



**TRANSNET FREIGHT RAIL**

an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP]  
(GOODS INCLUDING LOCAL CONTENT)**

**FOR THE SUPPLY AND DELIVERY OF BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**RFP NUMBER** HOAC/HO/9715  
**ISSUE DATE:** 11 JUNE 2013  
**CLOSING DATE:** 02 JULY 2013  
**CLOSING TIME:** 10:00  
**BID VALIDITY PERIOD:** 90 days from Closing Date

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ANNEXURE F	TECHNICAL QUESTIONNAIRE

**LIST OF ACRONYMS**

B-BBEE	Broad-Based Black Economic Empowerment
CD	Compact/computer disc
EME	Exempted Micro Enterprise
GBC	General Bid Conditions
ID	Identity Document
JV	Joint Venture
LOI	Letter of Intent
NDA	Non-Disclosure Agreement
OD	Transnet Operating Division
PTN	Post-Tender Negotiations
QSE	Qualifying Small Enterprise
RFP	Request for Proposal
SD	Supplier Development
SME	Small Medium Enterprise
SOC	State Owned Company
TCO	Total Cost of Ownership
VAT	Value-Added Tax
ZAR	South African Rand

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 1 : NOTICE TO BIDDERS**

**1 PROPOSAL REQUEST**

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

On or after 11 June 2013 the RFP documents may be inspected at, and are obtainable from the Transnet Tender Advice Centre, Ground Floor, Inyanda House 1, 21 Wellington Road, Parktown, on payment of an amount of R 500.00 (inclusive of VAT) per set. Payment is to be made as follows:

Bank:	Standard Bank
Account Number:	00203158598
Branch:	Braamfontein
Branch code:	004805
Account Name:	Transnet Freight Rail
Reference:	HOAC/HO/9715

**NOTES –**

- a) This amount is not refundable.
- b) A receipt for such payment made must be presented when collecting the RFP documents and submitted thereafter with your Proposal.

RFP documents will only be available for collection between 08H00 until 15H00 until 01 July 2013. Therefore payment must be effected and the RFP collected, prior to the above deadline.

*N.B: Pursuant to note (b) above, should a third party [such as a courier] be instructed to collect RFP documents on behalf of a Respondent, please ensure that this person [the third party] has a "proof of payment" receipt for presentation to Transnet when collecting the RFP documents.*

Any additional information or clarification will be faxed or emailed to all Respondents, if necessary.

**2 FORMAL BRIEFING**

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 [*Communication*] below:

### 3 PROPOSAL SUBMISSION

Proposals **in duplicate [1 original and 1 copy] plus a CD copy** must reach the Secretary, Transnet Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

RFP No:	HOAC/HO/9715
Description	SUPPLY AND DELIVERY OF BELTS
Closing date and time:	02 JULY 2013 10H00
Closing address	<i>[Refer to options in paragraph 4 below]</i>

All envelopes must reflect the return address of the Respondent on the reverse side.

### 4 DELIVERY INSTRUCTIONS FOR RFP

#### 4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located in the foyer at the main entrance of Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg, and should be addressed as follows:

THE SECRETARY  
TRANSNET ACQUISITION COUNCIL  
INYANDA HOUSE 1  
21 WELLINGTON ROAD  
PARKTOWN  
JOHANNESBURG 2001

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- b) It should also be noted that the above tender box is located in the foyer at the main entrance of Inyanda House 1, 21 Wellington Road, Parktown and is accessible to the public 24 hours a day, 7 days a week.
- c) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- d) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week



#### 4.2 Dispatch by courier

If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Secretary, Transnet Acquisition Council and a signature obtained from that Office:

THE SECRETARY  
TRANSNET ACQUISITION COUNCIL  
GROUND FLOOR  
INYANDA HOUSE 1  
21 WELLINGTON ROAD  
PARKTOWN  
JOHANNESBURG

4.3 Please note that this RFP closes punctually at **10:00 on Tuesday 02 July 2013**.

4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "NON-RESPONSIVE" and will be disqualified.

4.5 No email or facsimile responses will be considered, unless otherwise stated herein.

4.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.

4.7 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.

4.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope.

