

TRANSET FERIGHT RAIL

an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ] No CRAC-JHB-36109

FOR THE SUPPLY OF: RFQ FOR THE SUPPLY AND DELIVERY OF EXTENSION LADDERS.

FOR DELIVERY TO: TRANSNET FREIGHT RAIL
INFRA DEPOT; KRUGERSDORP MILLSITE

ISSUE DATE: TTHURSDAY 09 SEPTEMBER 2021

CLOSING DATE: THURSDAY 23 SEPTEMBER 2021

CLOSING TIME: 10:00 AM

VALIDIDTY PERIOD: WEDNESDAY, 9 JULY 2022

TRANSNET HAS SET A PREQUALIFICATION CRITERIA THAT

- **ONLY EXEMPTED MICRO ENTERPRISES & QUALIFYING SMALL ENTERPRISES WITH A B-BBEE STATUS LEVEL 1 MAY PARTICIPATE IN THIS RFQ PROCESS. A BID THAT FAILS TO MEET THIS PRE-QUALIFYING CRITERIA WILL BE REGARDED AS AN UNACCEPTABLE BID AND WILL BE DISQUALIFIED.**

NOTE TO THE BIDDER

THE MEMORANDUM OF UNDERSTANDING/AUTHORIZATION LETTER SHALL:

- **BE ON MANUFACTURER'S LETTERHEAD**
- **STATE THE BIDDERS COMPANY NAME**
- **BE SIGNED BY BOTH THE MANUFACTURER AND BIDDER**
- **BE DATED BY BOTH THE MANUFACTURER AND BIDDER**
- **QUOTE THE RFQ NUMBER**
- **QUOTE THE ITEMS TO BE MANUFACTURED**

OR

THE CONFIRMATION LETTER SHALL:

- **BE ON MANUFACTURER'S LETTERHEAD**
- **CONFIRM THAT THE BIDDER IS A MANUFACTURER OF THE ITEMS**
- **BE SIGNED BY THE MANUFACTURER**
- **BE DATED BY THE MANUFACTURER**
- **QUOTE THE RFQ NUMBER**
- **QUOTE THE ITEMS TO BE MANUFACTURED**

FAILURE TO ADHERE TO THE ABOVE SHALL LEAD TO A DISQUALIFICATION

SECTION 1: SBD1 FORM**PART A****INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF Transnet freight Rail, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	CRAC-JHB-36109	ISSUE DATE:	09/09/2021	CLOSING DATE:	23/09/2021	CLOSING TIME:	10:00 am
DESCRIPTION	RFQ FOR THE SUPPLY AND DELIVERY OF EXTENSION LADDERS TO TRANSNET FREIGHT RAIL INFRA NATIONAL DEPOT, MILLSITE KRUGERSDORP						
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
RECEPTION, TENDER ADVICE CENTRE, INYANDA HOUSE 1, GROUND FLOOR, 21 WELLINGTON ROAD, PARKTOWN, JOHANNESBURG							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON	Lucky Molefe			CONTACT PERSON			
TELEPHONE NUMBER	011 584 0685			TELEPHONE NUMBER			
FACSIMILE NUMBER	N/A			FACSIMILE NUMBER			
E-MAIL ADDRESS	Lucky.Molefe@Transnet.net			E-MAIL ADDRESS			
SUPPLIER INFORMATION							
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:		OR	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA		
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT			[TICK APPLICABLE BOX] ☐ Yes ☐ No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]							
1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]			2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES, ANSWER QUESTIONNAIRE BELOW]		
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS							
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO							

DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO

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.

PART B TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

- 1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 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.
- 1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

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 Responses to RFQ

Responses to this RFQ [**Quotations**] must not include documents or reference relating to any other quotation or proposal. Any additional conditions must be embodied in an accompanying letter.

2 Formal Briefing

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 5 [*Communication*] below:

3 Compulsory Local Content Threshold

In terms of section 8(1) of the Preferential Procurement Regulations, 2017, and the Instruction Note issued by National Treasury on the "Invitation and Evaluation of Bids based on a stipulated minimum threshold for local content and production for the **STEEL POWER PYLONS** Sector," Transnet is required to set a stipulated minimum threshold be set for this RFQ.

o Local Content Notes

- 3.2.1. The exchange rate to be used for the calculation of local production and content must be the exchange rate published by the South African Reserve Bank (SARB) on the date of the advertisement of the tender;
- 3.2.2. Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 must be used to calculate local content;
- 3.2.3. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the following formula which must be disclosed in the bid documentation:

$$LC = [1 - x/y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the SARB at 12:00 on the date of advertisement of the bid.

- 3.2.4. The SABS approved technical specification number SATS 1286:2011 and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)] are accessible to all potential tenderers on the DTI's official website; <http://www.dti.gov.za/industrial-development/ip.jsp> at no cost.
- 3.2.5. The rates of exchange quoted by the tenderer in paragraph 4.1 of Returnable Schedule (the Declaration Certificate for Local Production and Content for Designated Sectors) will be verified for accuracy.
- 3.2.6. Declaration Certificate for Local Production and Content (SBD 6.2) together with the Annex C (Local Content Declaration: Summary Schedule) must be completed, duly signed and submitted a the closing date and time of the bid;

- 3.2.7. Tenderers must familiarise themselves with all the information provided in the Local Content instruction notes with particular reference to paragraph 4 of the instruction notes.
- 3.2.8. Respondents are to ensure that they complete the local content annexures in line with the provisions made in the Guidance Document for the calculation of Local Content. Failure to comply will lead to disqualification.

3.3. Mandatory RFQ Annexures

The regulatory and mandatory RFQ Annexures, which must be completed by all Respondents in order to declare Local Content, are as follows:

Annexure B – Declaration Certificate for Local Production and Content [SBD 6.2]

Annexure C – Local Content Declaration: Summary Schedule

RESPONDENTS ARE REQUIRED TO COMPLETE, COMPLY AND DECLARE THE LOCAL CONTENT THRESHOLD. FAILURE TO COMPLY WILL LEAD TO DISQUALIFICATION

Annexures D and E are Supporting Schedules to Annexure C. They are named as follows:

Annexure D – Imported Content Declaration: Supporting Schedule to Annexure C

Annexure E – Local Content Declaration: Supporting Schedule to Annexure C

After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. Declaration C should be submitted with the bid documentation at the closing date and time of the bid. Declarations D and E should be kept by Respondents for verification purposes for a period of at least 5 years. The successful Respondent is required to continuously update Declarations C, D and E with the actual values for the duration of the contract. In addition to what is stated above regarding Annexures D and E, please note that these declarations are to be submitted as part of the Essential Returnable Documents - See Section 2 of RFQ.

3.4. Challenges meeting the Local Content Threshold

Should, after the award of a Bid, the Supplier experience challenges in meeting the stipulated minimum threshold for Local Content, Transnet is required to inform the DTI accordingly in order for the DTI to verify the circumstances and provide directives in this regard.

3.5. Exchange Rate Verification

The rate of exchange quoted by the Respondent in the declaration certificates (Annexure B – Declaration Certificate for Local Production & Content [SBD 6.2] and Annexure C – Local Content Declaration: Summary Schedule) will be verified for accuracy as per the requirement of National Treasury Instruction Notes and Circulars.

3.6. Local Content Obligations

Respondents are to note that the Local Content commitments made by the successful Respondent(s) will be incorporated as a term of the contract and monitored for compliance. Should the successful Respondent fail to meet its Local obligations, non-compliance penalties shall be applicable as per the contract or Standard RFQ Terms and Conditions for the Supply of Goods and Services. Breach of Local Content obligations also provide Transnet cause to terminate the contract in certain cases where material non-compliance with Local Content requirements are not achieved.

3.7. Local Content Obligations

Respondents are to note that the Local Content commitments made by the successful Respondent(s) will be incorporated as a term of the contract and monitored for compliance. Should the successful

Respondent fail to meet its Local obligations, non-compliance penalties shall be applicable as per the contract or Standard RFQ Terms and Conditions for the Supply of Goods and Services. Breach of Local Content obligations also provide Transnet cause to terminate the contract in certain cases where material non-compliance with Local Content requirements are not achieved.

4. Preferential Procurement Prequalification Criteria

3.1 Minimum B-BBEE level & Entity Size

Transnet has set a prequalification criteria that **Only** Exempted Micro Enterprises & Qualifying Small Enterprises with a B-BBEE status **level 1** may participate in this RFQ process. A bid that fails to meet this pre-qualifying criteria will be regarded as an unacceptable bid and will be disqualified.

3.2 Communication

3.3 Specific queries relating to this RFQ before the closing date of the RFQ should be submitted to [**Lucky Molefe**] before **12:00 pm on 21 September 2021**. In the interest of fairness and transparency Transnet's response to such a query will then be made available to other bidders.

3.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.

3.5 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.

3.6 Respondents may also, at any time after the closing date of the RFQ, communicate with the Secretariat of the Transnet Acquisition Council on any matter relating to its RFQ response:

Telephone 011 584-0821

Email: Prudence.Nkabinde@Transnet.net

3. Legal Compliance

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

4 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.

4. Changes to Quotations

Changes by the Respondent to its submission will not be considered after the closing date and time.

5. Binding Offer

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

6. Disclaimers

6.4. Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that Transnet reserves the right to:

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;

- disqualify Quotations submitted after the stated submission deadline;
 - not necessarily accept the lowest priced Quotation or an alternative bid;
 - place an order in connection with this Quotation at any time after the RFQ's closing date;
 - award only a portion of the proposed goods which are reflected in the scope of this RFQ;
 - split the award of the order/s between more than one Supplier/Service Provider should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
 - cancel the quotation process;
 - 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;
 - request audited financial statements or other documentation for the purposes of a due diligence exercise;
 - Award business to the highest scoring bidder/s unless objective criteria justifies the award to another bidder.
 - 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 provides for it;
 - **Upon approval of preferred bidder status, the preferred bidder will be provided with a Letter of Intent (LOI) and will be requested to provide a sample of the materials in the bid submission in line with the specification of the tender, to be inspected by Transnet Technology Management; Should the sample not be in line with the technical specification, TFR reserves the right to revoke or rescind the letter of intent and to proceed with the next ranked bidder.**
 - 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;
- award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods/Services 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 next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods/Services at their quoted price, even after they have been issued with a Letter of Regret.
- If Bidders intend to download the bid off the Portal, they are required to indicate their intention to respond to this bid by **[22 September 2021]** by sending an email with their contact details to the following address: **Lerato.Morailane@transnet.net** And **Anthonie.Erasmus@Transnet.net**, This is to ensure that any required communication (e.g. addenda to the bid) in relation to this bid reaches those intending to respond.

NOTE - Transnet will not be held liable if Bidders do not respond by this date and and do not receive the latest information regarding this Bid as a result thereof.

7. Specification

ITEM NO.	Item description
1	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVERLAP.
2	LADDER, EXTENSION; TYPE: INDUSTRIAL, EXTENDED LENGTH: 10.97 M, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868,
3	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA; (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVER LAP. NB: These ladders must come with a safety chain, a v-roller pole rung and a red transport warning flag
4	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA; (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVER LAP. NB: This ladder must come with a safety chain, a cable roller pole rung and the red transport flag.

Detailed drawing & specification attached on Annexure J

8. 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.

9. Security clearance

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the goods 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.

10. 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. Transnet is required to ensure that price quotations are invited and accepted from prospective bidders listed on the CSD. 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. The CSD can be accessed at <https://secure.csd.gov.za/>.

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

11. 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.

It is a requirement that bidders grant a written confirmation when submitting this bid that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status and by submitting this bid such confirmation is deemed to have been granted.

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.

12. Protection of Personal Data

In responding to this bid, Transnet acknowledges that it may obtain and have access to personal data of the Respondents. Transnet agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, Transnet requires Respondents to process any personal information disclosed by Transnet in the bidding process in the same manner. The detailed mutual duties of Transnet and the Respondents to protect personal information is contained in paragraph 36 of the General Bid Conditions.

