



NEC3 Engineering & Construction Contract (ECC3)

Transnet SOC Ltd

(REGISTRATION NO.1990/000900/30)

trading as

Transnet Freight Rail

Tender No. SIE11041CIDB

TENDER FOR THE DESIGN, SUPPLY, INSTALL, TEST AND COMMISSION OF THE 3 PHASE 11KV AC TRANSMISSION LINE FROM KNOPPIES DISTRIBUTION SUBSTATION TO SENTRARAND MAIN INTAKE DISTRIBUTION SUBSTATION UNDER THE CONTROL OF THE DEPOT ENGINEER, ISANDO

Issue Date: Mon, 30 July 2012

Closing Date: Tue, 21 August 2012 at 10:00

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PART T1: TENDERING PROCEDURES

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Part T1
Tendering procedures

TRANSNET



PART T1: TENDERING PROCEDURES

T1.1 TENDER NOTICE AND INVITATION TO TENDER

RFP NO. SIE11041CIDB

Transnet SOC Ltd trading as Transnet Freight Rail (the employer) invites tenders for the design, supply, install, test and commission of the 3 phase 11kV AC Transmission Line from Knoppies Distribution Substation to Sentrarand Main Intake Distribution Substation under the control of the Depot Engineer, Isando.

Tenderers should have a CIDB contractor grading designation of **5EP** or higher. 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 Willington Road, Parktown.

Tender documents may be collected during working hours after **09:00 on 30 July 2012** and will only be available until **15:00 on 06 August 2012**.

Payment of an amount of R 250-00 (per set) is to be made to Transnet Freight Rail at the Standard Bank, account number 203158598, branch code 4805. The deposit slip must reflect the RFP No. SIE11041CIDB and the Company (Supplier) name. The official Bank receipt franked with the official Bank stamp must be provided with the collection of a tender document. This amount is not refundable. No tenders will be sold after 15:00 on Monday, 06 August 2012

Queries relating to the administrative issues of these documents may be addressed to:

Mr. Neill Mitchell
Tel No. 011 584 0627
Fax no. 011 774-9836
E mail: Neill.mitchell@transnet.net

Or

Mrs. Sarah Assegai
Tel. No. 011 5840668
E-mail: Sarah.assegai@transnet.net

A compulsory clarification meeting with representatives of the Employer will take place at **Umjantshi C Boardroom, Ground Floor, Inyanda House 2, 15 Girton Road, Parktown, Johannesburg on Tuesday, 07 August 2012 starting at 10h00**. Tenderers without a valid tender document in their possession will not be allowed to attend the compulsory site/clarification meeting. The clarification meeting will be followed by a **compulsory** site inspection within travelling distance on the same day.

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 10:00 hrs on Tuesday, 21 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 SOC Ltd 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 5449486 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 SOC Ltd 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 ("BBBEE")

TRANSNET fully endorses and supports the South African Government's Broad-Based Black Economic Empowerment Programme and it is strongly of the opinion that all business enterprises have an equal obligation to redress the imbalances of the past. TRANSNET would therefore prefer to do business with business enterprises who share these same values and who are prepared to contribute to meaningful BBBEE initiatives (including and not limited to enterprise development, subcontracting and Joint Ventures) as part of their tender response.

Transnet would accordingly allow a "preference" in accordance with the 10% preference system, as per the Preferential Procurement Policy Framework Act 5 of 2000 (as amended) to companies who provide a BBBEE accreditation Certificate. All procurement and disposal transactions in excess of R30000 will be evaluated accordingly. All transactions below R30,000 will as far as possible be earmarked for EME's.

TRANSNET consequently urges Respondents (Large enterprises and QSE's – see below) to have themselves duly accredited by any one of the Accreditation Agencies approved by SANAS (South African National Accreditation System, under the auspices of the DTI).

In terms of Government Gazette No. 32467, Notice No. 810 dated 31 July 2009, as from 1 February 2010 only BBBEE certificates issued by Accredited Verification Agencies of Verification Agencies that are in possession of a valid pre-assessment letter from South African National Accreditation System will be valid.

However accreditation certificates issued by non-accredited verification agencies before 01 February 2010 and which are still within their one (1) year validity period will still be acceptable, until their expiry date provided that the accreditation was done in accordance with the latest codes (i.e. those promulgated on 9 February 2007).

BBBEE Accreditation Certificates issued after the published date i.e. 01 February 2010, by a Verification Agency not approved by SANAS, will NOT be acceptable as from 01 February 2010.

Enterprises will be rated by such Accreditation Agencies based on the following:

- (a) **Large Enterprises (i.e. annual turnover >R35 million):**
- Rating level based on all 7 (seven) elements of the BBBEE scorecard
 - Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)
- (b) **Qualifying Small Enterprises – QSE (i.e. annual turnover >R5 million but <R35 million):**
- Rating based on any 4 (four) of the elements of the BBBEE scorecard
 - Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)
- (c) **Exempted Micro Enterprises – EME (i.e. annual turnover <R5m are exempted from being rated or verified):**
- Automatic BBBEE Level 4 rating, irrespective of race ownership, i.e. 100% BBBEE recognition
 - Black ownership >50% or Black Women ownership >30% automatically qualify as Level 3 BBBEE rating, i.e. 110% BBBEE recognition
 - EME's should provide documentary proof of annual turnover (i.e. audited financials) plus proof of Black ownership if Black ownership >50% or Black Women ownership >30% (to be renewed annually) from their Auditors / Accounting Officers

In addition to the above, Respondents who wish to enter into a Joint Venture (JV) or subcontract portions of the contract to BBBEE companies must state in their Tenders / Proposals the percentage of the total contract value which would be allocated to such BBBEE companies, should they be successful in being awarded any business. A rating certificate in respect of such BBBEE JV-partners and/or sub-contractors, as well as a breakdown of the distribution of the aforementioned percentage allocation must also be furnished with the tender response to enable Transnet to evaluate / adjudicate on all tenders received on a fair basis.

Each Respondent is required to furnish proof of its BBBEE status (Certificate and Detailed Scorecard) and ensure that the documentation is valid at the date of Tender Submission as stipulated above to TRANSNET.

Failure to submit your BBBEE Certificate and Detailed Scorecard will result in a score of zero being allocated for BBBEE evaluation.

Turnover: Indicate your company's most recent annual turnover:

R.....

- If annual turnover <R5m, please attach auditors / accounting officers letter confirming annual turnover and percentage black ownership as well as Black Women ownership
- If annual turnover >R5m please attach BBBEE certificate and detailed scorecard from an accredited rating agency.

The DTI has created an online **B-BBEE Registry** (<http://www.dti.gov.za>) in order to provide a central and standardized source of the B-BBEE status of all entities, and to facilitate the flow of this information amongst entities by providing a Unique Profile Number (UPN) per each listing. Existing and prospective suppliers are therefore urged to list their B-BBEE status on the DTI Registry. Hence, entities verified by DTI, will receive the following benefits:

- Their BBEE status will be verified and confirmed by the DTI, before listing on the Registry
- Listing on the Registry will provide suppliers the option to market themselves on the DTI B-BBEE Opportunities Network. This is a search engine that is designed to help businesses find B-BBEE compliant entities who match specific requirements in terms of the nature of services/goods provided, region, B-BBEE status or other search criteria.

Transnet supports this DTI initiative and will use the DTI Registry to verify prospective and existing suppliers' BBEE credentials.

Kindly provide Transnet with your DTI B-BBEE UNIQUE PROFILE NUMBER with all tender submissions.

DTI BBEE UNIQUE PROFILE NUMBER:

Failure to submit your BBEE information in terms of the above-mentioned clauses will result in a score of zero being allocated for BBEE evaluation.

Suppliers and Tenderers are requested to duly complete the Supplier Declaration Form (SDF) and provide all the relevant supporting attachments as requested. Failure to provide the following may disqualify your tender submission:-

1. Duly completed SDF
2. Current tax clearance certificate

The Supplier and Tenderer shall furnish proof of the above to Transnet.

Transnet at its sole discretion may decide to allow certain price preferences in order to uplift the historically disadvantaged in terms of the PPPFA (Act 5 of 2000).

