GENERAL BID CONDITIONS**

**[June 2022]**

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## 1 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 1.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 3 SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 The Bid Documents must be completed in their entirety and Respondents are required to complete and submit their Bid submissions by uploading them into the system against each tender selected. The bidder guide can be found on the Transnet Portal [transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net).

## 4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.
- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

## **5 BID FEES**

A bid fee is not applicable. The Bid Documents may be downloaded directly from National Treasury's e-Tender Publication Portal at [www.etenders.gov.za](http://www.etenders.gov.za) and may also be downloaded from the Transnet website at [www.transnet.net](http://www.transnet.net) free of charge.

## **6 VALIDITY PERIOD**

6.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.

6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.

## **7 SITE VISITS / BRIEFING SESSIONS**

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

## **8 CLARIFICATION BEFORE THE CLOSING DATE**

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must upload questions onto the Transnet e-Tender Submission Portal or direct such queries to the contact person listed in the RFX Document in the stipulated manner.

## **9 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the contact person listed in the RFX Document.

## **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Respondents may at any time communicate with the contact person listed in the RFX Document on any matter relating to its Bid but, in the absence of written authority from the delegated individual (Winile Xhakaza), no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

## **11 RETURNABLE DOCUMENTS**

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

## **12 DEFAULTS BY RESPONDENTS**

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

- 12.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 12.2 accept an order in terms of the Bid;
- 12.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 12.4 comply with any condition imposed by Transnet,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

### **13 CURRENCY**

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFP.

### **14 PRICES SUBJECT TO CONFIRMATION**

Prices which are quoted subject to confirmation will not be considered.

### **15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

### **16 EXCHANGE AND REMITTANCE**

- 16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- 16.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.
- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.
- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

## **17 ACCEPTANCE OF BID**

- 17.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

## **18 NOTICE TO UNSUCCESSFUL RESPONDENTS**

- 18.1 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

## **19 TERMS AND CONDITIONS OF CONTRACT**

- 19.1 The Supplier/Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be. Respondents will be afforded an opportunity to withdraw an unacceptable deviation, failing which the respondent will be disqualified.

## **20 CONTRACT DOCUMENTS**

- 20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.
- 20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 20.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance, shall constitute a binding contract until the final contract is signed.

## **21 LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The domicilium citandi et executandi shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## **22 IDENTIFICATION**

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## **23 RESPONDENT'S SAMPLES**

- 23.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 23.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 23.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.
- 23.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

## **24 SECURITIES**

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.124.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 244 will be for the account of the Supplier/Service Provider.

## **25 PRICE AND DELIVERY BASIS FOR GOODS**

- 25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or

points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

25.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:

- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
- b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [latest ICC Incoterms] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

## **26 EXPORT LICENCE**

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

## **27 QUALITY OF MATERIAL**

Unless otherwise stipulated, the Goods offered shall be NEW i.e. in unused condition, neither second-hand nor reconditioned.

## **28 VALUE-ADDED TAX**

28.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be inclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

28.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

## **29 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

29.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 29.1 (a) above. Failure to comply with clause 29.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Supplier/Service Provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

#### 29.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Supplier/Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

### 30 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

#### 30.1 Contract Quantities

- a) It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.
- b) It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.
- c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

#### 30.2 Delivery Period

- a) **Period Contracts and Fixed Quantity Requirements**

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.
- b) **Progress Reports**

The Supplier/Service Provider may be required to submit periodical progress reports with regard to the delivery of the Goods/Services.
- c) **Emergency Demands as and when required**

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source.

The Total or Partial Failure to Perform the Scope of Supply section in the Terms and Conditions of Contract will not be applicable in these circumstances.

### **31 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS**

#### **31.1 Copyright**

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier/Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

#### **31.2 Drawings and specifications**

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

#### **31.3 Respondent's drawings**

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

#### **31.4 Foreign specifications**

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

### **32 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

32.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the designated official of Transnet according to whichever officer is specified in the Bid Documents.

32.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

32.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

32.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules

regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
- d) The Power of Attorney must authorise the South African representative or agent to choose the domicilium citandi et executandi.

32.5 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:

- a) funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

32.6 The attention of the Respondent is directed to clause 24 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

### **33 DATABASE OF RESTRICTED SUPPLIERS**

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 Bid shall be awarded to a Bidder 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 Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

### **34 CONFLICT WITH ISSUED RFX DOCUMENT**

34.1 Should a conflict arise between these General Bid Conditions and the issued RFX document, the conditions stated in the RFX document shall prevail.

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## **Annexure D - Supplier Integrity Pact**



**Important Note: All potential bidders must read this document and certify in the RFX Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.**

**INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

And The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

## **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 Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier'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 Bidders / Suppliers 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 Bidder / Supplier 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 Bidders / Suppliers 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 Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process in a fair manner.
- 2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

### 3 OBLIGATIONS OF THE BIDDER / SUPPLIER

- 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 Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- a) The Bidder / Supplier 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 bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
  - b) The Bidder / Supplier 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 bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier 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 Bidder / Supplier 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 bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

- 3.8 Transnet may require the Bidder / Supplier 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 Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Bidder/Supplier 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 BIDDING**

- 4.1 For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
- a) has been requested to submit a Bid in response to this Bid invitation;
  - b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 4.2 The Bidder has arrived at his submitted Bid 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 bidding.
- 4.3 In particular, without limiting the generality of paragraph 4.2 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 Bid;

- e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
- f) bidding with the intention of not winning the Bid.

- 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 Bid relates.
- 4.5 The terms of the Bid as submitted 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.
- 4.6 Bidders are 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 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

## **5 DISQUALIFICATION FROM BIDDING PROCESS**

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of paragraph 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 Bidder / Supplier from future bidding 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 Bidder / Supplier 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 Bidder / Supplier 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 DATABASE OF RESTRICTED SUPPLIERS**

- 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 Bid shall be awarded to a Bidder 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 Bidder should it be established, at any time, that a bidder 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 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 supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- 6.7 Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
  - b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
  - c) has carried out any contract resulting from such bid 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) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;
  - h) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
  - i) has litigated against Transnet in bad faith.

## **7 PREVIOUS TRANSGRESSIONS**

- 7.1 The Bidder / Supplier 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 Bidder's / Supplier's database or any bidding process.
- 7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX 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 Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
  - b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
  - c) Recover all sums already paid by Transnet;
  - d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
  - e) Cancel all or any other contracts with the Bidder / Supplier;
  - f) Exclude the Bidder / Supplier from entering into any bid with Transnet and other organs of state in future for a specified period; and
  - g) If the Supplier subcontracted a portion of the bid to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

## 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 bidding / 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 bid committee member or any person involved in the sourcing process must be declared in a prescribed form.
- 9.3 If a Bidder / Supplier 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 bid which will be considered for the bid process, the Bidder / Supplier:
- 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 Bidder / Supplier 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 Bidder / Supplier.

## 10 DISPUTE RESOLUTION

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

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## **Annexure E - Non Disclosure Agreement**



**NON DISCLOSURE AGREEMENT**

**[April 2020]**

**THIS AGREEMENT is made between**

**Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/30]

whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

**and**

**the Company as indicated in the RFQ bid response hereto.**

**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 Bid 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** 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 Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 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 Bid 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 Bid 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 Bid 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 Bid 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 Bid 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.

