

**TRANSNET**



**TRANSNET SOC LTD**  
(REGISTRATION NO.1990/000900/30)  
TRADING AS  
**TRANSNET FREIGHT RAIL**

**NEC3 Term Service Contract (TSC3)**

**RFP NO. S.I.C 11025 CIDB**

**TENDER DOCUMENT FOR MAINTENANCE OF TRACK  
WITH ON-TRACK MACHINERY: A10 DUAL PURPOSE  
TAMPING: - COALLINE FOR A PERIOD OF 2 YEARS.**

**OPENS: 16 July 2012**

**CLOSES: 14 August 2012 (10h00)**

Tender  
Tender Cover

**TRANSNET**



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# Part T1 Tendering Procedures

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## PART T1: TENDERING PROCEDURES

### T1.1 TENDER NOTICE AND INVITATION TO TENDER

RFP No.: S.I.C 11025CIDB

Transnet SOC Ltd trading as Transnet Freight Rail invites tenders for the **MAINTENANCE OF TRACK WITH ON-TRACK MACHINERY: A10 DUAL PURPOSE TAMPING - COALLINE FOR A PERIOD OF 2 YEARS.**

It is estimated that tenderers should have a CIDB contractor grading designation of classes between **1 to 9 CE PE** potential emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers. Only Tenderers who are registered with the CIDB are eligible to submit tenders

The physical address for collection of tender documents is: Transnet Freight Rail Tender Advice Centre, Ground Floor, Inyanda House 1, 21 Wellington Road, Parktown.

Tender documents may be collected during working hours after **08:00 on 16 July 2012** and will only be available until **15:00 on Wednesday, 25 July 2012.**

On payment of an amount of R1000.00 (per set) to be made to Transnet Freight Rail at the Standard Bank, account number 203158598, branch code 004805, ref no. RFP No. SIC11025 CIDB. The official Bank receipt(s) franked with the official Bank stamp to be provided with the collection of a tender document. This amount is not refundable. No tenders will be sold after 15:00 on Wednesday, 25 July 2012.

All queries must be addressed via e-mail to:

Ms. Delisiwe Mngomezulu  
Tel No. 011 584-1129  
E-mail: [Delisiwe.Mngomezulu@transnet.net](mailto:Delisiwe.Mngomezulu@transnet.net)

or

Sarah Assegaai  
E-mail [Sarah.Assegaai@transnet.net](mailto:Sarah.Assegaai@transnet.net)

A compulsory clarification meeting with representatives of the Employer will take place at **Bombela Boardroom, Ground Floor, Inyanda House 2, 15 Girton Road, Parktown on 26 July 2012 starting at 10h00.** Tenderers without a valid tender document in their possession will not be allowed to attend the clarification meeting.

Transnet reserves the right to accept the whole or any part of a tender. Transnet also reserves the right to negotiate terms and conditions with all, or a short-listed group of contenders, or the preferred Tenderer, should it be deemed necessary.

This tender closes punctually at **10h00 on Tuesday, 14 August 2012.**

Tenders may only be submitted on the tender documentation that is issued. Telegraphic, telephonic, facsimile and late tenders will not be accepted.

Tenderers are warned that a tender will be liable to disqualification should any attempt be made by a Tenderer either directly or indirectly to canvass any officer(s) or employees of Transnet Limited in respect of a tender between the date the tender is submitted and the date of the award. A Tenderer may, however, at any time

communicate with the Chairperson of the Transnet Freight Rail Acquisition Council, at telephone no. 011 544 9486 on any matter relating to his tender.

Envelopes must not contain documents relating to any tender other than that shown on the envelope. *No slips are to be attached to the tender documents. Any additional conditions must be embodied in an accompanying letter. Alterations, additions or deletions must not be made by the Tenderer to the actual tender documents.* Tenders submitted by Tenderers must be neatly bound and the inclusion of loose documents must be avoided. Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.

Compliance of tender(s) with Transnet's requirements is the sole responsibility of the Tenderer and any costs incurred in subsequent modifications to or replacement of equipment accepted by Transnet Limited in good faith on the grounds of certified compliance with specified standards by the contractor and in fact found to be inadequate in such respects, will be to the relevant Tenderer's account

### **BROAD-BASED BLACK ECONOMIC EMPOWERMENT & SOCIO-ECONOMIC OBLIGATIONS**

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

Transnet would therefore prefer to do business with local business enterprises who share these same values and who are prepared to contribute to meaningful B-BBEE initiatives [including, but not limited to subcontracting and Joint Ventures] as part of their tendered responses. Transnet will accordingly allow "preference" points to companies who provide a B-BBEE Accreditation Certificate. All procurement transactions will be evaluated accordingly.

Consequently, when Transnet invites prospective Service Providers to submit Proposals for its various expenditure programmes, it urges Respondents [*Large Enterprises and QSE's - see below*] to have themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 valid B-BBEE Accreditation Certificates must be issued by

1. Verification Agencies accredited by the South African National Accreditation System [SANAS]; or
2. Registered auditors approved by the Independent Regulatory Board of Auditors [IRBA], in accordance with the approval granted by the Department of Trade and Industry.

A Verification Certificate issued must reflect the weighted points attained by the measured entity for each element of the scorecard as well as the overall B-BBEE rating.

#### **1.1 B-BBEE Rating**

Enterprises will be rated by Verification Agencies or registered auditors based on the following:

3. **Large Enterprises** [i.e. annual turnover greater than R35 million]:
  - Rating level based on all seven elements of the B-BBEE scorecard
4. **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
  - Rating based on any four of the elements of the B-BBEE scorecard
5. **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:
  - EMEs are exempted from B-BBEE accreditation
  - Automatic rating of Level 4 B-BBEE irrespective of race or ownership Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE
  - EME's should provide documentary proof of annual turnover [i.e. annual financials signed off by an accounting officer] plus proof of Black ownership if Black ownership is greater than 50% and/or Black Women ownership is greater than 50%

Respondents will be required to furnish proof of the above to Transnet. [i.e. a detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or proof of turnover in respect of EMEs].

*N.B. Failure to do so will result in a score of zero being allocated for B-BBEE.*

**Turnover: Kindly indicate your entity's annual turnover for the past year: R\_\_\_\_\_**

**All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as Annexure A.**

### **Joint Ventures and Subcontractors**

In addition to the above, Respondents who wish to enter into a Joint Venture with, or subcontract portions of the contract to, B-BBEE entities must state in their RFPs, the percentage of the total contract value that will be allocated to such B-BBEE entities, should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFP response to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form.

Please note that a Respondent will not be awarded points for B-BBEE if it is indicated in its Proposal that such Respondent intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to an entity that does not qualify for at least the same points that the Respondent qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

### **B-BBEE Registration**

In addition to the accreditation certificate, Transnet recommends that Respondents register their B-BBEE compliance and supporting documentation on the Department of Trade and Industry's [DTI] National B-BBEE IT Portal and Opportunities Network and provide Transnet with proof of registration in the form of an official B-BBEE Profile issued by the DTI.

Transnet would wish to use the DTI B-BBEE IT Portal as a data source for tracking B-BBEE compliance.

*For instructions to register and obtain a DTI B-BBEE Profile go to <http://bee.thedti.gov.za>*

### **Further Recognition Criteria**

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 5.1 above, in addition to such scoring, a further **10% [ten per cent]** will be allocated to a Respondent's score based on the "Further Recognition Criteria" [FRC] on an ascending scale. This will be calculated based on the extent to which the Respondent commits to meet and/or exceed the minimum compliance targets with its proposed target score to be achieved during the contract period.

Respondents are required to submit their Further Recognition Criteria with their Proposals.

### **Supplier Development Initiatives**

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] developed in 2010 aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa.

Transnet fully endorses and supports Government's New Growth Path policy through its facilitation of Supplier Development [SD] initiatives. Hence Supplier Development Initiatives are a prerequisite for this RFP and are included in the Evaluation Criteria.

**Transnet urges its clients, suppliers and the general public  
to report any fraud or corruption on the part of Transnet employees to  
TIP-OFFS ANONYMOUS : 0800 003 056**

TRANSNET



delivering on our commitment *to you*

# Suppliers Code of Conduct

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## Suppliers Code of Conduct

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

These are:

- >> Transnet Procurement Policy - A guide for tenderers;
- >> Section 217 of the Constitution - the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- >> The Public Finance Management Act (PFMA);
- >> The Broad Based Black Economic Empowerment Act (BBBEE); and
- >> The Anti-Corruption Act.

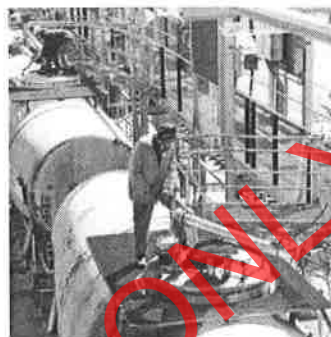
This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

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

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

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

- >> Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with, and payments to, our suppliers.





- >> Employees must not accept or request money or anything of value, directly or indirectly, from suppliers.

Employees may not receive anything that is calculated to:

- Illegally influence their judgement or conduct or to influence the outcome of a sourcing activity;
- Win or retain business or to influence any act or decision of any person involved in sourcing decisions; gain an improper advantage.

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

**Transnet is firmly committed to free and competitive enterprise.**

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

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

- >> Generally, suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities.



These include, but are not limited to:

- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
- Collusion;
- Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc.);
- Corrupt activities listed above; and harassment, intimidation or other aggressive actions towards Transnet employees.

- >> Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence must be conducted and the supplier is expected to participate in an honest and straight forward manner.
- >> Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

### Conflict of Interest

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

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



Show that you support good business practice by logging onto [www.transnet-suppliers.net](http://www.transnet-suppliers.net) and completing the form.

This will allow us to confirm that you have received, and agree to, the terms and conditions set out in our Suppliers Code of Conduct.

TIP-OFFS ANONYMOUS HOTLINE  
0800 003 056

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## Part T1.2: Tender Data

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## T1.2 TENDER DATA

The conditions of tender are the Standard Conditions of Tender as contained in Annex F of the CIDB Standard for Uniformity in Construction Procurement. (See [www.cidb.org.za](http://www.cidb.org.za)) The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the standard conditions of tender. Each item of data given below is cross-referenced to the clause in the Standard Conditions of Tender to which it mainly applies.

F.1.1 The employer is Transnet Limited trading as **Transnet Freight Rail**.

F.1.2 The tender documents issued by the employer comprise:

**Part T1: Tendering procedure**

T1.1 Tender notice and invitation to tender

T1.2 Tender data

**Part T2: Returnable documents**

T2.1 List of returnable documents

T2.2 Returnable schedules

**Part C1: Agreements and contract data**

C1.1 Form of offer and acceptance

C1.2 Contract data

**Part C2: Pricing data**

C2.1 Pricing instructions

C2.2 Price list / Bill of quantities

**Part C3: Scope of work**

C3 Works information

**Part C4: Site information**

C4 Site information

F.1.3 The employer's agent is:

Name : **Fana Marutla**

Address : **Inyanda House 3, 12a St Andrews Road, Parktown**

Tel : **011 583-0288**

Cell : **083 294 2576**

E-mail : [Fana.Marutla@transnet.net](mailto:Fana.Marutla@transnet.net)

F.2.1.1 The following tenderers who are registered with the CIDB, or are capable of being so registered prior to the evaluation of submissions, are eligible to have their tenders evaluated:

- a) contractors who have a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered, or a value determined in accordance with Regulation 25 (1B) or 25 (7A) of the CIDB Regulations, for class between **1 to 9 CE PE** of construction work; and:
- b) contractors registered as potentially emerging enterprises with the CIDB who are registered in one contractor grading designation lower than that required in terms of a) above and who satisfy the following criteria:

- 1) Has professional and technical qualifications.
- 2) Has professional and technical competence.
- 3) Has managerial capacity, reliability and experience.
- 4) Has financial resources and good reputation.
- 5) Has plant and equipment.

Joint ventures are eligible to submit tenders provided that:

- 1) Every member of the joint venture is registered with the CIDB;
- 2) The lead partner has a contractor grading designation in the **CE** class of construction work; and
- 3) The combined contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for classes between **1 to 9 CE PE** of construction work.

F.2.7 The arrangements for a compulsory clarification meeting are as stated in the Tender Notice and Invitation to Tender.

Confirmation of attendance to be notified at least one full working day in advance to:

Name : **Fana Marutla**

Tel : **011 583-0288**

Cell : **083 294 2576**

E-mail : [Fana.Marutla@transnet.net](mailto:Fana.Marutla@transnet.net)

Tenderers must sign the attendance list in the name of the tendering entity. Addenda will be issued to and tenders will be received only from those tendering entities appearing on the attendance list.

F2.1.2 If a tenderer wishes to submit an alternative tender offer, the only criteria permitted for such alternative tender offer is that it demonstrably satisfies the Employer's standards and requirements, the details of which may be obtained from the Employer's Agent.

Calculations, drawings and all other pertinent technical information and characteristics as well as modified or proposed Pricing Data must be submitted with the alternative tender offer to enable the Employer to evaluate the efficacy of the alternative and its principal elements, to take a view on the degree to which the alternative complies with the Employer's standards and requirements and to evaluate the acceptability of the pricing proposals. Calculations must be set out in a clear and logical sequence and must clearly reflect all design assumptions. Pricing Data must reflect all assumptions in the development of the pricing proposal.

Acceptance of an alternative tender offer will mean acceptance in principle of the offer. It will be an obligation of the contract for the tenderer, in the event that the alternative is accepted, to accept full responsibility and liability that the alternative offer complies in all respects with the Employer's standards and requirements.

The modified Pricing Data must include an amount equal to 5% of the amount tendered for the alternative offer to cover the Employer's costs of confirming the acceptability of the detailed design before it is constructed.

- F.2.13.3 Parts of each tender offer communicated on paper shall be submitted as an original plus one copy.
- F.2.13.5 The employer's address for delivery of tender offers and identification details to be shown on each tender offer package are:

If posted, the envelope must be addressed to:

**The Chairperson  
Transnet Freight Rail Acquisition Council  
P.O. Box 4244  
JOHANNESBURG  
2000**

And must be dispatched in time for sorting by the Post Office to reach the Post Office Box indicated above, before the closing time of the tender.

If delivered by hand, to be deposited in the Transnet Freight Rail Acquisition Council tender box which will be located in the foyer, and addressed to:

**The Chairperson  
Transnet Freight Rail Acquisition Council  
Ground Floor, Inyanda House  
21 Wellington Road  
Parktown  
JOHANNESBURG  
2001**

It should also be noted that the above tender box is accessible to the public 24 hours per day, 7 days a week.

The measurements of the "tender slot" are 500mm wide x 100mm high, and Tenderers must please ensure that tender documents/files are not larger than the above dimensions. Tenders, which are too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate envelopes.

#### **Identification details**

Tenders must be submitted before the closing hour on the date and time listed in the 'Notice and Invitation to Tender'; and must be enclosed in a sealed envelope which must have inscribed on the outside.

- (a) Tender No.
- (b) Description of work
- (c) Closing date of tender

- F.2.13.6 The two-envelope procedure will not be followed.
- F.2.15 The closing time for submission of tender offers is as stated in the Tender Notice and Invitation to Tenderer.
- F.2.15 Telephonic, telegraphic, telex, facsimile or e-mailed tender offers will not be accepted.

F.2.16 The tender offer validity period is **12 weeks**.