4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [*Alterations made by the Respondent to Bid Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

#### 5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

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

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

The Department of Trade and Industry [DTI] is currently in the process of reviewing the B-BBEE Codes of Good Practice [Code Series 000]. Transnet reserves the right to amend this RFP in line with such reviews and/or amendments once they have come into effect. Transnet furthermore reserves the right to adjust the thresholds and evaluation processes to be aligned with such changes which may be issued by the DTI after the issue date of this RFP.

##### 5.1 B-BBEE Scorecard and Rating

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note the following:

- Proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods.
- The 80/20 preference point system applies where the acquisition of the Goods will be less than R1 000 000.00. However, if the 80/20 preference point system is stipulated in this RFP and all Bids received exceed R1 000 000.00, the RFP will be cancelled.
- The **90/10** preference point system applies where the acquisition of the Goods will exceed R1 000 000.00. However, if the 90/10 preference point system is stipulated in this RFP and all Bids received are equal to or below R1 000 000.00, the RFP will be cancelled.

The **90/10** preference point system is applicable to this RFP.

When Transnet invites prospective suppliers to submit Proposals for its various expenditure programmes, it requires Respondents [*Large Enterprises and QSE's - see below*] to have their B-BBEE status verified in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. Valid B-BBEE Verification Certificates must be issued by:

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

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

Enterprises will be rated by Verification Agencies or Registered Auditors based on the following:

- Large Enterprises** [i.e. annual turnover greater than R35 million]:
  - Rating level based on all seven elements of the B-BBEE scorecard
- Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
  - Rating based on any four of the elements of the B-BBEE scorecard
- Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:

In accordance with B-BBEE Codes of Good Practice [Statement 000, Section 4], any enterprise with an annual total revenue of R 5 million or less qualifies as an EME.

- Automatic rating of B-BBEE Level 4 irrespective of race or ownership
- Black<sup>1</sup> ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

Sufficient evidence to qualify as an EME would be a certificate [which may be in the form of a letter] from an auditor, accounting officer or a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, Black ownership / Black female ownership and B-BBEE status level.

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



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

In this tender, Transnet will accordingly allocate a maximum of **10 [ten] points** in accordance with the **90/10** preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. *[Refer Annexure A for further details].*

N.B. Failure to submit a B-BBEE certificate, which is valid as at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.

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

R \_\_\_\_\_

*All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as Annexure A. (Page 61 to 66)*

## 5.2 B-BBEE Joint Ventures, Consortiums and/or Subcontractors

In addition to the above, Respondents who would wish to enter into a Joint Venture [JV] or consortium with, or subcontract portions of the contract to, B-BBEE entities, must state in their RFPs the percentage of the total contract value that would be allocated to such B-BBEE entities, should they be successful in being awarded any business. A valid B-BBEE Verification Certificate in respect of such B-BBEE JV or consortium partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFP Bid to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form appended hereto as Annexure A [Page 61 to 66].

### a) **JVs or Consortiums**

If contemplating a JV or consortium, Respondents should also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

#### (i) Incorporated JVs/Consortiums

As part of an incorporated JV/consortium's Bid response, the incorporated JV/consortium must submit a valid B-BBEE Verification Certificate in its registered name.

#### (ii) Unincorporated JVs/Consortiums

As part of an unincorporated JV/consortium's tendered response, the unincorporated JV/consortium must submit a consolidated B-BBEE certificate as if it was a group structure and such scorecard must have been prepared for this RFP in particular.

N.B. Failure to submit a B-BBEE certificate in respect of the JV or Consortium, which is valid as at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.

b) **Subcontracting**

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

A person awarded a contract may not subcontract more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

**5.3 B-BBEE Registration**

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

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

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

**5.4 B-BBEE Improvement Plan**

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 5.1 above, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement and enterprise development will meet or exceed certain minimum targets over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals by completion of Section 17 appended hereto.

**5.5 Supplier Development Initiatives**

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

Transnet fully endorses and supports Government's New Growth Path policy through its facilitation of Supplier Development [SD] initiatives. Hence Respondents are required to submit their commitments with regard to Supplier Development Initiatives over the duration of this contract.