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## **Annexure F - Technical Evaluation**

**TRANSNET NATIONAL PORTS AUTHORITY**

**Description of the works: Flushing and cleaning of storm-water reticulation systems “as & when” required in the Port of Durban**

**ELIGIBILITY CRITERIA**

The following eligibility criteria will form the basis of evaluating all tenders and failure to comply will result in the elimination of the tender

<b>Item</b>	<b>Eligibility Criteria</b>	<b>Required Information</b>	<b>Proof of accreditation submitted</b>		
	<b>Bylaws</b>	Tenderer must submit Copy of valid Scheduled Trades and Occupation Bylaws permit from the eThekweni Municipality.	<b>Yes</b>	<b>No</b>	
<b>Item</b>	<b>Criteria</b>	<b>Required Information</b>	<b>Sub-Criteria/ Compliance Measure</b>	<b>Applicable score</b>	<b>Max scores</b>
	<b>Company Experience</b>	<p><b>Company Experience</b></p> <p>References</p> <p>Tenderer must submit traceable references i.e., reference letter / completion certificate indicating the Company experience in stormwater flushing and cleaning of resultant waste. References must be on the letterhead of company that work was done, references must include the following required information:</p> <p>(1) The description of the project                      (2) Client Company name                      (3) Client contact details (email and telephone)                      (4) Project start and finish dates</p>	<p>0= No references submitted, or not relevant to stormwater jetting or not all required information submitted</p> <p>20= The Tenderer has submitted one (1) reference letter/completion certificate that is relevant to stormwater jetting.</p> <p>40= The Tenderer has submitted two (2) reference letters/completion certificates that are relevant to stormwater jetting.</p> <p>60= The Tenderer has submitted three (3) reference letters/completion certificates that are relevant to stormwater jetting.</p> <p>80= The Tenderer has submitted four (4) to five (5) reference letters/completion certificates that are relevant to stormwater jetting.</p> <p>100= The Tenderer has submitted six (6) or more reference letters / completion certificates that are relevant to stormwater jetting</p>	<p>0</p> <p>4</p> <p>8</p> <p>12</p> <p>16</p> <p>20</p>	<b>20</b>
	<b>key personnel</b>	<p><b>3.1 Qualification &amp; CVs of Key Personnel</b></p> <p>Tenderer to submit CVs with qualification and contactable references indicating minimum of three (3) years’ experience of each key personnel list below:                      All C.V’s submitted must include certificate of qualification.                      Key Personnel                      (1) CV of Project Manager with a minimum NQF 6 qualification</p>	<p>0= No Response/ CVs submitted not work related/ years of experience not indicated/CV submitted without certificate of qualification or below 3 years.</p> <p>20= One (1) key personnel member CVs submitted with three (3) years’ experience.</p> <p>40 = Two (2) key personnel members CVs submitted with three (3) years’ experience</p> <p>60 = Three (3) key personnel members CVs submitted with three (3) years’ experience.</p>	<p>0</p> <p>2</p> <p>4</p> <p>6</p>	<b>10</b>

		(2) CV of Site Foreman with flushing and cleaning of stormwater system experience or training in spill response (3) CV of Safety Officer (SACPCMP) registered	<b>80</b> = Four (3) key personnel members CVs submitted with four (4) years' experience. <b>100</b> = Five (3) key personnel members CVs submitted with five (5) or more years' experience.	8 10	
<b>Confined space certificate</b>	The Tenderer must submit proof of the employees training certificate for working in a confined space, all certificates must be dated and valid.	<b>0</b> = No certificate submitted.		0	<b>10</b>
		<b>20</b> = The Tenderer has submitted one (1) valid training certificate for working in confined spaces.		2	
		<b>40</b> = The Tenderer has submitted two (2) valid training certificates for working in confined spaces.		4	
		<b>60</b> = The Tenderer has submitted three (3) valid training certificates for working in confined spaces.		6	
		<b>80</b> = The Tenderer has submitted four (4) valid training certificates for working in confined spaces.		8	
		<b>100</b> = The Tenderer has submitted five (5) valid training certificates for working in confined spaces.		10	
<b>Water Jetting certificate</b>	The Tenderer must submit proof of the employees training certificate for Water Jetting operating Training certificate, all certificates must be dated and valid	<b>0</b> = No certificate submitted		0	<b>10</b>
		<b>20</b> = Tenderer has submitted one (1) training certificate Water Jetting operating		2	
		<b>40</b> = Tenderer has submitted two (2) training certificates for Water Jetting operating		4	
		<b>60</b> = Tenderer has submitted 3 training certificates for handling hazardous materials		6	
		<b>80</b> = Tenderer has submitted 4 training certificates for Water Jetting operating		8	
		<b>100</b> = Tenderer has submitted 5 training certificates for Water Jetting operating		10	
<b>Availability of equipment</b>	The bidder must have proof of key plant and equipment owned/leased by the bidder (Vacuum tanker /jetting machine).	<b>0</b> = No proof of ownership/leasing agreement of vacuum/jetting machine provided		0	<b>10</b>
		<b>20</b> = Only leasing agreement of Jetting or vacuum machine provided.		2	

	(Vacuum tanker & jetting machine)	NB: Proof of ownership/lease agreement accompanied by the letter indicating lead time must be attached to claim points	40= Only leasing agreement of Jetting and vacuum machine provided.	4	
			60= Proof of ownership for Vacuum and Jetting machine is provided.	6	
			80= Proof of ownership with proof of maintenance plan/service history for Jetting machine.	8	
			100= Proof of ownership with proof of maintenance plan/service history for Jetting and vacuum machine.	10	
<b>Safety</b>		<p><b>Method Statement</b></p> <p>documents or required information to ensure SHE compliance in terms of Scope of work which includes these elements:</p> <ol style="list-style-type: none"> <li>1.Scope of the work and hazards identified are aligned to risk assessment.</li> <li>2.Minimum Personal Protective Equipment (PPE) required to complete the job</li> <li>3.Personnel required and responsibilities</li> <li>4.Resources and equipment required</li> <li>5.Emergency procedures</li> </ol>	0= No response or none of the elements met or Information is generic.	0	<b>10</b>
			20= The Tenderer has submitted only one (1) element.	2	
			40= The Tenderer has submitted only two (2) elements.	4	
			60= The Tenderer has submitted any three (3) elements.	6	
			80= The Tenderer has submitted only four (4) elements.	8	
			100= The Tenderer has submitted all 5 elements.	10	
		<p><b>Risk Assessment</b></p> <p>The bidder to submit a detailed Risk Assessment. The information to ensure SHE compliance in terms of Scope of work which <b>includes these elements:</b></p> <ol style="list-style-type: none"> <li>1. Identify the risks and hazards to which persons may be exposed to.</li> <li>2. Analysis and evaluation of identified risks/ hazards.</li> <li>3. Measures to mitigate, reduce or control the risks and hazards identified with roles and responsibilities for implementation and control.</li> <li>4. Defined Risk Assessment methodology in which risks are quantified.</li> <li>5. Signed Risk assessment by 16.2 or Construction Manager or Construction Supervisor.or Construction Supervisor.</li> </ol>	0= No response or none of the elements met or Information is generic.	0	<b>10</b>
			20= The Tenderer has submitted only one (1) element.	2	
			40= The Tenderer has submitted only two (2) elements.	4	
			60= The Tenderer has submitted only three (3) elements.	6	
			80= The Tenderer has submitted only four (4) elements.	8	
			100= The Tenderer has submitted all five (5) elements.	10	