F.2.19 Access shall be provided for the following inspections, tests and analysis:  
a) Substations locations and access routes  
b) Equipment currently installed

F.3.4 The time and location for opening of the tender offers is:  
Time 11h00 on the closing date of tender  
Location: **Table G66 and G69, West Wing, Ground Floor  
Inyanda House  
21 Wellington Road, Parktown  
Johannesburg**

F3.11.1 The procedure for the evaluation of responsive tenders is Method 2



**STEP ONE – TEST MINIMUM THRESHOLD FOR B-BBEE SCORECARD & SUPPLIER DEVELOPMENT INITIATIVES**

a) **B-BBEE Rating**

EVALUATION CRITERION	Maximum number of tender evaluation points
• Current status evaluated according the B-BBEE Accreditation scorecard	10

b) **Supplier Development Bid Document and SD Initiatives:** [Refer to SD/ED Annexure]

EVALUATION CRITERIA	Maximum number of tender evaluation points
• Submission of SD/ED Strategy	5
• New skills development	30
• Small business promotion	15
• Job creation	10
• Job preservation	40
	10

**The test for meeting the B-BBEE and SD threshold [Step One] must be passed for a Respondent's proposal to progress to Step Two for further evaluation.**

**STEP TWO – TEST MINIMUM THRESHOLD FOR TECHNICAL CRITERIA**

**Technical Criteria:**

EVALUATION CRITERIA	Maximum number of tender evaluation points
• Scope of Works	25
• Capacity and Tamping and Stabiliser requirements	34
• Mechanical and Motive Aspects	24
• Machine Productivity	9
• Safety Plan (Part T2.2 TFR Tender Safety clauses and Questionnaire of tender document)	3
• Comprehensive Risk Plan with risk register/Environmental Management / Business Continuity Plan.	5
	100

*The minimum threshold for Step Two evaluation criteria must be met or exceeded for a Respondent's proposal to progress to Stage Two for final evaluation.*

Criteria to be evaluated (Technical) on the following scales:

Failed outright/unacceptable	=	(20)
Poor	=	(40)
Average / Equal	=	(60)
Above average	=	(80)
Outstanding	=	(100)

The score for financial offer is calculated using Formula 2 (option 1) of SANS 294,

Score the financial offers of remaining responsive tender offers using the following formula:

$$N_{Fo} = W_1 \times A$$

Where:  $N_{Fo}$  is the number of tender evaluation points awarded for the financial offer.

$W_1$  is the maximum possible number of tender evaluation points awarded for the financial offer as stated in the Tender Data.

A is a number calculated using the formula and option described in Table F.1 as stated in the Tender Data.

Up to 100 minus  $T_{EV}$  tender evaluation points will be awarded to Tenderers for SD.



F.3.11.3 Method 2: Financial offer and Preference

Description of quality criteria and sub criteria			Maximum number of tender evaluation points
Commercial	Competitive offer	100	60
Supplier/Enterprise development	SD/ED points as scored in Stage 1, Step 2	100	20
Further Recognition	Business with >50% Black Ownership	25	20
	Business with >50% Black Woman Ownership	25	
	Business with Local community	25	
	Black Youth Involvement in Business	25	
Total evaluation points			100

F.3.13.1 Tender offers will only be accepted if:

- (a) The tenderer has in his or her possession an original valid Tax Clearance Certificate issued by the South African Revenue Services or has made arrangements to meet outstanding tax obligations.
- (b) The tenderer is registered with the Construction Industry Development Board in an appropriate contractor grading designation;
- (c) The tenderer or any of its directors is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector.
- (d) The tenderer has not:
  - i. abused the Employer's Supply Chain Management System; or
  - ii. failed to perform on any previous contract and has been given a written notice to this effect; and
- (e) has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the employer or potentially compromise the tender process.
- (f) The Tenderer is deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the *works* and of the rates and prices stated in the priced Price List in the *works* Information. The rates and prices (except in so far as otherwise provided in the Tender) collectively cover full payment for the discharge of all his obligations under the Contract and all matters and things necessary for the proper completion of the *works*.

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## Part T2: Returnable documents

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## T2.1 LIST OF RETURNABLE DOCUMENTS

The tenderer must complete the following returnable documents:

### 1 Returnable Schedules required for tender evaluation purposes

No	Returnable schedules (All are to be submitted)
1	Certificate of Attendance at Site Meeting
2	Certificate of Authority for Joint Ventures
3	Schedule of Subcontractors
4	Schedule of Plant and Equipment
5	Schedule of Tenderer's experience
6	Proposed amendments and qualifications
7	Labour payment schedule
8	Compulsory Enterprise Questionnaire
9	Record of Addenda to Tender Documents
10	Experience of Key Staff in the form of Curriculum Vitae
11	Supplier Declaration form
12	RFP declaration form
13	Transnet SOC Ltd: Contractual Safety clauses which will form part of any resulting contract
14	Technical Questionnaire
15	SD/ED Questionnaire
16	Further Recognition Questionnaire
17	Foreign Exchange

## 2 Other documents required for tender evaluation purposes

No	Returnable Documents
1	Letter of Good Standing with the Compensation Commissioner
2	Certificate of Authority for Signatory (Resolution by Board)
3	Safety Plan and Fall Protection Plan in accordance with the Construction Regulations of 2003 and Transnet's E4E
4	Quality Assurance Plan
5	Comprehensive Environmental Management Plan, Risk Register and Business Continuity Plan, Risk register to cover identified risks associated with this project and accompanying risk mitigation measures
6	Approach paper and work plan
7	Proposed Organization and Staffing
8	BBBEE rating certificate with detailed scorecard
9	Statement of compliance with requirements of the Scope of Work
10	Certified Copy of Financial Statements (for the past 3 years) including Balance sheets
11	Certified Copy of Share Certificates CK1 & CK2
12	Certified copy of certificate of incorporation and CM29 and CM9
13	Certified Copy of Identity Documents of Shareholders/Directors/members (where applicable)
14	Cancelled Cheque
15	Current and original Tax clearance certificate
16	Vat registration certificate
17	Copy of BEE Policy/BEE Plan/Employment Policy/Procurement Policy
18	Transnet SOC Ltd: Contractual Safety clauses which will form part of any resulting contract and Questionnaire
19	RFP Declaration Form
20	Form of Intent to provide performance bond
21	Respondents to provide TFR with their Supplier Development (SD) / Enterprise Development (ED) strategy as well as providing details of job retention and creation should they be successful with this tender. As part of the proposal, the respondent must include a high level SD/ED proposal which will be subject to evaluation as per the ED evaluation criteria.

### **3 Other documents that will be incorporated into the contract**

3.1 C1.1 Form of Offer and Acceptance

3.2 C1.2 Contract Data (Part 1 and 2)

3.3 C2.2 Price List

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## T2.2 RETURNABLE SCHEDULES

- Certificate of Attendance at Site Meeting
- Certificate of Authority for Joint Ventures
- Schedule of Subcontractors
- Schedule of Plant and Equipment
- Schedule of Tenderer's experience
- Proposed amendments and qualifications
- Labour payment schedule
- Compulsory Enterprise Questionnaire
- Record of Addenda to Tender Documents
- Experience of Key Staff in the form of Curriculum Vitae
- Supplier Declaration form
- RFP declaration form
- Transnet SOC Ltd: Contractual Safety clauses which will form part of any resulting contract
- Technical Questionnaire
- SD/ED Questionnaire
- Further Recognition Questionnaire
- Foreign Exchange

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## Certificate of attendance at Clarification Meeting

This is to certify that

\_\_\_\_\_ (Tenderer)

of

\_\_\_\_\_ (address)

\_\_\_\_\_ was represented by the person(s) named below at the compulsory meeting held for all tenderers at \_\_\_\_\_ (location) on \_\_\_\_\_ (date), starting at \_\_\_\_\_. We acknowledge that the purpose of the meeting was to acquaint ourselves with the Site of the Works and/or matters incidental to doing the work specified in the tender documents in order for us to take account of everything necessary when compiling our rates and prices included in the tender.

Particulars of person(s) attending the meeting:

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

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

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

Capacity \_\_\_\_\_

Attendance of the above persons at the meeting is confirmed by the Employer's representative, namely:

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

Capacity: \_\_\_\_\_ Date and time \_\_\_\_\_

### Certificate of Authority for Joint Ventures

This Returnable Schedule is to be completed by joint ventures.

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms . . . . .  
 . . . . . , authorised signatory of the company . . . . .  
 . . . . . , acting in the capacity of lead partner, to sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORIZED SIGNATORY
Lead partner		Signature. . . . . Name . . . . . Designation
		Signature. . . . . Name . . . . . Designation
		Signature. . . . . Name . . . . . Designation
		Signature. . . . . Name . . . . . Designation

"PREVIEW COPY ONLY"





### Schedule of Proposed Subcontractors

We notify you that it is our intention to employ the following Subcontractors for work in this contract.

If we are awarded a contract we agree that this notification does not change the requirement for us to submit the names of proposed Subcontractors in accordance with requirements in the contract for such appointments. If there are no such requirements in the contract, then your written acceptance of this list shall be binding between us.

We confirm that all subcontractors who are contracted to construct a house are registered as home builders with the National Home Builders Registration Council.

	Name and address of proposed Subcontractor	Nature and extent of work	Previous experience with Subcontractor.
1.			
2.			
3.			
4.			
5.			

"PREVIEW COPY ONLY"

Signed \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Tenderer \_\_\_\_\_



### Schedule of Proposed Subcontractors

We notify you that it is our intention to employ the following Subcontractors for work in this contract.

If we are awarded a contract we agree that this notification does not change the requirement for us to submit the names of proposed Subcontractors in accordance with requirements in the contract for such appointments. If there are no such requirements in the contract, then your written acceptance of this list shall be binding between us.

We confirm that all subcontractors who are contracted to construct a house are registered as home builders with the National Home Builders Registration Council.

	Name and address of proposed Subcontractor	Nature and extent of work	Previous experience with Subcontractor.
1.			
2.			
3.			
4.			
5.			

"PREVIEW COPY ONLY"

Signed \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Tenderer \_\_\_\_\_



### Schedule of Plant and Equipment

The following are lists of major items of relevant Equipment that I/we presently own or lease and will have available for this contract or will acquire or hire for this contract if my/our tender is accepted.

(a) Details of major Equipment that is owned by and immediately available for this contract.

Quantity	Description, size, capacity, etc.

Attach additional pages if more space is required.

(b) Details of major Equipment that will be hired, or acquired for this contract if my/our tender is acceptable.

Quantity	Description, size, capacity, etc.

Attach additional pages if more space is required.

Signed

Date

Name

Position

Tenderer

## Schedule of the Tenderer's Experience

The following is a statement of similar work successfully executed by myself/ourselves:

Employer, contact person and telephone number	Description of contract	A. Value of work inclusive of VAT (Rand)	B. Date completed
<b>“PREVIEW COPY ONLY”</b>			

Signed \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Tenderer \_\_\_\_\_

### Proposed amendments and qualifications

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

The Tenderer's attention is drawn to clause F.3.8 of the Standard Conditions of Tender referenced in the Tender Data regarding the employer's handling of material deviations and qualifications.

Page	Clause or item	Proposal
<b>“PREVIEW COPY ONLY”</b>		

Signed \_\_\_\_\_ Date \_\_\_\_\_  
Name \_\_\_\_\_ Position \_\_\_\_\_  
Tenderer \_\_\_\_\_



### Labour payment schedule

Tenderers are required to complete the following schedule:

#### DAY LABOUR (if required)

Skilled Hour \_\_\_\_\_

Unskilled Hour \_\_\_\_\_

Labourer Hour \_\_\_\_\_

Driver/Operator Hour \_\_\_\_\_

% Profit on Material \_\_\_\_\_

#### TRANSPORT AND MACHINERY

**RUNNING**

**STANDING**

1. Light vehicle up to 1 ton
2. 5 Ton vehicle
3. 10 Ton vehicle with crane
4. Crane
5. Scaffolding
6. Generator
7. Other equipment:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Full details of any other charges:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Tenderer \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

“PREVIEW COPY ONLY”

### Compulsory Enterprise Questionnaire

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

**Section 1: Name of enterprise:** .....

**Section 2: VAT registration number, if any:** .....

**Section 3: CIDB registration number, if any:** .....

**Section 4: Particulars of sole proprietors and partners in partnerships**

Name*	Identity number*	Personal income tax number*

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

**Section 5: Particulars of companies and close corporations**

Company registration number .....

Close corporation number .....

Tax reference number .....

**Section 6: Record in the service of the state**

Indicate by marking the relevant boxes with a cross if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- a member of any municipal council
- a member of any provincial legislature
- a member of the National Assembly or the National Council of Province
- a member of the board of directors of any municipal entity
- an official of any municipality or municipal entity
- an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999)
- a member of an accounting authority of any national or provincial public entity
- an employee of Parliament or a provincial legislature

If any of the above boxes are marked, disclose the following:

Name of sole proprietor, partner, director, manager, principal shareholder or stakeholder	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months



\*insert separate page if necessary

**Section 7: Record of spouses, children and parents in the service of the state**

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of a sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months been in the service of any of the following:

- a member of any municipal council
- a member of any provincial legislature
- a member of the National Assembly or the National Council of Province
- a member of the board of directors of any municipal entity
- an official of any municipality or municipal entity
- an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999)
- a member of an accounting authority of any national or provincial public entity
- an employee of Parliament or a provincial legislature

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

\*insert separate page if necessary

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

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

Signed

Date

Name

Position

Enterprise name





### Record of Addenda to tender documents

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed

Date

Name

Position

Tenderer

**I. Curriculum Vitae of Key Personnel**

<b>Name:</b>	<b>Date of birth:</b>
<b>Profession:</b>	<b>Nationality:</b>
<b>Qualifications:</b>	
<b>Professional registration number:</b>	
<b>Name of employer (firm):</b>	
<b>Current Position:</b>	<b>Years with the firm:</b>
<b>Employment record: (list in chronological order starting with earliest work experience)</b>	
<b>A. Experience record pertinent to required service</b>	
<b>Certification:</b>	
I, the undersigned, certify that to the best of my knowledge and belief, this data correctly describes me, my qualifications and my experience.	
_____	_____
<i>[Signature of person named in schedule]</i>	Date

## Transnet Supplier Declaration/Application

The Financial Director or Company Secretary

Transnet Vendor Management has received a request to load your company on to the Transnet vendor database. Please furnish us with the following to enable us to process this request:

1. Complete the "Supplier Declaration Form" (SDF) on page 2 of this letter
2. **Original** cancelled cheque **OR** letter from the bank verifying banking details (**with bank stamp**)
3. **Certified** copy of Identity document of Shareholders/Directors/Members (where applicable)
4. **Certified** copy of certificate of incorporation, CM29 / CM9 (name change)
5. **Certified** copy of share Certificates of Shareholders, CK1 / CK2 (if CC)
6. A letter with the company's letterhead confirming physical and postal addresses
7. **Original** or **certified** copy of SARS Tax Clearance certificate and Vat registration certificate
8. A signed letter from the Auditor / Accountant confirming most recent annual turnover and percentage black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (SANAS member).