Supplier Development Initiatives are a prerequisite for this RFP. Transnet requires Respondents to meet or exceed a threshold of 20% in respect of their SD commitments on this contract.

*All Respondents must refer to Section 16 and **Annexure G** for further instructions and submit a Supplier Development Bid Document and SD Value Summary, **Annexure G** as these are mandatory returnable documents.*

*Note: Should a JV be envisaged the principal respondent is required to submit the required responses as indicated above.*

*The commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.*

## 6 COMMUNICATION

Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted before **12:00 on Friday 28 June 2013**, substantially in the form set out in Section 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretary on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretary with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretary of the Transnet Acquisition Council, at telephone number 011 544-9486, email [prudence.nkabinde@transnet.net](mailto:prudence.nkabinde@transnet.net) on any matter relating to its RFP Proposal.

Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

## 7 INSTRUCTIONS FOR COMPLETING THE RFP

- 7.1 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.
- 7.2 Both sets of documents are to be submitted to the address specified in paragraph 4 above.
- 7.3 A CD copy of the RFP Proposal must be submitted. Please provide files in MS Word / Excel format, not PDF versions, noting that the signed original set will be legally binding.
- 7.4 All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.

## 8 COMPLIANCE

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

## 9 ADDITIONAL NOTES

- 9.1 Changes by the Respondent to its submission will not be considered after the closing date.
- 9.2 The person or persons signing the Proposal must be legally authorised by the Respondent to do so [*Refer Section 6 – Signing Power, Resolution of the Board of Directors*]. A list of those person(s) authorised to negotiate on behalf of the Respondent [if not the authorised signatories] must also be submitted along with the Proposal together with their contact details.
- 9.3 Bidders who fail to submit a duly completed and signed RFP Declaration Form [*Section 10*] will not be considered.
- 9.4 Transnet will not do business with companies involved in B-BBEE fronting practices.
- 9.5 Transnet may wish to visit the Respondent's place of manufacture and/or workshop and/or office premises during this RFP process.
- 9.6 Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.
- 9.7 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.

**FAILURE TO OBSERVE ANY OF THE AFOREMENTIONED REQUIREMENTS  
MAY RESULT IN A PROPOSAL BEING REJECTED**

## 10 DISCLAIMERS

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

- 10.1 modify the RFP's Goods and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 10.4 not necessarily accept the lowest priced Proposal or an alternative bid;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.8 award a contract for only a portion of the proposed Goods which are reflected in the scope of this RFP;
- 10.9 split the award of the contract between more than one Supplier; or
- 10.10 make no award of a contract.

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches

of the Competition Act 89 of 1998. Respondents are required to indicate in Section 11 [*Breach of Law*] whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.

Transnet reserves the right to award business to the highest scoring bidder/s unless objective criteria justify the award to another bidder.

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

## **11 LEGAL REVIEW**

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

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

"PREVIEW COPY ONLY"

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 2 : BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS**

**1 BACKGROUND**

**TFR in terms of the Bargaining Council agreement provides uniform clothing to operational grade workers annually in terms of the agreed entitlement. The current contracts for the supply of these uniform clothing items expire end August 2013 and the purpose of this SPP is to obtain approval the engage the market with a view of renewing the contracts. The RFP's will source suppliers to supply Transnet Uniform Clothing on an "as and when" require basis, over a 2 year period.**

**2 EXECUTIVE OVERVIEW**

Transnet is seeking a partner(s) to provide solutions for its clothing requirement nationally, it also seeks to improve its current processes for providing these Goods to its end user community throughout its locations.

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

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

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

**2.7 SCOPE OF REQUIREMENTS**

The scope of this RFP is to source and secure the supply and delivery of socks for the next 2 years in order to embed the Transnet branding



Respondents must complete and submit **Annexure F – Technical Submission which may include a technical questionnaire.**

A Respondent's compliance with the minimum functionality/technical threshold of 100% will be measured by their responses to Annexure F. ( SATS 1286:2011)

### **3 COMPULSORY LOCAL CONTENT THRESHOLD**

In terms of section 9(1) of the Preferential Procurement Regulations, 2011, and the Instruction Note issued by National Treasury on the "Invitation and Evaluation of Bids based on a stipulated minimum threshold for local content and production for the Clothing Sector", Transnet is required to set a stipulated minimum threshold be set for this RFP.