		<p><b>Policy, Organisation and Safety and Health Management Involvement</b></p> <p>The Tenderer must submit a policy which includes the following elements:</p> <ol style="list-style-type: none"> <li>1. Safety and Health Plan</li> <li>2. Signed and dated Safety and Health Policy copy signed by the Chief Executive Officer / Managing Director</li> <li>3. Signed OHS Act 16.2 Appointee Letter</li> <li>4. Signed relevant SHE legal appointees in terms of Construction Regulations applicable to the Project: <ul style="list-style-type: none"> <li>• SHE Representatives</li> <li>• First Aiders</li> <li>• Risk Assessors</li> </ul> </li> <li>5. Company Safety, Health and Environmental organogram – include names of Legal appointments</li> </ol>	<p><b>0</b>= No response or none of the elements met or Information is generic.</p> <p><b>20</b>= The Tenderer has submitted only one (1) element.</p> <p><b>40</b>= The Tenderer has submitted only two (2) elements.</p> <p><b>60</b>= The Tenderer has submitted any three (3) elements.</p> <p><b>80</b>= The Tenderer has submitted only four (4) elements.</p> <p><b>100</b>= The Tenderer has submitted all five (5) elements.</p>	<p>0</p> <p>2</p> <p>4</p> <p>6</p> <p>8</p> <p>10</p>	<b>10</b>
	<b>Environment</b>	<p><b>Environmental Management Plan (EMP):</b></p> <p>The tenderer shall provide a detailed Environment Management Plan (EMP) specific to the scope of the project. The EMP must identify the possible environmental impacts of the proposed activity; and include measures to minimise, mitigate and manage these impacts. The EMP must include but not limited to the following elements:</p> <ol style="list-style-type: none"> <li>1. Dust Management.</li> <li>2. Noise control.</li> <li>3. Management of hazardous chemical and flammable substances.</li> <li>4. Pollution control and spill response.</li> <li>5. Waste Management.</li> <li>6. Environmental education and awareness.</li> <li>7. Housekeeping.</li> <li>8. Environmental Laws and Regulations relevant to the project.</li> <li>9. Occurrence management.</li> <li>10. Management responsibilities.</li> </ol>	<p><b>0</b>= Environmental Management Plan (EMP) for the proposed activities/ key elements not submitted</p> <p><b>20</b>= The tenderer has submitted an EMP with three (3) or less key elements met.</p> <p><b>40</b>= The tenderer has submitted an EMP with four (4) to seven (7) key elements met.</p> <p><b>60</b>= The tenderer has submitted an EMP with eight (8) to nine 9 key elements met.</p> <p><b>80</b>= The tenderer has submitted an EMP with ten (10) to eleven (12) key elements met.</p> <p><b>100</b>= The tenderer has submitted an EMP with all twelve (13) key elements met.</p>	<p>0</p> <p>2</p> <p>4</p> <p>6</p> <p>8</p> <p>10</p>	<b>10</b>

		<p>11. Protection of sensitive/ no-go areas.</p> <p>12. Monitoring and reporting.</p> <p>13. The EMP must include an environmental policy signed by Top Management which, as a minimum:</p> <ul style="list-style-type: none"> <li>- Is appropriate given the purpose and context of the tenderer's business.</li> <li>- Includes a commitment to fulfil the tenderer's environmental compliance (legal) obligations.</li> <li>- Includes a commitment to the protection of the environment, including prevention of pollution.</li> <li>- Provides framework for setting environmental objectives; and</li> <li>- Includes a commitment to continual improvement.</li> </ul>			
		<b>TOTAL WEIGHT</b>			<b>100</b>

# **HOW TO" GUIDE FOR BIDDERS**

# TRANSNET



*national ports  
authority*

## **Port of Durban EMP Guidelines** (Construction, Operational & Decommissioning)

Transnet National Ports Authority – Port of Durban

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## **Preface**

The Environmental Department (HQ) started to develop an Environmental Management Framework (EMF) to incorporate environmental management within TNPA processes. Through this process, it was realized that this sectorial approach was not the most adequate to implement sustainable development within TNPA core business. The decision was then taken to adopt a more integrated and comprehensive approach to address sustainability challenges within TNPA. This strategic shift is the rationale behind the development of a Sustainability Management Framework (SMF).

The SMF purpose is to indicate and clearly depict how and where intervention is required into internal business unit process in order to effectively address sustainability related matters and provide guidance to achieve the sustainable development objectives of the Transnet National Ports Authority.

### **Abbreviations:**

1. **SMF** : Sustainability Management Framework
2. **EMS** : Environmental management System
3. **EMP** : Environmental Management Plan/Program
4. **CEMP** : Construction Environmental Management Plan
5. **OEMP** : Operations Environmental Management Plan
6. **DEMP** : Decommissioning Environmental Management Plan
7. **Enviro** : Environment/Environmental
8. **SEA** : Strategic Environmental Assessment
9. **EIA** : Environmental Impact Assessment
10. **ES** : Environmental Specification
11. **DEA** : Department of Environmental Affairs
12. **DWA** : Department of Water Affairs

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### **7. Annexure 1** Examples of Construction, Operational & Decommissioning EMPs

## **1. Introduction**

Most of the global environmental assessment practice appears to be directed at the scoping and assessment stages of EIAs. The mitigation, monitoring and management components of EIAs receive less attention. Attention is now being focused on the need to demonstrate that impacts can be monitored and managed. The EMP is recognized as the tool that can provide the assurance that the project proponent has made suitable provision for mitigation. The EMP is the document that provides a description of the methods and procedures for mitigating and monitoring impacts. The EMP also contains environmental objectives and targets which the project proponent or developer needs to achieve in order to reduce or eliminate negative impacts.

The EMP document can be used throughout the project life cycle. It is regularly updated to be aligned with the project progress from construction, operation to decommissioning. EMPs provide a link between impacts predicted and mitigation measures specified in the EIA report, or risk assessment and the implementation and operational activities of the project. EMPs outline the environmental impacts, the mitigation measures, roles and responsibilities, timescales and cost of mitigation.

Three broad categories of EMPs can be recognized in the project lifecycle. They are the construction phase EMP, operational phase EMP and decommissioning EMP. The main objectives of these EMPs are all the same, namely to:

- Identify the possible environmental impacts of the proposed activity; and
- Develop measures to minimize, mitigate and manage these impacts.

The difference between these EMPs is related to the difference in mitigation actions required for the different stages of the project life cycle.

The development and implementation of a successful EMP has benefits beyond merely meeting legal obligations. EMPs are not just required for developments and projects that have undergone an EIA but according to NEMA all activities and development affecting the environment in a negative way must have an EMP. An EMP also contributes to environmental awareness of the workforce and empowers and educates employees on the importance of protecting the environment against possible negative impacts.