Transnet insists on honesty and integrity beyond reproach at all times and will not tolerate any form of improper influencing, bribery, corruption, fraud, or any other unethical conduct on the part of bidders/ Transnet employees. If, in the opinion of Transnet's Chief Operating Officer, a tenderer/contractor/ supplier has or has caused to be promised, offered or given to any Transnet employee, any bribe, commission, gift, loan, advantage or other consideration, Transnet shall be entitled to revoke the tender / contract by following its internal policies that govern the Exclusion process. In such an event Transnet will be entitled to place any Tenderer/Contractor/Supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Tenderers. This List will also be distributed to all other State Owned Enterprises and Government Departments.

Transnet invites its valued suppliers to report any allegations of fraud, corruption or other unethical activities to Transnet Tip-offs Anonymous, at any of the following addresses/contract numbers :-

- **Toll free anonymous hotline – 0800 003 056**
- **Email – Transnet@tip-offs.com**
- **Fax number – 0800 007 788**
- **Freepost DN 298, Umhlanga Rocks, 4320**

CONFIDENTIALITY IS GUARANTEED.



• **SUPPLIER DEVELOPMENT (SD) / ENTERPRISE DEVELOPMENT (ED):**

Transnet's SD/ED Objective

- **Transnet's short-term Supplier Development and Enterprise Development objective is to align their SD/ED initiatives with their B-BBEE Strategy in order to achieve the maximum score on the B-BBEE Scorecard.**
- **Transnet's long-term objective as defined by the Enterprise Development vision, is to leverage medium to large suppliers, as external agents, to influence downstream ED opportunities within the greater Transnet supply chain, focusing on Rolling stock, Port Equipment and Infrastructure etc.**

Focus SD/ED Area's

- **A focus will be on providing small businesses with opportunities and preferential trading terms.**
- **Empowering HDI's to create their own business resulting in quality job creation.**
- **Consider SD/ED strategy which should include financial and non financial assistance to downstream suppliers as well as skills development.**

Respondents are requested to provide TFR with their Supplier Development (SD) / Enterprise Development strategy as well as providing details of:

- Job Preservation
- Job Creation
- Skills Development
- Small Business Promotion
- Localisation / Industrialisation
- Sustainability
- Rural Development

should they be successful with this tender. As part of the proposal, the respondent will need to include a high level SD/ED proposal which will be subject to evaluation as per the ED evaluation criteria. The successful respondent/tenderer must submit a more detailed SD/ED plan within 60 days of award of contract.

• **SOCIO-ECONOMIC OBLIGATIONS FOR FOREIGN RESPONDENTS**

Foreign Respondents' socio-economic obligations under this procurement programme will fall under the associated Government initiative, namely, the Competitive Supplier Development Programme ("CSDP") as developed by the Department of Public Enterprises.

• **Competitive Supplier Development Programme (CSDP):**

Transnet's CSDP Objective

- **Transnet's CSDP objective is to influence Multinational organisations toward initiatives that lead to the development of local downstream suppliers through large-scale SOE procurement in order to develop a competitive local supplier base focusing on Rolling stock and Infrastructure.**

Focus CSDP Area's

- **Applies to procurement event/s totaling greater than R70m (\$10m) with foreign companies**
- **Leveraging expanded maintenance and manufacturing initiatives.**
- **Skills development of scarce resources increasing the quality of jobs.**

- **Transfer of technology and innovation to local suppliers from foreign OEM's/companies**
- **Consider CSDP strategy which should include localization, sustainability and skills development as initiatives as a submission by tenderer.**

CSDP Triggers:

CSDP transactions are triggered when:

- **There is a single contract of which the total value is equal to or exceeds USD10 million (~R70 million)**
- **There is a contract with a renewable option clause, should the option be exercised, the total value of the opportunity is equal to or exceeds USD10 million (~R70 million)**

Furthermore, there is a CSDP obligation if the total value of the contract is less than USD10 million (~R70 million) but one of the following apply:

- **There is an opportunity to develop a local industry within Transnet's supply chain;**
- **When a limited local supply base exists and the potential to develop existing suppliers is evident;**
- **When there is a strong opportunity for IP and skills transfer to local suppliers and/or Transnet.**

Respondents are requested to provide TFR with their CSDP strategy as well as providing details of:

- Localisation / Industrialisation
- Sustainability
- Skills Development

should they be successful with this tender. As part of the proposal, the respondent will need to include a high level CSDP proposal to include localization, sustainability and skills transfer which will be subject to evaluation as per the CSDP evaluation criteria. The successful respondent/Tenderer must submit a more detailed CSDP plan within 60 days of award of contract.

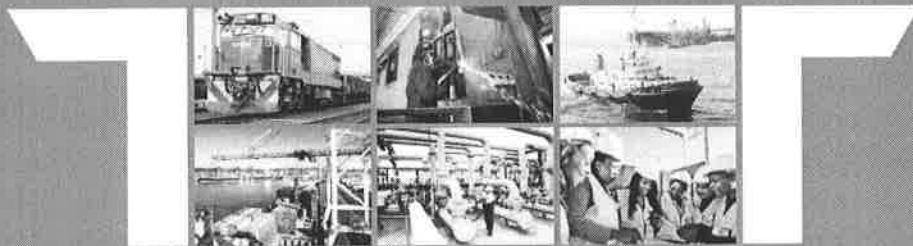
TRANSNET



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.

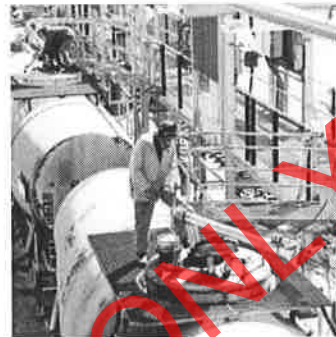
This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

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 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

PART T1.2: TENDER DATA

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PART T1: TENDERING PROCEDURES

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).

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 SOC Ltd trading as Transnet Freight Rail.

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

Part T1: Tendering procedures

T1.1 Tender notice and invitation to tender

T1.2 Tender data

Part T2: Returnable documents

T2.1 List of returnable documents

T2.2 Returnable Schedules

Part C1: Agreements and contract data

C1.1 Form of offer and acceptance

C1.2 Contract data

C1.3 Performance Bond

C1.4 Adjudicator's Contract Data

Part C2: Pricing data

C2.1 Pricing instructions

C2.2 Bill of Quantities

Part C3: Scope of Work

C3 Works Information

Part C4: Site information

C4 Site information

F.1.4 The employer's agent is:

Name : **Thato Tabane**

Address : **01 Anvil Road, Isando, 1619**

F.2.1.1 Only those tenderers who are registered with the CIDB, or are capable of being so registered prior to the evaluation of submissions, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a **5EP** class of construction work, are eligible to submit tenders.

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 a **CE** class of construction work.

F.2.7 The arrangements for a compulsory clarification meeting are as stated in Part T1.1 Tender Notice and Invitation to Tender.

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

Name : Mr. Neill Mitchell

Tel : 011 584 0627

Fax : 011 774 9836

E-mail : Neill.mitchell@transnet.net

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

F.2.12 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 delivered by hand, to be deposited in the Transnet Freight Rail Acquisition Council tender box which is located in the foyer on the ground floor, Inyanda house, 21 Wellington Road, Parktown, Johannesburg and addressed as follows:

- i) The Chairperson
Transnet Freight Rail Acquisition Council
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 long x 100mm wide, 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.

- ii) If posted, the envelope must be addressed to:

The Chairperson
Transnet Freight Rail Acquisition Council
P O Box 4244
Johannesburg
2000

and must be despatched in time for sorting by the Post Office to reach the Post Office Box indicated above, before the closing time of the tender. In the event of the late receipt of a tender, the Tenderer's franking machine impression will not be accepted as proof that the tender was posted in time.

- iii) **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 A 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 Tender.**

F.2.15 Telephonic, telegraphic, 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.2.23 The tenderer is required to complete and return/submit all **returnable documents and schedules.**

F.3.4 The time and location for opening of the tender offers are:

Time 10:15 on the closing date of tender.

Location: TableG66 & 69, West Wing, Ground Floor, Inyanda House, 21 Wellington Road, Parktown, Johannesburg

F.3.11.1 The procedure for the evaluation of responsive tenders is **Method 4**

The score for quality is to be calculated using the following formula:

$$W_Q = W_2 \times S_O / M_S$$

Where W_2 is the percentage score given to quality and equals **60**

S_O is the score for quality allocated to the submission under consideration

M_S is the maximum possible score for quality in respect of a submission

The score for financial offer is calculated using Formula 2 (option 1)

Where W_1 is the percentage score given to financial offer and equals **100 minus W_2** .