#### **3.1 Local Content Threshold**

A Local Content threshold of 100% [Hundred percent] will be required for all Goods to be manufactured by a successful Respondent for the remainder of the contract term.

For further guidance with regard to the determination of "Local Content", Respondents must refer to the following documentation:

- SABS approved technical specification number SATS 1286:2011
- Guidance on the calculation of Local Content

[available on the DTI website: <http://www.thedti.gov.za>]

#### **3.2 Mandatory RFP Annexures**

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

- Annexure B – Declaration Certificate for Local Production and Content [SBD 6.2]
- Annexure C – Local Content Declaration: Summary Schedule

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

- Annexure D – Imported Content Declaration: Supporting Schedule to Annexure C
- Annexure E – Local Content Declaration: Supporting Schedule to Annexure C

After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. Declaration C should be submitted with the bid documentation at the closing date and time of the bid. Declarations D and E should be kept by Respondents for verification purposes for a period of at least 5 years. The successful Respondent is required to continuously update Declarations C, D and E with the actual values for the duration of the contract. Although Annexure D and Annexure E need not be submitted with Proposals, Transnet reserves the right to call for these Supporting Schedules if required.

### 3.3 Local Content Project Plan

Respondents must indicate how they intend to achieve the compulsory 100% Local Content minimum threshold within the initial 24 [Twenty Four] months of the contract period by submitting a project plan which schedules the key tasks to be accomplished and related timelines.

*The Local Content Project Plan must project from contract month 1 [award of business] to contract month 24 [100 % local production and content achieved] and include:*

- (i) *Key tasks to achieve 100% local production and content [i.e. 100% South African manufacture]*
- (ii) *Completion timelines per task in months [milestones]*
- (iii) *Sufficient breakdown of detail so that no task duration is longer than four weeks*
- (iv) *Critical dependencies*

- **Failure to submit a Local Content Project Plan will disqualify a Respondent's Proposal.**
- Transnet will conduct bi-monthly reviews with the Supplier(s) to monitor progress with respect to the completion of projected milestones.
- Should, after the award of a Bid, the Supplier experience challenges in meeting the stipulated minimum threshold for Local Content, Transnet is required to inform the DTI accordingly in order for the DTI to verify the circumstances and provide directives in this regard.

## 4 GREEN ECONOMY / CARBON FOOTPRINT

Whereas Transnet cannot prescribe a Respondent's commitment to environmental issues, Transnet would wish to have an understanding of your company's position in this regard, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

## 5 GENERAL SUPPLIER OBLIGATIONS

- 5.1 The Supplier(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 5.2 The Supplier(s) must comply with the requirements stated in this RFP.

## 6 "AS AND WHEN REQUIRED" CONTRACTS

- 6.1 Purchase orders will be placed on the Supplier(s) from time to time as and when Goods are required.
- 6.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.
- 6.3 Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents

will be used as guidelines in establishing lead times and monthly delivery requirements with the Supplier.

- 6.4 Where scheduled deliveries are required, the delivery period(s) specified must be strictly complied with, unless otherwise requested by Transnet. Material supplied earlier than specified may not be paid for or may be returned by Transnet, with the Supplier being held liable for all expenses so incurred, e.g. handling and transport charges.
- 6.5 If the delivery period offered by the Respondents is subject to a maximum monthly production capacity, full particulars must be indicated in Section 3 [*Pricing and Delivery Schedule*]
- 6.6 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

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- 6.7 Respondents are to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays and periods occupied in stocktaking or in effecting repairs to plant or in overhaul of plant which would ordinarily occur within the stated delivery lead time:

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## 7 PRE-PRODUCTION SAMPLES/PROTOTYPES

- 7.1 Only in cases when a pre-production sample(s) or prototype(s) is/are called for, the Respondent should state here the date required to deliver the necessary pre-production samples(s) or prototype(s) calculated as from the date of notification of acceptance of its Proposal by Transnet:

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- 7.2 NB: Purchase Orders will be placed on the Supplier(s) only after the date of approval of the pre-production sample(s).