## **2. EMP Development**

It is the stated goal of Transnet National Ports Authority (TNPA) to implement sustainable environmental management practices within all South Africa's commercial ports. This applies to the planning, design, construction, operation, restoration, reuse and decommissioning activities and the development of port related infrastructure.

These guidelines indicate the matters that should be considered in preparing construction and operational environmental management plans (EMPs). These guidelines are not definitive but provide guide to the basic requirements for EMPs. It is important to note that all development undertaken on port land will require a construction, operational and decommissioning EMP. All these documents will be captured within the lease agreements signed between the parties. With regards to the decommissioning EMP, it might not be possible and necessary for it to be formulated and submitted for approval at initiation of project but at a reasonable timeframe (e.g. 6 months-short term leases, 2 years long term leases ) before decommissioning and vacation of land or infrastructure. The scope and terms of reference can however be agreed upon signing of the lease. An EMP should always be prepared specifically for the location where the development occurs, having regard to the specific nature of the development activities.

Generic and non-site-specific EMPs will not be accepted. Depending on the nature of construction and operation of the proposed development, technical information may need to be provided. Specialised consultants may need to be engaged to prepare this information.

It is important that anyone requiring or preparing an EMP consider consulting with the Environmental Staff of the Transnet National Ports Authority of South Africa (TNPA). This will allow timely assessment of the EMP and prevent delays as well as submission of unnecessary information. The organization may also be able to assist you in preparing your EMP or have information that you need.

### **3. Environmental Impact Assessments (EIAs)**

EIAs are required for certain types of developments in terms of the Environmental Management Act (Act 109 of 1998) as amended in GNR 385,386 and 387. This set of legislation lists some activities that are subject to the EIA process. Examples of some of these activities are construction in a sensitive area, development of structures below the high water mark e.g. quays, moorings, breakwaters, etc.

The National Environmental Management Act (NEMA) also requires that all construction or development works be accompanied by an EMP irrespective of the nature and scale, so even if an activity does not feature in the ECA's listed activities, it still requires environmental controls to be in place. These CEMP or method statements can also be sent to the Dept. of Environmental Affairs for approval.

## **4. Construction EMPs**

### **4.1 Background**

A construction EMP (CEMP) is a practical and achievable plan of management to ensure that any environmental impact during the construction phase is minimized. The CEMP is accompanied by Method Statements which depicts or describes mitigation measures for their proposed operational methods. In preparing a CEMP, consideration should be given to the issues discussed below. The CEMP must be site specific and detail measures that will be employed on the site to minimize any

adverse environmental impact. Importantly, the CEMP must include a 'schedule of works' indicating the timing of the construction activity.

**For construction and development activities which are initiated by TNPA** itself a Construction Environmental Specification (ES) will be compiled. These ESs incorporate specifications, together with guidance for 'good environmental practice' for construction work. It will be prepared by the TNPA Environmental Department which will be responsible for the preparation of tender documentation for the construction of infrastructure. The successful contractor will then be required to submit a CEMP to TNPA to indicate how they intend meeting the TNPA requirements, as stipulated in the ES. In essence this ES will act as the EMP which then indicates the environmental requirements that will need to be met in undertaking the works. The complexity and detail of the ES will vary, based on the nature and scale of the project. In some cases this ES can also be drawn up by independent consultants or alternatively sent for external review.

**For construction activities based on application or proposal from an external client or tenant** this guide will aid contractors in drawing up an EMP in line with the requirements of TNPA. As mentioned before the EMP must be specific to nature and scale of development as well as be accompanied by an EMP for the operational phase (OEMP). More of the operational EMP (OEMP) will be discussed further in the document.

## **4.2 Purpose**

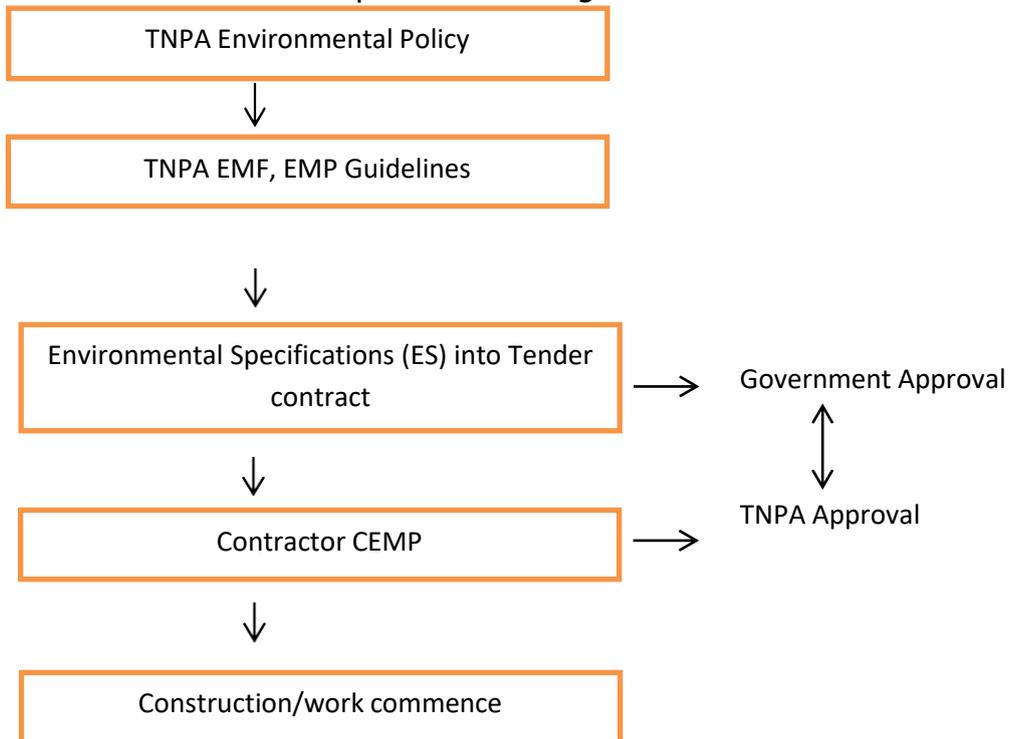
The purpose of the CEMP is to ensure good environmental management practices are undertaken with all works done in the port and that minimal impact is inflicted on the environment. It also ensures adherence to TNPA Environmental Policy, legislative requirements and those objectives from Strategic Environmental Assessments (SEAs) are met together with the conditions of EIA RoDs, where applicable.

The CEMP should specify all potential environmental impacts, control measures, performance criteria, and mitigation strategies, together with relevant monitoring and reporting procedures.