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

TIP-OFFS ANONYMOUS: 0800 003 05



Ethics Helpdesk
Ethics Management Systems™

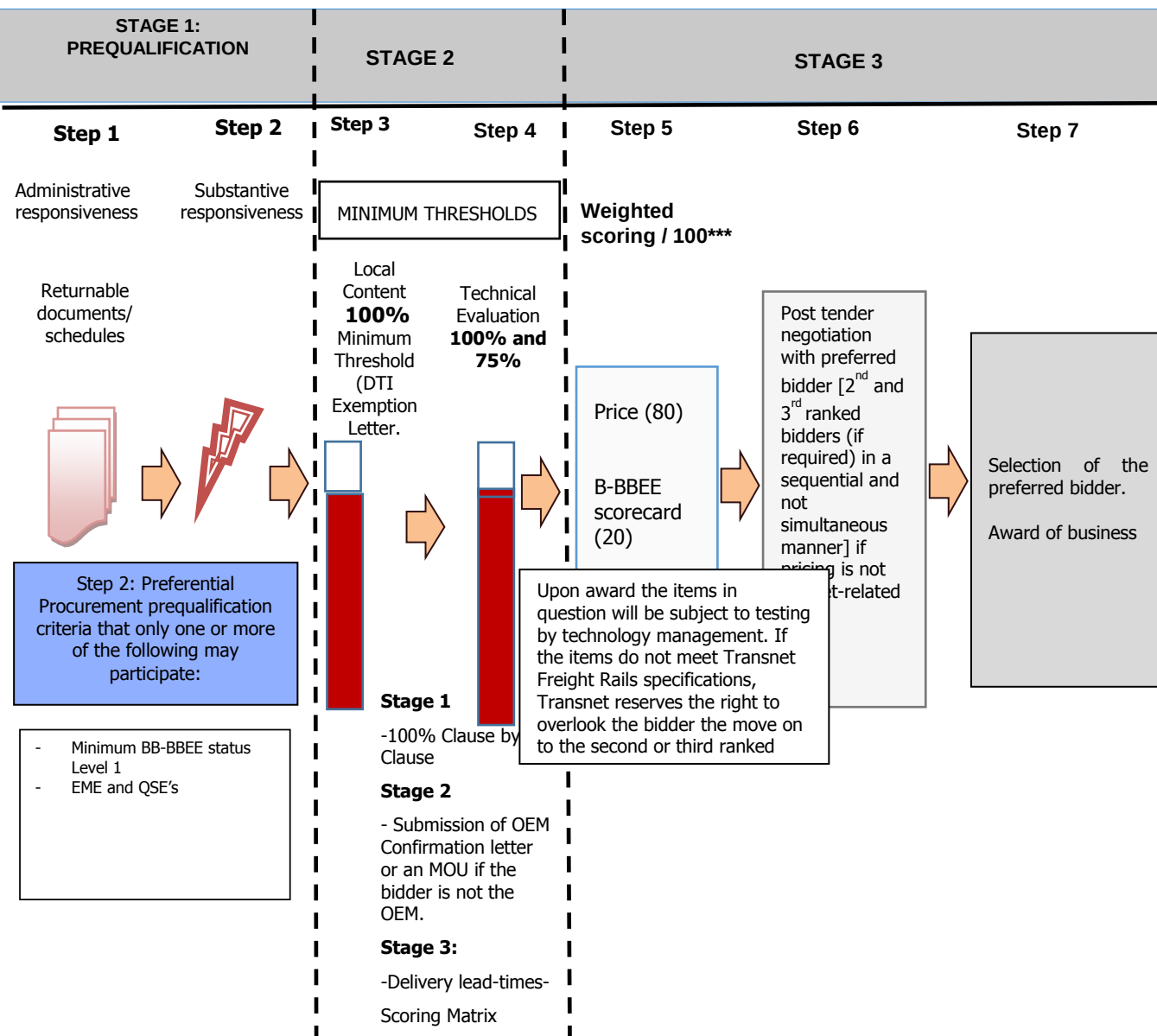
You can choose to be Anonymous or Non-Anonymous on ANY of the platforms
PLEASE RETAIN YOUR REFERENCE NUMBER

				
	AI Voice Bot "Jack" 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 anytime.	WhatsApp App Speak to an Agent via WhatsApp.	Speak to an Agent Speak to an Agent via the platform with no call or data charge.	Telegram Speak to an Agent via Telegram.
 0800 003 056	 086 551 4153	 reportit@ethicshelpdesk.com	 *120*0785980808#	

SECTION 3

EVALUATION METHODOLOGY, CRITERIA AND RETURNABLE DOCUMENTS

1 Evaluation Criteria



1.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFQ Reference
Whether the Bid has been lodged on time	
Whether all Returnable Documents and/or schedules [where applicable] were	Section 3

Respondent's Signature

Date & Company Stamp

completed and returned by the closing date and time	
• Verify the validity of all returnable documents	<i>Section 3</i>
• Verify if the Bid document has been duly signed by the authorised respondent	<i>All sections</i>

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

1.2 STEP TWO: Test for Substantive Responsiveness to RFQ

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

Check for substantive responsiveness	RFQ Reference
• Whether any general pre-qualification criteria set by Transnet, have been met	<i>All sections including: Section 2 paragraphs 2.2, 4</i>
• Whether the Bid contains a 100% Completed priced offer. (The pricing schedule has been provided in the RFQ, bidders to complete the provided pricing schedule failure to complete and submit the provided pricing schedule will result in a bid disqualification).	<i>Section 4 - Quotation Form</i>
• Section 1: SBD 1 Form	<i>Section 1</i>
• Proof of CSD	
• Valid and original (or a certified copy) proof of Respondent's compliance to B-BBEE requirements stipulated in Section 7 of this RFQ.	
• Annexure B – Declaration Certificate For Local Production And Content [Sbd6.2]	<i>Section 2 - Paragraph 3 Local Content Annexure B</i>
• Annexure C – Local Content Declaration: Summary Schedule	<i>Section 2 - Paragraph 3 Local Content Annexure C</i>
• Whether any set prequalification criteria for preferential procurement have been met: Indicate the minimum B-BBEE threshold (if applicable): - Minimum B-BBEE Level 1 - Exempted Micro Enterprises (EME'S) - Qualifying Small Enterprises (QSE's)	

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

1.3 STEP THREE: Minimum Threshold for Local Content

Local Production and Content Threshold	RFQ REFERENCE
• A minimum threshold of 100% is required for Local Content of Goods offered Powerline Hardware	<i>Section 2, paragraph 3 Annexures B and C</i>
Annexure B – Declaration Certificate For Local Production And	<i>Section 2 - Paragraph 3</i>

Content [Sbd6.2]	<i>Local Content Annexure B</i>
Local Content Annexure B	<i>Section 2 - Paragraph 3</i> <i>Local Content Annexure C</i>

The test for meeting the Local Content threshold [Step Three] must be passed for a Respondent's proposal to progress to Step Four for further evaluation

- **Respondents are to note that Transnet will not round off final Local Content scores for the purposes of determining whether the Local Content threshold has been met.**
- **A bid that fails to meet the minimum stipulated threshold for local production and content will be regarded as an unacceptable bid.**

1.4 STEP FOUR: Technical Evaluations

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

Stage 1:

- Annexure H- which include a 100% Clause by Clause Compliance to Specifications, and **Failure to submit and comply 100% to the technical Clause by Clause Compliance to Transnet's Specifications will result in a bid being disqualified. Bidder to ensure that this document is submitted and that they respond to each statement of compliance.**

Stage 2:

- **Whether any Technical Pre-qualification set by Transnet have been met as follows**

If A Bidder Is an Original Equipment Manufacturer (OEM)/Manufacturer, the Bidder Must Submit a Letter on a Company Letterhead, Signed, Dated and Confirming That They Are the OEM/Manufacturer and shall state the items that they produce/manufacture that are required in the RFQ. The letter must quote the RFQ number.

If A Bidder Is Not an Original Equipment Manufacturer (OEM)/Manufacturer, The Bidder Must Submit a Memorandum of Understanding (MOU)/Authorization letter Between the Bidder and the OEM/Manufacturer, Which Must Be On the OEM's Letterhead stating the bidders company name. The MOU/Authorization letter shall be Signed & Dated by Both the OEM and Bidder. The MOU should make reference to the RFQ number Plus the items which the OEM/Manufacturer will produce/manufacture.

Failure to submit the MOU/Authorization letter between the Bidder and the OEM/Manufacturer or an OEM/Manufacturer confirmation letter in the case of where a bidder is a manufacturer will result in a bid being disqualified.

Stage 3:

- Annexure I- Delivery lead-times schedule.

Bidders will score zero (0) should they not submit this technical delivery lead-times scoring matrix
Only bidders that complete, submit and score a minimum threshold of 75% will proceed to the next phase of evaluations.

A Respondent's compliance with the minimum technical threshold of 75% will be measured by their responses to **Annexure I.**

Note: Bidders to note that the delivery lead-time is calculated from the day a Transnet Freight Rail valid Purchase order is issued.

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

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

1.5 STEP FIVE: Evaluation and Final Weighted Scoring

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

Evaluation Criteria	RFQ Reference
• Commercial offer	<i>Section 4</i>

2

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

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

4 Where:

5 Ps = Score for the Bid under consideration

6 Pt = Price of Bid under consideration

7 $Pmin$ = Price of lowest acceptable Bid

- b) **Broad-Based Black Economic Empowerment criteria** [Weighted score 20 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

REFER TO Section 4 (PRICING SCHEDULES)

1.6 STEP SIX: 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. A final evaluation will be conducted in terms of 80/20 and the contract will be negotiated and awarded to the successful Respondent(s).

1.7 STEP SEVEN: Award of business and conclusion of contract

- **Upon approval of preferred bidder status, the preferred bidder will be provided with a Letter of Intent (LOI) and will be requested to provide a sample of the materials in the bid submission in line with the specification of the tender, to be inspected by Transnet Technology Management; Should the sample not be in line with the technical specification, TFR reserves the right to revoke or rescind the letter of intent and to proceed with the next ranked bidder.**
- Immediately after approval to award the contract has been received, the successful or preferred bidder(s) will be informed of the acceptance of his/their Quotation by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).
- Otherwise, a final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

1.8. Validity Period

Transnet requires a validity period of 180 [One Hundred and Eighty] Business Days from the closing date of this RFQ **9 JULY 2021**. Bidders are to note that they may be requested to extend the validity period of their bid, on 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.

8 Disclosure of contract information**Prices Quoted**

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices and preferences claimed of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, (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, goods/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:

Is the Respondent (Complete with a "Yes" or "No")						
A DPIP/FPPO		Closely Related to a DPIP/FPPO		Closely Associated to a DPIP/FPPO		
List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.						
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 DPIP or FPPO are to note that Transnet is required to annually publish on its website a list of all business contracts entered into with DPIP or FPPO. This list will include successful Respondents, if applicable.

2. 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 the quotation based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFQ <u>will</u> result in a Respondent's disqualification.</i>
Returnable Documents Used for Scoring	<i>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.</i>
Essential Returnable Documents	<i>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.</i>

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 Quotations the **Mandatory Returnable Documents**, and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
Section 1: SBD1 Form	
Section 4: 100% Completed Quotation Form (The pricing schedule has been provided in the RFQ, bidders to complete the provided pricing schedule failure to complete and submit the provided pricing schedule will result in a bid disqualification).	
ANNEXURE B – Declaration Certificate for Local Production and Content [SBD6.2] (SBD6.2 must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained)	
ANNEXURE C – Local Content Declaration: Summary Schedule (Annexure C must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained)	
A Local Content exemption letter from DTI (where applicable)	
Proof of CSD Registration	
Valid And Original (Or A Certified Copy) Proof Of Respondent's Compliance To B-BBEE Requirements Stipulated In Section 7 Of This RFQ.	

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:

RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
Technical Substantive Returnable Documents (Annexure H) – Compliance to Specifications Failure to submit a completed 100% Clause by Clause Compliance to Transnet's Specifications will Result in A bid being disqualified. - If A Bidder Is an Original Equipment Manufacturer (OEM)/Manufacturer, the Bidder Must Submit a Letter on a Company Letterhead, Signed, Dated and Confirming That They Are the OEM/Manufacturer and shall state the items that they produce/manufacture that are required in the RFQ. The letter must quote the RFQ number. - If A Bidder Is Not an Original Equipment Manufacturer (OEM)/Manufacturer, The Bidder Must Submit a Memorandum of Understanding (MOU)/Authorization letter Between the Bidder and the OEM/Manufacturer, Which Must Be On the OEM's Letterhead stating the bidders company name. The MOU/Authorization letter shall be Signed & Dated by Both the OEM and Bidder. The MOU should make reference to the RFQ number Plus the items which the OEM/Manufacturer will produce/manufacture. Failure to submit the MOU/Authorization letter between the Bidder and the OEM/Manufacturer or an OEM/Manufacturer confirmation letter in the case of where a bidder is a manufacturer will result in a bid being disqualified.	
Annexure I - Delivery Lead-times Scoring Matrix Bidders will score zero (0) should they not submit this technical functionality questionnaire. Only bidders that score a minimum threshold of 75% will proceed to the next Phase of evaluations.	

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:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
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	
SARS Tax Certificate and /or Tax pin	
SECTION 5: Certificate of Acquaintance with RFQ Documents	
SECTION 6: RFQ Declaration and Breach of Law Form	
SECTION 7: B-BBEE Preference Claim Form	

Respondent's Signature

Date & Company Stamp

SECTION 8: SBD 9 - Certificate Of Independent Bid Determination	
ANNEXURE D – Imported Content Declaration: Supporting Schedule to Annexure	
ANNEXURE E – Local Content Declaration: Supporting Schedule to Annexure C	

3. 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 RFQ. 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

SECTION 4
QUOTATION FORM

I/We _____
hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; and
- any other standard or special conditions embodied in this Request for Quotation.

I/We accept that unless Transnet should otherwise decide and so inform me/us, this Quotation [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. I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.

Respondent's Signature

Date & Company Stamp

Price Schedule

Item No	Description of Item	Unit	Estimated Quantity	Unit Price Excl VAT	TOTAL PRICE OF ITEM [ZAR]
1	LADDER, EXTENSION; TYPE: INDUSTRIAL, EXTENDED LENGTH: 10.97 M, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868.	EACH	18		
2	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA; (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVER LAP.	EACH	97		
3	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA; (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVER LAP. NB: These ladders must come with a safety chain, a v-roller pole rung and a red transport warning flag	EACH	2		
4	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA; (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVER LAP. NB: This ladder must come with a safety chain, a cable roller pole rung and the red transport flag.	EACH	1		
TOTAL PRICE, exclusive of VAT:					
VAT 15% (if applicable)					
Total Inclusive of VAT (where applicable)					

I/We quote as follows for the goods required, on a “delivered to Krugersdorp” basis, including VAT:

Respondent's Signature_____
Date & Company Stamp

Delivery Lead-Time from date of purchase order: _____ [weeks]

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 RFQ;
 - (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 RFQ;
 - (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 RFQ.