- 7.3 State the number of days/weeks/months after which delivery would commence subject to Transnet's approval of the pre-production sample(s) or prototype(s), calculated as from the date of such approval:

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## 8 MANUFACTURERS

The Respondents must state hereunder the actual manufacturer(s) of the Goods tendered for:

- 8.1 Local Manufacturer(s):

RFP ITEM NO.	NAME	BUSINESS ADDRESS

**THE ABOVE TABLE IS AN EXAMPLE OF INFORMATION REQUIRED.**

## 9 INSPECTION DETAILS

The Respondents must state the actual name(s) and address/addresses of the suppliers of the Goods for inspection purposes only:

### 9.1 Local Manufacturer(s)

RFP ITEM NO.	NAME	BUSINESS ADDRESS

**THE ABOVE TABLE IS AN EXAMPLE OF INFORMATION REQUIRED.**

## 10 ACTUAL CLOTH / FABRIC SUPPLIER

The Respondents must state hereunder the actual cloth / fabric supplier:

Name of Company	Contact Person	Telephone number

**THE ABOVE TABLE IS AN EXAMPLE OF INFORMATION REQUIRED.**

## 11 IMPORTED CONTENT

The Respondents must state hereunder the value and percentage of the imported content as well as the country of origin in respect of each item tendered for:

RFP ITEM NO / DESCRIPTION.	VALUE	% COST	COUNTRY OF ORIGIN

Note: Where more than one country is applicable to one item, the Respondents must furnish this information separately.

## 12 EXCHANGE AND REMITTANCE (TO BE CHANGE)

The attention of the Respondents is directed to clause 16 *[Exchange and Remittance]* of the General Bid Conditions appended hereto. Where a bid is subject to foreign exchange, the % of the price that is subject to foreign exchange must be indicated next to each item. Should a bid be successful where foreign exchange is applicable, the successful bidder will be expected to secure Forward Exchange Cover (FEC) Contracts to fix the price in ZAR. The bidder will be required to secure the FEC immediately after receipt of any and all purchase orders issued against the supply contract.

### 13 PENALTY FOR DELAYS IN DELIVERY

If the Service Provider fails to effect delivery of any portion of the deliverables within the period(s) stipulated in the contract ("Delivery Schedule"), the Client shall have the right to retain as a penalty one-fourteenth per cent of the actual amount due in respect of the deliverable delayed for each day of the period of delay. Any amount recoverable from the Service Provider in terms of this clause may, without prejudice to any other legal remedies available to the Client, be deducted in whole or in part from any monies in the hands of the Client due for payment to the Service Provider

### 14 LOCAL CONTENT DIRECTIVE

On 16th July 2012 the National Treasury issued an instruction regarding the local content with regards to the clothing and textile industry. (Refer to annexure F). In non-verbatim extract, the instruction states that bids in respect of Textiles, Clothing, Leather and Footwear must contain a specific bidding condition that:

- (1) Only locally produced or locally manufactured Textiles, Clothing, Leather and Footwear from local raw material or input will be considered
- (2) If the raw material or input to be used for a specific item is not available locally, bidders should obtain written authorization from the DTI should there be a need to import such raw material or input; and
- (3) A copy of the authorization letter must be submitted together with the bid document at the closing date and time of the bid.
- (4) As per the instruction note by the National Treasury the Department of Trade and Industry (DTI) has designated and determined the stipulated minimum threshold for the Textiles, Clothing, Leather and Footwear sector for local production and content.
- (5) The stipulated minimum threshold percentages for local production and content for the Textiles, Clothing, Leather and Footwear sector is 100%. (refer to the attached directive ~ (Annexure F - SATS 1286:2011)
- (6) On the pricing and delivery schedule contained in Section 3, Annexure A of this RFP, bidders must clearly state whether the products being offered are 100% local content or not. If not, the bidders must indicate which % is local and attach a summary detailing the imported portion per item.
- (7) Such statements in the Pricing and Delivery Schedule will be legally binding and no deviation(s) will be accepted at time of delivery and hence the onus to confirm local content lies entirely with the bidder, prior to submitting the bid.
- (8) It is a prerequisite of the Preferential Procurement Policy Framework Regulations 2011 that all procurement activities undertaken by Transnet which involve "designated sectors" [i.e. the purchase of textile, clothing, and/or buses [bus bodies]] shall be subject to the requirements of Regulation 9(1) thereof. Since this RFP falls within these designated sectors, "local content" is a pre-qualification for this acquisition of Security Uniform Clothing. The stipulated minimum threshold for Textiles, Clothing, Leather and Footwear sector is 100%. Only locally produced or locally manufactured Textiles, Clothing, Leather and Footwear with this stipulated minimum threshold for local production will be considered.
- (9) Transnet reserves the right to evaluate bids in accordance with any instructions issued by National Treasury. Transnet also reserves the right to approach the Minister of Finance for exemption from the Regulations or instructions and to evaluate the bids in accordance with such exemption if granted.
- (10) Respondents must complete and return the Declaration Certificate for Local Production and Content appended hereto as Annexure A, B (SBD6.2), C, D & E Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 must be used to calculate local content.