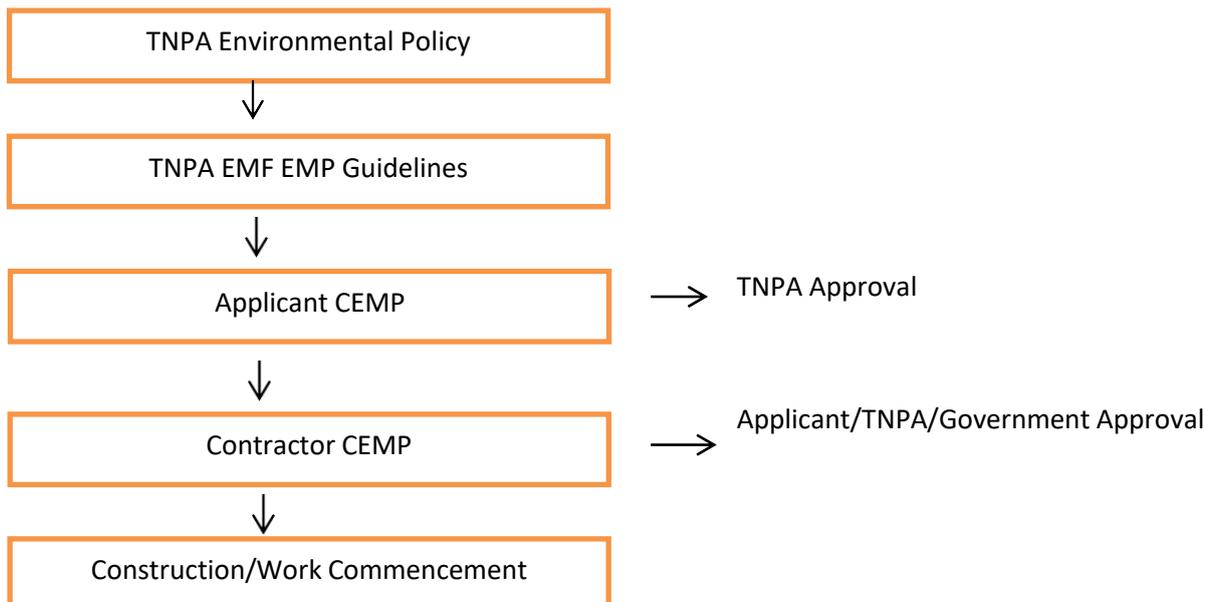
## **Annexure 1**

These guidelines present an example of a CEMP (only partially). It is not mandatory to use this format; however, it may be used as a guide and demonstrates the type of issues that may need to be addressed on a specific project. Some guidance on the key environmental issues to be addressed can be found in Fig 1.5. In addition, any contingency plans for unforeseen circumstances or impacts that may arise needs to be included in the CEMP.

The CEMP is a dynamic document, which may be subject to change or modifications as a result of site developments or changes on site.



**Fig 1.3 TNPA CEMP approval tree for construction and development activities which are initiated by TNPA.**



**Fig 1.4 TNPA CEMP approval tree for construction activities based on application or proposal from an external client or tenant.**

### 4.3 Implementation

**No construction activities can commence on port property until a CEMP has been accepted in writing by TNPA.** Furthermore, no work can commence on the site until the 'pre-start site inspection' has been held on site or appropriate agreement has been reached with the Port's Environmental Department. Ideally, a CEMP will be submitted with the development application; however, where contractors have not been appointed at the time of making the development application, the requirement for a CEMP will be a condition of approval, which will require the document to be lodged at least one week prior to the planned construction commencement date.

### 4.4 Structure of the CEMP

The following sections detail the various components of the CEMP. The level of detail required is, however, dependent on the size and nature of the development, and the sensitivity of the surrounding environment.

### 4.5 Introduction

- This should include an overview of proposed works, the scope of the development and the layout of the works site, including size and location. It should contain site-specific details, such as:
  - The address and real property description of the site;
  - Details of the developer/contractors, and key groups or individuals who may be associated with the project; and
  - Details of the type and duration of the construction phase.

**Table 1: A summary of key environmental issues associated with the works at the site should be presented.**

<b>Key Environmental Issues</b>	
<ul style="list-style-type: none"> <li>➤ <b>METHOD STATEMENTS</b></li> <li>➤ <b>GENERAL SITE PROCEDURES</b></li> <li>➤ Demarcation of Environmentally Sensitive Areas</li> <li>➤ Location of camp and depot</li> <li>➤ Demarcation of the site</li> <li>➤ Access and traffic control</li> <li>➤ Toilets</li> <li>➤ Domestic waste water</li> </ul>	<ul style="list-style-type: none"> <li>➤ Materials use, handling, storage and transport</li> <li>➤ Emergency procedures</li> <li>➤ Social issues</li> <li><b>SITE CLEARANCE</b></li> <li>➤ Removal of endemic and endangered species</li> <li>➤ Removal of top soil</li> <li>➤ Stabilisation of steep slopes</li> </ul>

<ul style="list-style-type: none"> <li>➤ Refuse</li> <li>➤ Dredging</li> <li>➤ Protection of the fauna and flora</li> <li>➤ Defacement of natural features</li> <li>➤ Protection of archaeological and paleontological sites</li> <li>➤ Effluent and storm water management</li> <li>➤ Seawater turbidity levels</li> <li>➤ Dust control</li> <li>➤ Noise control</li> <li>➤ Underwater (and other) blasting</li> </ul>	<ul style="list-style-type: none"> <li>➤ Removal of alien vegetation</li> </ul> <p><b>SITE REHABILITATION</b></p> <ul style="list-style-type: none"> <li>➤ Scoping</li> <li>➤ Landscaping and preparation for re-vegetation</li> <li>➤ Seeding</li> </ul> <p><b>MANAGEMENT AND MONITORING:</b></p> <ul style="list-style-type: none"> <li>➤ General inspection and monitoring</li> <li>➤ Scientific monitoring</li> <li>➤ Environmental awareness training/inductions</li> <li>➤ Documentation</li> <li>➤ Incentives and penalties</li> <li>➤ External audit</li> <li>➤ <b>MEASUREMENT AND PAYMENT</b></li> </ul>
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The role of this section is to identify those areas, issues or values that may be impacted by the development. Risk assessment methodologies can be used to assess the potential environmental impacts, and prioritize preventative and remedial management strategies or actions.

#### 4.5.1 Summary of Key Environmental Issues

A summary of key environmental issues associated with the works at the site should be presented (Table 1). Issues to be covered may include:

- Erosion and sediment control (including wind and water erosion, depending on the environment)
- Acid sulphate soil management
- Water-quality management
- Waste management
- Air-quality management (dust and vehicle emissions)
- Historical or cultural heritage
- Noise management
- Flora and fauna
- Land contamination

The role of this section is to identify those areas, issues or values that may be impacted by the development. Risk assessment methodologies can be used to assess the potential environmental impacts, and prioritise preventative and remedial management strategies or actions. The erosion and sediment-control management plan should also pay attention to the management of existing gully inlets downstream of the construction site.

### 4.5.1 Management responsibilities

This section should outline tasks associated with the development and implementation of the CEMP, and nominate the responsible staff members. It may include the roles and responsibilities of the following people:

- Project Manager
- Site Supervisor
- Project Engineer
- Site Foreman
- Site SHE Officer/Manager
- Employees (and sub-contractors)

### 4.5.2 Monitoring & Reporting

This section outlines the key elements to be monitored and reported over the duration of the project, including the maintenance period. These may include Environmental Audits, Environmental complaints and corrective action reports and register, and scheduled inspections by TNPA and government officials.

The CEMP is to acknowledge that a 'pre-start inspection' meeting is to be held – to ensure the approved CEMP, including the specified environmental controls for the site, is understood by all parties (contractors/developers/TNPA etc.). Additionally, the TNPA may also conduct audits throughout the construction phase as follows:

- 'project half complete inspection' – to ensure work is being carried out in accordance with the approved CEMP;
- 'pre-completion inspection' – to ensure all parties are clear on what will occur in the final stages of the construction work and what environmental issues are to be addressed; and
- 'project completion inspection' – to ensure work has been completed in accordance with the approved CEMP and that no other matters require further work.