The score for quality and financial offer is to be combined, before the addition of the score for preference, as follows:

$$W_C = W_3 \times \left(1 + \frac{S - S_m}{S_m}\right)$$

Where W_3 is the number of tender evaluation points for quality and financial offer and equals:

90 where the financial value, VAT inclusive, of all responsive tenders received have a value in excess of R 2,000,000.00 or

S is the sum of score for quality and financial offer of the submission under consideration

S_m is sum of the score for quality and financial offer of the submission scoring the highest number of points

Up to 100 minus W_3 tender evaluation points will be awarded to Tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.

F.3.11.3 Only those Tenderers who score a minimum score of **60 points** in respect of the following quality criteria are eligible to submit tenders.

DESCRIPTION	Max. Eval.Pnts
CATEGORY: TECHNICAL / PRACTICAL	
• Compliance to all Specification/s as required	30%
• Experience with similar work done CIDB Rating of 5EP	10%
• Organization and Staffing (Organogram and Curriculum Vitae	10%
• Safety Plan - TFR Tender Safety clauses and Questionnaire (see Part T2.2 of tender document)	10%
• Environmental Management Plan / Risk Register / Business Continuity Plan	10%
• Approach paper which responds to the scope of works and outlines proposed methodology and work plan complete with time frames. ➤ Technical approach (Method Statement) ➤ Work plan with time frames (schedule) (Gantt Chart / Level 2 Program)	20%
• Comparable projects (References / Track Record)	10%
TOTAL	100
CATEGORY: COMMERCIAL	
• Competitive Pricing	100%
• Financial Capacity (Already CIDB audited)	
TOTAL	100
CATEGORY: B-BBEE (SCORING MATRIX)	
• B-BBEE Certificate and Scorecard	100%
TOTAL	100
CATEGORY: SUPPLIER / ENTERPRISE DEVELOPMENT	
• Submission of SD / ED Strategy	5%
• Quality of SD / ED Strategy	5%
• Skills Development	30%
• Rural Development	30%
• Job Creation / Preservation	20%
• Small Business Promotion	10%
TOTAL	100
CATEGORY: FURTHER RECOGNITION	
• Business with >50% Black Ownership	25%
• Business with >30% Black Woman Ownership	25%
• Business with Disabled Owned company	25%
• Business with Black Youth Owned company	25%
TOTAL	100

Criteria to be evaluated on the following scales:

a) Non-compliance	=	0
A detrimental response/answer/solution	=	20
Less than acceptable	=	40
Acceptable response/answer/solution	=	60
Above acceptable	=	80
Excellent	=	100

<u>Compliance to specification</u>	<u>Point</u>
Scoring Scale	
<ul style="list-style-type: none"> • Compliance to drawings, specification & adopted standards (SANS, IEC, etc.) • Compliance documentation submitted. • Product proven and approved for Transnet Freight Rail use. 	<u>100</u>
<ul style="list-style-type: none"> • Non-Critical deviation on specification / drawings with alternatives offered. • Technical documentation submitted must be suitable for making a technical judgment. • Documentation offered to prove international wide acceptance. 	<u>80</u>
<ul style="list-style-type: none"> • Deviation from specification / drawing. • Inadequate information submitted for making a technical judgment. 	<u>40</u>

- F.3.13.1 Tender offers will only be accepted if:
- a) The Tenderer has completed and returned all **returnable documents and schedules**.
 - b) 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.
 - c) The Tenderer is registered with the Construction Industry Development Board in an appropriate contractor grading designation;
 - d) 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.
 - e) 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
 - f) Has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the Tenderers ability to perform the contract in the best interests of the employer or potentially compromise the tender process.

Tender will be disqualified if all returnable documents and schedules are not returned.

F.3.18 The number of paper copies of the signed contract to be provided by the employer is **one**.

The additional conditions of tender are:

- 1 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*.
- 2 Notwithstanding what is stated in Pricing Data, Tenderers are required to tender for **all** the areas quoted in the Price List.
- 3 Transnet Freight Rail may conclude one or more contracts as a result of this tender.
- 4 The tenders shall be completed in black ink only.

PART T2: RETURNABLE DOCUMENTS

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PART T2: RETURNABLE DOCUMENTS

T2.1 LIST OF RETURNABLE DOCUMENTS

The Tenderer must complete the following returnable documents:
(Tender will be disqualified if all returnable documents and schedules are not returned)

1 Returnable Schedules required for tender evaluation purposes

No	Returnable schedules (All are to be submitted)
1	Record of Addenda to Tender documents
2	Certificate of authority for joint ventures (where applicable)
3	Labour Payment Schedule
4	Rate of Exchange
5	Proposed amendments and qualifications
6	Preferencing Schedule
7	Contractual Safety Clauses and Questionnaire
8	RFP Declaration Form
9	Curriculum Vitae of key personnel
10	Certificate of Attendance at Site/Clarification Meeting
11	Compulsory Enterprise Questionnaire
12	Schedule of Subcontractors
13	Schedule of Plant and Equipment
14	Schedule of the Tenderer's Experience
15	Supplier Declaration form (version 7)

2 Other documents required for tender evaluation purposes

No	Returnable Documents (All are to be submitted)
1	Safety Plan in accordance with the Construction Regulations of 2003 and Transnet's E4E (See Draft)
2	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
3	Form of Intent to provide performance bond
4	Certificate of Authority for Signatory (Resolution by Board)
5	Approach paper and work plan (Programme and Method statements)
6	Statement of compliance with requirements of the Scope of work
	Supplier Development (SD) / Enterprise Development (ED) strategy as well as details of job retention and creation should you be successful with this tender. As part of the proposal include a high level SD/ED proposal which will be subject to evaluation as per the ED evaluation criteria
7	Letter of Good Standing with the Compensation Commissioner
8	Quality Assurance Plan
9	Proposed Organization and Staffing including quantity of personnel to be trained in aspects of safety
10	BBBEE rating certificate with detailed scorecard
11	Certified Copy of CIDB certification
12	Certified Copy of Financial Statements (for the past 3 years) including Balance sheets
13	Certified Copy of Share Certificates CK1 & CK2
14	Certified copy of certificate of incorporation and CM29 and CM9
15	Certified Copy of Identity Documents of Shareholders/Directors/members (where applicable)
16	Cancelled Cheque
17	Current and original Tax clearance certificate
18	Vat registration certificate
19	ISO1400 & ISO9000 Certificates
20	Copy of BEE Policy/BEE Plan/Employment Policy/Procurement Policy

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 Bill of Quantities / Price List

T2.2 RETURNABLE SCHEDULES

- Record of Addenda to Tender Documents
- Certificate of Authority for Joint Ventures
- Labour Payment Schedule
- Rate of Exchange
- Proposed amendments and qualifications
- Preferencing schedule
- Contractual Safety Clauses and Questionnaire
- RFP Declaration Form
- Curriculum Vitae of key personnel
- Certificate of Attendance at Site Meeting
- Compulsory Enterprise Questionnaire
- Schedule of Subcontractors
- Schedule of Plant and Equipment
- Schedule of Tenderers experience
- Supplier Declaration Form (Version 7)

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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

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Certificate of Authority for Joint Ventures

This Returnable Schedule is to be completed by joint venture.

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 SIGNATURE
Lead partner		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....

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

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	R _____/hr	R _____/hr
2. 5 Ton vehicle	R _____/hr	R _____/hr
3. 10 Ton vehicle with crane	R _____/hr	R _____/hr
4. Crane	R _____/hr	R _____/hr
5. Scaffolding	R _____/hr	R _____/hr
6. Generator	R _____/hr	R _____/hr
7. Other equipment:		

8. Full details of any other charges:

TENDERER: _____

DATE: _____

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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: (a) The percentage quoted above will be deemed to apply even though a portion only of the item(s) tendered for is accepted.