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

- b) All Prices must be quoted in South African Rand, inclusive of VAT
- c) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule will result in a bid being disqualified.
- d) 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.

SECTION 5

CERTIFICATE OF ACQUAINTANCE WITH RFQ 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 RFQ. 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 will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account in calculating tendered prices or any other purpose:

1. Transnet's General Bid Conditions
2. Standard RFQ Terms and Conditions for the supply of Goods or Services to Transnet
3. Transnet's Supplier Integrity Pact

Existing vendors: existing vendors are required to confirm whether all the information (e.g. company address, contact details, banking details, etc.) relating to the existing vendor number is still correct at the time of submission of this bid or update their information in the table below:

Transnet Operating Division [e.g. TFR, TE, etc]	Vendor Number	Information still current [tick if applicable]	Information change [indicate detail of change/s & attach appropriate proof]

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFQ 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 the Standard terms or conditions could result in disqualification.

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

The bidder understands that his/her Bid will be disqualified if this Certificate of Acquaintance with RFQ documents included in the RFQ as a returnable document, is found not to be true and/ or 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: _____

SECTION 6**RFQ 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 RFQ Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Quotation **[RFQ]**;
3. we have been provided with sufficient access to the existing Transnet facilities/sites and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and has 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 RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;
5. we have complied with all Obligations of the Bidder/Supplier as indicated in paragraph 3 of the Transnet Supplier Integrity Pact which includes but is 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;
6. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner;
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 Transnet 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 the Transnet;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **is / is not** [delete as applicable] a former employee or board member of Transnet in the past 10 years. I further declare that if they were 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 RFQ; 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:

[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]

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.

DECLARATION OF INTEREST REGARDING PERSONS EMPLOYED BY THE STATE (SBD4)

12. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

13. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:

13.1. Full Name of bidder or his or her representative:

13.2. Identity Number:

13.3. Position occupied in the Company (director, trustee, shareholder²):
.....

13.4. Company Registration Number:

¹ "State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

² "Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

13.5. Tax Reference Number:

13.6. VAT Registration Number:

13.7. Are you or any person connected with the bidder presently employed by the state?	YES / NO
13.7.1. If so, furnish the following particulars:	
Name of person / director / trustee / shareholder/ member:	
Name of state institution at which you or the person connected to the bidder is employed :	
Position occupied in the state institution:	
Any other particulars:	
13.8. If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?	YES / NO
13.8.1. If yes, did you attached proof of such authority to the bid document? (Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.	YES / NO
13.8.2. If no, furnish reasons for non-submission of such proof:	
13.9. Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?	YES / NO
13.9.1. If so, furnish particulars:	
13.10. Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?	YES / NO
13.10.1. If so, furnish particulars:	
13.11. Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?	YES / NO
13.11.1. If so, furnish particulars:	
13.12. Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?	YES / NO

Respondent's Signature_____
Date & Company Stamp

13.12.1. If so, furnish particulars:

.....

The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 14 below.

14. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

BREACH OF LAW

15. We further hereby certify that *I/we 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 _____ duly authorised hereto	AS WITNESS:	
Name:	Name:	
Position:	Position:	
Signature:	Signature:	
Date:	Registration No of Company/CC _____	

Respondent's Signature_____
Date & Company Stamp

Place:	Registration Name of Company/CC _____	
--------	--	--

Respondent's Signature_____
Date & Company Stamp

SECTION 7**B-BBEE PREFERENCE POINTS CLAIM FORM**

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [**B-BBEE**] Status Level of Contribution.

Transnet will award preference points to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

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 Either the 80/20 preference point system will be applicable to this tender.
- 1.4 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.5 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

- 1.6 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.7 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser

2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the

Broad-Based Black Economic Empowerment Act;

- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents;
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"** means:
 - 1) B-BBEE status level certificate issued by an unauthorised body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act.
- (j) **"QSE"** means a Qualifying Small EEnterprise in terms of a Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

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

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

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

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

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

Enterprise	B-BBEE Certificate & Sworn Affidavit
Large	Certificate issued by SANAS accredited verification agency
QSE	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 www.dti.gov.za/economic_empowerment/bee_codes.jsp .]
EME¹	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.

¹ In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a Sworn Affidavit as the generic codes are not applicable to them.

- 4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

- 6.1 B-BBEE Status Level of Contribution: . =(maximum of 20 points)
- (Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES		NO	
-----	--	----	--

- 7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 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

- ☐ Partnership/Joint Venture / Consortium

- ☐ 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-BBEE status level of contribution indicated in paragraphs 4.1 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 paragraphs 4.1 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 the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have-
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
 - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (f) forward the matter for criminal prosecution.

WITNESSES

- 1.
- 2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

SECTION 8: SBD 9 - CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds. Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
2. Transnet will take all reasonable steps to prevent abuse of the supply chain management system and to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
3. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
4. In order to give effect to the above, the following certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

Respondent's Signature

Date & Company Stamp

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of : _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, 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
6. 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 consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a. prices;
 - b. geographical area where product or service 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 bid; or
 - f. bidding with the intention not to win the bid.

Respondent's Signature

Date & Company Stamp

8. 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 products or services to which this bid invitation relates.
9. 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.
10. 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.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

SECTION 9**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 RFQ, 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 RFQ 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 RFQ, 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, 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 RFQ (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 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 RFQ, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFQ and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Respondents are required to provide consent below:

YES		NO	
------------	--	-----------	--

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 RFQ 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/infoereg/>, click on contact us, click on complaints.IR@justice.gov.za

ANNEXURE K**STANDARD RFQ TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS TO TRANSNET
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37 DRAWINGS & SPECIFICATIONS.....78**INTRODUCTION**

When an Agreement is entered into between Transnet SOC Ltd [**Transnet**] and the appointed supplier of Goods to Transnet [**the Supplier**], these Standard Terms and Conditions of Contract, the technical specifications for the Goods, a Schedule of Requirements including such special conditions as may be applicable, and any terms in the associated Bid Documents, exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet

A) DEFINITIONS

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

- a. **AFSA** means the Arbitration Foundation of South Africa;
- b. **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements, the technical specifications for the Goods and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Supplier [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet;
- c. **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- d. **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- e. **Commencement Date** means [01/05/2020], notwithstanding the signature date of the Agreement;
- f. **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, 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:

- i. information relating to methods of operation, data and plans of the disclosing Party;
 - ii. the contents of the Agreement;
 - iii. 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;
 - iv. any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - v. information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
 - vi. information relating to the past, present and future research and development of the disclosing Party;
 - vii. 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;
 - viii. information contained in the software and associated material and documentation belonging to the disclosing Party;
 - ix. technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - x. Copyright works;
 - xi. commercial, financial and marketing information;
 - xii. data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - xiii. plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - xiv. information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
 - xv. 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;
- g. **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other

material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

- h. **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to the Agreement generate, collect, process, store or transmit in relation to their business;
- i. **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- j. **Expiry Date** means [];
- k. **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;
- l. **Goods** means the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;
- m. **ICC Incoterms 2010** means the set of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of the Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for the Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- n. **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- o. **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;
- p. **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- q. **Party** means either one of these Parties;

- r. **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- s. **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- t. **Price(s)** means the agreed Price(s) for the Goods to be purchased from the Supplier by Transnet, as detailed in the Schedule of Requirements, issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;
- u. **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier for the supply of Goods or ancillary Services;
- v. **Services** means Services provided to Transnet including activities such as consultation, advisory services, implementation services and day-to-day assistance provided by the Supplier, pursuant to the Schedule of Requirements in terms of the Agreement;
- w. **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;
- x. **Schedule of Requirements** means Schedule 1 hereto;
- y. **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- z. **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- aa. **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- bb. **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- cc. **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- dd. **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.

B) INTERPRETATION

- a. Clause headings in the Agreement are included for ease of reference only and do not form part of the 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.
- b. Any term, word or phrase used in the 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 the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- c. A reference to the singular incorporates a reference to the plural and *vice versa*.
- d. A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- e. A reference to a particular gender incorporates a reference to the other gender.

C) NATURE AND SCOPE

- a. The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the supply to Transnet of the Goods 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 Supplier in accordance with the Agreement.
- b. 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.
- c. Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- d. During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements in accordance with procedures set out in clause cc) [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- e. Insofar as any term, provision or condition in the Schedule of Requirements conflicts with a like term, provision or condition in the 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.

D) AUTHORITY OF PARTIES

- a. Nothing in the 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.
- b. Neither Party shall be entitled to, or have the power or authority to:
 - i. enter into an agreement in the name of the other; or
 - ii. give any warranty, representation or undertaking on the other's behalf; or
 - iii. Create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

E) DURATION AND CANCELLATION

- a. Notwithstanding the date of signature hereof, the Commencement Date of the Agreement is [1/-5/2020] and the duration shall be for a [5 [[Five]]] year period, expiring on [2025], unless:
 - i. the 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
 - ii. The Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- b. Notwithstanding clause p) [*Breach and Termination*], either Party may cancel the Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, the Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

F) GENERAL OBLIGATIONS OF THE SUPPLIER

- a. The Supplier shall:
 - i. respond promptly to all complaints and enquiries from Transnet;
 - ii. inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
 - iii. conduct its business in a professional manner which will reflect positively upon the Supplier and the Supplier's products;
 - iv. keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Goods and keep such records for at least 5 [five] years from the date of each such transaction;

- v. 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 Goods and ancillary Services and the conduct of the business and activities of the Supplier;
 - vi. 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;
 - vii. 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 Goods 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
 - viii. Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, throughout the entire term of the Agreement. Should the Supplier 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 the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Supplier.
- b. The Supplier acknowledges and agrees that it shall at all times:
- i. render the supply of the Goods and ancillary Services and perform all its duties with honesty and integrity;
 - ii. communicate openly and honestly with Transnet regarding the supply and performance of the Goods and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
 - iii. endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
 - iv. use its best endeavours and make every diligent effort to meet agreed deadlines;
 - v. treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
 - vi. practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;

- vii. Treat all enquiries from Transnet in connection with the supply of the Goods and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
 - viii. when requested by Transnet, provide clear and accurate information regarding the Supplier'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;
 - ix. 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;
 - x. 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;
 - xi. not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
 - xii. 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;
 - xiii. immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods or ancillary Services to Transnet; and
 - xiv. ensure that at all times, during the currency of the 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 Supplier shall further ensure the validity of its Tax Clearance Certificate, for the duration of the Agreement.
- c. In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods and ancillary Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified

railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

d. Green Economy/Carbon Footprint

- i. In addition to the Supplier Development and B-BBEE commitments that the Supplier makes, the Supplier has in its bid provided Transnet with an understanding of the Supplier's position with regard to issues such as waste disposal, recycling and energy conservation.

e. Reporting

- i. The Supplier shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause e.
- ii. Without prejudice to the Transnet's rights under the Agreement:
 1. if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Supplier is not at any time complying with its B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Supplier as to the steps he reasonably considers should be taken by the Supplier in order for the Supplier to remedy such non-compliance and the time period within which such steps must be taken;
 2. If such recommendations are not implemented by the Supplier in accordance with such recommendations, then the provisions of clause shall apply; and
 3. Transnet may at any time request a meeting with the Supplier to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach

agreement on the steps or actions that the Supplier must undertake in order to remedy that non-compliance.

- iii. In the event the Supplier is found not to have met the B-BBEE and/or Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause g) or shall be entitled to terminate in terms of clauses o) and p).
- iv. For the sake of completion of its contractual obligations, the Supplier shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

G) PENALTIES

Non-compliance Penalty Certificate:

- i. If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- ii. A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - the dispute shall be resolved in accordance with the provisions of the Agreement; and
 - if pursuant to that referral, it is determined that the Supplier owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- iii. Subject to Clause (g) above, the Supplier shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Supplier for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier for Non-compliance Penalties accrued during any

relevant period, those Non-compliance Penalties shall be carried forward to the next period.

- iv. The Supplier shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- v. Should the Supplier fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Supplier from the account of the Supplier in the ensuing month.
- vi. The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

H) INVOICES AND PAYMENT

- a. Transnet shall pay the Supplier the amounts stipulated in each Purchase Order, subject to the terms and conditions of the Agreement.
- b. Transnet shall pay such amounts to the Supplier 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 Supplier for the delivery of the Goods ordered, in terms of clause d below.
- c. All Prices set out in the Agreement and the Schedule of Requirements hereto are exclusive of VAT, which will be payable at the applicable rate in ZAR.
- d. Unless otherwise provided for in the Schedule of Requirements appended to the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- e. 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 Supplier 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.

- f. The Supplier shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

I) PRICE ADJUSTMENTS

- a. Prices for Goods supplied in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements annexed hereto.
- b. No less than 2 [two] 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 Goods.
- c. Pursuant to clause b above, the Supplier shall keep full and accurate records of all costs associated with the supply of the Goods to Transnet, in a form to be approved in writing by Transnet. The Supplier 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.
- d. Should Transnet and the Supplier 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 z) of the Master Agreement [*Dispute Resolution*].
- e. If during the period of the Agreement Transnet can purchase similar Goods of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Goods purchased hereunder from the Supplier, Transnet may notify the Supplier of such total delivered cost and the Supplier shall have an opportunity to adjust the Price of the Goods purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Supplier fails to do so or cannot legally do so, Transnet may (i) purchase the Goods from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier hereunder shall be reduced accordingly; (ii) terminate the Agreement without any penalty, liability or further obligation; or (iii) continue purchases under the Agreement.