TNPA staff may also conduct spot inspections at any time during the project.

### 4.5.3 Key Management Plans

For each issue identified, key management plans should be prepared. These can be presented in tabular format (refer **Annexure1**), which outlines:

- The management requirement;
- The action required to address the management requirement;
- The responsible person undertaking the action
- The timing for completing the action.

The CEMP provides the framework for managing environmental issues on the site during the construction phase. TNPA actively monitors (audits) the performance of the CEMP through site inspections and detailed environmental audits. The CEMP therefore forms part of the contract obligation since the EMP Guidelines and ES will accompany the tender and contract documentation.

### 4.5.5 Site Plan

A site plan must be attached to the CEMP. The plan should detail the spatial location of any proposed key developments on the site (building structure etc.), natural features (waterways, sensitive vegetation etc.), and any environmental control measures, e.g. erosion controls. A copy of this plan should be displayed at the site office at all times, and be updated and amended as works progress.

## 5. Operating EMPs

### 5.1 Introduction

An Operational Environmental Management Plan (OEMP) is focused on sound environmental management practices, which will be undertaken to minimize adverse impacts on the environment through normal operation of the facility. In addition, an OEMP identifies what measures will be put in place or will be required to manage any incidents and emergencies that may occur during the operation of the facility.

All activities undertaken on Port property require OEMPs as part of the TNPA lease agreement. The OEMP will be assessed as part of the lease adjudication process and forms an integral part of the lease agreements to be undersigned between TNPA and tenants of the Ports. Where the development involves an Environmental Impact Assessment (EIA) and approval of the OEMP might be undertaken National or Provincial government, Departments of Environmental Affairs (DEA).

An OEMP can also form the basis for an Environmental Management System (EMS) to be implemented both if development is to be undertaken with a construction phase before operations as well as when within existing infrastructure. TNPA encourages the implementation of an EMS based on the principles of the ISO 14001 international standards. A broad overview and implementation schedule needs to be provided in advance.

### 5.2 Mandatory Information

All information listed below is mandatory for an OEMP. If the OEMP forms part of a development application, most of the information below will be included in any case. **Note** that the applicant will typically be the entity undertaking construction or the entity undertaking the activity on site once it has been constructed. All applicants will also not necessarily be developing on port land but may also utilize existing infrastructure, in this case an OEMP and EMS outline must still be submitted in the prescribed format.

Information that must be provided about the proposal and associated OEMP includes:

- A real property description of the subject land;
- The postal address of the subject site (where possible);
- Full name and postal address of the applicant;
- The applicant's company name where applicable);

- Details of the activities that are to be undertaken and how activities will be managed;
- A scaled (dimensional) site plan (concept), including buildings, structures, drains and other site features relevant to the OEMP;
- Plans (concept) showing the proposed locations of all discharge and emission points to the environment, including where air, noise, liquids, dust, wastewater, smoke, vapours and any other contaminants are emitted; and
- Specific details and design of individual components/devices (such as dust/emission/odour extractors, waste water treatment facilities, etc.).

**Note** that as much information as possible should be included in a plan. Using a plan clearly indicates the site-specific features as they are to be located on the site. A report should accompany the plans to complete the information required for review of the OEMP.

### **5.3 Detailed description of the proposed activity**

It is essential that the applicant includes detailed description of the proposed activity in the OEMP, as it may form the basis for any licensing/permit conditions that may be requested by the organization or government departments, e.g. Dept. of Environmental Affairs (DEA), Dept. of Water Affairs (DWA), etc.

The description to include information on:

- Processes being undertaken and any emissions associated with the activity;
- Plans of the site and surrounding area, and location of any discharge points;
- Any nearby activities or environmental attributes that may be of relevance to the activity;
- An outline of the proposed operations and activities, including transport movements; and
- An assessment of risks and hazards, and measures to minimise these.

### **5.4 Details of any (actual & potential) emissions or other wastes and contaminants**

This section is to provide details of the scale, intensity and regularity of actual and potential emissions expected as part of normal operations. Information that should be provided includes:

- Quantity, regularity, concentration and description of actual and potential emissions and contaminants;
- The name and exact location of equipment giving rise to such discharges and emissions;
- The name and exact location of equipment used in the processing, reprocessing, treatment and/or discharge of wastes (on and off site);
- Treatment, recycling and/or reprocessing either on or off site; and
- Disposal and/or storage on or off site.

## **5.5 Site Environmental Induction**

All personnel entering or working in the site must receive an induction covering all relevant environmental, safety, health and security issues. The extent of the induction should be based on the length of time for which the person will be on site, the activities that they will be undertaking and the risks to which they will be exposed. In particular, the induction must provide information on known environmental risks relating to site activities and site emergency plans. No person will be issued with Port access permits unless proof of induction is provided.

## **5.6 Environmental Complaints**

An OEMP must address how any complaints relating to the operation are to be managed. An OEMP can include details of:

- The system for recording complaint details, including time, details of complainant, complaint specifics and follow up action;
- Investigation of environmental complaints;
- Notification of the relevant person or entity that complaints have been received; and
- Registration of complaints, including details of measures undertaken to satisfactorily address the complaint.

## **5.7 Environmental Incidents**

An OEMP must detail how any environmental incidents are to be recorded and managed. Such detail must include:

- The requirement to immediately take appropriate action, such as the use of spill response kits;
- The process for informing the relevant persons and/or authorities (preferably in the Dept. of Environmental Affairs prescribed manner.)
- The recording and investigation of all incidents as part of the OEMP;
- The reports prepared and circulated on the investigation; and
- Recommendations on steps to avoid similar events.

## **5.8 Monitoring**

An OEMP must provide details of any program to be undertaken to monitor the environmental aspects and effects resulting from the operation on site. As part of the approval process, specific conditions may be placed on the applicant/operator to measure and monitor environmental performance. Monitoring may be the requirement of a specific license/permit, such as storm water discharge, or based on a site-specific complaint, such as dust monitoring.

## **5.9 Auditing**

The implementation of an OEMP must be monitored continually as indicated in 4.8 above. Periodic auditing by an external entity would be beneficial, and such aspects should also be detailed in the OEMP.

## **5.10 Responsibilities**

Any OEMP must specify the individuals, positions/ or entities (together with contact details) responsible for all aspects of implementing the OEMP. In particular, the OEMP must clearly identify the individuals or otherwise responsible for:

- Receiving the reporting of monitoring, remedial action, environmental complaints and emergencies;
- Ensuring the measures/action plans are undertaken; and
- Verification, reporting and auditing of such measures/actions.

This should also include after-hours contact details for emergencies.

## **5.11 Supporting Information**

There may be a requirement to undertake other studies or prepare other plans in support of an OEMP. These will typically be prepared for sites as part of a development proposal, but may be specifically prepared for a facility. These may include:

- A risk and hazard analysis with an action programme;
- An emergency response plan;
- Lighting plan;
- An acoustic report;
- Geotechnical report;
- Flora/fauna report; or
- Details of consultation with relevant public authorities.