NB: **▪ Failure to submit the above documentation will delay the vendor creation process.**  
**▪ Where applicable, the respective Transnet business unit processing your application may request further information from you. E.g. proof of an existence of a Service/Business contract between your business and the respective Transnet business unit etc.**

### **IMPORTANT NOTES:**

- a) **If your annual turnover is less than R5 million**, then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership and black female ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), should you feel you will be able to attain a better BBBEE score.
- b) **If your annual turnover is between R5 million and R35million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific BBBEE level based on any 4 of the 7 elements of the BBBEE score-card, please include your BEE certificate in your submission as confirmation of your status.  
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency e.g. permanent SANAS Member).
- c) **If your annual turnover is in excess of R35million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific BEE level based on all seven elements of the BBBEE generic score-card. Please include your BEE certificate in your submission as confirmation of your status.  
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (permanent SANAS Member).
- d) **To avoid PAYE tax being automatically deducted from any invoices received from you**, you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.
- e) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.
- f) **Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products in order that he/she should complete and Internal**

**Transnet Departmental Questionnaire before referring the matter to the appropriate Transnet Vendor Master Office.**

Regards,  
Transnet Vendor/Supplier Management *[please substitute this with your relevant Transnet department before sending this document out]*

**Supplier Declaration Form**

Company Trading Name							
Company Registered Name							
Company Registration Number Or ID Number If A Sole Proprietor							
Form of entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor	
VAT number (if registered)							
Company Telephone Number							
Company Fax Number							
Company E-Mail Address							
Company Website Address							
Bank Name				Bank Account Number			
Postal Address						Code	
Physical Address						Code	
Contact Person							
Designation							
Telephone							
Email							
Annual Turnover Range (Last Financial Year)		< R5 Million		R5-35 million		> R35 million	
Does Your Company Provide		Products		Services		Both	
Area Of Delivery		National		Provincial		Local	
Is Your Company A Public Or Private Entity		Public		Private			
Does Your Company Have A Tax Directive Or IRP30 Certificate		Yes		No			
Main Product Or Service Supplied (E.G.: Stationery/Consulting)							
<b>BEE Ownership Details</b>							
% Black Ownership		% Black women ownership		% Disabled person/s ownership			
Does your company have a BEE certificate		Yes		No			
What is your broad based BEE status (Level 1 to 9 / Unknown)							
How many personnel does the firm employ		Permanent		Part time			
Transnet Contact Person							
Contact number							
Transnet operating division							

**Duly Authorised To Sign For And On Behalf Of Firm / Organisation**

Name			Designation	
Signature			Date	

**Stamp And Signature Of Commissioner Of Oath**

Name \_\_\_\_\_ Date \_\_\_\_\_  
Signature \_\_\_\_\_ Telephone No. \_\_\_\_\_

**NB:** Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products.

**2. VENDOR TYPE OF BUSINESS**

(Please tick as applicable) (\* - Minimum requirements)

**2.1 Indicate the business sector in which your company is involved/operating:**

Agriculture		Mining and Quarrying	
Manufacturing		Construction	
Electricity, Gas and Water		Finance and Business Services	
Retail, Motor Trade and Repair Services		Wholesale Trade, Commercial Agents and Allied Services	
Catering, accommodation and Other Trade		Transport, Storage and Communications	
Community, Social and Personal Services		Other (Specify)	
Principal Business Activity *			
Types of Services Provided			
Since when has the firm been in business?			

**2.2 What is your company's annual turnover (excluding VAT)? \***

<R20k	>R20k <R0.3m	>R0.3m <R1m	>R1m <R5m	>R6m <R10m	>R11m <R15m	>R16m <R25m	>R26m <R30m	>R31m <R34m	>R35m

**2.3 Where are your operating/distribution centres situated \***


**3. VENDOR OWNERSHIP DETAIL**

(Please tick as applicable) (\* - Minimum requirements)

**3.1 Did the firm previously operate under another name? \***

YES \_\_\_\_\_ NO \_\_\_\_\_

**3.2 If Yes state its previous name:\***

Registered Name \_\_\_\_\_



Trading Name

**3.3 Who were its previous owners / partners / directors?\***

SURNAME & INITIALS ID NUMBERS

**3.4 List Details of current partners, proprietors and shareholders by name, identity number, citizenship, status and ownership as relevant: \***

SURNAME & INITIALS	IDENTITY NUMBER	CITIZENSHIP	HDI	DIS - ABLED	GENDER	DATE OF OWNERSHIP	% OWNED	% VOTING
--------------------	-----------------	-------------	-----	-------------	--------	-------------------	---------	----------

**3.5 List details of current directors, officers, chairman, secretary etc. of the firm: \***

SURNAME & INITIALS	IDENTITY NUMBER	TITLE	DIS - ABLED	GENDER	% OF TIME DEVOTED TO THE FIRM	CONTACT NUMBER
--------------------	-----------------	-------	-------------	--------	-------------------------------	----------------

**3.6 List details of firms personnel who have an ownership interest in another firm: \***

SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM
--------------------	-----------------	------------------------------	---------------------	---------	--------------------------------

**4. VENDOR DETAIL**

(Please tick as applicable) (\* - Minimum requirements)

**4.1 How many personnel does the firm employ? \***

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Permanent						
Part Time						

**4.1.1 In terms of above kindly provide numbers on women and disabled personnel? \***

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

<b>4.2</b>	<b>Provide Details of Contact Person/s Responsible for Broad Based Black Economic Empowerment (BBEE) in the Company *</b>		
	<b>SURNAME</b>	<b>INITIALS</b>	<b>DESIGNATION</b>
			<b>TELEPHONE NO.</b>

**4.2.1** Is your company a value adding supplier (i.e. registered as a vendor under the VAT Act of 1991, where NPAT + total labour cost > 25% of total revenue)?

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

**4.2.2** Is your company a recipient of Enterprise Development Contributions?\*

**YES**  **NO**

**4.2.3** May the above mentioned information be shared and included in Transnet Supplier Data future reference? \*

**YES**  **NO**

**4.2.4** If you are successful in the tender/contract (where applicable) and this is awarded to your company / organisation, will this have a positive impact on your employment plans? \*

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

**4.2.5** If yes (above) kindly provide the following information:

	<b>BLACK</b>	<b>WHITE</b>	<b>COLOURED</b>	<b>INDIAN</b>	<b>OTHER</b>	<b>TOTAL</b>
<b>Permanent</b>						
<b>Part Time</b>						

**4.2.6** In terms of above kindly provide numbers on woman and disabled personnel:

	<b>BLACK</b>	<b>WHITE</b>	<b>COLOURED</b>	<b>INDIAN</b>	<b>OTHER</b>	<b>TOTAL</b>
<b>Women</b>						
<b>Disabled</b>						

**4.2.7** Are any of your members/shareholders/directors ex employees of Transnet?

**YES**  **NO**

**4.2.8** Are any of your family members employees of Transnet?

**YES**  **NO**

**4.2.9** If Yes to points 4.2.7 & 4.2.8, list details of employees/ex-employees

<b>SURNAME &amp; INITIALS</b>	<b>IDENTITY NUMBER</b>	<b>NAME &amp; ADDRESS OF OTHER FIRM</b>	<b>TITLE IN OTHER FIRM</b>	<b>% OWNED</b>	<b>TYPE OF BUSINESS OF OTHER FIRM</b>

Internal Transnet Departmental Questionnaire (for office use only)

**Section 1: To be completed by the Transnet Requesting / Sourcing Department**

<b>TFR</b>	<b>TRE</b>	<b>TPT</b>	<b>TPL</b>	<b>TNPA</b>	<b>TRN</b>
Create	Amend	Block	Unbloc	Once-Off / Emergency	
Exten	Delete	Undele			

Supplier's trading name \_\_\_\_\_

Supplier's registered name \_\_\_\_\_

Please indicate if the Supplier has a contract with sourcing Transnet OD | Yes  No

If yes please submit a copy of the letter of award \_\_\_\_\_





## RFP DECLARATION FORM

MAINTENANCE OF TRACK WITH ON-TRACK MACHINERY: DUAL PURPOSE TAMPING - KIMBERLEY SOUTH AND BELVILLE FOR A PERIOD OF 5 YEARS.

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

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

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

ADDRESS:

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

Indicate nature of relationship with Transnet:

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

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

6. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet (other than any existing and appropriate business relationship with Transnet) which could unfairly advantage our company in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
7. We accept that any dispute pertaining to this bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. (Refer "Important Notice to Respondents" overleaf).
8. We further accept that Transnet reserves the right to reverse a tender award or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

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

For and on behalf of ..... duly authorised thereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	
Place:	

**IMPORTANT NOTICE TO RESPONDENTS**

- Transnet has appointed a Procurement Ombudsman to investigate any **material complaint** in respect of RFP's exceeding R 5,000,000.00 (five million S.A. Rands) in value. Should a Respondent have any material concern regarding an RFP process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.
- It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).
- An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net)
- For transactions below the R 5,000,000.00 (five million S.A. Rand) threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.
- All Respondents should note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a bidder on its List of Excluded Bidders.

## TRANSNET LIMITED / CONTRACTORS / SUB-CONTRACTORS

### CONTRACTUAL SAFETY CLAUSES WHICH WILL FORM PART OF ANY RESULTING CONTRACT

The parties agree on the following arrangements according to section 37 (2) of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) to ensure compliance by the mandatory with provisions of the Act.

- 1) That the Contractor is an "employer" in his own right as defined in section 1 of Act 85 of 1993 and that he must fulfill all his obligations as an employer in terms of the Act.
- 2) The Contractor shall comply with the requirements of Act 85 of 1993 in its entirety
- 3) Where special permits are required, such as electrical switching, hot work permits, etc. the Contractor shall obtain them from a person designated by Transnet Limited for this purpose, and all requirements of the Contractor must rigidly comply with the permit.
- 4) The Contractor shall conduct a risk assessment of the work to be performed by a competent person prior to the commencement of work, to identify risks and hazards that persons may be exposed to, analyze and evaluate identified hazards.
- 5) The Contractor shall have a documented Health and Safety Plan based on the risks and hazards identified before commencement of work.
- 6) The Health and Safety Plan shall include the following:
  - 6.1 The safety management structure to be instituted with all appointments in terms of the Act and Regulations
  - 6.2 The safe working methods and procedures to be implemented to ensure work are performed in compliance to the Act.
  - 6.3 The safety equipment, devices and clothing to be made available by the Contractor to his employees
  - 6.4 The site access control measures pertaining to health and safety to be implemented.
  - 6.5 Control measures for ensuring that the Health and Safety Plan is maintained and monitored for the duration of the contract.
- 7) The Contractor shall ensure that all work is performed under the close supervision of a person trained to understand the hazards associated with the work performed and who has authority to ensure that the necessary precautionary measures are implemented.
- 8) The Contractor must appoint a Health and Safety coordinator to liaise with Transnet Limited on matters pertaining to occupational health and safety.
- 9) The appointed Safety coordinator must liaise at least once a week with the\* Health and Safety Section / Risk Manager /Occupational Risk Manager of Transnet Limited.
- 10) The Contractor shall furnish the\* Health and Safety Section/ Risk Manager/ Occupational Risk Manager of Transnet Limited immediately with full particulars of any sub-Contractor which he may involve in the contract in order that the sub-Contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.

- 11) The Contractor shall stop any sub-contractor from executing work which is not in accordance with the Health and Safety Plan or which poses a threat to health and safety of persons.
- 12) The Contractor shall ensure that all his employees and visitors undergoes health and safety induction pertaining to the hazards prevalent, proof of such training must be kept on file.
- 13) In the event where the risk assessment reveals the risk relating to working from an elevated position the Contractor shall cause the designation of a competent person, responsible for the preparation of a Fall Protection Plan.
- 14) The Fall Protection Plan shall include:
  - 14.1 A risk assessment of all work carried out from an elevated position
  - 14.2 Procedures and methods to address all the identified risks per location
  - 14.3 Evaluation of employee's physical and psychological fitness necessary to work at elevated position.
  - 14.4 The training of employees working from an elevated position.
  - 14.5 Procedure addressing the inspection, testing and maintenance of all fall protection equipment.
- 15) The Contractor shall advise the \* Health and Safety Section / Risk Manager/ Occupational Risk Manager of Transnet Limited of any hazardous situations which may arise from work being performed either by the Contractor or his sub-Contractor.
- 16) Copies of all appointments required by the act must be given to \* Health and Safety Section / Risk Manager / Occupational Risk Manager of Transnet Limited.
- 17) The Contractor shall ensure that a Health and Safety File is available which shall include all documentation as required by the Act, copy of his and his Sub-Contractors Risk Assessment and Health and Safety Plan.
- 18) All incidents referred to in Section 24 of the Act involving the Contractor and his Sub-Contractor on Transnet Ltd premises, shall be reported as prescribed. Transnet Ltd hereby obtains an interest in the issue of any investigation, formal inquiry conducted in terms of Section 31 and 32 of the Act into any incident involving the Contractor, his Sub-Contractor, any person or machinery under his control on Transnet Ltd premises.
- 19) No alcohol or any other intoxicating substance shall be allowed on Transnet Ltd premises. The Contractor shall not allow anyone under or suspected to be under the influence of alcohol or any other intoxicating substance on Transnet Ltd premises.
- 20) Contractor to ensure its employees undergo medical surveillance as required by legislation
- 21) Contractor will be required to provide monthly safety performance reports and statistics
- 22) A letter of good standing in terms of Section 80 (Employer to register with the Compensation Commissioner) of the Compensation for Occupational Injuries and Disease Act 1993 (Act 130 of 1993) must also be furnished.

23) All clauses in the contract pertaining health and safety form an integral part of the contract and if not complied with may be construed as breach of contract.

\*As applicable

## A. Tenderer OH & S Management System Questionnaire

This questionnaire forms part of TFR tender evaluation process and is to be completed by all Tenderer's and submitted with their tender offer. The objective of the questionnaire is to provide an overview of the status of the Tenderer's OH&S management system. Tenderers will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters. **TFR will verify accuracy of this information during the physical visit as part of the tender evaluation.**

The information provided in this questionnaire is an accurate summary of the company's occupational health and safety management system.		
Company Name:		
Signed:	Name:	
Position:	Date:	
Tender Description:		
Tender Number:		
Tenderer OH&S Management System Questionnaire	Yes	No
<b>1. OH&amp;S Policy and Management</b>		
- <i>Is there a written company health and safety policy?</i> - If yes provide a copy of the policy		
- <i>Does the company have an OH&amp;S Management system e.g NOSA, OHSAS, IRCA System etc</i> - If yes provide details		
- <i>Is there a company OH&amp;S Management System, procedures manual or plan?</i> - If yes provide a copy of the content page(s)		
- <i>Are health and safety responsibilities clearly identified for all levels of Management and employees?</i> - If yes provide details		
<b>2. Safe Work Practices and Procedures</b>		
- <b>Are safe operating procedures or specific safety instructions relevant to its operations available?</b> - If yes provide a summary listing of procedures or instructions		
- <b>Is there a register of injury document?</b> If yes provide a copy		

<ul style="list-style-type: none"> <li>- Are Risk Assessments conducted and appropriate techniques used?</li> <li>- If yes provide details</li> </ul>		
<b>3. OH&amp;S Training</b>		
Describe briefly how health and safety training is conducted in your company:		
<ul style="list-style-type: none"> <li>- Is a record maintained of all training and induction programs undertaken for employees in your company?</li> <li>- If yes provide examples of safety training records</li> </ul>		
<b>4. Health and Safety Workplace Inspection</b>		
<ul style="list-style-type: none"> <li>- Are regular health and safety inspections at worksites undertaken?</li> <li>- If yes provide details</li> </ul>		
<ul style="list-style-type: none"> <li>- Is there a procedure by which employees can report hazards at workplaces?</li> <li>- If yes provide details</li> </ul>		
<b>5. Health and Safety Consultation</b>		
<ul style="list-style-type: none"> <li>- Is there a workplace health and safety committee?</li> </ul>		
<ul style="list-style-type: none"> <li>- Are employees involved in decision making over OH&amp;S matters?</li> <li>- If yes provide details</li> </ul>		
<ul style="list-style-type: none"> <li>- Are there employee elected health and safety representatives?</li> <li>- Comments</li> </ul>		
<b>6. OH&amp;S Performance Monitoring</b>		
<ul style="list-style-type: none"> <li>- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents?</li> <li>- If yes provide details</li> </ul>		
<ul style="list-style-type: none"> <li>- Are employees regularly provided with information on company health and safety performance?</li> <li>- If yes provide details</li> </ul>		
<ul style="list-style-type: none"> <li>Is company registered with workmen's compensation and up to date?</li> <li>- If yes provide proof of letter of good standing</li> </ul>		
<ul style="list-style-type: none"> <li>- Has the company ever been convicted of an occupational health and safety offence?</li> </ul>		

- If yes provide details		

**Safety Performance Report**

**Monthly DIFR for previous months**

Previous Year	No of Disabling Injuries	Total Number of employees	DIFR per month
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

DIFR =  
Number  
of  
Disabling  
injuries  
x  
200000  
divided  
by  
number  
of man  
hours  
worked  
for the  
period

\_\_\_\_\_  
Signed  
(Tenderer)