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

J) WARRANTIES

The Supplier warrants that:

- a. pursuant to clause f) [*General Obligations of the Supplier*], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;
- b. the execution and performance of the Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and
- c. 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 Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

K) THIRD PARTY INDEMNITY

The Supplier hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause j)b above.

L) INSPECTION

- a. Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it

may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.

- b. When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of the Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- c. The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of the Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- d. The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of the Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- e. All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of the Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- f. Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).
- g. When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- h. Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause I).

M) DEFECTIVE GOODS

- a. Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in the Agreement, only as regards outward condition of packages and Transnet retains the right to reject the

Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.

- b. If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.
- c. If such Goods are rejected, the Supplier will pay the following costs:
 - i. for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or
 - ii. for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.
- d. If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.
- e. If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.
- f. Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.
- g. Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

N) TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY

- a. In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

- i. no manufacturing of the Goods 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
- ii. delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of the Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

- b. The Supplier shall thereupon, as soon as possible after such date, deliver to Transnet the Goods [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 Goods. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier will be calculated on the basis of Transnet's enrichment. The Supplier shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.
- c. Whenever, in any case not covered by clause 17.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods as required by the terms of the Agreement or Purchase Order, or if any Goods are rejected on any of the grounds mentioned in clause m) [*Defective Goods*], Transnet may cancel the Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

O) RIGHTS ON CANCELLATION

- a. If the Agreement or Purchase Order is cancelled in whole or in part in terms of clause 17 [*Total or Partial Failure to Perform the Scope of Supply*], Transnet may execute or complete the Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods 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 Supplier's default.
- b. Any amount which may be recoverable from the Supplier in terms of clause 18.1 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 Supplier.

P) BREACH AND TERMINATION

- a. If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] 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 the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- b. Either Party may terminate the 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:
 - i. a voluntary arrangement or composition or reconstruction of its debts;
 - ii. its winding-up or dissolution;
 - iii. the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
 - iv. Any similar action, application or proceeding in any jurisdiction to which it is subject.
- c. Transnet may terminate the Agreement at any time within 2 [two] months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. 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.
- d. Notwithstanding this clause 19, Transnet may cancel the Agreement:
 - (a) without cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier, or
 - (b) by notice in writing to the Supplier, where the Supplier fails to provide Transnet with a valid Tax Clearance Certificate issued by the South African Revenue Service at any time during the currency of the Agreement.
- e. The provisions of clauses a) [*Definitions*], 3 [*Warranties*], 8 [*Rights on Cancellation*], 23 [*Confidentiality*], v) [*Limitation of Liability*], w) [*Intellectual Property Rights*], z) [*Dispute Resolution*] and dd)a [*Governing Law*] shall survive termination or expiry of the Agreement.

Q) CESSION

- a. Upon written notice to the Supplier, Transnet shall be entitled:
 - i. to appoint Transnet's financier of the Goods as first payer under the Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
 - ii. To cede, assign and transfer its right, title and interest in the Goods to such financier as part of the funding consideration for the Goods.
- b. The Supplier is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of the Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

R) FORCE MAJEURE

- a. 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 the 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.
- b. 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 the 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 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

S) PROTECTION OF DATA

- a. The Parties agree that they may obtain and have access to personal data during the duration of the Agreement for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in the Agreement, the Parties shall at all times ensure that:
 - a) they process data only for the express purpose for which it was obtained;

- b) once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
 - c) data is provided only to authorised personnel who strictly require the personal data to carry out the Parties' respective obligations under the Agreement;
 - d) they do not disclose personal data of the other Party, other than in terms of the Agreement;
 - e) they have all reasonable technical and organisational measures in place to protect all personal data from unauthorised access and/or use;
 - f) they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all data in its possession or under its control in terms of the Agreement;
 - g) Such personal data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- b. The Parties agree that if personal data 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 further processing.
- c. Should it be necessary for either Party to disclose or otherwise make available the personal data to any third party (including sub-contractors and employees), it may do so only with the prior written permission of the other Party. The Party requiring such permission shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause s), and dealing with that third party's obligations in respect of its processing of the personal data. Following approval by the other Party, the Party requiring permission agrees that the provisions of this clause s) shall *mutatis mutandis* apply to all authorized third parties who process personal data.
- d. The Parties shall ensure that any persons authorized to process data on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all data. Where necessary to meet this requirement, the Parties shall keep all personal data and any analyses, profiles, or documents derived therefrom logically separated from all other data and documentation held by it.
- e. The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal data 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 has been effectively implemented.
- f. The Parties agree that they will promptly return or destroy any personal data 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 the 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 data. The information will be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organization.

- g. Personal Information security breach: Supplier's Obligations
- a) The Supplier shall notify the Information Officer of Transnet, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal data and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal data and to restore the integrity of the affected Goods as quickly as is possible. The Supplier shall also be required to provide Transnet 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 data.
 - b) The Supplier shall provide on-going updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
 - c) Where required, the Supplier may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or 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 Supplier undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of Transnet including providing any information or material in its possession or control and implementing new security measures.

T) CONFIDENTIALITY

- a. The Parties hereby undertake the following with regard to Confidential Information:
- i. 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;

- ii. 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 the 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 the Agreement;
- iii. 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 the Agreement, in which case such copies shall be regarded as Confidential Information;
- iv. 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 the Agreement;
- v. not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- vi. 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 the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- vii. 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 the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- viii. 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;

- ix. 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;
 - x. 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 the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by such person or entity; and
 - xi. 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.
- b. The duties and obligations with regard to Confidential Information in this clause t) shall not apply where:
- i. a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Staff; or
 - ii. 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
 - iii. 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
 - iv. Is independently developed by a Party as proven by its written records.
- c. This clause t) shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Supplier by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

U) INSURANCES

- a. Without limiting the liability of the Supplier under the Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against including any liability it may have as a result of its activities under the

Agreement for theft, destruction, loss of or damage to Goods, 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 Supplier.

- b. The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- c. Subject to clause 24.2 below, if the Supplier fails to effect adequate insurance under this clause 24, 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. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.
- d. In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 24.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Supplier or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

V) LIMITATION OF LIABILITY

- a. The Supplier's liability under this clause 25 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to the Agreement.
- b. Neither Party excludes or limits liability to the other Party for:
 - i. death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
 - ii. Fraud.
- c. Neither Party accepts liability for damages and claims of a special, indirect or consequential nature arising as a result of the performance or non-performance of the Agreement, provided that such loss, damages or claims are not the direct result of the wilful acts or omissions and/or negligence or of any event which could reasonably have been foreseen and avoided on the part of the other Party. The phrase, "special, indirect or consequential" is deemed to include economic loss, loss of opportunity, loss of profit or revenue, and loss or damage in connection with claims against the principal by third parties.

- d. Nothing in this clause 25 shall be taken as limiting the liability of the Parties in respect of clauses t) *[Confidentiality]* and w) *[Intellectual Property Rights]*.

W)INTELLECTUAL PROPERTY RIGHTS

a. Title to Confidential Information

- i. Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Supplier's Background Intellectual Property shall remain vested in the Supplier.
- ii. Transnet shall grant to the Supplier an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier to sub-license to other parties.
- iii. The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- iv. The Supplier shall grant Transnet access to the Supplier's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.
- v. The above shall not pertain to any software licenses procured by the Supplier from third parties and used in the supply of the goods.

b. Title to Intellectual Property

- i. All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.

- ii. Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- iii. Where the Foreground Intellectual Property was created by the Supplier or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- iv. No consideration shall be paid by Transnet to the Supplier for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of the Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.
- v. Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld], the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

c. Title to Improvements

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Supplier shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Supplier hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Supplier shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

d. Unauthorised Use of Confidential Information

The Supplier shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such

Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

e. Unauthorised Use of Intellectual Property

- i. The Supplier agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.
- ii. It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- iii. The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- iv. If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

X) NON-WAIVER

- a. Failure or neglect by either Party, at any time, to enforce any of the provisions of the 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 the Agreement.
- b. Such failure or neglect shall not in any manner affect the continued, unaltered validity of the Agreement, or prejudice the right of that Party to institute subsequent action.

Y) PARTIAL INVALIDITY

If any provision of the 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.

Z) DISPUTE RESOLUTION

- a. Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- b. 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.
- c. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- d. 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 29.
- e. This clause 29 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.
- f. This clause 29 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

AA) ADDRESSES FOR NOTICES

- a. The Parties to the 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 the Agreement, provided that either Party shall be entitled to substitute such other address or facsimile number, as may be, by written notice to the other:

i. Transnet

8.8.1.1 For legal notices:

Barbarossa Ntshingila

Legal, Governance and Compliance

Tel: 011 544 9073

Attention: Executive Manager Secretariat
and Governance

8.8.1.2 For commercial notices:

Lucky Molefe

Supply Chain Services

Technical Buyer

Tel No. 011 584 0685

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

- b. Any notice shall be deemed to have been given:
 - i. if hand delivered, on the day of delivery; or
 - ii. if posted by prepaid registered post, 10 [ten] calendar days after the date of posting thereof; or
 - iii. 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.
- c. Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.
- d. Any notice shall be deemed to have been given:
 - i. if hand delivered, on the day of delivery;
 - ii. if sent by fax, 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
 - iii. 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.

BB) WHOLE AND ONLY AGREEMENT

- a. The Parties hereby confirm that the Agreement constitutes the whole and only agreement between them with regard to the subject matter of the Agreement.
- b. The Parties hereby confirm that the 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 the Agreement, any annexures appended hereto and the Schedule of Requirements.

CC)AMENDMENT AND CHANGE CONTROL

- a. Any amendment or change of any nature made to the Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to the Agreement as an addendum hereto.

- b. 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 z) [*Dispute Resolution*].

DD) GENERAL

a. Governing Law

The 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.

b. Change of Law

In the 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 the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier 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 29[*Dispute Resolution*] above.

c. Counterparts

The 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 the Agreement by signing any such counterpart.

EE) DATABASE OF RESTRICTED SUPPLIERS

- a. 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.
- b. 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.

- c. 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
- d. 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.
- e. 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.
- f. A supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- g. 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.
- h. Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers/service providers. When a dispute arises between Transnet and its supplier/service provider, 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, 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/service provider commits perjury either in giving evidence or on affidavit;
 - c) Scurrilous allegations. Where a supplier/service provider makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
 - d) Abuse of court process. When a supplier/service provider abuses the court process in order to gain a competitive advantage during a bid process.
- i. Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be restricted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

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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.

**SECTION 10
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") Page **2** of **8**

Private & Confidential

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.

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 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.

3.2 The acceptance and giving of gifts may be permitted provided that:

- a) The gift does not exceed R1 000 (one thousand Rand) in retail value;
- b) Many low retail value gifts do not exceed R 1 000 within a 12 month period;
- c) Hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
- d) A Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
- e) A Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
- f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue

and improper influence on the evaluation process or reward for the contract that has been awarded; and

g) A Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.

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 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of 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 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)

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.

SECTION 11**PROTECTION OF PERSONAL INFORMATION**

14. 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.
15. 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.
16. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFQ, 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.
17. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFQ and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
18. 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.
19. Transnet further agrees that in submitting any information or documentation requested in this RFQ, 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, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
20. 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.
21. 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 RFQ (physically, through a computer or any other form of electronic communication).

22. 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 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.
23. 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.
24. In submitting any information or documentation requested in this RFQ, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFQ and further confirming that they are aware of their rights in terms of Section 5 of POPIA.

Respondents are required to provide consent below:

YES		NO	
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25. 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.
26. The Respondent declares that the personal information submitted for the purpose of this RFQ 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 G

LOCAL CONTENT INSTRUCTION NOTES AND ANNEXURES

Respondent's Signature

Date & Company Stamp



Private Bag X84, PRETORIA, 0001, the dti Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 0000
the dti Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, www.thedti.gov.za

Guidance Document for the Calculation of Local Content

1. DEFINITIONS

Unless explicitly provided in this guideline, the definitions given in SATS 1286:2011 apply.

2. GENERAL

2.1. Introduction

This guideline provides tenderers with a detailed description of how to calculate local content of products (goods, services and works) by components/material/services and enables them to keep an updated record for verification requirements as per the SATS 1286:2011 Annexure A and B.

The guideline consists of two parts, namely:

- a written guideline; and
- three declarations that must be completed:
 - Declaration C: “Local Content Declaration – Summary Schedule” (see Annexure C);
 - Declaration D: “Imported Content Declaration – Supporting Schedule to Annex C” (see Annexure D); and
 - Declaration E: “Local Content Declaration – Supporting Schedule to Annex C” (see Annexure E).

The guidelines and declarations should be used by tenderers when preparing a tender. A tenderer must complete Declarations D and E, and consolidate the information on Declaration C.

Annexure C must be submitted with the tender by the closing date and time as determined by the Tender Authority. The Tender Authority reserves the right to request that Declarations D and E also be submitted.

If the tender is successful, the tenderer must continuously update Declarations C, D and E with actual values for the duration of the contract.

NOTE:

Annexure A is a note to the purchaser in SATS 1286:2011; and
Annexure B is the Local Content Declaration IN SATS 1286:2011.

2.2. What is local content?

According to SATS 1286:2011, the local content of a product is the tender price less the value of imported content, expressed as a percentage. It is, therefore, necessary to first compute the imported value of a product to determine the local content of a product.

2.3. Categories: Imported and Local Content

The tenderer must differentiate between imported content and local content.

Imported content of a product by components/material/services is separated into two categories, namely:

- products imported directly by the tenderer; and
- products imported by a third party and supplied to the tenderer.