## **6. Decommissioning EMPs (DEMPs)**

### **6.1 Introduction**

As the final phase in the project cycle, decommissioning may present positive environmental opportunities associated with the return of the land for alternative usage and the cessation of impacts associated with operational activities. However, depending on the nature of the operational activity, the need to manage risks and potential residual impacts may remain well after operations have ceased. Examples of potential residual impacts and risks include contamination of soil groundwater, stock that has been abandoned (e.g. oil drums, scrap equipment, old chemicals, etc.) and old (unserviceable) structures.

The decommissioning phase EMP provides specific guidance with respect to the management of the environmental risks associated with the decommissioning stage

of a project. The decommissioning phase EMPs are typically encountered with storage before the ex/importing of minerals, base metals and other bulk commodities in Ports. As mentioned earlier in the document all three types of EMPs will be captured in the formal lease agreements with the latter only being required for approval on an agreed upon timeframe before vacation of land or infrastructure which should ideally be 2 years for long-medium term leases and 6 months for shorter term leases. This will enable decommissioning and rehabilitation to take place sufficiently and according to specified requirements.

## **6.2 Implementation**

All EMPs (construction, operational and decommissioning) will be captured in the lease agreements to ensure commitment to the compliance to TNPA environmental requirements, legal requirements and the implementation of an environmental management system (formal or informal). CEMP and OEMP must be submitted for approval before commencement of work or occupation of land and infrastructure. The DEMP must be submitted before lease agreement lapses in order to undertake proper decommissioning and/or rehabilitation. In the case of long and medium term lease agreements the ideal timeframe would be two years before lease lapse and for short term lease agreements 6 months before lease lapse. Adherence to these requirements will be monitored by the Property Department/Business Unit and implementation overseen by the Environmental Department/Business Unit.

## **6.3 Auditing**

TNPA will, where possible and necessary, conduct due diligence audits on newly acquired land as well as before land or a portion of land is leased to a tenant or operator. In most cases the tenants vacating the land will be required to conduct a due diligence audit to ascertain the environmental status of the land after their operational activities took place thereon. If TNPA is satisfied with the condition of the land then report can and will be communicated to the next tenant which will then act as his baseline status. If TNPA is not satisfied with the status of the land further rehabilitation and clean-up is to be undertaken by the vacating tenant. The due diligence audit will form the basis for all decommissioning and rehabilitation.

## **6.4 Key environmental issues to be addressed**

All key issues identified and addressed in the CEMP and OEMP must be looked at and the residual effects and impacts addressed accordingly. The immediate and residual effects of the following substances and materials should also be looked at, if not mentioned in CEMP or OEMP:

- Air Emissions
- Waste and Wastewater Management

- Materials/Commodity Handling & Storage
- Solid Waste Management
- Hazardous Waste
- Radioactive Waste
- Asbestos Containing Materials (ACMs)
- Polychlorinated BI-Phenyls (PCBs)
- Ozone Depleting Substances
- Odour, Dust and Smoke Nuisances
- Soil and Groundwater

## **6.5 Rehabilitation plan**

A rehabilitation plan should be submitted to TNPA for approval before rehabilitation commences. This rehabilitation plan must address all issues as per the OEMP as well as listed above but is not limited to that. TNPA will reply in writing to the applicant to continue with decommissioning and rehabilitation. This rehabilitation plan should also be sent to the Department of Water Affairs and Forestry since it is a legal requirement for all major rehabilitation plans to have their approval before commencement. Once again, only after written approval from DWAF can rehabilitation commence.

## **6.6 Key management plans**

For each contaminant or area required rehabilitation identified, key management plans should be prepared accordingly. These can be presented in tabular format (refer **Annexure3**), which outlines:

- the management requirement;
- the action required to address the management requirement;
- the responsible person undertaking the action
- the timing for completing the action.

The DEMP provides the framework for managing the rehabilitation process on the site. TNPA actively monitors (audits) the performance and progress of the DEMP through site inspections and detailed environmental audits.

## **6.7 Monitoring**

TNPA officials will continuously monitor the decommissioning and rehabilitation process to ensure compliance to plans and conditions provided or submitted.

## **6.8 Site plan**

A site plan should be submitted to TNPA indicating the rehabilitation intentions, methods and contamination levels. This site map will be used during monitoring.

## 7. Annexure 1

Examples of Construction and Operational Environmental Management Plan defined in elements tables. These tables represent examples of how to address environmental aspects, as per Table 1 (**Key Environmental Issues**).

### Element 1: Noise Management (construction phase)

#### EXAMPLE ONLY

It is acknowledged that, during the construction phase of a development, there is the potential for some generation of noise from on-site activities. The table below outlines the proposed management strategy to address issues relating to noise management that will be fully implemented prior to and during the construction phase of the development.

**Table A – CEMP: Noise Management**

<b>ELEMENT</b>	<b>NOISE MANAGEMENT</b>		
<b>Objective</b>	To manage activities on site to reduce the impact on surrounding properties.		
	To comply with relevant legislation.		
<b>Management Strategy</b>	Noise to be managed primarily through administrative controls during the construction phase.		
		<b>Responsible Person</b>	<b>Time frame</b>
<b>Actions</b>	All construction activities to be restricted to between 08h00 -17h00 during week days only;	Site Manager	Throughout construction phase
	All equipment used during construction phase to be regularly maintained to ensure efficient operation; and		
	Noise dampening equipment to be used on equipment with excessive noise-generating characteristics.		
<b>Performance indicators</b>	Lack of complaints/requests for attention by community/TNPA	Site Manager	Throughout construction phase

	officials/authorities		
<b>Monitoring</b>	Daily inspection of the work site to occur;	Site Manager	Throughout construction phase
	Service logs of equipment/machinery used on site to be monitored.		
<b>Reporting</b>	Any complaints or incidents to be reported immediately to the Site Manager, who should then record this in a logbook.	Site Manager	Throughout construction phase
<b>Corrective action</b>	Investigate cause of excessive noise;	Site Manager	Throughout construction phase
	Implement corrective measures prior to the recommencement of site works;		
	Possible rescheduling of noise generating activities to reduce noise annoyance.		
<b>Interfaces</b>	Individual contractors/sub-contractors EMPs must address and comply with any other TNPA EMP or controls which exist for the Ports.	Site Manager	Throughout construction phase

## **Element 2: Erosion and Sediment Management (CONSTRUCTION PHASE)**

### **EXAMPLE ONLY**

It is acknowledged that, during the construction phase of the development, there is a potential for ground disturbance, traffic movements and on-site drainage, which may increase the rate of erosion and sediment export from the site, and therefore impact the surrounding environment. Accordingly, the table below outlines the proposed management strategy to address issues relating to erosion and sediment management, which will be fully implemented prior to and during the construction phase of the development.