(b) 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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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
<p style="color: red; font-size: 2em; transform: rotate(-30deg); opacity: 0.5;">"PREVIEW COPY ONLY"</p>		

Signed _____ Date _____
 Name _____ Position _____
 Tenderer _____



Preferencing Schedule

Where direct preferences are granted in respect of targeted enterprise status

<p>1 Definitions</p> <p>The following definitions shall apply to this schedule: Contractors who are registered with the CIDB who are registered in one contractor grading designation of 5EP or higher required in terms of above and who satisfy the following criteria :</p> <ol style="list-style-type: none"> a) has professional and technical qualifications. b) has professional and technical competence. c) has managerial capacity, reliability and experience. d) has financial resources and good reputation. e) has plant and equipment. <p>2 Conditions associated with the granting of preferences</p> <p>The tenderer, who being a Targeted Enterprise undertakes to:</p> <ol style="list-style-type: none"> 1) not subcontract more than 20% of the Contract Price to non-Targeted Enterprises; 2) remain a Targeted Enterprise for the duration of the Contract; 3) accept the sanctions set out in Section 3 below should conditions 1 or 2 be breached; 4) complete the Tender Preference Claim Form contained in Section 4 below; and 5) complete a Targeted Declaration Affidavit and submit this with the tender. <p>3 Sanctions relating to breaches of preferencing conditions</p> <p>The sanctions for breaching the preferencing conditions are:</p> <ol style="list-style-type: none"> 1) termination of the Contract; or 2) a financial penalty payable to the Employer equal to 1,25 times the number of tender evaluation points awarded in respect of the preference claimed, multiplied by the Contract Price exclusive of VAT, divided by 100. <p>4 Tender preference claim in respect of enterprise status or structure of the tendering entity</p> <p>I/we apply on behalf of my/our firm for the following preference:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 30%;">Category of Targeted Enterprise</th> <th style="width: 40%;">Percentage of maximum tender evaluation points provided for in the Preferential Procurement Policy Framework Act (Act 5 of 2000)</th> <th style="width: 30%;">Preference claimed for Targeted Enterprise status (Y=yes)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm or sole proprietor confirms that he / she understands the conditions under which such preferences are granted and confirms that the Tenderer satisfies the conditions pertaining to the granting of tender preferences.</p> <p>Signature :</p> <p>Name :</p> <p>Duly authorised to sign on behalf of :</p> <p>Telephone :</p> <p>Fax :</p> <p>Date :</p>	Category of Targeted Enterprise	Percentage of maximum tender evaluation points provided for in the Preferential Procurement Policy Framework Act (Act 5 of 2000)	Preference claimed for Targeted Enterprise status (Y=yes)										<p>Guidance notes</p> <p><i>Definitions for Targeted Enterprises</i></p> <p><i>Percentage: 20% (typically between 20 and 25%)</i></p> <p><i>Insert factor $\geq 1,0$ (typically 1,25 to 1,5)</i></p> <p><i>Insert category description and percentage of maximum tender evaluation points tender schedule in table. Minimum points for quality =6</i></p>
Category of Targeted Enterprise	Percentage of maximum tender evaluation points provided for in the Preferential Procurement Policy Framework Act (Act 5 of 2000)	Preference claimed for Targeted Enterprise status (Y=yes)											



TRANSNET SOC LTD / 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 fulfil 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 SOC Ltd 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, analyse 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 Co-ordinator to liaise with Transnet SOC Ltd on matters pertaining to occupational health and safety.
- 9) The appointed Safety Co-ordinator must liaise at least once a week with the* Health and Safety Section / Risk Manager /Occupational Risk Manager of Transnet SOC Ltd.
- 10) The contractor shall furnish the* Health and Safety Section/ Risk Manager/ Occupational Risk Manager of Transnet SOC Ltd 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 subcontractor 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 SOC Ltd 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 SOC Ltd.
- 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 subcontractors Risk Assessment and Health and Safety Plan.
- 18) All incidents referred to in Section 24 of the Act involving the contractor and his subcontractor on Transnet SOC Ltd premises, shall be reported as prescribed. Transnet SOC 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 subcontractor, any person or machinery under his control on Transnet SOC Ltd premises.
- 19) No alcohol or any other intoxicating substance shall be allowed on Transnet SOC 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 SOC 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

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
1. OH&S Policy and Management		
- Is there a written company health and safety policy? - If yes provide a copy of the policy		
- Does the company have an OH&S Management system e.g NOSA, OHSAS, IRCA System etc - If yes provide details		
- Is there a company OH&S Management System, procedures manual or plan? - If yes provide a copy of the content page(s)		
- Are health and safety responsibilities clearly identified for all levels of Management and employees? - If yes provide details		
2. Safe Work Practices and Procedures		
- Are safe operating procedures or specific safety instructions relevant to its operations available? - If yes provide a summary listing of procedures or instructions		
- Is there a register of injury document? If yes provide a copy		
- Are Risk Assessments conducted and appropriate techniques used? - If yes provide details		

3. OH&S Training		
Describe briefly how health and safety training is conducted in your company:		
- Is a record maintained of all training and induction programs undertaken for employees in your company? - If yes provide examples of safety training records		
4. Health and Safety Workplace Inspection		
- Are regular health and safety inspections at worksites undertaken? - If yes provide details		
- Is there a procedure by which employees can report hazards at workplaces? - If yes provide details		
5. Health and Safety Consultation		
- Is there a workplace health and safety committee?		
- Are employees involved in decision making over OH&S matters? - If yes provide details		
- Are there employee elected health and safety representatives? - Comments		
6. OH&S Performance Monitoring		
- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents? - If yes provide details		
- Are employees regularly provided with information on company health and safety performance? - If yes provide details		
Is company registered with workmen's compensation and up to date? - If yes provide proof of letter of good standing		
- Has the company ever been convicted of an occupational health and safety offence? - 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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RFP DECLARATION FORM

RFP FOR THE PROVISION OF

[-----]

FOR A PERIOD OF [-----]

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.
- 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
- 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.

Curriculum Vitae of Key Personnel

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

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: _____

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 _____

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:

- | | |
|--|---|
| <input type="checkbox"/> a member of any municipal council
<input type="checkbox"/> a member of any provincial legislature
<input type="checkbox"/> a member of the National Assembly or the National Council of Province
<input type="checkbox"/> a member of the board of directors of any municipal entity
<input type="checkbox"/> an official of any municipality or municipal entity | <input type="checkbox"/> 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)
<input type="checkbox"/> a member of an accounting authority of any national or provincial public entity
<input type="checkbox"/> 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:

- | | |
|--|---|
| <input type="checkbox"/> a member of any municipal council | <input type="checkbox"/> 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) |
| <input type="checkbox"/> a member of any provincial legislature | |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Province | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity |
| <input type="checkbox"/> a member of the board of directors of any municipal entity | <input type="checkbox"/> an employee of Parliament or a provincial legislature |
| <input type="checkbox"/> an official of any municipality or municipal entity | |

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



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.

	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	Value of work Inclusive of VAT (Rand)	Date Completed
“PREVIEW COPY ONLY”			

Signed _____ Date _____

Name _____ Position _____

Tenderer _____





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)						
BEE Ownership Details						
% 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	CITI-ZENSHIP	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						

4.2 Provide Details of Contact Person/s Responsible for Broad Based Black Economic Empowerment (BBBEE) in the Company *

SURNAME	INITIALS	DESIGNATION	TELEPHONE NO.

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)?

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

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 Database for 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? *

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

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

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Permanent						
Part Time						

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

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

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

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



Internal Transnet Departmental Questionnaire (for office use only)

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

TFR		TRE		TPT		TPL		TNPA		TRN	
Create		Amend		Block		Unblock		Once-Off / Emergency			
Extend		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			

a) What is being procured from the supplier?

i. Products only	Yes	No
ii. Services only	Yes	No
iii. Labour only	Yes	No
iv. Mix of services and products	Yes	No
v. Mix of services and labour	Yes	No

b) If your answer is **YES** to questions II, III, IV or V in paragraph a) above, please indicate whether the relevant **PAYE questionnaires** have been forwarded to the appropriate **Transnet Operational Divisions'** decision making bodies / **Strategic Supply Management** team for a directive /decision on tax withholding from payments to this supplier.