2.3.1. Imported Content

Identify the imported content, if any, by value for products by component/material/services. In the case of components/materials/services sourced from a South African manufacturer, agent, supplier or subcontractor (i.e. third party), obtain that information and Declaration D from the third party.

Calculate the imported content of components/materials/services to be used in the manufacture of the total quantity of the products for which the tender is to be submitted.

As stated in clause 3.2.4 of SATS 1286:2011: "If information on the origin of components, parts or materials is not available, it will be deemed to be imported content."

2.3.1.1. Imported directly by the tenderer:

When the tenderer import products directly, the onus is on the tenderer to provide evidence of any components/materials/services that were procured from a non-domestic source. The evidence should be verifiable and pertain to the tender as a whole. Typical evidence will include commercial invoices, bills of entry, etc.

When the tenderer procures imported services such as project management, design, testing, marketing, etc and makes royalty and lease payments, such payments relating to the tender must be included when calculating imported content.

2.3.1.2. Imported by a third party and supplied to the tenderer:

When the tenderer supplies components/material/services that are imported by any third party (for example, a domestic manufacturer, agent, supplier or subcontractor in the supply chain), the onus is on the tenderer to obtain verifiable evidence from the third party.

The tenderer must obtain Declaration D from all third parties for the related tender. The third party must be requested by the tenderer to continuously update Declaration D. Typical evidence of imported content will include commercial invoices, bills of entry etc.

When a third party procures imported services such as project management, design, testing, marketing etc. and makes royalty and lease payments, such payments relating to the tender must be included when calculating imported content.

2.3.1.3. Exempt Imported Content:

Exemptions, if any, are granted by the Department of Trade and Industry (**the dti**). Evidence of the exemptions must be provided and included in Annexure D.

2.3.2. Local Content

Identify and calculate the local content, by value for products by components/materials/services to be used in the manufacture of the total quantity of the products.

3. ANNEXURE C**3.1. Guidelines for completing Annexure C: Local Content Declaration – Summary Schedule**

Note: The paragraph numbers correspond to the numbers in Annexure C.

C1. Tender Number

Supply the tender number that is specified on the specific tender documentation.

C2. Tender description

Supply the tender description that is specified on the specific tender documentation.

C3. Designated products

Supply the details of the products that are designated in terms of this tender (i.e. buses).

C4. Tender Authority

Supply the name of the tender authority.

C5. Tendering Entity name

Provide the tendering entity name (for example, Unibody Bus Builders (Pty) Ltd).

C6. Tender Exchange Rate

Provide the exchange rate used for this tender, as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

C7. Specified local content %

Provide the specified minimum local content requirement for the tender (i.e. 80%), as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MDB) 6.2.

C8. Tender item number

Provide the tender item number(s) of the products that have a local content requirement as per the tender specification.

C9. List of items

Provide a list of the item(s) corresponding with the tender item number.
This may be a short description or a brand name.

Calculation of local content**C10. Tender price**

Provide the unit tender price of each item excluding VAT.

C11. Exempted imported content

Provide the ZAR value of the exempted imported content for each item, if applicable. These value(s) must correspond with the value(s) of column D16 on Annexure D.

C12. Tender value net of exempted imported content

Provide the net tender value of the item, if applicable, by deducting the exempted imported content (C11) from the tender price (C10).

C13. Imported value

Provide the ZAR value of the items' imported content.

C14. Local value

Provide the local value of the item by deducting the Imported value (C13) from the net tender value (C12).

C15. Local content percentage (per item)

Provide the local content percentage of the item(s) by dividing the local value (C14) by the net tender value (C12) as per the local content formula in SATS 1286.

Tender Summary**C16. Tender quantity**

Provide the tender quantity for each item number as per the tender specification.

C17. Total tender value

Provide the total tender value by multiplying the tender quantity (C16) by the tender price (C10).

C18. Total exempted imported content

Provide the total exempted imported content by multiplying the tender quantity (C16) by the exempted imported content (C11). These values must correspond with the values of column D18 on Annexure D.

C19. Total imported content

Provide the total imported content of each item by multiplying the tender quantity (C16) by the imported value (C13).

C20. Total tender value

Total tender value is the sum of the values in column C17.

C21. Total exempted imported content

Total exempted imported content is the sum of the values in column C18. This value must correspond with the value of D19 on Annexure D.

C22. Total tender value net of exempted imported content

The total tender value net of exempt imported content is the total tender value (C20) less the total exempted imported content (C21).

C23. Total imported content

Total imported content is the sum of the values in column C19. This value must correspond with the value of D53 on Annexure D.

C24. Total local content

Total local content is the total tender value net of exempted imported content (C22) less the total imported content (C23). This value must correspond with the value of E13 on Annexure E.

C25. Average local content percentage of tender

The average local content percentage of tender is calculated by dividing total local content (C24) by the total tender value net of exempted imported content (C22).

4. ANNEXURE D**4.1. Guidelines for completing Annexure D: “Imported Content Declaration – Supporting Schedule to Annexure C”**

Note: The paragraph numbers correspond to the numbers in Annexure D.

D1. Tender number

Supply the tender number that is specified on the specific tender documentation.

D2. Tender description

Supply the tender description that is specified on the specific tender documentation.

D3. Designated products

Supply the details of the products that are designated in terms of this tender (i.e. buses).

D4. Tender authority

Supply the name of the tender authority.

D5. Tendering entity name

Provide the tendering entity name (i.e. Unibody Bus Builders (Pty) Ltd).

D6. Tender exchange rate

Provide the exchange rate used for this tender, as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

Table A. Exempted Imported Content**D7. Tender item number**

Provide the tender item number(s) of the product(s) that have imported content.

D8. Description of imported content

Provide a list of the exempted imported product(s), if any, as specified in the tender.

D9. Local supplier

Provide the name of the local supplier(s) supplying the imported product(s).

D10. Overseas supplier

Provide the name(s) of the overseas supplier(s) supplying the exempted imported product(s).

D11. Imported value as per commercial invoice

Provide the foreign currency value of the exempted imported product(s) disclosed in the commercial invoice accepted by the South African Revenue Service (SARS).

D12. Tender exchange rate

Provide the exchange rate used for this tender as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

D13. Local value of imports

Convert the value of the exempted imported content as per commercial invoice (D11) into the ZAR value by using the tender exchange rate (D12) disclosed in the tender documentation.

D14. Freight costs to port of entry

Provide the freight costs to the South African Port of the exempted imported item.

D15. All locally incurred landing costs and duties

Provide all landing costs including customs and excise duty for the exempted imported product(s) as stipulated in the SATS 1286:2011.

D16. Total landed costs excl VAT

Provide the total landed costs (excluding VAT) for each item imported by adding the corresponding item values in columns D13, D14 and D15. These values must be transferred to column C11 on Annexure C.

D17. Tender quantity

Provide the tender quantity of the exempted imported products as per the tender specification.

D18. Exempted imported value

Provide the imported value for each of the exempted imported product(s) by multiplying the total landed cost (excl. VAT) (D16) by the

tender quantity (D17). The values in column D18 must correspond with the values of column C18 of Annexure C.

D19. Total exempted imported value

The total exempted imported value is the sum of the values in column D18. This total must correspond with the value of C21 on Annexure C.

Table B. Imported Directly By Tenderer

D20. Tender item numbers

Provide the tender item number(s) of the product(s) that have imported content.

D21. Description of imported content:

Provide a list of the product(s) imported directly by tender as specified in the tender documentation.

D22. Unit of measure

Provide the unit of measure for the product(s) imported directly by the tenderer.

D23. Overseas supplier

Provide the name(s) of the overseas supplier(s) supplying the imported product(s).

D24. Imported value as per commercial Invoice

Provide the foreign currency value of the product(s) imported directly by tenderer disclosed in the commercial invoice accepted by the South African Revenue Service (SARS).

D25. Tender rate of exchange

Provide the exchange rate used for this tender as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

D26. Local value of imports

Convert the value of the product(s) imported directly by the tenderer as per commercial invoice (D24) into the ZAR value by using the tender exchange rate (D25) disclosed in the tender documentation.

D27. Freight costs to port of entry

Provide the freight costs to the South African Port of the product(s) imported directly by the tenderer.

D28. All locally incurred landing costs and duties

Provide all landing costs including customs and excise duty for the product(s) imported directly by the tenderer as stipulated in the SATS 1286:2011.

D29. Total landed costs excl VAT

Provide the total landed costs (excluding VAT) for each item imported directly by the tenderer by adding the corresponding item values in columns D26, D27 and D28.

D30. Tender quantity

Provide the tender quantity of the product(s) imported directly by the tenderer as per the tender specification.

D31. Total imported value

Provide the total imported value for each of the product(s) imported directly by the tenderer by multiplying the total landed cost (excl. VAT) (D29) by the tender quantity (D30).

D32. Total imported value by tenderer

The total value of imports by the tenderer is the sum of the values in column D31.

Table C. Imported by Third Party and Supplied to the Tenderer**D33. Description of imported content**

Provide a list of the product(s) imported by the third party and supplied to the tenderer as specified in the tender documentation.

D34. Unit of measure

Provide the unit of measure for the product(s) imported by the third party and supplied to tenderer as disclosed in the commercial invoice.

D35. Local supplier

Provide the name of the local supplier(s) supplying the imported product(s).

D36. Overseas supplier

Provide the name(s) of the overseas supplier(s) supplying the imported products.

D37. Imported value as per commercial invoice

Provide the foreign currency value of the product(s) imported by the third party and supplied to the tenderer disclosed in the commercial invoice accepted by SARS.

D38. Tender rate of exchange

Provide the exchange rate used for this tender as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

D39. Local value of imports

Convert the value of the product(s) imported by the third party as per commercial invoice (D37) into the ZAR value by using the tender exchange rate (D38) disclosed in the tender documentation.

D40. Freight costs to port of entry

Provide the freight costs to the South African Port of the product(s) imported by third party and supplied to the tenderer.

D41. All locally incurred landing costs and duties

Provide all landing costs including customs and excise duty for the product(s) imported by third party and supplied to the tenderer as stipulated in the SATS 1286:2011.

D42. Total landed costs excluding VAT

Provide the total landed costs (excluding VAT) for each product imported by third party and supplied to the tenderer by adding the corresponding item values in columns D39, D40 and D41.

D43. Quantity imported

Provide the quantity of each product(s) imported by third party and supplied to the tenderer for the tender.

D44. Total imported value

Provide the total imported value of the product(s) imported by third party and supplied to the tenderer by multiplying the total landed cost (D42) by the quantity imported (D43).

D45. Total imported value by third party

The total imported value from the third party is the sum of the values in column D44.

Table D. Other Foreign Currency Payments**D46. Type of payment**

Provide the type of foreign currency payment. (i.e. royalty payment for use of patent, annual licence fee, etc).

D47. Local supplier making the payment

Provide the name of the local supplier making the payment.

D48. Overseas beneficiary

Provide the name of the overseas beneficiary.

D49. Foreign currency value paid

Provide the value of the listed payment(s) in their foreign currency.

D50. Tender rate of exchange

Provide the exchange rate used for this tender as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

D51. Local value of payments

Provide the local value of each payment by multiplying the foreign currency value paid (D49) by the tender rate of exchange (D50).

D52. Total of foreign currency payments declared by tenderer and/or third party

The total of foreign currency payments declared by tenderer and/or a third party is the sum of the values in column D51.

D53. Total of imported content and foreign currency payment

The total imported content and foreign currency payment is the sum of the values in column D32, D45 and D52. This value must correspond with the value of C23 on Annexure C.

5. ANNEXURE E**5.1. Guidelines to completing Annexure E: “Local Content Declaration-Supporting Schedule to Annexure C”**

The paragraph numbers correspond to the numbers in Annexure E

E1. Tender number

Supply the tender number that is specified on the specific tender documentation.

E2. Tender description

Supply the tender description that is specified on the specific tender documentation.

E3. Designated products

Supply the details of the products that are designated in terms of this tender (for example, buses/canned vegetables).

E4. Tender authority

Supply the name of the tender authority.

E5. Tendering entity name

Provide the tendering entity name (for example, Unibody Bus Builders (Pty) Ltd) Ltd).

Local Goods, Services and Works**E6. Description of items purchased**

Provide a description of the items purchased locally in the space provided.

E7. Local supplier

Provide the name of the local supplier that corresponds to the item listed in column E6.

E8. Value

Provide the total value of the item purchased in column E6.

Respondent's Signature

Date & Company Stamp

E9. Total local products (Goods, Services and Works)

Total local products (goods, services and works) is the sum of the values in E8.

E10. Manpower costs:

Provide the total of all the labour costs accruing only to the tenderer (i.e. not the suppliers to tenderer).

E11. Factory overheads:

Provide the total of all the factory overheads including rental, depreciation and amortisation for local and imported capital goods, utility costs and consumables. (Consumables are goods used by individuals and businesses that must be replaced regularly because they wear out or are used up. Consumables can also be defined as the components of an end product that are used up or permanently altered in the process of manufacturing, such as basic chemicals.)

E12. Administration overheads and mark-up:

Provide the total of all the administration overheads, including marketing, insurance, financing, interest and mark-up costs.

E13. Total local content:

The total local content is the sum of the values of E9, E10, E11 and E12. This total must correspond with C24 of Annexure C.