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**SIC 11025**  
**Mechanised Ballast Tamping Machine :Turnout Tamping**  
**Advantageous**

**Evaluation Criteria**

		Unit	Response
1	<u>Scope of works</u>		
	<b>If your bid become successful, then:</b>		
	What will be included in your offer?	SOM/OM/S	
	Does your machine fit within the vehicle structure gauge?	Y/N	
	Does your axle loading exceed 20ton	Y/N	
	What lead time will be required before delivery of service?	months	
	Provide detailed plans on how you will be maintaining your machine/s over the contract period. Also indicate the maintenance intervals and state whether or not your maintenance is based on OEM or other maintenance	proof	
2	<u>Capacity and Tamping and Stabiliser Requirements</u>		
	<b>If your bid become successful, then:</b>		
	What workload can you cover in 5 years? (in terms of standard km tamped)	std km tamped	
	How long will your machine take to tamp a 1:12 concrete set	min	
	How long will your machine take to tamp a 1:20 concrete set (where applicable)	min	
	What is the nominal rate of tamping of your machine	sl/min	
	What is the maximum that your machine can lift the track?	mm	
	What is the maximum that your machine can slew the track?	mm	
	How many times per sleeper does your machine tamp with?	number	
	What is the Tamping Frequency of your machine?	Hz	
	How much time will be used for preparation at the start of every shift	min	
3	<u>Mechanical and Motive Aspects</u>		
	<b>If your bid become successful, then:</b>		
	How will machine be removed from track if broken down in section?	explanation- draw gear,coupling?	
	What retardation can the service brakes of your machines provide? (% of gravitational acceleration)	%	
	What retardation can the emergency brakes of your machine/s provide? (% of gravitational acceleration)	%	
	Speed of machine travelling free on level track	km/hr	
	Speed of machine travelling free on rail up gradient of 1:50	km/hr	
	What track gauge does your machine operate with?	mm	
	Will your machine be capable of actuating signalling equipment?	Y/N	
4	<u>Safety Requirements</u>		
	<b>If your bid become successful, then:</b>		
	Will you provide flagmen to protect your work site?	Y/N	
5	<u>Machine Productivity</u>		
	<b>If your bid become successful, then:</b>		
	Can the machine work at night?	Y/N	
	Does your service package provide for offtrack accomodation?	Y/N	
	Does your offer include all necessary support to deliver the workload required?	Y/N	
	Will the machine be able to work between 650mm & 700mm sleeper spacing	Y/N	

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### FURTHER RECOGNITION CRITERIA [FRC]

Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in Section 1, paragraph 5.1, in addition to such scoring, a further 10% [ten per cent] will be allocated to Respondents score based on the following "Further Recognition Criteria" on an ascending scale. This will be calculated based on the extent to which the Respondent commits to meet and/or exceed the minimum compliance targets with its proposed target score to be achieved during the contract period.

Respondents are to insert their Further Recognition Criteria current and target % scores in the table below. This will indicate how you would intend to improve your rating over the contract period:

Further Recognition Criteria				
Ownership Indicator	Required Responses	Compliance Target	Current Scores (%)	RFP Target Scores (%)
<b>A Ownership :</b>				
1. The percentage of the business owned by Black <sup>1</sup> persons.	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation will be increased over the contract period.</i>	Points will be allocated for any score >50% to 100%, on a sliding scale		
2. The percentage of your business owned by Black women.	<i>Provide a commitment based on the extent to which ownership in the hands of black women as a percentage of total ownership of the organisation will be increased over the contract period.</i>	Points will be allocated for any score >30% to 100%, on a sliding scale		
Management Control Indicator	Required Responses	Compliance Target	Current Scores (%)	RFP Target Scores (%)
<b>B Board Participation :</b>				
1. The percentage of Black Board members in relation to the total number of Board members.	<i>Provide a commitment based on the extent to which the number of Black Board members, as a percentage of the total Board, will increase over the contract period.</i>	Points will be allocated for any score >50% to 100%, on a sliding scale		
<b>C Management :</b>				
1. The percentage of Black Senior Top Management involved in day to day management of the organisation, in relation to the total Top Management cadre.	<i>Provide the percentage of Blacks that will be appointed by the Board and will be operationally involved in the day to day <b>Top management</b> of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of <b>overall strategy</b>, over the contract period.</i>	Points will be allocated for any score >40% to 100%, on a sliding scale		
2. The percentage of Black Middle Management involved in day to day management of the organisation, in relation to the total Middle Management cadre.	<i>Provide the percentage of Blacks that will be appointed by the organisation in the <b>middle management</b> cadre and will be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the <b>day to day management</b> of the organisation, over the contract period.</i>	Points will be allocated for any score >63% to 100%, on a sliding scale		
3. The percentage of Black Junior Management involved in day to day	<i>Provide the percentage of Blacks that will be appointed by the organisation in the <b>junior management</b> cadre and will be operationally</i>	Points will be allocated for any score >68% to		

<sup>1</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

management of the organisation, in relation to the total Junior Management cadre.	<i>involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a <b>supervisory role</b> with regards to the day to day management of the organisation, over the contract period.</i>	100%, on a sliding scale		
<b>Employment Equity Indicator</b>	<b>Required Responses</b>	<b>Compliance Target</b>	<b>Current Scores (%)</b>	<b>RFP Target Scores (%)</b>
<b>D. Employment Equity :</b>				
1. The percentage of Black disabled employees in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all employees in the organisation, will increase over the contract period.</i>	Points will be allocated for any score >2% to 10%, on a sliding scale		
2. The percentage of Black employees as a percentage of the total workforce i.e. of all employees in the organisation.	<i>Provide a commitment based on the extent to which the number of Black employees will increase as a percentage of the organisation's total workforce, over the contract period.</i>	Points will be allocated for any score >65% to 100%, on a sliding scale		
3. The percentage of Black women employees as a percentage of the total workforce.	<i>Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, over the contract period.</i>	Points will be allocated for any score >40% to 100%, on a sliding scale		
<b>Enterprise Development Indicator</b>	<b>Required Responses</b>	<b>Compliance Target</b>	<b>Current Scores (%)</b>	<b>RFP Target Scores (%)</b>
<b>E. Enterprise Development :</b>				
1. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax [NPAT]	<i>Provide a commitment based on the increase in your organisation's annual spend on Enterprise Development initiatives as a percentage of its Net Profit after Tax, over the contract period.</i>	Points will be allocated for any score >3% of NPAT, on a sliding scale		
<b>Preferential Procurement Indicator</b>	<b>Required Responses</b>	<b>Compliance Target</b>	<b>Current Scores (%)</b>	<b>RFP Target Scores (%)</b>
<b>F. Preferential Procurement :</b>				
1. B-BBEE procurement spend from all Service Providers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend will increase over the contract period.</i>	Score will be allocated for any score >50% to 100%, on a sliding scale		



## SUPPLIER DEVELOPMENT INITIATIVES

### 1.1 Aim and Objectives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] developed in 2010 aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa. Transnet fully endorses and supports Government's New Growth Path policy.

The key focuses of the NGP include:

- increasing employment intensity of the economy
- addressing competitiveness
- balancing spatial development of rural areas and poorer provinces
- reducing the carbon intensity of the economy
- creating opportunities in improving regional and global cooperation
- enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women

Transnet, as a State Owned Company [SOC], plays an important role to ensure these objectives are achieved. Therefore, the purchasing of goods and/or services needs to be aligned to Government's objectives for developing and transforming the local supply base. Transnet's mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black<sup>2</sup> South Africans with a particular emphasis on:

- Youth [16 to 35 year olds]
- Black women
- People with disabilities
- Small businesses
- Rural integration

### 1.2 Supplier Development [SD]

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises [DPE]. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix [IC<sup>3</sup> Matrix]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC<sup>3</sup> Matrix. This RFP has been identified as *strategic*, involving high commercial leverage and high value. Transnet's expectation is that a minimum SD target of 10% [ten per cent] of the Respondent's tendered value is offered as part of its SD initiatives to be submitted [the SD Bid Document].

<sup>2</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

Accordingly, Transnet requests all Respondents to submit a **Supplier Development Bid Document** demonstrating their commitment and support for the New Growth Path Policy and how an appointment in terms of this RFP would assist in achieving the NGP objectives.

- a) For a detailed understanding of the IC<sup>3</sup> Matrix, the respective SD initiatives and their objectives, please refer to the "Guidelines for the Completion of a Supplier Development Bid Document" appended hereto as Annexure B.
- b) The following Supplier Development [SD] focus areas have been identified and are included in the prescribed evaluation criteria, namely:

Category	Description
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Creation/Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

- c) The **Supplier Development Bid Document** is to be submitted as a separate document, developed in line with the criteria set out in Annexure C [*Supplier Development Value Summary*] appended hereto. The Supplier Development Bid Document is a detailed narrative document explaining the Respondent's Bid value as summarised in Appendix C. There is no prescribed format for this document. This SD Bid Document will represent a binding commitment on the part of the successful Respondent. The SD Bid Document should outline the type of activities you intend to embark upon should you be awarded the contract. This Bid Document should also provide an overview of what you intend to achieve, when, and the mechanisms whereby you will achieve those objectives.

Annexure C must also be completed, indicating by cross-reference the detailed areas which have been addressed in your SD Bid Document for each of the evaluation criteria listed in paragraph 1.2 (c) above, together with the Value Indicators therefor.

Notes for completion of SD Bid Document:

- (i) Respondents are urged to pay careful attention to the compilation of the SD Bid Document [including Annexure C] since this will form an essential component of the evaluation of your Proposal.
- (ii) Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.
- (iii) Please provide detailed calculations to illustrate how your estimated Rand values provided in Annexure C have been derived.
- (iv) Respondents are required to provide an electronic copy [CD] of the completed Annexure C as part of the SD Bid Document submission.

### 1.3 Additional contractual requirements

Should a contract be awarded through this RFP process, the successful Respondent(s) [hereinafter referred to as **the Service Provider**] will be contractually committed, *inter alia*, to the following conditions:

- a) The Service Provider will be required to submit a Supplier Development Plan within 45 [forty-five] days from the signature date of a Letter of Intent [**LOI**]. This SD Plan represents additional detail in relation to the SD Bid Document providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Service Provider proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the SD Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.
- b) The SD Plan may require certain additions or updates to the initial SD Bid Document in order to ensure that Transnet is satisfied that development objectives will be met.
- c) The Service Provider will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Service Provider's compliance with its stated SD commitments.
- d) The Service Provider will be required to provide:
  - (i) monthly status updates to Transnet for each SD initiative. [Detailed requirements will be provided by Transnet];
  - (ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and
  - (iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.
- e) All information provided by the Service Provider in order to measure its progress against its stated targets will be auditable.
- f) The Service Provider will be required to submit this SD Plan to Transnet in writing, within 45 [forty-five] days after signature of a Letter of Intent [**LOI**], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] days. Transnet will reserve the right to reduce or increase the number of days in which the Service Provider must submit its SD Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.
- g) The contract will be conditional on agreement being reached by the parties on the SD Plan submitted by the Service Provider. Therefore failure to submit or thereafter to agree to the SD Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.
- h) Failure to adhere to the milestones and targets defined in an SD Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, which shall equate to the monetary value of any such SD initiative which the Service Provider fails to deliver, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

#### 1.4 Supplier Development Documentation

Your **SD Bid Document** [including Annexure C ], to be submitted as part of your RFP Proposal, will represent a binding commitment on the part of the successful Respondent.

Attached herewith is the following documentation:

- **SD Guideline Document – Annexure B**

*This document must be used as a guideline to complete the SD Bid Document.*

- **SD Value Summary – Annexure C**

*This template must be completed as part of the bid which will represent a binding financial commitment on the part of the successful Respondent.*

***Failure to submit, or to submit an incomplete Supplier Development Bid Document, which includes all the required Annexures as indicated in this Section, will result in disqualification of your Proposal.***

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**Annexure B**

**REQUEST FOR PROPOSAL**

**GUIDELINES FOR COMPLETION OF THE  
SUPPLIER DEVELOPMENT BID DOCUMENT**

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### Note

For the purposes of this document, any reference to a/the "**Service Provider**" shall be construed to mean a reference to a Respondent (in terms of this RFP) and/or to a successful Respondent (to whom the business is to be awarded), as so indicated by the context hereinafter.

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## 1 What is Supplier Development?

The Supplier Development (**SD**) Programme is an initiative of the Department of Public Enterprises (**DPE**) supported by Transnet. The aim of SD is to increase the competitiveness, capability and capacity of the South African supply base where there are comparative advantages and potential for local or regional supply. This can be achieved through skills transfer, , as well as building new capability and capacity in the South African supply base. In addition, SD has its roots grounded firmly around the transformation of South Africa and the empowerment of previously disadvantaged individuals and enterprises.

## 2 Background and Guidance on the Supplier Development Objectives for South Africa

As a developing economy with inherent structural and social imbalances, South Africa is facing the significant economic challenge of increasing growth in a manner that includes all South Africans. The historical lack of investment in infrastructure in South Africa has negatively impacted on local industry, resulting in a loss of key skills and a decrease in manufacturing industry capabilities. To respond to this, Government policies have been designed to address these imbalances and to act as a catalyst of change for the benefit of South Africa.

One of these Government policies, the New Growth Path (**NGP**) aims to enhance growth, employment creation and equity by reducing the dependencies of South African industries on imports, and promoting the development of skills and capabilities that are in short supply within the country. It identifies strategies that will enable South Africa to grow in a more equitable and inclusive manner and promotes the development of new industry to attain South Africa's developmental agenda.

Transnet's SD effort is closely aligned to the NGP objectives and as a result we are able to fulfil our commitment to sustainability within South Africa whilst at the same time addressing other corporate objectives including increasing productivity and efficiency, volume growth, capital investment, financial stability, funding, human capital, SHEQ regulatory compliance and improving customer service.

The combined objectives of Transnet and Government will be realised through:

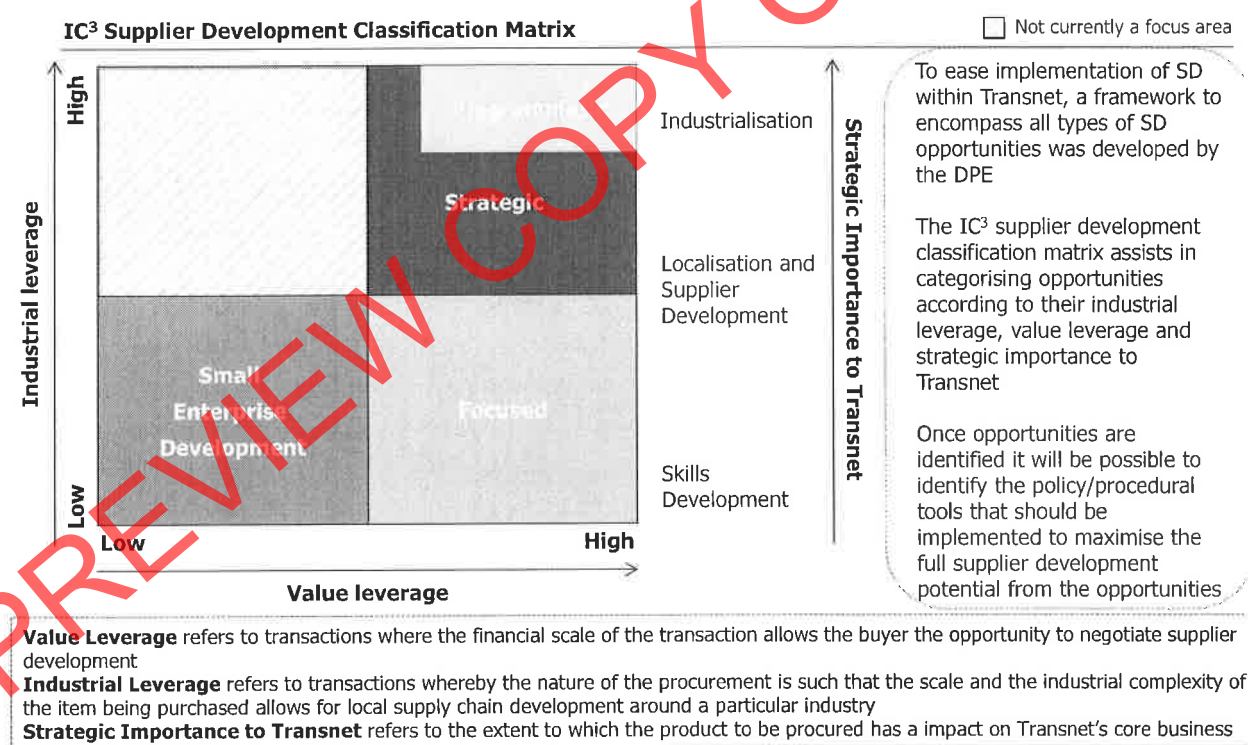
- aggressively implementing capital investment plans which will result in competitive local industries;
- improving operational efficiency;
- using procurement to influence the development of the local supplier industry; and
- ensuring it creates sufficient economic opportunities for the participation of previously disadvantaged groups.