Yes	No
-----	----

c) If your reply to (b) is "NO", please furnish reasons :

d) Certification and Approval of proposed Vendor Creation/Unblocking/Other Changes by Transnet Official with Appropriate Delegated Authority :

I HEREBY CERTIFY THAT THE TRANSNET DETAILED PROCUREMENT PROCESS (DPP) / PROCUREMENT MECHANISM HAS IN ALL RESPECTS BEEN ADHERED TO AND I THEREFORE APPROVE THE PROPOSED VENDOR CREATION/APPROVAL/OTHER CHANGES TO BE EFFECTED ON THE VENDOR MASTER

Name	Grade	Date				Signature				
		Y	Y	Y	Y	M	M	D	D	

Tel No:		Fax	
---------	--	-----	--

Section 2: To be completed by the BEE Department (this section is for Confirmation/Determining of BEE Status)

NARROW BASED (NB)				BROADBASED (BBBEE)				VALIDITY DATE		
BEE O/S	BWBE	DPBE	MR	CONTR. LEVEL	EME: <R5m	QSE: >R5m <R35m	LARGE: >R35m			
Name	Grade	Date				Signature				
		Y	Y	Y	Y	M	M	D	D	
		Y	Y	Y	Y	M	M	D	D	

**PART C1
AGREEMENT AND CONTRACT DATA**

“PREVIEW COPY ONLY”

C1.1 FORM OF OFFER AND ACCEPTANCE (ECC3)

OFFER

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

DESIGN, SUPPLY, INSTALL, TEST AND COMMISSION OF THE 3 PHASE 11KV AC TRANSMISSION LINE FROM KNOPPIES DISTRIBUTION SUBSTATION TO SENTRARAND MAIN INTAKE DISTRIBUTION SUBSTATION UNDER THE CONTROL OF THE DEPOT ENGINEER, ISANDO

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 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

Signature of witness

Date

Tenderer's CIDB registration number (if any):

ACCEPTANCE

By signing this part 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 Service Information / 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 Tender 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 Agreement. 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, Carlton Centre, 150 Commissioner Street, Johannesburg, 2000

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 signing this Schedule of Deviations below, 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.

"PREVIEW COPY ONLY"



C1.2 CONTRACT DATA

The General Conditions of Contract are the NEC3 Engineering and Construction Contract (June 2005) (ECC3), copies of which may be obtained from the South African Institution of Civil Engineering (tel. 011-805 5947) or Engineering Contract Strategies (tel. 011 803-3008).

The General Conditions of Contract make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the general conditions of contract.

Part One – Data Provided by the Employer

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

Statements given in all contracts

1 General

(a) The *conditions of contract* are the core clauses and the clauses for Main Option **B**, dispute resolution Option **W1** and secondary Options **X3, X7, X13, X16, X18 and Z** of the NEC3 Engineering and Construction Contract (June 2005) as amended June 2006.

(b) **The Contractor's Offer and the Employer's Acceptance is in Part C1.1 Form of Offer and Acceptance.**

(c) The *works* are:

Supply & Install 11KV AC Transmission Line from Knoppies Distribution Substation to Sentrarend Main Intake Distribution Substation

(d) The *Employer* is

Name **Transnet SOC Ltd trading as Transnet Freight Rail**
Address **49th Floor Carlton Centre**
150 Commissioner Street
JOHANNESBURG
2000

(e) The *Project Manager* is

Name **Thato Tabane**
Address **6th Floor, Goods Building, 01 Anvil Road**
Isando

- (f) The *Supervisor* is
Name **Tshokolo Koalepe**
Address **Room 614, Goods Building, 01 Anvil Road
Isando**
- (g) The *Adjudicator* will be appointed if a dispute arises.
- (h) The Works Information is in **Part C3 - "Scope of Work"**.
- (i) The Site Information is in **Part C4 - "Site Information"**.
- (j) The *boundaries of the site* are the area within the perimeter fence of the substation..
- (k) The *language of this contract* is **English**.
- (l) The *law of the contract* is the law of the **Republic of South Africa**.
- (m) The *period for reply to a communication* is **3 weeks**. (Matters to be referred to Acquisition Council for approval will take longer)
- (n) The *Adjudicator nominating body* is the **Association of Arbitrators (Southern Africa)**.
- (o) The *tribunal* is **Arbitration**.
- (p) The following matters will be included in the Risk Register
- i. Delays in the delivery of Replacement Circuit Breakers.
 - ii. Cancellation of working permits.
 - iii. Lack of staff for supervision.
 - iv. Work near live electrical equipment (OHTE and other) holds a danger of electrocution for workers.
 - v. Theft of equipment before handover.
 - vi. Site Accessibility (road conditions, vegetation, etc).

3 Time

- (a) The *starting date* is the contract date.
- (b) The *access dates* are
For the duration of the contract
- (c) The *Contractor* submits revised programmes at intervals no longer than **4 (four) weeks**.

4 Testing and Defects

- (a) The *defects date* is **52 weeks** after completion of the whole of the works.
- (b) The *defect correction period* is **2 weeks**

5 Payment

- (a) The *currency of this contract* is the **South African Rand (ZAR)**.
- (b) The *assessment interval* is **on the 10th of each calendar month**.
- Payments will be made once a month for completed installations

- (c) The *interest rate* is **two percent** per annum above the **prime lending rate** of the **Standard Bank of South Africa Limited** as determined from time to time.

6 Compensation events

- (a) The place where weather is to be recorded is at the town closest to the substation where work is being carried out.
- (b) The *weather measurements* to be recorded for each calendar month are
- (i) the cumulative rainfall (mm)
 - (ii) the number of days with rainfall more than **10mm**
 - (iii) the number of days temperature below zero
 - (iv) the number of days snow lying on the ground at 09h00.
- (c) The *weather measurements* are supplied by the **SA Weather Service**.
- (d) The *weather data* are the records of past *weather measurements* for each calendar month which were recorded by **an official weather station nearest to each site** and which are available from **SA Weather Service**.

8 Risks and insurance

- (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**.

Optional statements

- (a) If the tribunal is arbitration the arbitration procedure is:
- The Rules for the conduct of Arbitrations issued by the Association of Arbitrators (Southern Africa) by an Arbitrator to be mutually agreed by the Parties, and failing agreement to be appointed by the Association of Arbitrators.
 - The place where arbitration is to be held is: **[Johannesburg]**
 - The person or organisation who will choose an Arbitrator if the Parties cannot agree a choice is **The Chairman of the Association of Arbitrators (Southern Africa)**.
- (b) **If the Employer has decided the completion date for the whole of the works**

The completion date for the whole of the *works* is three months after the starting date.

(c) N/A

(d) The *Contractor* is to submit a first programme for acceptance within **4 weeks** of the Contract Date.

(e) N/A

(f) The period within which payments are made is **30 days within receipt of the VAT invoice, based on the progress payment certificate prepared by the Project Manager.**

(g) N/A

(h) N/A

(i) The *Employer* provides these insurances from the Insurance Table

1. Insurance against loss of or damage to the *works*, Plant and Materials is **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.

The deductibles are as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.

2. Insurance against loss of or damage to Equipment (**Temporary Works only**) as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.

The deductibles are as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.

3. Insurance against loss of or damage to property (except the *works*, Plant, 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 **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

(j) If additional insurances are to be provided

The *Employer* provides these additional insurances

1. Contract Works SASRIA insurance subject to the terms exceptions and conditions of the SASRIA coupon policy.

Cover/indemnity is **to the extent provided by the SASRIA coupon policy.**

The deductibles are **in respect of each and every theft claim 0,1% of Contract Value subject to a minimum of R 2,500.00 and a maximum of R 25,000.00.**

The *Contractor* provides these additional insurances

1 Where the Contract requires that design of any part of the *works* shall be provided by the *Contractor*, he shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been affected.

2 Where the Contract involves manufacture, and/or fabrication of Plant and Materials, components or other goods to be incorporated into the *works*, at premises other than the site, the *Contractor* shall satisfy the *Employer* that such Plant and Materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication.

3 Should the *Employer* have an insurable interest in such items during manufacture or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any subcontractor.

4. The insurance coverage referred to in 1 and 2 above shall be obtained from an insurer in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.

Option B:

All clauses will apply with the following amplification:-

- (a) The method of measurement is as indicated in the measurement clauses of SABS 1200.
- (b) The last sentence of Clause 63.13 of Option B states:-
"The *Employer* and the *Contractor* agree, rates and lump sums to be used to assess a compensation event instead of Defined Cost".
- (c) When agreed rates and lump sums are used, Compensation Events are assessed as follows:-

- (i) Where in the opinion of the *Project Manager* work is of a similar character and executed under similar conditions to work priced in the Bill of Quantities, it is to be valued at such rates and prices (including General Items) contained therein as may be applicable; or
- (ii) Where work is not of a similar character or is not executed under similar conditions, the rates and prices in the Bill of Quantities are to be used as the basis for valuation as far as may be reasonable; or
- (iii) Where work cannot reasonably be valued in accordance with Clauses (c)(i) and (c)(ii) above, suitable rates or prices are agreed upon between the *Project Manager* and the *Contractor* after due consultation by the *Project Manager* with the *Employer* and the *Contractor*; or
- (iv) In respect of additional or substituted work, the *Project Manager* may, if in his opinion it is necessary or desirable, issue an instruction that the work be executed in some other appropriate manner.
- (v) If the parties cannot agree, the *Project Manager* notifies the *Contractor* accordingly and makes his own assessment.