Private Bag X115, Pretoria, 0001

TO: ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS AND
CONSTITUTIONAL INSTITUTIONS

ACCOUNTING OFFICERS OF ALL MUNICIPALITIES AND MUNICIPAL ENTITIES

ACCOUNTING AUTHORITIES OF ALL SCHEDULE 2 AND 3 PUBLIC ENTITIES

HEAD OFFICIALS OF PROVINCIAL TREASURIES

NATIONAL TREASURY DESIGNATED SECTORS CIRCULAR NUMBER 1 OF 2020/2021:

**INVITATION AND EVALUATION OF BIDS WITH A STIPULATED MINIMUM THRESHOLD
FOR LOCAL PRODUCTION AND CONTENT FOR:**

- **Steel Power Pylons**
- **Monopole Pylons**
- **Steel Substation Structures**
- **Powerline Hardware**
- **Street Lighting Steel Poles**
- **Steel Lattice Towers and Masts**

1. PURPOSE

- 1.1 The purpose of this Circular is to introduce amendments to Instruction Note Number 9 of 2016/2017, that designated steel power pylons, monopole pylons, steel substation structures, powerline hardware, steel lattice towers & masts and street lighting steel poles for 100% local procurement.
- 1.2 The amendments contained in the new Circular seek to clarify the list of products and components included in the Instruction Note Number 9 of 2016/2017.
- 1.3 The Circular will regulate the environment within which Accounting Officers (AOs) and Accounting Authorities (AAs) may procure the aforementioned products that are designated for local production and content.

2. BACKGROUND

- 2.1. The Preferential Procurement Regulations, 2017 ('the regulations'), made in terms of Section 5 of the Preferential Procurement Policy Framework Act No. 5 of 2000 (PPPFA) which came into effect on 1 April 2017, make provision for the Department of Trade and Industry (**the dti**), now the Department of Trade, Industry and Competition (**the dtic**) to designate sectors in line with national development and industrial policies for local production.

- 2.2. Regulation 8 (1) of the regulations prescribes that in the case of designated sectors where in the award of bids, local production and content is of critical importance, such bids must be advertised with the specific condition that only locally produced goods, services and/or works with a stipulated minimum threshold for local production and content will be considered.
- 2.3. To this end, **the dtic** has designated and determined the stipulated minimum threshold for the Steel Power Pylons, Monopoles Pylons; Steel Substation Structures; Powerline Hardware; Street Lighting; Steel Poles and Steel Lattice Towers and Masts sectors for local production and content in the Instruction Note Number 9 of 2016/2017.
- 2.4. A review of the existing list of designated products and components has become necessary to provide further clarity and disaggregation on the items under these products and components in the Instruction Note Number 9 of 2016/2017. The review mainly affects Powerline Hardware and Steel Substation Structures. It will emphasize that the *transmission line hardware* and the *distribution line hardware* items fall under **Powerline Hardware** and also confirm that the *substation hardware components* are classified as **Steel Substation Structures**.

3. PRODUCT DESIGNATION

- 3.1 **Power pylons and substation structures** are steel fabricated (cut, punched and galvanised) components erected for the transmission, distribution and/or reticulation of electrical power from the power station through to the consumer. At every transition between power generation, power transmission and power distribution there is a need for the erection of a substation which serves as a facility for the stepping up or down of power in preparation for the requirements of the next phase of the power transfer process. Substations are erected using steel structures fabricated by means of cutting, punching and galvanising.
- 3.2 Depending on the procuring entity's design and functionality requirements, galvanised **steel monopole structures** may be specified instead of power pylons for the transfer of power from the power station through to the end user. Galvanised steel monopoles are fabricated following a cutting, bending, welding and galvanising process.
- 3.3 In the construction of power pylons, monopoles, substation structures and distribution powerlines a variety of auxiliary components are used to fulfil such requirements as providing stability to the power pylon structures, attachment and fastening of components, provision of platforms and foundations, etc. These auxiliary components are made using a variety of metals including cast aluminium, galvanised steel, composite materials, brass and others. These components are collectively called **powerline hardware** and are used in both **power transmission** and **distribution**.
- 3.4 **Composite Insulators:** These insulators have at least two insulating parts, such as a fibre glass core and a polymer housing equipped with metal end fittings. They provide mechanical strength and insulate conductors from the structures they are attached to.
- 3.5 **The components addressed under this Designation Note are classified as follows under the harmonisation system:**
- 3.5.1 **Powerline Line, Distribution Line and Substation Hardware**

- HS730890: Structures and parts of structures of iron/steel (Including steel powerline hardware)
- HS730820: Towers and lattice masts (Including monopole pylons and street lighting poles)
- HS761090: Aluminium structures and parts for construction (Including aluminium powerline hardware)
- H854690: Electrical insulators of composite polymer materials

To ensure that local production and content is discharged on manufacturing activities, the products and components in Table 1 have been designated and must be included in bid invitations¹. *Different methods and/or process are used to manufacture the products/components. These include casting, forging, drawing, rolling, fabrication, helically or wire formed, injection, moulding, baking or a combination of these methods or processes.*

Table 1: Steel Power Pylons, Monopole Pylons, Steel Substation Structures, Powerline Hardware, Street Lighting Steel Poles and Steel Lattice Towers and Masts

Products for Designation	Minimum Local Content
Steel Power Pylons	100%
Monopole Pylons	100%
Steel Substation Structures	100%
Powerline Hardware (distribution line hardware and transmission line hardware)	100%
Street Lighting Steel Poles	100%
Steel Lattice Towers And Masts	100%

- 3.6 All primary steel related products: flat products (plates and coils) and long products (rounds, angles, sections and wire related products) and secondary aluminium ingots are included in this designation and must be manufactured and sourced locally. This is to support and sustain the existing local steelmaking and aluminium secondary smelting capacities respectively.
- 3.7 In this designation, imported input raw materials such as aluminium extrusion billets for the manufacture of aluminium components; rubber and zinc used in hot deep galvanising processes are deemed as locally manufactured products. These inputs should be imported in raw material form for further fabrication in South Africa.
- 3.8 The imported input raw material indicated in will be deemed to have been sourced locally for the purposes of calculating local content.
- 3.10 Subject to market changes, National Treasury in consultation with the dtic reserves the right to reintroduce deeming of primary steel as locally produced.

¹ Please see Annexure A for a detailed breakdown

4. INVITATION OF BIDS FOR STEEL POWER PYLONS, MONOPOLE PYLONS, STEEL SUBSTATION STRUCTURES, POWERLINE HARDWARE, STREET LIGHTING STEEL POLES AND STEEL LATTICE TOWERS AND MASTS

4.1. Bids in respect of Steel Power Pylons, Monopoles Pylons; Steel Substation Structures; Powerline Hardware; Street Lighting Steel Poles and Steel Lattice Towers and Masts must contain a specific bidding condition which states that:

4.1.1 If the quantity of materials and/or products required cannot be wholly sourced from South African based manufacturers and/or at the designated local content threshold at any particular time, bidders should obtain written approval from **the dtic** to supply the remaining portion at a lower local content threshold. **the dtic**, in consultation with the procuring organ of state, will grant such approval on a case-by-case basis and will consider the following:

- required volumes in the particular bid;
- available collective South African industry manufacturing capacity at that time;
- delivery times;
- availability of input materials and components;
- technical considerations including operating conditions;
- materials of construction; and
- security of supply and emergencies.

4.1.2 Bidders must clearly indicate in their bids the quantities of material and products to be supplied and the level of local content for each product.

4.1.3 The turn-around time for processing of authorisation requests is 5 working days from the date of receipt. Therefore, such applications should reach **the dtic** at least five days before closing date and time of bid.

4.1.4 The approval process that **the dtic** follows is that if there is a particular designated product and the minimum threshold for local content cannot be met for various reasons, bidders must apply for approval or authorization (when the tender is still open, before closing date). After checking with the industry, **the dtic** will then decide whether or not to grant an authorization. This is per bid.

4.1.5 The tender information / relevant information must be provided on the tenderer's / supplier's letterhead when requesting an authorisation letter:

- Procuring entity/government department/state owned company,
- Tender/bid number,
- Closing date,
- Item(s) for which the approval is being requested for,
- Detailed specifications issued by the procuring entity
- Local content that can be met
- Reason(s) for the request
- Supporting letters from local manufacturers/sub-suppliers

4.1.6 Organs of state may contact **the dtic** in instances where the stipulated minimum threshold for local content cannot be met in order for **the dtic** to verify and in consultation with the AO/AA provide directives in this regard.

4.1.7 For further information, bidders and procuring state organs may contact the Capital Equipment and Metals Sector Desk within **the dtic** at telephone (012) 394-1356/1380 or e-mail localcontent@thedtic.gov.za.

4.1.8 Bid specifications for the designated products in this Circular may be done in collaboration with **the dtic**.

4.2. AOs/AAs must stipulate in bid invitations that:

4.2.1 The exchange rate to be used for the calculation of local production and content must be the exchange rate published by the South African Reserve Bank (SARB) on the date of advertisement of the bid.

4.2.2 Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 must be used to calculate local content.

4.3. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the following formula which must be disclosed in the bid documentation:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by SARB on the date of advertisement of the bid.

4.4. AOs/AAs must clearly stipulate in the bid documentation that the SABS approved technical specification number SATS 1286:2011 and the Guidance on the Calculation of Local Content, together with the Local Content Declaration Template (Annex C: Local Content Declaration Summary Schedule), Annexure D (Imported Content Declaration: Supporting Schedule to Annex C) and Annexure E (Local Content Declaration: Supporting Schedule to Annex C) are accessible to all potential bidders on **the dtic's** official website, namely <http://www.thedtic.gov.za/sectors-and-services-2/industrial-development/industrial-procurement/> at no cost.

4.5. For the purpose of paragraphs 4.1, 4.2 and 4.3 above, the Declaration Certificates for Local Production and Content (SBD/MBD 6.2) must form part of the bid documentation. The SBD 6.2 is for use by all National and Provincial Departments, Constitutional Institutions and Public Entities listed in Schedules 2, 3A, 3B, 3C and 3D to which the Public Finance Management Act applies, whilst the MBD 6.2 is for use by all Municipalities and Municipal Entities to which the Municipal Finance Management Act (MFMA) applies.

4.6. AOs/AAs must stipulate in the bid documentation that:

4.1.9 The Declaration Certificate for Local Production and Content (SBD/MBD 6.2) together with the Annex C (Local Content Declaration: Summary Schedule) must be completed, duly signed and submitted by the bidder at the closing date and time of the bid; and

4.6.2 The rate of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate will be verified for accuracy.

5. EVALUATION OF BIDS FOR STEEL POWER PYLONS, MONOPOLE PYLONS, STEEL SUBSTATION STRUCTURES, POWERLINE HARDWARE, STREET LIGHTING STEEL POLES AND STEEL LATTICE TOWERS AND MASTS

- 5.1. An evaluation process in line with Preferential Procurement Regulations, 2017 must be followed.

6. EVALUATION OF BIDS BASED ON FUNCTIONALITY

- 6.1. Whenever it is deemed necessary to evaluate bids on the basis of functionality, the prescripts contained in PPR 2017 and paragraph 6 and 11 of the Implementation Guide must be followed.

7. POST AWARD AND REPORTING REQUIREMENTS

- 7.1. Once bids are awarded, **the dtic** must be:
- (i) notified of all the successful bidders and the estimated value of the contracts; and
 - (ii) provided with copies of the contracts, the SBD/MBD 6.2 Certificates together with the Declaration C submitted by the successful bidders within 30 days of award.
- 7.2. The purpose of the requirements of paragraph 7.1 above is for **the dtic** to, among others, conduct compliance audits with a view to monitor the implementation of the industrial development strategies.
- 7.3. Contractors may not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the minimum threshold as stipulated in regulation 8 of the Preferential Procurement Regulations, 2017.

8. CONTACT INFORMATION

- 8.1 Any enquiries in respect of Local Production and Content and all documents to be submitted to the dtic must be directed as follows:**

The Department of Trade, Industry & Competition
Private Bag X84
Pretoria
0001

For Attention:

Chief Director: Industrial Procurement
Tel: (012) 394 1435
Fax: (012) 394 1535
EMAIL: localcontent@thedtic.gov.za

9. APPLICABILITY

- 9.1 This Circular applies to all national and provincial departments, constitutional institutions; public entities listed in schedules 2 and 3 to the PFMA, and municipalities and municipal entities to which the MFMA applies.

10. DISSEMINATION OF INFORMATION CONTAINED IN THIS CIRCULAR

- 10.1 Heads of provincial treasuries are requested to bring the contents of this Circular to the attention of accounting officers and supply chain management officials of their respective provincial departments.
- 10.2 Accounting officers of national and provincial departments are requested to bring the contents of this Circular to the attention of accounting authorities and the supply chain management officials of Schedule 3A and 3C public entities reporting to their respective executive authorities.
- 10.3 Accounting officers of municipalities and municipal entities are requested to bring the contents of this Circular to the attention of the supply chain management officials of their municipalities and municipal entities.
- 10.4 Accounting authorities of Schedule 2, 3B and 3D public entities are requested to bring the contents of this Circular to the attention of the supply chain management officials of their public entities.

11. NOTIFICATION TO THE AUDITOR-GENERAL

- 11.1 A copy of this Circular will be forwarded to the Auditor-General for notification.

12. REPEAL OF INSTRUCTION DATED 27 JULY 2016

This Circular repeals the Instruction on invitation and evaluation of bids based on a stipulated minimum threshold for local production and content for Steel Power Pylons, Monopoles Pylons; Steel Substation Structures; Powerline Hardware; Street Lighting Steel Poles and Steel Lattice Towers and Masts dated 27 July 2016 and takes effect on the date of issue.

13. AUTHORITY FOR THIS CIRCULAR AND EFFECTIVE DATE

- 13.1 This Circular is issued in terms of regulation 8(3) of the Preferential Procurement Regulations, 2017 and takes effect on date of issuance.