This will lead to Transnet achieving its long-term objective of increasing both shareholder and societal value using its procurement expenditure to ensure local development through the sustainable growth of capability and capacity in South Africa's supply chain and the inclusion of the previously disadvantaged individuals in the economy in a manner that is beneficial to Transnet, South African industry and the people of South Africa. As a result this State Owned Company (**SOC**) is able to fulfil its responsibility as the biggest link in the South African freight logistics chain whilst complementing the objectives of Government.

### 3 Transnet’s Supplier Development Objectives and Framework

To aid its implementation of SD, Transnet has adapted an existing framework from the DPE. This framework allows for a basic set of principles to be applied to appropriately target SD initiatives. Supplier Development initiatives aim to assist local suppliers in developing their competitive advantage through increasing their capability and capacity potential. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity (**IC<sup>3</sup>**) Supplier Development Classification Matrix.

This framework encapsulates the types of SD opportunities which Transnet currently considers effective and allows Transnet to move its SD structure away from a dynamic policy environment towards a framework that is designed around general Supplier Development objectives. This enables Transnet to adopt a standard structure but also allows the flexibility to reconsider emphasis on certain aspects as objectives change. The IC<sup>3</sup> Matrix (refer to Figure 1 below) categorises SD opportunities in a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. Further categorisation of opportunities into the relevant quadrants is based on supplier-buyer power, industrial complexity, risk and the length of procurement period.



**Figure 1: The IC<sup>3</sup> Supplier Development Classification Matrix**

In order for Service Providers to successfully meet the needs of a particular initiative, a detailed understanding of each quadrant is required.

#### 3.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet’s balance sheet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructure development and industrialisation is achieved through joint support and in some cases public spending. Investment is focused in plant,

technology and skills in both intermediate and advanced capabilities to develop competitive advantage.

### 3.2 **Strategic**

Strategic initiatives follow a three to five year planning horizon, involving investment in at least plant, technology and/or skills in intermediate capabilities. This enforces the need for multinational corporations and Original Equipment Manufacturers (**OEMs**) to develop a certain percentage of their products locally. Strategic initiatives can therefore be used to achieve Transnet's objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require Government support to develop local capability.

### 3.3 **Focused**

Focused initiatives include all high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium-term contracts that can be leveraged to encourage Supplier Development, with a focus on investment in technology or skills to enhance existing local capability. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers and furthers objectives of empowerment, transformation and regional development.

### 3.4 **Small Enterprise Development**

Small Enterprise Development initiatives are typically of low value and have no industrial leverage as they are characterised by typically low complexity goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward historically disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of non-financial services that help entrepreneurs start new business and grow existing ones.

## **4 Response based on the IC<sup>3</sup> Matrix Quadrants**

Based on the supplier-buyer power, industrial complexity, risk and the length of procurement period, the Service Provider is expected to formulate a SD Bid Document to identify the opportunities that it will pursue. Ideally the SD Bid Document should address factors that are specific to the applicable quadrant of the IC<sup>3</sup> matrix.

Transnet has identified a number of opportunities which may aid a Service Provider in formulating its response based on each quadrant. Each of the opportunities identified by the Service Provider should have a direct or indirect effect on the value it creates for the country in order to maximise the socio-economic impact.

Based on the strategic objectives, emphasis on SD evaluation categories will differ by IC<sup>3</sup> quadrants

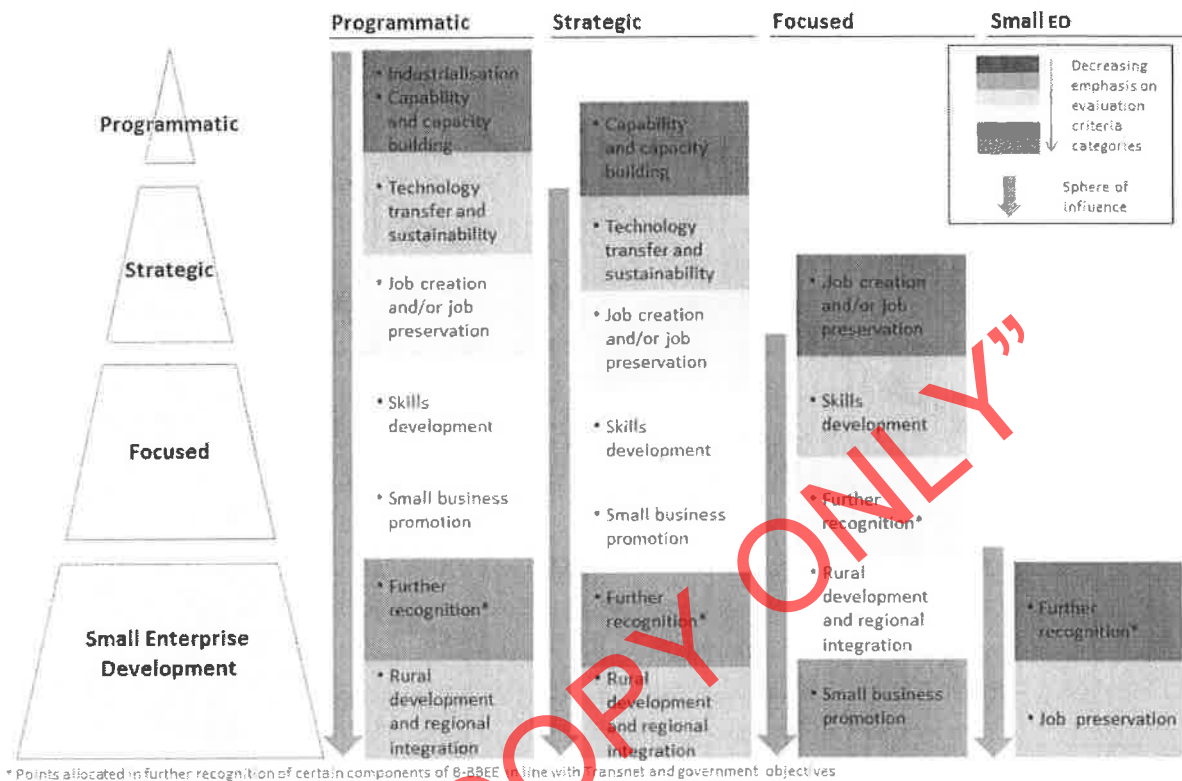


Figure 2: Transnet value capture through supplier influence

4.1 Programmatic

The strategic objective of “Programmatic transactions” is to assist Government to achieve its industrialisation objectives through the development of the local supplier base, in order to increase the cost efficiency of SOC procurement, support and maintenance programmes. In order to satisfy this objective a number of focus areas and key outcomes have been identified:

a) Programmatic Focus Areas -

- Industrialisation
- Capability and capacity building in South Africa
- Technology transfer
- Skills development related to the manufacturing process and the industry
- Development of new technology and innovation
- Investment in plant
- Development of local companies aligned to empowerment objectives

b) Key Outcomes -

- Industrialisation
- Manufacturing capability and capacity building
- Technology transfer
- Skills development

#### 4.2 **Strategic**

The main objective of Strategic transactions is to leverage local downstream suppliers through large-scale SOC procurement in order to develop a competitive local supplier base. In response to these objectives the following are the specific focus areas and key outcomes applicable:

- a) Strategic Focus Areas -
- Capability and capacity building in South Africa
  - Transfer of technology and innovation to local suppliers from foreign OEM's
  - Skills development related to the industry
  - Development of local companies aligned to empowerment objectives
- b) Key Outcomes -
- Increased S.A. manufacturing capability and capacity
  - Increased technology transfer
  - Skills development
  - Job creation/preservation

#### 4.3 **Focused**

Focused initiatives assist local suppliers to improve their performance, enhance their existing production and skills capabilities with emphasis being placed on benefiting previously disadvantaged individuals and rural development. In order to satisfy these objectives a number of focus areas and key outcomes have been identified:

- a) Focused Focus Areas -
- Developing a local supplier base that supports preferential procurement outcomes
  - Developing skills within the specific industry
  - Creating opportunity for job preservation
  - Reducing income inequality in specific regions
- b) Key Outcomes -
- Empowerment
  - Skills development
  - Rural development
  - Job creation/preservation

#### 4.4 **Small Business Development**

Enterprise Development (**ED**) objectives are centred around assisting local suppliers to improve their skills by placing increased emphasis on benefiting previously disadvantaged individuals and rural development in line with the Broad-Based Black Economic Empowerment (B-BBEE) strategy. The following focus areas and key outcomes have been identified:

- a) Small Business Development Focus Areas -
- Providing small businesses with opportunities and preferential trading terms, increased focus on Black woman-owned enterprises, focus on the youth, people with disabilities and region-specific initiatives

- Empowering previously disadvantaged individuals to create their own businesses resulting in quality job creation
- b) Key Outcomes -
- Empowerment
  - Rural development
  - Skills development
  - Job creation/preservation

Based on these focus areas and key outcomes, a Service Provider would need to actively focus on the quadrant-specific requirements in order to maximise the potential commercial benefit for Transnet, South Africa and themselves. In doing so value can be created across all lines of reporting resulting in continued relations.

## 5 Supplier Development Category Definitions and High Level Descriptions

### 5.1 Industrialisation

Industrialisation refers specifically to industrial development that will result in globally leading capabilities within South Africa.

Criteria	Description
➤ Value of investment in plant	➤ Quantification of the monetary value invested in machinery, equipment and/or buildings as a result of this RFP
➤ Percentage of the investment of plant purchased in South Africa	➤ Percentage value invested in machinery, equipment and/or buildings that are sourced from local companies
➤ Reduction in import leakage	➤ A percentage indication of the increase in locally supplied products and therefore the resultant decrease in imports as a result of the award of a contract
➤ Potential increase in export content	➤ The percentage increase in exports that will result from increased industrial capability locally in relation to the award of a contract

### 5.2 South African Capability and Capacity Building

South African capability and capacity building refers specifically to industrial development that focuses on value-added activities for the local industry through manufacturing or service-related functions.

Criteria	Description
➤ Value-added manufacturing activity/activities to be undertaken in South Africa	➤ Description of value-added activities to be performed during the contract period in South Africa
➤ Service-related functions to be undertaken in South Africa	➤ Description of service-related functions to be performed during the contract period in South Africa
➤ Number of local suppliers in the supply chain	➤ Number of South African suppliers that are to be utilised in the fulfilment of a contract

### 5.3 Technology transfer/sustainability

Technology improvements are intangible assets with significant economic value. The Service Provider will be measured on its plan to transfer knowledge and IP to contribute towards capability building of the local supply base, which ultimately leads to improved efficiency and capability. Plans to assist in this by a Service Provider must be assessed to enable the local supply base to potentially export its newly-acquired technological know-how, thereby decreasing capital leakage.

Criteria	Description
Technology transfer including: <ul style="list-style-type: none"> <li>➤ Methods of manufacturing</li> <li>➤ Introduction of new technologies</li> <li>➤ IP transfer (number and value)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Introduction of a new/improved method of manufacturing</li> <li>➤ Provision of new technologies:               <ul style="list-style-type: none"> <li>○ For processes</li> <li>○ ICT</li> </ul> </li> <li>➤ The provision of patents, trademarks and copyrights</li> </ul>
<ul style="list-style-type: none"> <li>➤ Number of local suppliers to be evaluated for integration into the OEM supply chain</li> </ul>	<ul style="list-style-type: none"> <li>➤ An indication of the number of South African suppliers that an OEM/Service Provider plans to evaluate for possible inclusion into its supply chain, should it meet the requirements</li> </ul>

### 5.4 Skills development

Skills development indicates the company's commitment to education and whether that fits in with targeted groups (artisans, technicians, etc.). Consideration needs to be directed towards the adequate quality and value of skills so developed in order to allow for better evaluation in line with Government's objectives.

Criteria	Description
<ul style="list-style-type: none"> <li>➤ Number of downstream supply chain individuals to be trained including:               <ul style="list-style-type: none"> <li>• Number of artisans trained</li> <li>• Number of technicians trained</li> <li>• Number of black people trained</li> <li>• Total number of people trained</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Number of individuals that the Service Provider plans to train in the local industry over the contract period; training undertaken in the previous year will be taken into account</li> <li>➤</li> </ul>
<ul style="list-style-type: none"> <li>➤ Number of company employees to be trained</li> </ul>	<ul style="list-style-type: none"> <li>➤ Number of individuals within the company (in South Africa) that the Service Provider plans to train over the contract period; training undertaken in the previous year will not be taken into account as past employee training appears in the skills development pillar of the B-BBEE scorecard; criteria broken down as for industry training above</li> </ul>
<ul style="list-style-type: none"> <li>➤ Certified training (yes/ no)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Compliance with local and/or international skills accreditation</li> </ul>

Criteria	Description
➤ Rand value spent on training	➤ Total planned monetary value spend (as a % of contract value) on skills development /training for the contract period within the industry; money spent in the previous year will be included in year 1 to make allowance for Service Providers who have just completed a training drive within the industry
➤ Number of bursaries/ scholarships (specify field of study)	➤ The number of higher education bursaries/scholarships provided in the previous year and planned for the length of the contract
➤ Number of apprentices (sector must be specified)	➤ The number of apprentices that the Service Provider plans to enlist during the course of the contract
➤ Investment in Schools in specific sectors e.g. engineering	➤ The monetary value that the Service Provider is prepared to invest in the development and running of schools to increase technical skills development

5.5 **Job creation/preservation**

Job creation and/or preservation allows assessment of Government’s objectives to increase labour absorption, focusing on unskilled workers and the youth.

Criteria	Description
➤ Number of jobs preserved	➤ Number of jobs which would be preserved through Award of Contract
➤ Number of jobs created including: <ul style="list-style-type: none"> <li>• New skilled jobs created</li> <li>• New unskilled jobs created</li> </ul>	➤ Number of jobs to be created during the period of the contract <ul style="list-style-type: none"> <li>• Jobs for people in a specialised field of work requiring a defined training path and / or requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a higher education institution.</li> <li>• Jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required</li> </ul>
➤ Number of jobs created for youth	➤ Jobs created for individuals aged 16 – 30 years
➤ Number of jobs created for Black youth	➤ Jobs created for Black individuals aged 16 – 30 years



**5.6 Small business promotion**

Small business promotion criteria give an indication of the Service Provider’s commitment to developing small business in line with NGP and B-BBEE requirements.