Option X3:

- (a) The amount payable to the Contractor in respect of rate exchange will be adjusted for increases and decreases in costs of imported materials, due to fluctuations in foreign currency exchange rates after the conclusion of the Contract. Tenderers shall indicate whether or not their tenders or part(s) thereof are subject to variation on account of exchange rate fluctuations.
- (b) Where no particulars are furnished, such tenders will be deemed to be not subject to variation on account of exchange rate fluctuations.
- (c) 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 is the rate of exchange on the day 7 days prior to the date on which tenders close.
- (d) Forward cover to be arranged by the contractor within 2 weeks after notification of award.

Option X7: Delay damages is a penalty in South African Law and the word penalty is to replace delayed damages throughout the Contract.

- 1) **Penalty for late Completion of the whole of the works is R3,000.00 per day.**

Option X13:

- (a) The amount of the Guarantee (Performance Bond) is to be calculated as **5 %** or **10%** of the tender price. (Excl. VAT).

The Contractor has the option of either providing the guarantee of 5% and having retention money of 10% deducted from each claim, or alternatively, providing a guarantee of 10% and having retention money of 5% deducted from each claim.

- (b) The Form of Guarantee (or Performance Bond) is in Clause C 1.3 of Part C1.

Option X16

- (a) The retention free amount is **Nil**
The retention percentage is **5 or 10%**, depending on the option exercised in option X13 above.

Option X18: Limitation of Liabilities

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.

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 *Employer's* arranged insurance as set out in the contract.

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).

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.

The *end of liability date* is two months after the end of the *service period*.

Option Z - Additional conditions of contract

Z1.1 DAY

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 20 December to 4 January (both days included) is excluded from the calculation of the number of days concerned.

Z1.2 ASSIGNMENT & CESSION (See clause Z3)

Z1.3 NON-WAIVER

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.

Z1.4 LIMITATION OF THE AUTHORITY OF THE PROJECT MANAGER

The Project 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.

Z1.5 PROJECT MANAGER'S DEPUTY means the person appointed by the Project Manager to administer the *Contractor's* performance and execution of Works according to the powers and rights held by and obligations placed upon the Project Manager's Deputy in terms of the Contract and the appointment.

Z1.6 BACKGROUND INTELLECTUAL PROPERTY 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.

Z1.7 CONFIDENTIAL INFORMATION means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party (intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises), or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term –

- (a) information relating to methods of operation, data and plans of the disclosing Party;
- (b) the contents of this Agreement;
- (c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- (d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
- (e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- (f) information relating to the past, present and future research and development of the disclosing Party;
- (g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- (h) information contained in the software and associated material and documentation belonging to the disclosing Party;
- (i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- (j) Copyright works;
- (k) commercial, financial and marketing information;
- (l) 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;

Z1.8 FOREGROUND INTELLECTUAL PROPERTY means all Intellectual Property developed by either Party pursuant to this Agreement;

Z1.9 INTELLECTUAL PROPERTY means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property.

Z1.10 TRADE MARKS 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.

Z1.11 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.

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.

Z1.12 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 be withheld), the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground intellectual Property.

Z1.13 TITLE TO IMPROVEMENTS

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Supplier shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries.

The Supplier hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Supplier shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

Z1.14 UNAUTHORISED USE OF CONFIDENTIAL INFORMATION

The Supplier shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of 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

Z1.15 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.

- a) 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.
- b) The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- c) 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.

Z1.16 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:
 - i. not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
 - ii. 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;

- iii. 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;
- iv. 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;
- v. 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;
- vi. 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
- vii. 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.
- viii. 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.
- ix. 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
- x. 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
- xi. is independently developed by a Party as proven by its written records.

- e) This clause Z1.16 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.

Z1.17 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.

Z1.18 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.

Z2 THE CONTRACTOR'S GENERAL OBLIGATIONS

Z2.1 The following information in addition to Core Clause 2 of the Schedule of Options will apply:

Z2.1.1 The Contractor's general obligations under the Contract comprise: -

- provision of Transmission Lines and all accessory tools and equipment of the types and nature stipulated in the Particular Specifications and
- the provision of all labour, Project 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.

Z2.1.2 Transnet Freight Rail shall, in the case of a breach of contract by the Contractor in terms of clause Z10, 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.

Z2.1.3 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.

Z2.1.4 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.

Z2.1.5 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.

Z3 CESSION, ASSIGNMENT AND SUBCONTRACTING

Z3.1 Neither the *Contractor* nor the *Employer* may, without the written consent of the other, cede or assign the Contract or any part thereof or any obligation under the Contract or cede any right or benefit there under.

Z3.2 The Contractor shall not enter into any subcontract without the prior written approval of the Project 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 Z3.1 hereof.

Z3.3 Approval given in terms of clauses Z3.1 and Z3.2 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.

Z4 SUFFICIENCY OF TENDER

Z4.1 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.

Z5 ACCESS, RIGHTS-OF-WAY AND CAMPSITES

Z5.1 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.

Z5.2 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 Supervisor.

Z5.3 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 Supervisor 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.

Z5.4 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.

Z5.5 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.

Z5.6 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 Supervisor.

Z6 WORKMEN

Z6.1 All persons employed by the Contractor to carry out the Contract shall be competent, responsible and of good character.

Z6.2 If, in the opinion of the Supervisor, any person employed by the Contractor is inefficient, negligent, disrespectful or objectionable, the Supervisor may, after consultation with the Contractor, instruct that such person be removed from the Contract Work.

Z6.3 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.

Z6.4 The Contractor shall, upon request, provide the Supervisor 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 Supervisor.

Z6.5 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.

Z6.6 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.

Z6.7 Staff shall only be allowed to travel on a train or machine in approved accommodation or cabin facilities.

Z7 HOUSING OF EMPLOYEES

Z7.1 The Contractor shall, where necessary, make his own arrangements for suitable housing of his employees. Where temporary housing is permitted by the Supervisor on Transnet Freight Rail land the Contractor shall provide suitable sanitation, lighting and portable water supplies.

Z7.2 The Contractor may, where available and subject to the approval of the Supervisor, 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.

Z7.3 Fouling of the area inside or outside Transnet Freight Rail's boundaries must be prevented. The Contractor may be called upon by the Supervisor to dispose of any foul or waste matter generated by the Contractor.

Z8 HOURS OF WORK

Z8.1 The Contractor shall conform to the hours of duty laid down by the Supervisor. 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.

Z8.2 Work shall not be suspended for rain or inclement weather unless otherwise agreed by the Supervisor. 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.

Z8.3 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.

Z8.4 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.

Z9 COMPLIANCE WITH STATUTES AND SAFETY RULES

Z9.1 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.

Z9.2 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 Supervisor, 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 Supervisor, 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 Supervisor.
- In addition to compliance with clause Z9.2 hereof, the Contractor shall report all incidents contemplated by Section 24 of the Act in writing to the Supervisor. 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.

Z10 BREACHES AND REMEDIES

Z10.1 Should the Contractor commit any breach or default of any kind mentioned in clause Z10.2 hereof, the Employer may exercise, subject to the provisions as stated in Option W1 as well as clause Z10.3, 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 Z10.3 hereof.

Z10.2 Breaches or defaults entitling the Employer to act in terms of clause Z10.3 hereof shall be the following:

Z10.2.1 insolvency of the Contractor or an act of insolvency comprising inter alia, the following:

Z10.2.1.1 liquidation or sequestration of the Contractor's estate (provisionally or finally); or

Z10.2.1.2 the Contractor publishing a notice of surrender of his estate as insolvent; or

Z10.2.1.3 the Contractor entering into a compromise with the general body of his creditors; or

Z10.2.1.4 the Contractor having an execution levied on his goods.