MS ESTELLE SETAN
ACTING CHIEF PROCUREMENT OFFICER
DATE: 06-Jan-2021

**ANNEXURE A: DISTRIBUTION LINE, TRANSMISSION LINE AND SUBSTATION
HARDWARE COMPONENTS DESIGNATED FOR 100% MINIMUM LOCAL CONTENT**

Distribution Line, Transmission Line and Substation Hardware Components
Casted/Forged: Arching Horn, Clamp, Clevis, Connector, Corona ring/bell/shield, Damper, Eye, Fitting, Hook, Installation pulley, Link, Shackle, Spacer, Spindle, Suspension/Strain assembly, Thimble, Tongue, Tower and Stay Component, Turnbuckle, Weight and other casted & forged products used on powerlines and substations.
Drawn/Rolled: Bolt, Fastener, Hook, Nail, Nut, Rod, Screw, Threaded rod, Washer and other drawn & rolled products used on powerlines and substations.
Fabricated: Adjustor, Anchor, Block, Brace, Bracket, Buckle, Clamp, Clevis, Clip, Compression fitting, Connector, Cross arm/X arm, Dead end, Ferrule, Fitting, Frame, Hook, Iron, Joint, Link, Lug, Plate, Platform, Pole, Rod, Shackle, Spindle, Stay, Strap tie, Support cradle, Thimble, Tie, Washer and other fabricated products used on powerlines and substations.
Helically/Wire Formed: Armour Grip Suspension Unit, Armour Rod, Damper, Dead end, Grip, Pole top Make Off, Shunt, Spacer, Splice, Tie and other helically or wire formed products used on powerlines and substations.
Injected/Moulded/Baked/Combination: Aerial Bundle Conductor (ABC) fitting, Bird flight Diverter, Box, Bush, Fuse cut/out Base, Fuse Holder, Insulator and other injected, moulded, baked or a combination of these methods or processes products used on powerlines and substations.
Insulators, Cut-Out/Drop-out Fuses and Corona Rings
11 – 33Kv Cut-Out/Drop-out Fuses: 11, 22 & 33kv Base Assemblies, Fuse Holder Assemblies and Solid Links
11 – 132kV Distribution Insulators: 11 – 44kV, (40, 70, 80, & 90kN), Long Rod Insulators (All IEC end-fitting variations) 11 – 132kV, (120 & 160kN), Long Rod Insulators (All IEC end-fitting variations) 110 – 132kV, (210 & 300kN), Long Rod Insulators (All IEC end-fitting variations) 11 – 132kV Braced, Horizontal, Inverse-Suspension, Jumper, Station, & Vertical Line Post Insulators (All IEC & other standard end-fitting variations)
161 – 275kV Sub-Transmission Insulators: 161 – 275kV, (120, 160, 210, & 300kN), Long Rod Insulators (All IEC end-fittings) 161 – 275kV Braced, Horizontal, Jumper, Station, & Vertical Line Post Insulators (All IEC & other standard end-fitting variations)
330 – 765kV Transmission Insulators: 330 – 400kV, (120, 160, 210, & 300kN), Long Rod Insulators (All IEC end-fittings) 400 – 765kV, (120, 160, 210 & 300 & 400kN), Long Rod Insulators (All IEC end-fittings)
132 – 765kV Corona Rings: - Ø220, 330, & 430mm Cast Aluminium Corona Rings - Ø496 & 566 mm Hot Dip Galvanised (HDG) Steel Corona Rings
Shield-Wire Insulators: 70 & 120kN Shield-Wire Long Rod Insulators (All IEC end-fittings) - Shield-Wire Post Insulators (All IEC & other standard end-fitting variations)

**MANDATORY RETURNABLE DOCUMENT:
FAILURE TO FULLY COMPLETE, DECLARE, SIGN, DATE & WITNESS
THIS ANNEXURE B WILL RESULT IN THE BID BEING NON-RESPONSIVE &
DISQUALIFIED**

**ANNEXURE B****SBD 6.2****DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS**

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) makes provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. In terms of Regulation 16(2) of the Preferential Procurement Regulations, 2017, any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of the 2017 Regulations.
- 1.4. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.5. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.6. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on <http://www.thedti.gov.za/industrial development/ip.jsp> at no cost.

- 1.7. A bid will be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
1. LADDER, EXTENSION; TYPE: INDUSTRIAL, EXTENDED	100%
2. LADDER, EXTENSION; TYPE: EXTENSION.	100%

**MANDATORY RETURNABLE DOCUMENT:
FAILURE TO FULLY COMPLETE, DECLARE, SIGN, DATE & WITNESS
THIS ANNEXURE B WILL RESULT IN THE BID BEING NON-RESPONSIVE &
DISQUALIFIED**

3. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES		NO	
-----	--	----	--

- 3.1. If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**MANDATORY RETURNABLE DOCUMENT:
FAILURE TO FULLY COMPLETE, DECLARE, SIGN, DATE & WITNESS
THIS ANNEXURE B WILL RESULT IN THE BID BEING NON-RESPONSIVE &
DISQUALIFIED**

LOCAL CONTENT DECLARATION (REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO. CRAC-JHB-36019

ISSUED BY: TRANSNET SOC LTD

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on http://www.thdti.gov.za/industrial_development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names), do hereby declare, in my capacity as of (name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
 - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
 - (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	100%
Local content %, as calculated in terms of SATS 1286:2011	

FAILURE TO FULLY COMPLETE, DECLARE & SIGN THIS WILL RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

DATE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

SATS 1286.2011

Annex C

MANDATORY RETURNABLE DOCUMENT:
FAILURE TO FULLY COMPLETE, DECLARE, SIGN & DATE THIS ANNEXURE C
WILL RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED

NB: THESE SHADED SECTIONS MUST BE COMPLETED BY THE TENDERER

Local Content Declaration - Summary Schedule

Note: VAT to be excluded from all calculations

(C1)	Tender No.	CRAC-JHB-36019		
(C2)	Tender description:	RFQ FOR THE SUPPLY AND DELIVERY OF EXTENSION LADDER TO TRANSNET FREIGHT RAIL INFRA NATIONAL DEPOT, MILLSITE KRUGERSDORP		
(C3)	Designated product(s)	STEEL POWER PYLONS		
(C4)	Tender Authority:	TRANSNET FREIGHT RAIL		
(C5)	Tendering Entity name:			
(C6)	Tender Exchange Rate: Select/Amend to reflect the applicable foreign currency	PULA	EU	GBP
(C7)	Specified local content 100%			

Calculation of local content**Tender summary**

Tender item no's	List of items	Tender price - each (excl VAT)	Exempted imported value	Tender value- net of exempted imported content	Imported value	Local value	Local content % (per item)	Tender Qty	Total tender value	Total exempted imported content	Total Imported content
(C8)	(C9)	(C10)	(C11)	(C12)	(C13)	(C14)	(C15)	(C16)	(C17)	(C18)	(C19)
1	LADDER, EXTENSION; TYPE: INDUSTRIAL, EXTENDED LENGTH: 10.97 M, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA										
2	LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA; (TYPE 1); 9,75 METERS,										

(C20) Total tender value R

(C21) Total Exempt imported content

(C22) Total Tender value net of exempt imported content

(C23) Total Imported content

(C24) Total local content

(C25) Average local content % of tender

Signature of tenderer from Annex B

X

Date:

NB: THESE SHADED SECTIONS MUST BE COMPLETED BY THE TENDERER

ESSENTIAL RETURNABLE DOCUMENT:
FAILURE TO FULLY COMPLETE, DECLARE, SIGN & DATE THIS ANNEXURE D
MAY RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED

Imported Content Declaration - Supporting Schedule to Annex C

**This total must correspond with
Annex C - C 23**

Annex E

NB: THESE SHADED SECTIONS MUST BE COMPLETED BY THE TENDERER

ESSENTIAL RETURNABLE DOCUMENT:
FAILURE TO FULLY COMPLETE, DECLARE, SIGN & DATE THIS ANNEXURE E
MAY RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED

Local Content Declaration - Supporting Schedule to Annex C

(E1)	Tender No.	CRAC-JHB-36019	Note: VAT to be excluded from all calculations
(E2)	Tender description:	RFQ FOR THE SUPPLY AND DELIVERY OF EXTENSION LADDERS TO TRANSNET FREIGHT RAIL INFRA NATIONAL DEPOT, MILLSITE KRUGERSDORP	
(E3)	Designated products:	STEEL POWER PYLONS	
(E4)	Tender Authority:	TRANSNET FREIGHT RAIL	
(E5)	Tendering Entity name:		

Local Products (Goods, Services and Works)	Description of items purchased	Local suppliers	Value
	(E6)	(E7)	(E8)
	(E9) Total local products (Goods, Services and Works)		R

[illegible]

Signature of tenderer from Annex B

	X
--	---

Date:

ANNEXURE H
CLAUSE BY CLAUSE TO SPECIFICATION

RFQ NUMBER: CRAC-JHB-36109

The compliance response is to contain ONLY the following statement, "**Comply**" or "**Do not comply**" or a tick (✓) on 'comply' or 'do not comply' box.

Bidders are to refer to the Scope of Work (Annexure J) For Full Detailed Specification:

**RFQ FOR THE SUPPLY AND DELIVERY OF EXTENSION LADDERS TO TRANSNETFREIGHT RAIL
INFRA NATIONAL DEPOT, MILLSITE KRUGERSDORP.**

THE BIDDERS MUST FULLY COMPLY WITH THE TECHNICAL CLAUSE BY CLAUSE STATEMENT OF COMPLIANCE, FAILURE TO DO SO WILL LEAD TO DISQUALIFICATION. ATTACH ANY REQUIRED SUPPORTING DOCUMENTS, FAILURE TO ATTACH THE REQUIRED PROOF WILL LEAD TO DISQUALIFICATION. FAILURE TO FULLY COMPLETE AND COMPLY 100% WILL BE REGARDED AS NON-COMPLIANCE AND WILL LEAD TO BIDDERS BEING DISQUALIFIED

NB: Please sign the bottom page of the Clause-by-Clause Compliance Declaration.

Clause	Comply	Do not Comply
RFQ FOR THE SUPPLY AND DELIVERY OF EXTENSION LADDERS TO TRANSNETFREIGHT RAIL INFRA NATIONAL DEPOT, MILLSITE KRUGERSDORP.		
BIDDERS SHALL INDICATE WHETHER THEY COMPLY OR DO NOT COMPLY WITH THE MAIN CLAUSES		
LADDER, EXTENSION; TYPE: INDUSTRIAL, EXTENDED LENGTH: 10.97 M, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA		
LADDER, EXTENSION; TYPE: EXTENSION, MATERIAL: GLASS FIBER; SPECIFICATION: BBB 0868, LA ; (TYPE 1); 9,75 METERS, WITH 1,22 METRE OVERLAP.		
SPECIFICATION BBB6017		
1.0 SCOPE		
2.0 BACKGROUND		
2.1		
2.2		
3.0 TENDERING PROCEDURE		
4.0 SERVICE CONDITIONS		
4.1		
4.2		
4.3		
5.0 QUALITY CONTROL		
6.0 GENERAL REQUIREMENTS		
6.1		
6.2		
6.3		
6.4		
6.5		
7.0 TESTS AND INSPECTIONS		
7.1		
7.2		
7.3		
7.4		
8.0 MARKING		
9.0 TECHNICAL DATA		
9. APPENDI 1 TECHNICAL DATA SHEET		

ANNEXURE I

DELIVERY LEAD-TIME

ANNEXURE I

1. Mandatory Requirements

Fubctionality Requirements	Type of Proof required	Bidders Response
Delivery Lead times	Week	

Criteria	Weight	Score					Score Achieved
		0 (0%)	1 (25%)	2 (50%)	3 (75%)	4 (100%)	
Delivery Lead Times	100%	Greater than 5 weeks	Greater 4 weeks, but less than or equal to 5 weeks	Greater than 3 weeks, but less than or equal to 4 weeks	Greater than 2 weeks, but less than or equal to 3 weeks	Less than or equal to 2 weeks	

75% Minimum Threshold required for a bidder to proceed to the next stage of evaluations.

ANNEXURE J
DRAWINGS AND SPECIFICATION



A division of Transnet SOC Limited

TECHNOLOGY MANAGEMENT

SPECIFICATION

SPECIFICATION FOR PORTABLE GLASS REINFORCED POLYESTER (GRP) EXTENTION TRESTLE LADDER FOR Ohte

Author:	Chief Engineering Technician Technology Management	W Schoeman
Approved:	Senior Engineer (Electrical) Technology Engineering	S Smit
Authorised:	Senior Engineer (Electrical) Technology Management	L Borchard

Three handwritten signatures are shown, each on a horizontal line. The first signature is for W Schoeman, the second for S Smit, and the third for L Borchard.

Date: 25 April 2019

Circulation restricted to:

Transnet

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**DOCUMENT HISTORY:****SPECIFICATION FOR PORTABLE GLASS REINFORCED POLYESTER (GRP) EXTENTION TRESTLE LADDER
FOR OHTE**

Dates Amended	Author	Amendments
25/08/2005	WF Mans	Old Spoornet specification.
25/04/2019	W Schoeman and S Smit	Updated format. Updated to ANSI A14.5:2017 standard

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1.0 SCOPE

This specification covers Transnet's requirements for portable glass reinforced polyester (GRP) extension ladders for use on high voltage electrical equipment. The ladders are to be used for 3kV DC live working and on earthed OHE on all other traction electrification types.