Criteria	Description
<ul style="list-style-type: none"> <li>➤ Percentage procurement from:                             <ul style="list-style-type: none"> <li>• QSEs</li> <li>• EMEs</li> <li>• Start-ups</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Refers to the planned procurement from small business as a % of the total planned procurement spend</li> </ul>
<ul style="list-style-type: none"> <li>➤ Non-financial support provided to small business</li> </ul>	<ul style="list-style-type: none"> <li>➤ Service Providers will be credited for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business</li> </ul>
<ul style="list-style-type: none"> <li>➤ Financial support provided to small business</li> </ul>	<ul style="list-style-type: none"> <li>➤ Service Providers will be credited for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans</li> </ul>
<ul style="list-style-type: none"> <li>➤ Joint ED initiatives with Transnet</li> </ul>	<ul style="list-style-type: none"> <li>➤ The number of ED initiatives that the Service Provider will jointly run with Transnet:                             <ul style="list-style-type: none"> <li>• That are aligned to Transnet’s objectives</li> <li>• That are non-financial in nature</li> </ul> </li> </ul>

**5.7 Rural development/integration**

Rural development / integration indicates the Service Provider’s planned use of local labour and business which will contribute to Governments NGP objectives and result in supply chain efficiencies. Commitment to rural development will result in the alleviation of poverty and thereby contribute to development objectives. The development must be sustainable in order to have a long-term and meaningful impact.

Criteria	Description
<ul style="list-style-type: none"> <li>➤ Number of local employees</li> </ul>	<ul style="list-style-type: none"> <li>➤ Number of people employed from within the town/city of operation</li> </ul>
<ul style="list-style-type: none"> <li>➤ Value spent on local business</li> </ul>	<ul style="list-style-type: none"> <li>➤ Monetary value spent on businesses within the town/city of operation</li> </ul>
<ul style="list-style-type: none"> <li>➤ Proximity of business to operations</li> </ul>	<ul style="list-style-type: none"> <li>➤ The locality of the business in relation to operations, preference is given for regional (provincial) locality</li> </ul>
<ul style="list-style-type: none"> <li>➤ Number of rural businesses to be developed</li> </ul>	<ul style="list-style-type: none"> <li>➤ The number of rural businesses that the Service Provider plans to develop as a result of the contract</li> </ul>
<ul style="list-style-type: none"> <li>➤ Value of development to local community (sustainable)</li> </ul>	<ul style="list-style-type: none"> <li>➤ The monetary value spent on rural community development that will result in long-term social improvements</li> </ul>

**6 Market Intelligence Assistance**

Service Providers with limited knowledge of the local market, supply base and its capabilities may require assistance in identifying local suppliers and the development needs in order to develop its SD Bid

Document. The United Nations Industrial Development Organisation (UNIDO) supplies a benchmarking service in South Africa which will be able to assist Service Providers in identifying potential local suppliers with which to work. In addition, this service will provide insight as to the type of support that these local suppliers require in order to become more competitive. UNIDO's benchmarking tool gives insight into the performance levels being seen in Service Providers' businesses and the practices used to deliver the products or services being offered. The benchmarking tool focuses on:

- 6.1 Performance data relating to -
  - a) Financial performance
  - b) Customer data
  - c) Processes
  - d) Learning & growth
- 6.2 Company's current business situation -
  - a) Plans for the business and capabilities to manage their fulfilment
  - b) Ability to generate business
  - c) Employee relationships
  - d) Developing new markets
  - e) Developing products and services
  - f) Managing money

The UNIDO benchmarking tool provides a basic framework through which an understanding of the South African market can be established. Whilst the list of criteria may not be exhaustive, Service Providers are free to meet with UNIDO to further understand how they can work together to develop a deeper understanding of the market and the SD opportunities available.

## 7 Government Policy Documents

- NIPP [http://www.thedti.gov.za/industrial\\_development/nipp.jsp](http://www.thedti.gov.za/industrial_development/nipp.jsp)
- IPAP2 <http://www.thedti.gov.za/DownloadFileAction?id=561>
- CSDP <http://www.dpe.gov.za/res/transnetCSDP1.pdf>
- NGP <http://www.thepresidency.gov.za/pebble.asp?relid=2323>

## 8 Other Reference Websites

References	Website
Department of Public Enterprise (DPE)	<a href="http://www.dpe.gov.za">www.dpe.gov.za</a>
United Nations Industrial Development Organisation (UNIDO)	<a href="http://www.unido.org/spx">www.unido.org/spx</a>

## GLOSSARY OF WORDS

**Broad-Based Black Economic Empowerment (B-BBEE)**

A South African legal requirement that require all entities operating in the South African economy to contribute to empowerment and transformation

**Enterprise Development (ED)**

An element contained within the B-BBEE scorecard whereby a Measured Entity can receive recognition for any Qualifying Enterprise Development Contributions towards Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or 30% black woman owned. Enterprise Development Contributions consists of monetary and non-monetary, recoverable and non-recoverable contributions actually initiated in favour of a beneficiary entity by a measured entity with the specific objective of assisting or accelerating the development, sustainability and ultimate financial independence of the beneficiary. This is commonly accomplished through the expansion of a beneficiaries financial and/ or operation capacity.

**Industrial Policy Action Plan II (IPAPII)**

The implementation plan for the National Industrial Policy Framework (NIPF) which details key action plans (KAPs) and timeframes for the implementation of industrial policy actions in line with the NIPF.

**Integrated Supply Chain Management (iSCM)**

Refers to an integrated "one supply chain management" strategy within Transnet which has been developed with Centres of Excellence (COEs) with cross-functional teams comprising divisional and corporate task team members, to deliver value through improved efficiencies and compliance with the regulatory environment.

**New Growth Path (NGP)**

Developed by the Economic Development Department tabled in January 2010 frames a new approach to unlocking economic growth by knitting together the IPAP2 as well as policies and programmes in rural development, agriculture and, sciences & technology, education, skills development, labour, mining and beneficiation, tourism and social development with the aim to target limited capital and capacity at activities that maximise the creation of decent work opportunities. Key indicators include: Quality job creation, Youth employment, Labour intensive growth, and Equity.

**Original Equipment Manufacturer (OEM)**

Refers to a manufacturing company that owns the intellectual property rights and patents for the equipment it sells and services

**Socio-economic Development**

Refers to development which addresses social and economic aspects such as job creation, poverty reduction and increased national value add and which not only focuses on the business's financial bottom line.

**State Owned Company (SOC)**

Refers to Government-owned corporations. They are legal entities created, and owned, by Government to undertake commercial activities on behalf of an owner Government, and are usually considered to be an element or part of the state. They are established to operate on a commercial basis.

**Supplier Development (SD)**

Improving the socio-economic environment by creating competitive local suppliers via Enterprise Development, CSDP and other initiatives such as Preferential Procurement. This results in a supply base that can eventually be competitive to market its goods on the international market leading to increased exports.

**United Nations Industrial Development Organisation (UNIDO)**

A specialised agency of the United Nations. Its mandate is to promote and accelerate sustainable industrial development in developing countries and economies in transition, and work towards improving living conditions in the world's poorest countries by drawing on its combined global resources and expertise.

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## SUPPLIER DEVELOPMENT VALUE SUMMARY

## Annexure C

Respondents must complete this Annexure C which summarises your Supplier Development [SD] Bid Document and related value commitments.

Please insert the SD Value Indicators in the table below. Cross-reference the Value Indicators quoted under the column heading "SD BID DOCUMENT CROSS-REFERENCE" with the corresponding section in your SD Bid Document.

SD CATEGORY	SD MEASUREMENT	SD VALUE INDICATORS					SD BID DOCUMENT CROSS-REFERENCE
		NUMBER	PERCENTAGE	RAND VALUE excluding VAT	YES/NO		
<b>3</b>	<b>Skills Development</b>						
3.1	Number and Rand value of artisans/technicians to be trained over the contract period						
3.2	Number and Rand value of apprentices to be trained over the contract period						
3.3	Number and Rand value of Blacks* to be trained over the contract period						
3.4	Number and Rand value of Black women to be trained over the contract period						
3.5	Number and Rand value of Youth to be trained over the contract period [where "Youth" means individuals between the ages of 16 - 35 years]						
3.6	Number and Rand value of persons with disabilities to be trained over the contract period						
3.7	Is the level of the training offered above in compliance with the National Qualification Framework guidelines [NQF] / South African Qualification Association (SAQA)? - Yes/No [Please indicate]						
3.8	Number and Rand value of higher education bursaries and/or scholarships to be offered by your company [provide details in your SD Bid Document]						
3.9	Rand value of other skills development initiatives [to be further detailed in your SD Bid Document]						

SD CATEGORY	SD MEASUREMENT	NUMBER	PERCENTAGE	SD VALUE INDICATORS			SD BID DOCUMENT CROSS-REFERENCE
				RAND VALUE excluding VAT	YES/NO		

\*Where "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

Job Creation	The potential for job creation/ preservation through the award of the contract	Number of new skilled jobs to be created due to award of contract	Rand value of new skilled jobs to be created in rural areas	Number of new skilled jobs for "Black" individuals and/or contractors	Number of new skilled jobs for Black women	Number of new skilled jobs for Black persons with disabilities	Number of new skilled jobs for Black Youth [where "Youth" means individuals between the ages of 16 - 35 years]	Number and Rand value of new unskilled jobs to be created by award of contract	Number of unskilled jobs to be created in rural areas	Number of unskilled jobs for historically disadvantaged individuals and/or contractors	Number of unskilled jobs for Black women	Number of unskilled jobs for Black persons with disabilities	Number of unskilled jobs for Black Youth [where "Youth" means individuals between the ages of 16 - 35 years]	The potential for job preservation through the award of the contract
4.1	Number and Rand value of new skilled jobs to be created due to award of contract:													
4.1.1	Number of new skilled jobs to be created in rural areas													
4.1.2	Number of new skilled jobs for "Black" individuals and/or contractors													
4.1.3	Number of new skilled jobs for Black women													
4.1.4	Number of new skilled jobs for Black persons with disabilities													
4.1.5	Number of new skilled jobs for Black Youth [where "Youth" means individuals between the ages of 16 - 35 years]													
4.2	Number and Rand value of new unskilled jobs to be created by award of contract:													
4.2.1	Number of unskilled jobs to be created in rural areas													
4.2.2	Number of unskilled jobs for historically disadvantaged individuals and/or contractors													
4.2.3	Number of unskilled jobs for Black women													
4.2.4	Number of unskilled jobs for Black persons with disabilities													
4.2.5	Number of unskilled jobs for Black Youth [where "Youth" means individuals between the ages of 16 - 35 years]													
Job Maintenance / Preservation	The potential for job preservation through the award of the contract													
5.1	Number of jobs which would be preserved through award of contract:													
5.1.1	- By the Respondent													

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SD CATEGORY	SD MEASUREMENT	SD VALUE INDICATORS				SD/BID DOCUMENT CROSS-REFERENCE
		NUMBER	PERCENTAGE	RAND VALUE excluding VAT	YES/NO	
5.1.2	- By subcontractors					
5.1.3	- By South African suppliers / service providers					
5.1.4	- By other [specify]					

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SD CATEGORY	SD MEASUREMENT	SD VALUE INDICATORS				SD BID DOCUMENT CROSS-REFERENCE
		NUMBER	PERCENTAGE	RAND VALUE excluding VAT	YES/NO	
6	Small Business Promotion					
6.1.	Percentage of your projected annual procurement spend from businesses with an annual turnover of less than R35 million [QSEs]					
6.2.	Percentage of your projected annual procurement spend from businesses with an annual turnover of less than R5 million [EMEs]					
6.3.	Percentage of your projected annual procurement spend from start-up enterprises					
6.4.	Percentage of the estimated contract value which would be subcontracted to EMEs					
6.5.	Percentage of the estimated contract value which would be subcontracted to QSEs					
6.6.	Percentage of the estimated contract value which would be subcontracted to start-up enterprises					

**ESTIMATED RAND VALUE TOTAL OF SUPPLIER DEVELOPMENT COMMITMENT, EXCLUDING VAT :** R 0.00

**SUPPLIER DEVELOPMENT COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE :** %



## FOREIGN EXCHANGE RATE INFORMATION REQUIRED TO BE FURNISHED BY TENDERERS.

1. Particulars of the exchange rate on which prices are based :

\_\_\_\_\_ (Foreign currency) equals R\_\_\_\_\_ (South African currency)

**Note: Tenderers who offer imported material shall base their tenders on the selling rate of exchange that ruling on the last working day of the month prior to the closing date of tenders.**

2. The percentage of the tender prices which is to be remitted by the tenderers from South Africa to another country is \_\_\_\_\_% of the f.o.b./c. and f.f.o.r. in bond price (delete those not applicable).

- Note:**
- (1) The percentage quoted above will be deemed to apply even though a portion only of the item(s) tendered for is accepted.
  - (2) Adjustment in respect of variation in exchange rate will be allowed only on the percentage of the tendered price quoted above.

3. The tendered price shall be computed at the rate of exchange stated by the tenderer in paragraphs 1 and 2 above as applied to the percentage of the tendered price quoted.

4. Transnet Freight Rail will accept for its account, in respect of such percentage of the tendered price as will be affected by the rate of exchange, any variation between the rate mentioned in paragraph 1 above and the rate ruling at the date when payment for the goods is made by Transnet Freight Rail; provided that if the Contractor is required to remit the whole or portion of the contract price to another country in payment for goods or portion thereof prior to receiving payment from Transnet Freight Rail, the date(s) of such remittance(s) shall be deemed to be the date(s) of payment by Transnet Freight Rail for the purposes of this paragraph.

5. In the absence of a specific indication by the Contractor at the time of tendering that the proviso to paragraph 3 will apply, it will be assumed that the Contractor desires the adjustment to be effected by reference to the date on which actual payment is made by Transnet Freight Rail.

6. (a) The Contractor shall, if so required, furnish documentary proof to establish that the percentage of the contract price specified by him in paragraph 2 has actually been remitted to another country and the rate of exchange at which that was done.
- (b) Whenever the Contractor is required to remit the whole or portion of the contract price, to another country as contemplated in the proviso to paragraph 2 above, he shall notify Transnet Freight Rail forthwith and furnish documentary evidence of such remittance and of the rate of exchange at which that was done.

7. Invoices in respect of goods supplied must reflect the amount remitted or to be remitted to another country and the amount to be retained in South Africa.

8. **The contractor shall take out forward cover for all imported materials and services within 14 days of award of the contract. Proof shall be submitted to the Project Manager/Manager in charge of the contract. The cost of forward**

**cover shall be invoiced separate from the contract invoices and shall not be included in the tender price.**

\_\_\_\_\_  
SIGNATURE OF TENDERER

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

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

ADDRESS:

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

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# Part C1: Agreement and Contract Data

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## C1.1 FORM OF OFFER AND ACCEPTANCE (TSC3)

### OFFER

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

**MAINTENANCE OF TRACK WITH ON-TRACK MACHINERY: A10 DUAL PURPOSE TAMPING - COALLINE FOR A PERIOD OF 2 YEARS.**

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, signing this part of this Form of Offer and Acceptance, the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data. The representative, when signing this part of the Form of Offer and Acceptance, shall be deemed to be duly authorised by a Resolution of the Board of Directors/Certificate of Partners, a certified copy to be included in the Returnable Documents.

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

If Option E or F (Cost reimbursable or management contract) applies, replace table with following sentence: "The offered prices are the Actual Cost plus the fee contained in the Contract Data".

This Offer may be accepted by the Employer by signing the Acceptance part as well as the Schedule of Deviations of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s) \_\_\_\_\_

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

Capacity \_\_\_\_\_

**For the tenderer:**

*(Insert name and address of organisation)*

Name of witness \_\_\_\_\_

Date \_\_\_\_\_

Signature of witness \_\_\_\_\_

Date \_\_\_\_\_

Tenderer's CIDB registration number (if any):

## ACCEPTANCE

By signing this part as well as the Schedule of Deviations of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto as listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or immediately after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the tenderer (now Contractor) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

for the  
Employer

**Transnet SOC Ltd trading as Transnet Freight Rail, 49<sup>th</sup> floor, Carlton Centre, 150  
Commissioner street, Johannesburg, 2000.**

*(Insert name and address of Employer)*

Name of  
witness

Signature of  
witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

## SCHEDULE OF DEVIATIONS

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.
4. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the parties become an obligation of the contract, shall also be recorded here.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

## C1.2 Contract Data (TSC3)

### Part one - Data provided by the Employer

Please read the relevant clauses in the conditions of contract before you enter data. The number of the principal clause is shown for each statement however other clauses may also use the same data.