Z10.2.2 material breach of the Contract by the Contractor comprising inter alia;

- Z10.2.2.1 the abandonment or repudiation of the Contract;
- Z10.2.2.2 suspension of progress of the Work without contractual cause;
- Z10.2.2.3 assigning of the Contract without the consent in writing of the Employer having first being obtained
- Z10.2.2.4 subcontracting any part of the Contract without the Project Manager's approval;
- Z10.2.2.5 failing to provide the performance bond in terms of option X13 hereof;
- Z10.2.2.6 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;
- Z10.2.2.7 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
- Z10.2.2.8 conviction of the Contractor or any of his employees in a court of law for any offence which adversely affects the interests of Transnet
- Z10.3 In the event of any breach or default mentioned in clause Z10.2 hereof, the Employer may exercise any of the following options, rights and powers: -
- Z10.3.1 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.
- Z10.3.2 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 Project Manager, all for the account of and at the cost and risk of the Contractor.
- Z10.3.3 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 Project Manager may deem fit.
- Z10.3.4 To obtain from any source whatsoever, at the cost of the Contractor, tools, equipment and material as are necessary, in the opinion of the Project Manager, for the proper completion of the Contract.
- Z10.3.5 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 Project Manager shall issue the Final Certificate when so authorised by the Employer.
- Z10.3.6 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.
- Z10.4 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.
- Z10.5 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.
- Z10.6 In any action taken or instituted by Transnet in terms of clauses Z10.1 to Z10.4 hereof or any clause of

the Contract read alone or in conjunction with these clauses, a certificate issued by the Project Manager shall be deemed to be proof of any amount due by the Contractor to Transnet or by Transnet to the Contractor.

Z10.7 No action taken or instituted by Transnet in terms of clauses Z10.1 to Z10.4 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 Z10.3 and Z10.4 hereof are additional to any other rights, claims or remedies that Transnet may have in law or under the Contract against the Contractor.

Z10.8 Availability during annual builder's holidays
This contract shall include for allowing the normal annual 3-week builder's holiday during December provided that the contractor shall be on standby for normal production if required based on a 48-hour notice period by TFR

Further Additional Conditions of contract are:

1. Z1.7 Housing of Contractor's staff at substations will not be permitted.
2. Z1.8 The Contractor shall provide for any Electrical Power and Water that may be required during the execution of the works as the availability of these services on site is not guaranteed.
3. Z1.9 The Contractor must provide adequate storage, at his own expense to the satisfaction of the Supervisor.
4. Z1.10 The Contractor shall, on completion of the Works, clear the site of all leftover items of material to the satisfaction of the Supervisor.
5. Z1.11 The Contractor shall attend progress meetings when convened by the Supervisor (normally once a month). Such meetings will be for the purpose of discussing progress, planning, delays, materials, conditions and the co-ordination of site activities. The Project Manager or Supervisor or their deputies will chair the meetings and the proceedings shall be minuted and circulated by the Supervisor.
6. Z1.12 The Contractor shall attend ad hoc site meetings when convened by the Supervisor. Such meetings will be for the purpose of discussing specific issues or problems relating to specifications and adherence thereto, quality and contractual matters.
7. Z1.13 The Contractor shall supply and have available at all times, at the worksite or in his site office, A4 carbon copy books with detachable numbered sheets in triplicate, to be used as:
 - a. Z1.13.1 Site Instruction book for receiving and recording instructions issued. All instructions recorded shall be signed by the Supervisor and immediately acknowledged by the counter signature of the Contractor or his agent.
 - b. Z1.13.2 Daily diary/record book with a page per day for recording all events affecting the progress of the works such as drawings received on site, arrivals and dispatch of plant, material received or applied for, breakdowns, delays, work done during the day, etc. Entries shall be made by the Contractor or his appointed agent and signed by both parties daily. Those days on which no events take place must be ruled out and "NIL" entered. The site diary will be used as documentary proof to establish the validity of any claims in terms of the execution of the Contract.
 - c. Z1.13.3 The third book will be used as the Risk Register required by the Contract for Engineering and Construction Work, NEC3.
8. Z1.14 Site diaries shall be forwarded/ handed to the Supervisor.

9. Z1.15 The Contractor and each member of his personnel who may be required to enter high voltage substations for the purpose of performing work in terms of this contract must:
 - a. Z1.15.1 Observe the safety regulations regarding the entry of maintenance personnel into all buildings, sub- and tie-stations, control rooms and equipment sites accommodating equipment to perform work by him, as stipulated in Transnet Freight Rail's Electrical Safety Instructions as well as the E7/1 Specification for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment. Failure to comply with these requirements will render the Contractor liable for the payment of penalties and/or direct or indirect cost resulting from such negligence. The regulations and instructions having been made available to the Contractor, it will be the Contractor's responsibility to make sure that his personnel are in possession of these instructions.
 - b. Z1.15.2 Ensure that they have entered the relevant details onto the Substation Book prior to entering high voltage substations of the Client.
 - c. Z1.15.3 Ensure compliance with Specification E4E (Safety Appointments, Safety Plan, etc).
10. Z1.16 The Maintenance Managers (Electrical) at the Depots must be contacted to arrange for Work Permits or Supervision, names and contact details will be supplied to the contractors on award of contract.
11. Z1.17 The Client will perform all switching required, during the contract.
12. Z1.18 The Client reserves the right to cancel an authorised occupation or work permit at any time, even during the period of such occupation or work permit.
13. Z1.19 Special care shall be exercised when welding or flame cutting operations occur and the Contractor is required to provide suitable fire fighting equipment at close hand to these operations as prescribed by the Machinery and Occupational Health and Safety Act, 1993.
14. Z1.20 The Contractor shall provide the necessary number of suitable first aid kits, one set in the camp and one set at each working team. He shall maintain these outfits fully equipped at all times.
15. Z1.21 The Contractor shall comply with all applicable legislation, regulations issued in terms thereof and Transnet's safety rules which shall be entirely at the Contractor's cost, and which shall be deemed to have been allowed for in the tendered rates and prices.
16. Z1.22 The Contractor shall report all accidents in writing to the Supervisor. Any accident resulting in the death of or injury to any person on the Works shall be reported within 24 hours of its occurrence, and any other accident shall be reported within 48 hours of its occurrence.
17. Z1.23 The Contractor shall inform the Supervisor of the names and addresses and telephone numbers of his personnel to be called in emergencies. The Contractor will be responsible for seeing that one or more members of his personnel are available on call at all times to receive fault or failure reports.
18. Z1.24 Members of the Contractor's personnel shall, while on call, keep the duty personnel in the Infrastructure Control Office informed of their movements in order that they may be contacted without delay in case of an emergency.
19. Z1.25 The Contractor will be held responsible and accountable for any delays to the train service that he may cause during the contract period.
20. Z1, 26 Due to direct Supervision being required from Transnet Freight Rail, no work will be undertaken outside normal working hours.
21. Z1.27 After completion of the installation, the whole of the works shall be inspected, and the Contractor shall rectify to the satisfaction of the Supervisor any deficiencies that may exist.

22. Z1.28 Transnet Freight Rail will perform the final inspections with the Contractor.
23. Z1.29 Acceptance by the Supervisor of satisfactory completion of the work in no way relieves the Contractor from his duty to ensure compliance to specifications.
24. Z1.30 The Client shall require a guarantee of all the work, equipment and material for a period of twelve calendar months after date of final acceptance of the work.
25. Z1.31 The Contractor shall make good any defects, due to inferior material, equipment or workmanship, which may arise during this period within 2 weeks after notification.
26. Z1.32 If urgent repairs have to be carried out by the Client's staff to maintain supply during the guarantee period the Contractor shall inspect such repairs to ensure that the guarantee period is not affected and should they be covered by the guarantee, reimburse the Client the cost of material and labour.
27. Z1.33 The client reserves the right to withdraw a handover certificate should the contractor fail to rectify defects to the satisfaction of the Supervisor.
28. Z1.34 The Contractor shall be responsible for providing security on site for his personnel, plant and material.
29. Z1.35 The Contractor shall comply with the requirements of Specification BBB2007 (Environmental Guidelines and Specifications for Electrical Construction Work) during the contract period.

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C1.2 CONTRACT DATA

Part Two – Data Provided by the Contractor

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

Statements given in all contracts

(a) The Contractor is

Name
Address
.....
.....