**Table B – CEMP: Erosion and Sediment Management Plan**

ELEMENT	EROSION AND SEDIMENT CONTROL		
Objective	To manage activities that exacerbate erosion, and provide on-site controls that reduce erosion and contain any transported material within the subject site.		
Management Strategy	Implementation of engineering measures and a comprehensive management strategy.		
Actions	Responsibility	Time Frame	
<p>Prior to the commencement of site works, an Erosion and Sediment Control Plan must be implemented.</p> <p>The following controls should be included in the plan:</p> <ul style="list-style-type: none"> <li>• Perimeter control measures (e.g. sediment control fencing) prior to the commencement of works;</li> <li>• Run-off water diversion measures around site works, where practicable;</li> <li>• Measures to control the tracking of site material onto surrounding sites and roads (e.g. crushed rock pads, vibration grids etc.), so as not to impede existing traffic flows;</li> <li>• Clearly marked stockpile areas with associated control measures;</li> <li>• Geofabric to be placed over field gullies and/or side entry pits during construction phase;</li> <li>• Straw bales to be placed to divert runoff from adjoining blocks around the site;</li> <li>• Clearly delineated 'no-go' movement areas;</li> <li>• Access and egress points to the site.</li> </ul> <p>The following measures must also be implemented during the construction phase:</p> <ul style="list-style-type: none"> <li>• Landscaping work to commence as soon as practicable to reduce exposure time of exposed soil;</li> <li>• Exposed areas to be covered with mulch material to reduce impacts of rainfall on the site;</li> <li>• Existing outfalls from the site to be modified to limit concentration and velocity of site flows;</li> <li>• Dust control measures to be used where required</li> </ul>	Site Manager	Throughout construction phase	

<b>Performance Indicators</b>	Site Manager	Throughout construction phase
<ul style="list-style-type: none"> <li>Erosion and sediment movement should not exceed natural rates;</li> <li>Lack of complaints/requests for attention by PBC staff.</li> </ul>		
<b>Monitoring</b>	Site Manager	Throughout construction phase
<ul style="list-style-type: none"> <li>Daily visual inspections of the work site and engineering structures should occur and be logged in the CEMP log book. Inspect immediately after a significant rainfall event.</li> </ul>		
<b>Reporting</b>	Site Manager	Throughout construction phase
<ul style="list-style-type: none"> <li>Any erosion and/or sedimentation issues should be reported to the site manager immediately. The site manager should record such incidents in a log book and report on corrective actions taken before the recommencement of site works.</li> </ul>		
<b>Corrective Actions</b>	Site Manager	Throughout construction phase
<ul style="list-style-type: none"> <li>Investigate cause of incident;</li> <li>Restore control measures prior to the recommencement of site works.</li> </ul>		
<b>Interfaces</b>	Site Manager	Throughout construction phase
<ul style="list-style-type: none"> <li>Individual contractors'/subcontractors' EMPs must address and accord with any other EMP contained in this report.</li> </ul>		

### Element 3: Waste Management (OPERATIONAL PHASE)

#### EXAMPLE ONLY

It is acknowledged that waste may be generated during the operational phase of the development. The table below details those actions required to properly manage this waste.

Table C – OEMP: Waste Management

ELEMENT	WASTE MANAGEMENT
Objective	<ul style="list-style-type: none"> <li>➤ To minimize the potential for environmental impact of wastes generated on the operational site.</li> <li>➤ To comply with all approvals and or licenses issued to the site as well as the total Port.</li> </ul>

Management Strategy	To efficiently manage the subject site and activities that may lead to generation of wastes.	
<b>Actions</b>	<b>Responsibility</b>	<b>Time Frame</b>
<ul style="list-style-type: none"> <li>➤ All waste material to be removed off site shall be contained on site prior to disposal, using appropriate storage containers.</li> <li>➤ All waste materials from operational activities shall be regularly cleared off site and disposed of at an approved landfill site.</li> <li>➤ Maintain high level of housekeeping on the site, ensuring that all waste materials are handled correctly and not left at large.</li> <li>➤ Undertake staff training upon commencement of employment to ensure compliance.</li> </ul>	Site/Terminal Manager	Throughout operational phase
<b>Performance indicators</b>		
No wastes evident on site except in designated areas and containers.	Site/Terminal Manager	Throughout operational phase
Complaints from TNPA Official/Authorities		
<b>Monitoring</b>		
Regular inspections of the site.	Site/Terminal Manager	Throughout operational phase
<b>Reporting</b>		
Logs to be kept of regular inspections as well as disposal certificates to be kept in a register.	Site/Terminal Manager	Throughout operational phase
<b>Corrective action</b>		
Where a non-conformance has occurred, a detailed report of the incident and the cause shall be prepared and kept.	Site/Terminal Manager	Throughout operational phase
Control measures are to be rectified and/or replaced in the event of non-conformance.		
<b>Interfaces</b>		
Individual site EMPs must address and comply with any other TNPA EMP or controls which exist for the Ports.	Site/Terminal Manager	Throughout operational phase

## Element 4: Hydrocarbon Contamination Rehabilitation (decommissioning phase)

### EXAMPLE ONLY

It is acknowledged that during the operational phase of an organization or business that there might be instances of pollution that has taken place on site or degradation of the quality of the land due to the nature of its activities. Therefore the affected areas have to be rehabilitated to its original state or to an acceptable level for TNPA and the authorities. The table below details how a typical action plans that can be drawn up to depict the rehabilitation process.

**Table D – DEMP: Hydrocarbon contamination Rehabilitation**

<b>ELEMENT</b>	<b>DEMP: HYDROCARBON CONTAMINATION REHABILITATION</b>		
<b>Objective</b>	To reduce the levels of hydrocarbons in the contaminated soil to less than 1000ppm. To comply with all conditions and requirements of the due diligence audit findings.		
<b>Management Strategy</b>	To efficiently rehabilitate the subject site to TNPA and legal requirements or to the condition the site was before operations.		
<b>Actions</b>	<b>Responsibility</b>	<b>Time Frame</b>	
<ul style="list-style-type: none"> <li>➤ All waste material to be removed off site shall be contained on site prior to disposal, using appropriate storage containers.</li> <li>➤ All severely contaminated soil to be excavated approx. 30cm deeper than contamination level and taken for remediation.</li> <li>➤ All areas that has medium to low contamination levels will be treated with bioremediation products.</li> </ul>	Site/Terminal Manager	Throughout decommissioning phase	
<b>Performance indicators</b>	Site/Terminal Manager	Throughout decommissioning phase	
<ul style="list-style-type: none"> <li>➤ Acceptable hydrocarbon levels of less than 1000PPM</li> <li>➤ Complaints from TNPA Official/Authorities</li> </ul>			
<b>Monitoring</b>	Site/Terminal Manager	Throughout decommissioning phase	
<ul style="list-style-type: none"> <li>➤ Regular inspections of the site.</li> <li>➤ All treated areas to be tested for hydrocarbon levels after completion of remediation works.</li> </ul>			
<b>Reporting</b>	Site/Terminal	Throughout	

Logs to be kept of regular inspections as well as disposal certificates to be kept in a register.	Manager	decommissioning phase
<b>Corrective action</b>	Site/Terminal Manager	Throughout decommissioning phase
Where hydrocarbon levels still exceed legislative levels a brief action plan with completion dates shall be prepared and kept.		
Control measures are to be rectified and/or replaced in the event of non-conformance.		
<b>Interfaces</b>	Site/Terminal Manager	Throughout decommissioning phase
All DEMP's and rehabilitation plans must be approved by TNPA and in certain cases by the Authorities.		