Rows containing the statement and data for options in the core clauses and for main & secondary option clauses, according to the options chosen, are identified by shading in the left-hand column.

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

Clause	Statement	Data
PART 1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option: dispute resolution Option and secondary Options	<b>A: Priced contract with price list</b> <b>W1: Dispute resolution procedure</b> <b>X1: Price adjustment for inflation</b> <b>X3: Multiple currencies</b> <b>X13: Performance bond</b> <b>X17: Low performance damages</b> <b>X18: Limitation of liability</b> <b>Z: Additional conditions of contract</b>
	of the NEC3 Term Service Contract (June 2005)	
10.1	The <i>Employer</i> is (name):	<b>Transnet Freight Rail, A Division of Transnet SOC Ltd.</b>
	Address	<b>49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg</b>
	Tel No.	<b>(011) 3082435</b>
	Fax No.	<b>(011) 3082430</b>
10.1	The <i>Service Manager</i> is (name):	<b>Mr Fana Marutla</b>
	Address	<b>Inyanda House 3, 12A St Andrews Rd, Parktown</b>
	Tel	<b>(011) 583-0288</b>
	Cell	<b>083 294 2576</b>
	e-mail	<b><u>Fana.Marutla@transnet.net</u></b>
11.2(2)	The Affected Property is	<b>Countrywide</b>

11.2(13)	The <i>service</i> is	MAINTENANCE OF TRACK WITH ON-TRACK MACHINERY: A10 DUAL PURPOSE TAMPING - COALLINE FOR A PERIOD OF 2 YEARS.
		<b>Refer to clause 1.13 of Option Z : Additional Conditions of Contract</b>
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"><li>i. Cancellation of track occupations at short notice.</li><li>ii. The shortage of wagons, locomotives and locomotive driver crews may disrupt logistics to move material, equipment and staff on railway lines.</li><li>iii. Work on railway track near live OHTE electrical equipment holds a danger of electrocution for workers.</li><li>iv. Working on a railway lines adjacent to lines on which rail traffic continue to run holds the risk of injury or death to workers.</li><li>v. Dry vegetation at or near most worksites is a fire hazard.</li></ul>
11.2(15)	The Service Information is in	<b>Part C3 : Service Information (Works Information)</b>
12.2	The <i>law of the contract</i> is the law of	<b>The Republic of South Africa subject to the jurisdiction of the Courts of South Africa.</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>2 weeks</b>
PART 2	<b>The Contractor's main responsibilities</b>	<b>Refer to clause 1.13 of Option Z : Additional Conditions of Contract</b>
PART 3	<b>Time</b>	
30.1	The starting date is	<b>The Contract date</b>
	The <i>service period</i> is	<b>As stated in the service information.</b>
PART 4	<b>Testing and defects</b>	<b>No data is required for this section of the conditions of contract.</b>
PART 5	<b>Payment</b>	
51.1	The <i>currency of this contract</i> is the	<b>South African Rand (ZAR).</b>
51.2	The period within which payments are made is	<b>Payment will be made 30 days from invoice date. The assessment interval is a calendar month.</b>
51.4	The <i>interest rate</i> is	<b>2% Per annum above the prime lending rate of the Standard Bank of South Africa Ltd as determined from time to time.</b>
PART 6	<b>Compensation events</b>	<b>No data is required for this section of the conditions of contract.</b>
PART 7	<b>Use of Equipment Plant and Materials</b>	<b>No data is required for this section of the conditions of contract.</b>



**PART 8 Risks and insurance**

8.3.1 The *Employer* provides these insurances

- (a) The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract for any one event is **whatever the Contractor deems desirable in addition to that provided by the Employer.**
- (b) The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is that **which is prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.**

Indemnities and insurance

- i. The Contractor shall take every precaution not to cause damage to property or injury to any person as a result of his execution of the work.
- ii. Transnet will insure in the joint names of Transnet Freight Rail and the Contractor against all legal liabilities which may arise from the accidental death of or injury to third party persons and/or accidental loss of, or damage to third party property in the course of the Contractor's execution of the Work.
- iii. The insurance policy will be for an indemnity limit as stated in the policy and will be maintained in force during the entire period of the Contract.
- iv. The Contractor shall in the case of a liability arising out of a negligent act or omission on the part of the Contractor be responsible for payment of the amount(s) stated in the policy as being the deductible.
- v. The insurance to be provided in terms of clause 83.1(ii) will have a cross liabilities cover in respect of which each party shall be separately indemnified in respect of claims made by any one of them against the other as though a separate policy has been issued to each of them.
- vi. The Contractor shall insure against loss of or damage to his own machinery, tools, equipment, materials and site establishments and any consequential financial losses arising from such damage. This insurance is to be maintained in force during the entire period of the Contract. The Contractor shall likewise arrange his own insurances in respect of motor vehicle liabilities and employer's common law liabilities of the Contractor.

**PART 9 Termination**

**Refer to clause 1.21 of Option Z : Additional Conditions of Contract**

**Dispute Resolution**

**Option W1**

W1.1 The *Adjudicator* is (Name)

**Will be mutually agreed upon by the parties if a dispute arises.**

W1.2(3) The *Adjudicator nominating body* is:

**The Association of Arbitrators (Southern Africa)**

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

**Arbitration**

W1.4(5) The *arbitration procedure* is

**The Rules for the Conduct of Arbitrators of the Association of Arbitrators (Southern Africa)**



The place where arbitration is to be held is **Johannesburg**

The person or organisation who will choose an arbitrator **The Chairman of the Association of Arbitrators (Southern Africa)**

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is

#### Data for secondary Option clauses

#### Options X1, X3, X13, X17 and X18

#### 1 OPTION X1:

##### 1.1 FACTOR ADJUSTMENT

- 1.1.1 A contract price adjustment factor to be determined in accordance with the formula as described below will be applied to allow for all increases or decreases in costs, from any cause whatsoever, which may occur after the closing date of the submission of tenders and before the date of completion. The factor shall be rounded off to six decimal places.

The contract price adjustment factor shall be -

$$(1 - x) \left( 0.35 \frac{Lt}{Lo} + 0.40 \frac{Pt}{Po} + 0.13 \frac{Mt}{Mo} + 0.12 \frac{Dt}{Do} - 1 \right)$$

where  $x = 0,15$  and

Lo, Po, Mo and Do are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month two (2) months prior to closing date of the tender;

Lt, Pt, Mt and Dt are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month two (2) months prior to the date of measurement.

- 1.1.2 The indices to be used shall be those for the Consumer Price Index and Production Price Index as obtained from the monthly Statistical News Release published by STATS South Africa.

- Lo and Lt shall be the labour indices for Metropolitan Areas (P0141.1 Table A).
- Po and Pt shall be the average of the price indices of Non-Electrical Machinery and Transport Equipment in the ratio of 1:1 (P0142.1 Table 8 item 2.16 and 2.21 respectively).
- Mo and Mt shall be the price indices of materials used in Mechanical Engineering (P0142.1 Table 11).
- Do and Dt shall be the price indices of "Diesel Oil – Average Coastal and Witwatersrand" (P0142.1 Table 12).

- 1.1.3 When the value of an index at the time of calculation is not known the latest available index shall be used and any correction necessary shall be made by addition or subtraction in subsequent monthly payment certificates.

- 1.1.4 The amounts to be added to or subtracted from the monthly payment certificates shall be calculated by multiplying the amount certified for payment for that month (but excluding amounts not subject to price adjustment) by the contract price adjustment factor for that month.
- 1.1.5 Adjustment to measurements of previous months' quantities will be included in calculation of the amount certified for payment and will therefore be subject to the price adjustment factor of the current measurement month.
- 1.1.6 Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs as well as any increases and decreases therein, and profit.
- 1.1.7 Value added tax shall be excluded from individual payment item rates and price adjustment indices as it will be added to the total of the month's measurement, after price adjustment has been made in terms hereof.

## 2 OPTION X3:

### 2.1 FOREIGN EXCHANGE RATE FLUCTUATIONS

- 2.1.1 The contract price payable to the Contractor will be adjusted for increases and decreases in costs of imported materials, machines and spare parts, due to fluctuations in foreign currency exchange rates after the conclusion of the Contract and for the duration thereof.
- 2.1.2 Tenderers shall, by furnishing the particulars in the appendix to the Price List, indicate whether their tenders or part(s) thereof are subject to variation because of exchange rate fluctuations.
- 2.1.3 Where no particulars are furnished, such tenders will be deemed to be not subject to variation because of exchange rate fluctuations.
- 2.1.4 The foreign exchange rate adjustment will be made in the monthly payment certificates in respect of the progress payments for that month and are to be based on the Standard Bank of South Africa's "TT sell" rate at the close of business on the last banker's day of the month for which measurement is being made.
- 2.1.5 The percentages quoted in the appendix shall indicate the proportion of the scheduled rate or price that are subject to exchange rate fluctuations and the adjustments on account of exchange rate fluctuations shall only be made in respect of those proportions of the tendered rates and/or prices. The percentages quoted shall not be subject to variation because the actual quantities measured being more or less than the estimated quantities stated in the tender Price List.
- 2.1.6 The rate of exchange to be used by Tenderers in the computation of their tender rates and/or prices and which is to be quoted in the appendix are the rate of exchange on the day 7 days prior to the date on which tenders close.
- 2.1.7 The adjustments of the tendered rates and prices will be made in respect of percentages quoted to be affected by fluctuations in the rate of exchange of the stated currency, between the rate stated in the appendix and the ruling rate determined in accordance with clause 2.2.9 hereof.

2.1.8 The contract price adjustments stipulated in clause 1.1.1 hereof shall not apply to the portions of the contract payments that are subject to adjustments for exchange rate fluctuations in terms hereof and the following formula shall apply instead.

2.1.9 The foreign exchange rate adjustment formula shall read:

$$(1-x)\left[\frac{C_t}{C_o} - 1\right]$$

Where x = the percentage not applicable to foreign exchange

C<sub>o</sub> shall be the rate as prescribed in clause 2.2.4 hereof.

C<sub>t</sub> shall be the rate as prescribed in clause 2.2.4 hereof.

The indices to be used will be those that the Contractor proposed in his tender. These indices shall be from an official series, published by the generally accepted institution of the country to which the foreign currency is to be remitted. The tender shall furthermore show the trend of the indices over a period of at least two years.

2.1.10 The Contractor shall, when requested by the Service Manager's Deputy, furnish documentary proof of remittance to another country of the contract payments made in terms of this clause.

### 3 OPTION X13: PERFORMANCE BOND:

Transnet Freight Rail requires a Performance Bond of 5% of the total value of the Contract as security for the due and faithful performance by the Contractor of all the duties and obligations resting upon and assumed by him in terms of the Contract.

The Performance Bond is to be returned to the Contractor upon completion of the contract after certification from the Service Manager that all contract requirements have been met.

### 4 OPTION X17: LOW PERFORMANCE DAMAGES:

#### 4.1. UNSATISFACTORY PERFORMANCE OF THE MACHINERY

4.1.1 The Service Manager's Deputy may terminate the Work and/or order the machinery to be moved to another place of Work and/or order the removal of mechanic(s) and/or operator(s), and/or order the temporary or permanent removal and replacement of a machine under the following conditions:

- When the output of the machinery is less than 70% of the required minimum productivity for a period of two consecutive months, or
- when the percentage availability of the machinery (as described in the Contract data) is less than 75% for a period of two consecutive months.

4.1.2 The Contractor may substitute, either temporarily or for the duration of the Contract, other machinery in place of that listed in the Schedule of Machinery offered. The substitute machinery shall be subject to all the terms and conditions of the Contract and shall in no way be inferior to the original machinery. The Service Manager's Deputy shall be advised of any proposed substitution, which shall be subject to his approval.

4.1.3 Should the Service Manager's Deputy, at any time, be of the opinion that the machinery provided by the Contractor is performing defectively or is incapable of achieving the specified output and availability the Service Manager's Deputy may notify the Contractor in writing, but the Contractor shall not be relieved of any of his contractual obligations if such notification is not given.

4.1.4 The Contractor shall there-upon take steps to improve the output and availability of the machinery to specified performance levels or to replace the machinery with machinery capable of achieving the specified performance, failing which the Employer may act in terms of clause 1.2.1 of Option Z : Additional Conditions of Contract.

## 5. OPTION X18: LIMITATION OF LIABILITIES

- 5.1. The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to 10% of the total contract value or R1,000,000.00 (One million Rand), whichever is the higher amount.
- 5.2. For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to the deductible in terms of the Employers arranged insurance as set out in the contract.
- 5.3. The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to R1,000,000.00 (One million Rand).
- 5.4. The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to 10% of the total value of the contract at time of contract award or R1,000,000 (One million Rand) whichever is the higher amount.
- 5.5. The *end of liability date* is two months after the end of the *service period*.

## Option Z ADDITIONAL CONDITIONS OF CONTRACT

The Additional conditions of contract are

### 1. DEFINITIONS:

#### 1.1. DAY

- a) Day is a calendar day and where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, public holidays and the annual Christmas break from 16 December to 4 January (both days included) is excluded from the calculation of the number of days concerned.

#### 1.2. ASSIGNMENT & CESSION

- a) Neither the *Contractor* nor the *Employer* may, without the written consent of the other, assign the Contract or any part thereof or any obligation under the Contract or cede any right or benefit there under. (Refer to clause 1.14 of Option Z)

#### 1.3. NON-WAIVER

- a) No grant by the *Employer* or the *Contractor* to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than that in respect of which the grant was made to constitute a waiver of the rights of the grantor in terms of the Contract or an *estoppel* of the grantor's right to enforce the provision of the Contract.

#### 1.4. LIMITATION OF THE AUTHORITY OF THE SERVICE MANAGER

- a) The Service Manager is authorised to agree increases to the contract value to a maximum of **R2,000,000.00 or 10%** of the contract amount (excluding VAT) whichever is the lesser amount without referring it to the management of the Employer. If referral to management is necessary, a period of 8 weeks over and above any times allowed in the Contract is to be provided.

#### 1.5. SERVICE MANAGER'S DEPUTY

- a) Means the person appointed by the Service Manager to administer the Contractor's performance and execution of Works according to the powers and rights held by and obligations placed upon the Service Manager's Deputy in terms of the Contract and the appointment.

#### 1.6. BACKGROUND INTELLECTUAL PROPERTY

- a) Means all Intellectual Property introduced and required by either Party to give effect to their obligations under this 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 this Agreement.

## 1.7. CONFIDENTIAL INFORMATION

- a) 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 –
- information relating to methods of operation, data and plans of the disclosing Party;
  - the contents of this Agreement;
  - 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;
  - any information disclosed by either Party and which is clearly marked as being confidential or secret;
  - information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
  - information relating to the past, present and future research and development of the disclosing Party;
  - 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;
  - information contained in the software and associated material and documentation belonging to the disclosing Party;
  - technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
  - Copyright works;
  - commercial, financial and marketing information;
  - data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and 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;

## 1.2. FOREGROUND INTELLECTUAL PROPERTY”

- a) Means all Intellectual Property developed by either Party pursuant to this Agreement;

## 1.3. “INTELLECTUAL PROPERTY”

- a) 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

## 1.4. “TRADE MARKS”

- a) Mean registered Trade Marks and trade mark applications and includes 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.

## 1.5. INTELLECTUAL PROPERTY RIGHTS

### Title to Confidential Information

- a) 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.

- b) Transnet shall grant to the Supplier an irrevocable royalty free non-exclusive license to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Supplier to sub-license to other parties.
- c) The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive license to use the Supplier's Background Intellectual Property for the Permitted Purpose. This license shall not permit Transnet to sub-license to other parties.
- d) 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.

#### 1.6. TITLE TO INTELLECTUAL PROPERTY

- a) 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 this 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.
- b) 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.
- c) 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.
- d) 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 this 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. Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet (which consent shall not be unreasonably 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.