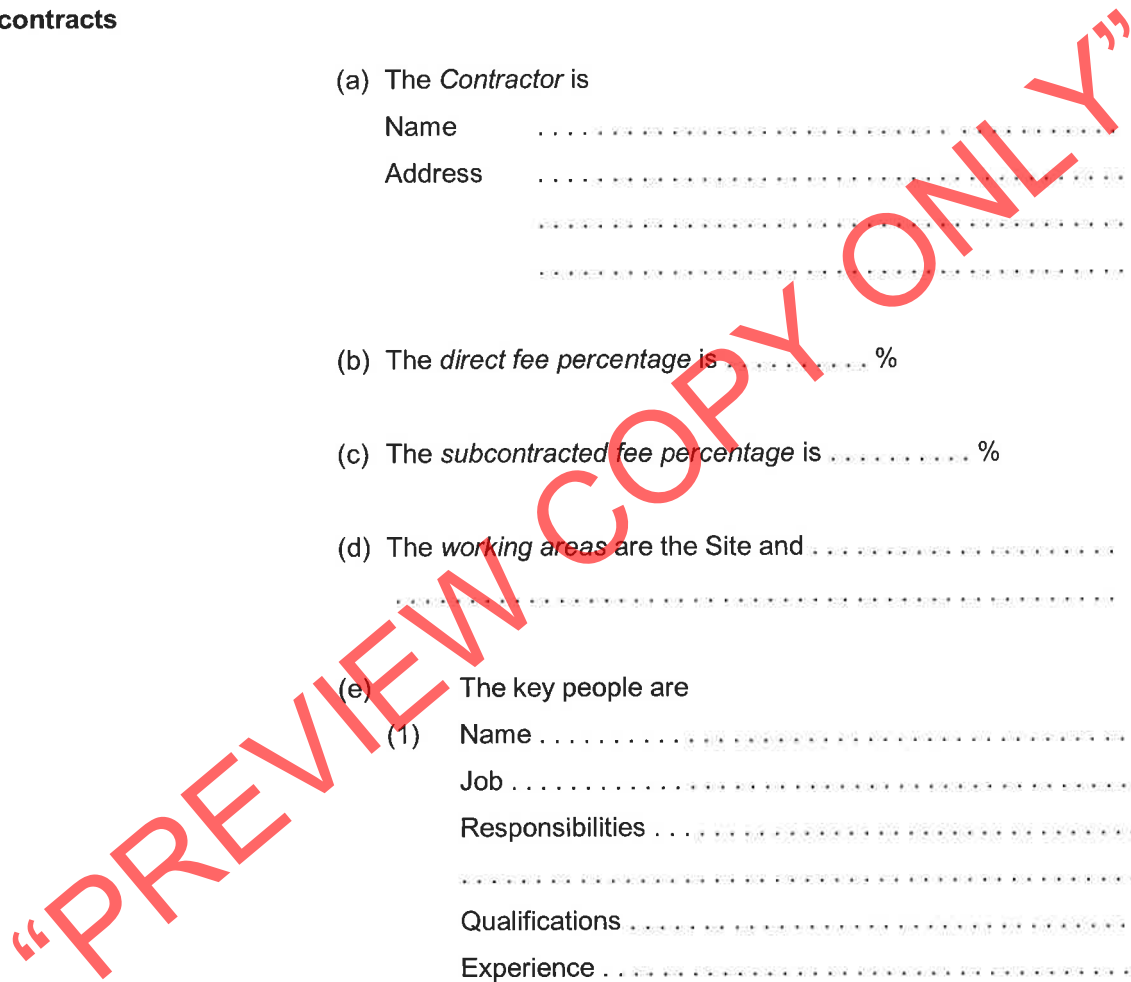
(b) The direct fee percentage is %

(c) The subcontracted fee percentage is %

(d) The working areas are the Site and
.....

(e) The key people are

(1) Name
Job
Responsibilities
.....
Qualifications
Experience
.....
.....



(2) Name
Job
Responsibilities
.....
Qualifications
Experience
.....

(3) Name
Job
Responsibilities
.....
Qualifications
Experience
.....

(4) Name
Job
Responsibilities
.....
Qualifications
Experience
.....

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(f) The following matters will be included in the Risk Register
.....
.....
.....
.....

Optional statements

(a) If the Contractor is to provide Works Information for his design

The Works Information for the Contractor's design is in

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



(b) If a programme is to be identified by the Contract Data.

The programme identified in the Contract Data is

.....

(c) If the Contractor is to decide the completion date for the whole of the works

The completion date for the whole of works is

.....

If Option A or B is used

Data for SSCC

(a) The percentage for people overheads is%.

(b) The published list of Equipment is the last edition of the list published by

.....

(c) The percentage for adjustment for Equipment in the published list is% (state plus or minus).

(d) The rates for other Equipment are

Equipment	size or capacity	rate
.....
.....
.....
.....

(e) The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
.....
.....
.....
.....

(f) The percentage of design overheads is %

(g) The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are **all of the categories listed above.**

C1.3 FORMS OF SECURITIES

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C1.3 FORMS OF SECURITIES

Pro-formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract (June 2005) (ECC3)

The *conditions of contract* stated in the Contract Data Part 1 may include one or more of the following Secondary Options:

Option X13: Performance Bond

Each of these Secondary Options requires a bond or guarantee "in the form set out in the Works Information".

Pro forma documents for these bonds and guarantee are provided here for convenience but are to be treated as part of the Works Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

This pro forma document is available for use by the Surety on the *Employer's* web page at www.transnet.net

Drafting instructions:

1. Select the required pro formas by deleting the ones not required, then complete all the details except that which the bond / guarantee provider is required to complete.
2. There are two pro formas suitable for use with Option X13, but only one of them can be used; the Reducing Value Guarantee is generally used only for building works.
3. Then delete these drafting instructions. Delete this whole Securities section if none of the above secondary Options have been selected by the *conditions of contract*.

Pro forma Performance Bond (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Surety)

Transnet Freight Rail
A Division of Transnet SOC Ltd
P O Box 8617
Johannesburg
2000

Date:

Dear Sirs,

Performance Bond for Contract No. SIE11041CIDB

With reference to the above numbered contract made or to be made between

Transnet Freight Rail, A Division of Transnet SOC Ltd

(the *Employer*) and

{Insert registered name and address of the *Contractor*}

(the *Contractor*), for

**Supply and install Transmission Line from Knoppies substation to
Sentrtrand Main-Intake substation**

(the *works*).

I/We the undersigned

on behalf of the Surety

of physical address

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in *solidum* for the due and faithful performance of all the terms and conditions of the Contract by the *Contractor* and for all losses, damages and expenses that may be suffered or incurred by the *Employer* as a result of non-performance of the Contract by the *Contractor*, subject to the following conditions:

1. The terms *Employer*, *Contractor*, *Project Manager*, *works* and Defects Certificate have the meaning as assigned to them by the *conditions of contract* stated in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Execution and Division", "No value received" and all other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Employer* has the absolute right to arrange his affairs with the *Contractor* in any manner, which the Employer deems, fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the construction period, indulgence, release or variation of the *Contractor's* obligation shall not affect the validity of this performance bond.
4. This bond will lapse on the earlier of
 - the date that the Surety receives a notice from the *Project Manager* stating that the last Defects Certificate has been issued, that all amounts due from the *Contractor* as certified in terms of the contract have been received by the *Employer* and that the *Contractor* has fulfilled all his obligations under the Contract, or

- the date that the Surety issues a replacement Performance Bond for such lesser or higher amount as may be required by the *Project Manager*.
5. Always provided that this bond will not lapse in the event the Surety is notified by the *Project Manager*, (before the dates above), of the *Employer's* intention to institute claims and the particulars thereof, in which event this bond shall remain in force until all such claims are paid and settled.
6. The amount of the bond shall be payable to the *Employer* upon the *Employer's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Project Manager* stating the amount of the *Employer's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Employer's* loss, damage and expense.
7. Our total liability hereunder shall not exceed the sum of:
- (say) _____
- R _____
8. This Performance Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa.

Signed at _____ on this _____ day of _____ 2012

Signature(s)	_____
Name(s) (printed)	_____
Position in Surety company	_____
Signature of Witness(s)	_____
Name(s) (printed)	_____

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**PART C1.4:
ADJUDICATOR'S CONTRACT DATA**

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CONTRACT DATA

- Statements given in all contracts**
- The *contract between the Parties* is **To be advised**.....
 - The *period of retention* is ...**N/A**..... weeks.
 - The *law of the contract* is the law of **the Republic of South Africa**
 - The *language of this contract* is **English**.....
 - The amount of the advanced payment is **N/A**.....
 - The Adjudicator's *fee* is...**To be advised**.....per hour.
 - The *interest rate* is **2%** per annum above the prime lending rate of the **Standard Bank of South Africa Ltd.**
 - The *currency of this contract* is **ZAR**.....
 - The Adjudicator's appointment terminates on (**To be advised**).....

- Optional statements**
- If the period for payment of invoices is not three weeks**
- The period for payment of invoices is **four**.....weeks.
- If additional conditions of contract are required**
- The *additional conditions of contract* are
To be advised
 -
 -
 -

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