2.0 REFERENCES

Unless otherwise specified all materials used and equipment developed and supplied shall comply with the current edition of the relevant ANSI, SANS or Transnet Freight Rail publications where applicable.

The following publications/specifications (latest editions) are referred to herein:

2.1 AMERICAN NATIONAL STANDARD INSTITUTE

ANSI A14.5:2017 Safety requirements for portable reinforced plastic ladders.

2.2 SOUTH AFRICAN NATIONAL STANDARDS (SANS)

SANS 121	Hot dip galvanized coatings on fabricated iron and steel articles – Specifications and test methods.
SANS 943	Man-made fibre ropes.
SANS 1304	Standard Specification for light ladders.
SANS 9001	Quality management systems - Requirements

3.0 TENDERING PROCEDURES

- 3.1.1 Tenderers shall indicate clause by clause compliance document with the specification. This shall take the form of a separate document listing all the specifications clause numbers indicating the individual statement of compliance or non-compliance. This document can be used by tenderers to elaborate on their response to a clause.
- 3.1.2 A statement of non-compliance shall be motivated by the tenderer.
- 3.1.3 Tenderers shall submit descriptive literature consisting of detailed technical specifications, general manufacturing details and principal dimensions, together with clear illustrations of the equipment offered.
- 3.1.4 Any items offered in accordance with other standards will be considered at the sole discretion of Transnet. The tenderer shall supply full details stating where the item differs from these specifications as well as supplying a copy (in English) of the recognized standard specification(s) with which it complies. Any deviations must be approved by Transnet Freight Rail-Technology Management's Electrical department in writing.
- 3.1.5 Failure to comply with clauses 3.1.1, 3.1.2, 3.1.3 and 3.1.4 could preclude a tenderer from consideration.

4.0 SERVICE CONDITIONS**4.1 ENVIRONMENTAL CONDITIONS**

Altitude:	0 - 1800 m above sea level
Relative humidity:	10% to 90%
Ambient temperature:	-10° C to +50° C
Wind pressure:	750 Pa
Lightning conditions:	20 ground flashes/km ² per annum

Pollution:	Heavily salt laden with industrial pollutants including diesel-electric locomotive emissions.
Ultra violet radiation:	Severe – equipment is intended for outdoor use.

4.2 MECHANICAL SERVICE CONDITIONS

- 4.2.1 Ladder equipment will be transported on gravel service roads and must be designed to withstand the vibrations associated with transportation.

4.3 ELECTRICAL SERVICE CONDITIONS

- 4.3.1 Ladder equipment will be used for OHE work on "live" 3kV DC lines and on earthed OHE on all other traction systems.

5.0 QUALITY CONTROL

- 5.1.1 The successful tenderer shall establish a quality control system, the requirements of which shall be in accordance with ISO 9001, to assure conformance to requirements of this specification.
- 5.1.2 The successful tenderer shall demonstrate compliance to Appendix C of ANSI A14.5 with regards to the quality of "GRP" materials.

6.0 GENERAL REQUIREMENTS

The following requirements are for a collapsible extension ladder of "Type I" or "Type 1A" in accordance to ANSI A14.5. This specification is also applicable to ladders fixed to trestle trolleys.

6.1 DESIGN

- 6.1.1 The design shall comply, generally, with the specification ANSI A14.5, heavy duty Type I and extra heavy duty Type 1A. Specific requirements of Transnet are however included in this specification.
- 6.1.2 The working length of a fully extended ladder shall be 9,75 m with at least 1,22 m overlap or 10,97m with at least 1,48 m overlap as required by the purchase order.
- 6.1.3 The collapsed ladder shall have a profile height when viewed from the side of not more than 145mm with an overlap of 1220mm for the "Type I" and 180mm for the "Type 1A" in order that it may take up minimum space during transport.
- 6.1.4 The width between stiles of the fly section shall be 295 ± 5 mm and the width of the base section shall suit that of the fly section.
- 6.1.5 Rung spacing shall be $275 \text{ mm} \pm 5 \text{ mm}$ centre to centre.
- 6.1.6 A polypropylene rope shall be fitted to the ladder by the manufacturer to be used with a pulley system to extend the ladder. Pulley must be in accordance to ANSI A14.5 clause 6.2.8 and the rope is specified in clause 6.2 of this specification.
- 6.1.7 Locks shall be fitted to the extension ladder to lock the extended section into position.
- 6.1.8 Robustly constructed galvanised steel feet shall be fitted to the bottom section and shall be pointed to ensure proper anchoring in the ground when the ladder is in use. The steel feet will also be fixed with an 8mm tie-rod.
- 6.1.9 All steel parts, including bolts, nuts and rivets shall be hot dip galvanised in accordance with specification SANS 121 or manufactured from a corrosion resistant material such as stainless steel. (Verification tests may be called for).
- 6.1.10 All steel fittings must be at least 5 mm thick, and bolted with 6mm bolts (M6).

6.2 ROPE

- 6.2.1 The polypropylene rope must be to SANS 943, be 12mm in diameter with 3 strands, have a breaking load of minimum 16kN.
- 6.2.2 The rope shall be located out of the way of the user and to the side of the ladder in such a manner that loose rope will not pile up at the base when the ladder is extended.
- 6.2.3 The length of the rope must suite the application and allow for clause 6.2.2.

6.3 LOCKS

- 6.3.1 Locks shall be tested in accordance with ANSI A14.5.
- 6.3.2 The locks shall not damage the stiles with extensive use.
- 6.3.3 Locks shall be reliable, user friendly and extremely robustly constructed. Parts shall not bend easily when the ladder is handled in a rough manner.

6.4 STILES

- 6.4.1 The ladder stiles shall be manufactured from "GRP" material complying in all respects with ANSI A14.5 clause 7.
- 6.4.2 The mechanical properties of the "GRP" shall be in accordance to table 1 below.

Table 1: Mechanical properties of "GRP" material

Material Property	Position of sample	Condition	Orientation *	Units	Required
Flexural Strength	Flange	Dry	LW	Mpa	304
Flexural Modulus	Flange	Dry	LW	Mpa	18 623
Flexural Strength	Web	Dry	LW	Mpa	317
Flexural Modulus	Web	Dry	LW	Mpa	17 244
Flexural Strength	Web	Dry	CW	Mpa	97
Flexural Modulus	Web	Dry	CW	Mpa	6 898
Tensile Strength	Flange	Dry	LW	Mpa	317
Tensile Strength	Web	Dry	LW	Mpa	241

*LW= Lengthwise or CW=Crosswise of pultrusion direction.

- 6.4.3 The stiles shall have additional weather and ultra violet radiation protection in the form of a surface veil of acceptable material and shall be fully described when tendering.
- 6.4.4 The surface of the stiles shall be painted with at least one coat of a special polyurethane paint, for extra ultra violet protection. Currently approved paint Plascon Glatex No 8. Plascodeure or an exact equivalent.
- 6.4.5 The stiles of the fly section shall be protected against abrasion damage when sliding over the rungs and through the guides.
- 6.4.6 The flange of the stiles of the fly section which can be slid along the overhead conductor shall be protected by means of sacrificial hard wearing, long lasting material preferably with some adhesion to prevent excessive wear when the ladder is slid along the overhead.
- 6.4.7 This material shall be easy to replace or renew before it is worn away to such an extent that the stiles are damaged.
- 6.4.8 The bottom ends of the stiles of the fly and base sections, both inside and outside shall be strengthened for at least 300 mm with snug fitting galvanised or corrosion resistant flat sheet sections to prevent damage to the glass fibre material.

- 6.4.9 The bottom ends of the fly section shall be supplied with suitable robust impact resisting end fittings, which will be able to protect the ends against damage when the fly section is dropped at speed.
- 6.4.10 All other ends of stiles shall be finished off with suitable durable metal caps of sufficient strength.
- 6.4.11 Prismatic fluorescent yellow green reflective tape with rounded corners shall be applied between stiles, not more than 1m apart, 50 mm wide by 150 mm long and coated with a clear varnish. The warranty of the reflective tape shall be at least 7 years.
- 6.4.12 Electrical properties of material shall be designed to requirements in clause 7.10 of ANSI A14.5.

6.5 RUNGS

- 6.5.1 Rungs may be of the metal type.
- 6.5.2 Rungs shall have a suitable flat top surface for greater comfort and be suitably dimpled or serrated to prevent slipping.
- 6.5.3 The rungs shall be fitted to the stiles so that the top flat surface is horizontal when the ladder is standing at an angle of 75 ± 1 degree to the horizontal.
- 6.5.4 The bottom rung of the fly section shall be arranged in such a manner that it will not injure a person's foot placed against the bottom rung on the base section to stabilise the ladder when the fly section is lowered or dropped.
- 6.5.5 Rungs must comply to the loading requirements of the ladder.

7.0 TESTS AND INSPECTIONS

7.1 GENERAL

- 7.1.1 Transnet Freight Rail reserves the right to be present at all tests and inspections as called for in this clause.
- 7.1.2 The responsibility for arranging the tests called for in this clause rests with the successful tenderer.
- 7.1.3 All tests will be witnessed by Transnet Freight Rail's Technology Management Electrical Quality Assurance Section. Inspections will take place at the manufacturers premises or suitable test facility, and must be organized well in advance (minimum 2 weeks prior).
- 7.1.4 The ladders shall be subjected to type tests as specified under clause 7.2 hereunder and sample tests as per clause 7.3 hereunder.
- 7.1.5 Transnet Freight Rail, Technology Management Electrical representative may request any additional test deemed necessary to ensure the compliance of the component.
- 7.1.6 Tenderers who are not an approved supplier shall submit a pre-production ladder for evaluation purposes. Manufacturing should not commence before written approval has been granted by Transnet Freight Rail's Technology Management Electrical department. The approved sample ladder shall be retained and be available during final inspection of the produced batch.

7.2 TYPE TESTS

- 7.2.1 The complete ladder shall be subjected to the tests applicable as described in section 8 of ANSI A14.5 and shall not fail any of the tests.
- 7.2.2 Rung fixing and strength shall comply with the tests in accordance with specification ANSI A14.5 table 17 clause 8.3.7.2 (rung torque in service test) with a minimum of 1000 inch pounds (113Nm).
- 7.2.3 The complete ladder shall be tested in a horizontal position to determine the maximum permissible deflection and should not exceed the values as laid down in table 2 of SANS 1304.

7.3 ROUTINE TESTS

- 7.3.1 Data will be recorded on each ladder for the horizontal bending test and deflection tests as per ANSI A14.5 clause 8.

7.4 SAMPLE TESTS

- 7.4.1 Sample testing of the "GRP" material shall be done in accordance with specification SANS 1304 clause 6.

8.0 MARKING

- 8.1.1 The ladders shall be permanently marked with the following:
- 8.1.1.1 TRANSNET or the Transnet logo.
 - 8.1.1.2 A dated batch number.
 - 8.1.1.3 Manufacturers name or logo.
 - 8.1.1.4 Manufacturers serial number.
 - 8.1.1.5 A label that should read "APPROVED BY TRANSNET FREIGHT RAIL TECHNOLOGY MANAGEMENT ELECTRICAL"
 - 8.1.1.6 Service load mass. 113 kg on "Type 1" 136 kg on "Type1A" ladders.
- 8.1.2 The lettering shall not be less than 5 mm in height.
- 8.1.3 Safety and instructive labelling is specified in ANSI A14.5, the appropriate "Danger" and "Warning" markings should appear on the ladder.

9.0 TECHNICAL DATA

- 9.1.1 Tenderers who have not previously supplied "GRP" ladders to Transnet shall furnish full details of their previous experience in the manufacture of similar equipment, together with one representative sample ladder, which can be tested to destruction if considered necessary.
- 9.1.2 The technical data requested in the annexure of this specification shall be furnished for each type of ladder offered.
- 9.1.3 The following data shall be submitted to Transnet Freight Rail's Technology Management:
- 9.1.3.1 Properties of the "GRP" used for the stiles tested as per clause 6.4.2 and clause 7 of ANSI A14.5.
 - 9.1.3.2 Results of the type tests as per clause 7.2 and 7.3.
- 9.1.4 All tests shall be done by an accredited test authority such as SABS, a University with the necessary laboratory equipment or other institutions acceptable to Transnet and results shall be presented in the form of an official test certificate.
- 9.1.5 Manuals for Inspection, Proper Set-up and use, Transport and storage should accompany each ladder. An digital copy may be requested per order.

10.0 PACKAGING

- 10.1.1 Ladders shall be packed in suitable way to prevent damages during transport.
- 10.1.2 Each container shall have firmly attached thereto a water resistant label, on which the following shall be designated:
- 12.2.1 Stores item number.
 - 12.2.2 Contract order number.
 - 12.2.4 Such other information as detailed in the Supply Chain Services (SCS) order.

END

Appendix 1- Technical Data Sheet

(Shall be completed by Tenderer for each type offered)

1. Original Equipment Manufacturer _____
2. Type

Type I	Type IA
--------	---------
3. Mass _____ kg
4. Electrical test results of "GRP" material. _____
5. Water absorption of "GRP" material as per ANSI A14.5 (0.75% maximum). _____
6. Method of manufacture of "GRP" material for stiles. _____
7. Percentage glass in "GRP" material used in stiles, (by mass) _____ % (51% min)
8. Description of method and material for preventing wear of stiles when being slid along the wire. _____
9. Material used for protection against weather and ultra violet radiation. _____
10. _____
11. Deflection as per SANS 1304 Table 2 _____ mm.