#### 1.7. TITLE TO IMPROVEMENTS

- a) 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.

## 1.8. UNAUTHORISED USE OF CONFIDENTIAL INFORMATION

- a) 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 an 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.

## 1.9. UNAUTHORISED USE OF INTELLECTUAL PROPERTY

- 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.
- It shall be within the 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.
- The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other award 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 award arising out of proceedings.

## 1.10. CONFIDENTIALITY

The Parties hereby undertake the following, with regard to Confidential Information -

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



- 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;
  - 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;
  - each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and
  - 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.
  - a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel.
  - 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
  - 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
  - is independently developed by a Party as proven by its written records.
- e) This clause Z1.10 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 (five) years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dies, blocks, labels, advertising matter, printing matter and the like.

### 1.11. 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 this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, 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.
- 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 this Agreement in order to accommodate the new circumstances caused by the act of force majeure. If a Party fails to agree to such modifications proposed by the other Party within 90 (ninety) days of the act of force majeure first occurring, either Party may thereafter terminate this Agreement with immediate notice.

### 1.12. EQUALITY AND DIVERSITY

- a) The Supplier will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

- b) Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

### 1.13. THE CONTRACTOR'S GENERAL OBLIGATIONS

The following information in addition to Core Clause 2 of the Schedule of Options will apply:

- a) The Contractor's general obligations under the Contract comprise: -
- maintenance of railway track and the provision of on-track maintenance machinery and all accessory tools and equipment of the types and nature stipulated in the Particular Specifications and
  - the provision of all labour, Service Manager's Deputy personnel and specialised tradesman required to undertake the duties and functions required in terms of the Contract and everything, whether of a temporary or permanent nature, required for performance of the Work and services to be provided in terms of the Contract.
- b) Transnet Freight Rail shall, in the case of a breach of contract by the Contractor in terms of clause 1.21 of Option Z : Additional Conditions of Contract, have a lien over the Contractor's machines and accessory tools and equipment and all temporary buildings of the Contractor used for carrying out the Work.
- c) The clause headings in these conditions of contract are not deemed to be part thereof and will not be taken into consideration in the interpretation of the Contract.
- d) Any grant by Transnet Freight Rail or the Contractor (the Grantor), or by any of the persons authorised to act on their behalf to the other, of any concession, waiver, condonation or allowance shall not, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or an estoppel of the grantor's right to enforce the provisions of the Contract.
- e) Value-added tax in terms of the Value-added Tax Act No. 89 of 1991 shall be dealt with as follows: -
- In Tendering; Value-added tax shall not be included in the tendered rates and prices. In payment; Value-added tax shall not be reflected on monthly contract payment
  - Certificates, but paid separately on the presentation of a tax invoice by the Contractor. The value of the work reflected on the tax-invoice must correspond with the netto amount indicated on the contract payment certificate.
  - Changes to the VAT rate will be dealt with in terms of sections 67 and 67A of the Act

### 1.14. CESSION, ASSIGNMENT AND SUBCONTRACTING

- a) The Contractor shall not cede or assign the Contract or any part thereof without the prior written approval of the Service Manager.
- b) The Contractor shall not enter into any subcontract without the prior written approval of the Service Manager which approval shall not unreasonably be withheld. The subcontractor, in respect of whom approval is so granted and his employees or workmen shall for all the intentions and purposes of the Contract, be deemed to be workmen of the Contractor, as provided in clause 1.14 a) of Option Z hereof.
- c) Approval given in terms of clauses 1.14 a) and 1.14 b) of Option Z hereof shall not relieve the Contractor of any responsibility, duty or obligation imposed upon him by the Contract, and the Contractor shall in particular be and remain solely liable and responsible for all acts, omissions, negligence or breaches of contract on the part of the assignee or any of his employees, and for all acts, omissions or negligence of any subcontractor or any of his employees.

### 1.15. SUFFICIENCY OF TENDER

- a) The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender and of the rates and prices stated in the Price List. These rates shall be sufficient to cover his obligations under the Contract and everything necessary for the proper performance of the Work and services specified here in.

### 1.16. ACCESS, RIGHTS-OF-WAY AND CAMPSITES

- a) Where entry onto Transnet Freight Rail's property is restricted, permission to enter will be given only for the performing the Work and services included in the Contract and will be subject to the terms and conditions laid down by Transnet Freight Rail.
- b) The Contractor shall arrange for campsites, workplaces and access thereto as well as for any right-of-way over private property to the place of the Work, and for access within the boundaries of Transnet Freight Rail's property. The owners of private property to be traversed shall be approached and treated with tact and courtesy by the Contractor, who shall, if necessary, obtain a letter of introduction to such property owners from the Service Manager's Deputy.
- c) The Contractor shall be responsible for the closing of all gates on roads and tracks used by him or his employees. Except with the prior approval of the Service Manager's Deputy and the owner or occupier of any private land to be traversed, the Contractor shall not cut, lower, damage, remove or otherwise interfere with any fence or gate which is either on Transnet Freight Rail's property or on private property and which restricts access to the Work.
- d) Where such approval has been given, the Contractor shall prevent entry of animals or unauthorised persons onto Transnet Freight Rail's or private property and shall make the fences safe against trespass at the close of each day's work.
- e) The Contractor shall take all reasonable steps to confine the movement of vehicles and plant to the approved right-of-way to minimise damage to property, crops and natural vegetation.
- f) When access is no longer required and before completion of the Work, the Contractor shall repair, restore or replace any fence or gate damaged during execution of the Work and services to the satisfaction of the Service Manager's Deputy.

### 1.17. WORKMEN

- a) All persons employed by the Contractor to carry out the Contract shall be competent, responsible and of good character.
- b) If, in the opinion of the Service Manager's Deputy, any person employed by the Contractor is inefficient, negligent, disrespectful or objectionable, the Service Manager's Deputy may, after consultation with the Contractor, instruct that such person be removed from the Contract Work.
- c) During the currency of the Contract, the Contractor shall not approach any employee of Transnet Freight Rail with a view to offering him employment in any capacity whatsoever.
- d) The Contractor shall, upon request, provide the Service Manager's Deputy with a weekly statement of the number of persons employed on the Work each day by the Contractor and any sub-contractor, the capacity in which employed, the total number of hours worked in that week for each grade of staff separately and details of any incentive or bonus payment schemes introduced. The statement shall be supported by documentary evidence when so required by the Service Manager's Deputy.
- e) The Contractor shall ensure that all staff transported on on-track machines and Transnet Freight Rail wagons or coaches, shall at all times be transported in a safe and responsible way. Only authorised staff shall be transported.
- f) The attention of the Contractor is directed to the requirements of safety legislation and regulations with regard to storage and transport of dangerous substances, accommodation and transport of people.
- g) Staff shall only be allowed to travel on a train or machine in approved accommodation or cabin facilities.

### 1.18. HOUSING OF EMPLOYEES

- a) The Contractor shall, where necessary, make his own arrangements for suitable housing of his employees. Where temporary housing is permitted by the Service Manager's Deputy on Transnet Freight Rail land the Contractor shall provide suitable sanitation, lighting and portable water supplies.
- b) The Contractor may, where available and subject to the approval of the Service Manager's Deputy, use Transnet Freight Rail campsites and sanitary services. The Contractor may in such case use Transnet Freight Rail waste disposal service if available at such campsite.
- c) Fouling of the area inside or outside Transnet Freight Rail's boundaries must be prevented. The Contractor may be called upon by the Service Manager's Deputy to dispose of any foul or waste matter generated by the Contractor.

### 1.19. HOURS OF WORK

- a) The Contractor shall conform to the hours of duty laid down by the Service Manager's Deputy. When required, the Contractor shall work either overtime or shifts, on paid public holidays, Saturdays or Sundays. The machinery will not be required to work more than 6 shifts in any 7-day period or 11 shifts in any 14-day period.
- b) Work shall not be suspended for rain or inclement weather unless otherwise agreed by the Service Manager's Deputy. Before the end of each day's work the Contractor will be advised in writing of the commencement time and duration of the following day's occupation(s). The duration of the occupation will be subject to train operating conditions.
- c) The Contractor may be required to work SPLIT occupations as defined in clause 3.10 of the Service Information when a 2 hour period will be allowed between occupation periods for servicing of the machines.
- d) The Contractor will be allowed sufficient time on-track to calibrate and adjust the machine as part of the preventive maintenance of the machine. This time will be outside the scheduled occupation periods and will not be included in any of the contract measurements.

### 1.20. COMPLIANCE WITH STATUTES AND SAFETY RULES

- a) The Contractor shall comply with all applicable legislation and the Transnet safety requirements. The cost of such compliance shall be borne by the Contractor and shall be deemed to have been allowed for in the rates and prices in the Contract.
- b) The Contractor shall, in particular, comply with the following Acts: -
  - The Compensation for Occupational Injuries and Diseases Act, (Act 130 of 1993); The Contractor shall produce proof of his registration and good standing with the Compensation Commissioner in terms of the Act
  - The Occupational Health and Safety Act (Act 85 of 1993); The Contractor is in terms of section 37(2) of Act 85 of 1993, deemed to be an employer in his own right with duties as prescribed in the Act and agrees to ensure that all work will be performed or machinery and plant used in accordance with the provisions of the Act in respect of all persons in his employ, other persons on the premises or the site or place of the Work or on the Work to be executed by him and under his control in terms of the Contract. The agreements in this Contract and all documents attached or referred to, form an integral part of the arrangements and procedures stipulated in the aforementioned section.
  - the Contractor shall comply with the current Transnet Specification E.4E, Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act, Act 85 of 1993 and Regulations as applicable, and shall, before commencement with the execution of the Contract, submit to the Service Manager's Deputy, documentary proof of his procedural compliance with the Act and particulars of his Health and Safety Policy and Programme to be implemented on the Work in accordance with Specification E.4E.
  - The Contractor's Health and Safety Policy and Programme will be subject to the agreement of the Service Manager's Deputy, who may order supplementary and/or additional safety arrangements

and/or different safe working methods to ensure compliance by the Contractor with his obligations as an employer in terms of the Act.

- The Contractor shall comply with the current Specification for Work On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment - E7/1, where applicable, and shall take particular care of the safety of his employees working on or in close proximity to a railway line during track occupations as well as under normal operational conditions.
- He shall also comply with all other safety requirements, regulations and guidelines of Transnet applicable to the nature of Work carried out under the Contract and shall obtain the particulars thereof from the Service Manager's Deputy.
- In addition to compliance with clause 1.20 (b) of Option Z hereof, the Contractor shall report all incidents contemplated by Section 24 of the Act in writing to the Service Manager's Deputy. Any incident resulting in the death of or injury to any person on the WORK shall be reported within 24 hours of its occurrence and any other incident shall be reported within 48 hours of its occurrence.
- The term "safety rules" is used in a generic sense and refers to all Transnet arrangements, procedures and requirements, pertaining to safety, specified or incorporated by reference in the contract documents, such as the Specification for Work On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment, E7/1, the Electrical Safety Instructions - High Voltage Equipment. (Copies of these documents are available for inspection at the offices of Transnet Freight Rail.

## 1.21. BREACHES AND REMEDIES

- a) Should the Contractor commit any breach or default of any kind mentioned in clause 1.21 b) of Option Z hereof, the Employer may exercise, subject to the provisions as stated in Option W1 as well as clause 1.21 c) of Option Z, for and on behalf of Transnet, immediately, in whole or in part and consecutively or concurrently, all or any of the options, rights and powers set out in clause 1.21 c) of Option Z hereof.
- b) Breaches or defaults entitling the Employer to act in terms of clause 1.21 c) of Option Z hereof shall be the following:
- insolvency of the Contractor or an act of insolvency comprising inter alia, the following:
  - liquidation or sequestration of the Contractor's estate (provisionally or finally); or
  - the Contractor publishing a notice of surrender of his estate as insolvent; or
  - the Contractor entering into a compromise with the general body of his creditors; or
  - the Contractor having an execution levied on his goods.
  - material breach of the Contract by the Contractor comprising inter alia;
  - the abandonment or repudiation of the Contract;
  - suspension of progress of the Work without contractual cause;
  - assigning of the Contract without the consent in writing of the Employer having first being obtained
  - subcontracting any part of the Contract without the Service Manager's approval;
  - failing to provide the performance bond in terms of option X13 hereof;
  - failing to satisfy any judgment or arbitrator's award entered against him within 7 days after such judgment or award is so entered; or to satisfy any attachment order against property within 3 days of its issue;
  - failure, after he has been notified in terms of Option X17 clause 4.1.3 to achieve the specified output and/or availability of the machinery; or to rectify defective performance; or
  - conviction of the Contractor or any of his employees in a court of law for any offence which adversely affects the interests of Transnet
- c) In the event of any breach or default mentioned in clause 1.21 b) of Option Z hereof, the Employer may exercise any of the following options, rights and powers: -
- d) To cancel the Contract and to invoke the lien over the Contractor's machines, equipment, tools and temporary buildings, and any indemnities or safeguards in favour of Transnet in terms of the Contract.

- e) To take over full possession and control of the whole or any portion of the Work and the Contractor's machinery equipment, tools and material used thereon, and control of any or all of the Contractor's employees (with or without accepting any liability for arrear salaries or wages, or for any contracts of personal service) and to continue and complete the Work, by employment of such of the Contractor's employees and using such of his site establishment, temporary buildings, machinery equipment tools and materials, as is necessary in the discretion of the Service Manager, all for the account of and at the cost and risk of the Contractor.
- f) To remove and dismiss any person employed by the Contractor and, for the account of and at the cost and risk of the Contractor, to engage or appoint any other person under such conditions and to pay him such salary or wage as the Service Manager may deem fit.
- g) To obtain from any source whatsoever, at the cost of the Contractor, tools, equipment and material as are necessary, in the opinion of the Service Manager, for the proper completion of the Contract.
- h) To dismiss the Contractor from any further control of the execution of the Contract, and thereafter to take over full control of and to utilise the whole or any portion of the machinery, equipment, tools and material belonging to the Contractor, and to employ any person other than the Contractor to complete the Contract, in each case for the account of and at the risk and cost of the Contractor, after or without offering such work for tender and without the interference or intervention in any way by the Contractor. After the said work has been completed by such other person and such other person has been paid therefore, the Service Manager shall issue the Final Certificate when so authorised by the Employer.
- i) To reduce, in the case where the Contractor's defective workmanship and/or performance is accepted by Transnet, any one or all of the rates and prices in the Contract by the amounts of Transnet's losses or the costs of rectifying the defective workmanship and/or performance of the Contractor, or by the amounts that the Contract Work is reduced in value as a consequence of the deficiencies.
- j) Should any money as shown by the final certificate be due by the Contractor to Transnet, the Contractor and/or his guarantor shall forthwith pay such money to Transnet, failing which Transnet may recover the said amount from the Contractor.
- k) All wages, salaries, costs, expenses and damages paid, incurred or sustained by Transnet for which the Contractor is liable in terms of the Contract, shall be paid by the Contractor on demand or shall be recovered from monies owing to the Contractor or by legal action in a court of appropriate jurisdiction.
- l) In any action taken or instituted by Transnet in terms of clauses 1.21 a) of Option Z to 1.21 j) of Option Z hereof or any clause of the Contract read alone or in conjunction with these clauses, a certificate issued by the Service Manager shall be deemed to be proof of any amount due by the Contractor to Transnet or by Transnet to the Contractor.
- m) No action taken or instituted by Transnet in terms of clauses 1.21 a) of Option Z to 1.21 j) of Option Z hereof or any clause of the Contract read alone or in conjunction with these clauses shall prejudice or detract from Transnet's right to recover damages for any other breach or default committed by the Contractor in respect of the Contract. The remedies provided under clauses 1.21 c) of Option Z and 1.21 j) of Option Z hereof are additional to any other rights, claims or remedies that Transnet may have in law or under the Contract against the Contractor.