leather and footwear, power pylons, rolling stock [locomotives and wagons], canned/processed vegetables

## 15 PRE / POST COMPLIANCE REQUIREMENTS, TECHNICALITIES AND REMARKS:

### 15.1 CAPABILITY REPORT

- a. It is a condition of bid that a capability report (all pages) issued by an organization accredited or recognized by SANAS, which proves that the bidder / manufacturer is capable to manufacture the product(s) in accordance with the relevant specification(s), be submitted with the tender document.
- b. The capability report must refer to the specific item(s) tendered for. If the report does not refer to the specific item(s) the tender will automatically be disqualified.
- c. In the event of the bidder not being the actual manufacturer and will be sourcing the products from another company a valid capability report from the manufacturer who manufactures the product(s) must be submitted with the tender.
- d. The capability report must not be older than 12 months
- e. Failure to submit a capability report will result in your bid being disqualified

### 15.2 COMPLIANCE TO BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA)

In terms of the BCEA a minimum wage must be paid to all employees. Kindly indicate the minimum hourly wage being paid to your employees, in the table below.

Current actual minimum hourly wage being paid to employees	R _____ / hour
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Furthermore, any bidder who is a member of the National Bargaining Council for the Clothing Workers Industry may attach the Bargaining Council certificate to the submission. However and regardless, the above table must also be completed.

### 15.3 COMPLIANCE TO SPECIFICATION

Full compliance to the specification / catalogue is required and non-compliance will result in the bid not progressing to the next stage of the evaluation.

## 16 NATIONAL REPRESENTATION / FOOTPRINT

Respondents must state if they have any branches/factories country wide

Yes \_\_\_\_\_ No \_\_\_\_\_ (if yes, below, kindly indicate the locations where such premises are situated)

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## 17 SERVICE LEVELS

17.1 An experienced account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.

17.2 Transnet will have monthly reviews with the Supplier's account representative on an on-going basis.

17.3 Transnet reserves the right to request that any member of the Supplier's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.

17.4 The Supplier will be measures on the following:

- a) Random checks on compliance with quality/quantity/specifications
- b) On-time delivery

17.5 The Supplier must provide a telephone number for customer service calls.

17.6 Failure of the Supplier to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] days' notice to the Supplier of its intention to do so.

### Acceptance of Service Levels:

YES		NO	
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## 18 TOTAL COST OF OWNERSHIP AND CONTINUOUS IMPROVEMENT INITIATIVES

18.1 Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with Transnet in its continuous improvement initiatives to reduce the total cost of ownership [TCO].

### Accepted:

YES		NO	
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If "yes", please specify details in paragraph 18.2 below.

18.2 Respondents must briefly describe their commitment to TCO and continuous improvement initiatives and give examples of specific areas and strategies where cost reduction initiatives can be introduced. Specific areas and proposed potential savings percentages should be included. Additional information can be appended to the Respondent's Proposal if there is insufficient space available below.

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## 19 RISK

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

**19.1 Quality and specification of Goods delivered:**

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**19.2 Continuity of supply:**

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

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**19.4 Compliance with the National Railway Safety Regulator Act, 16 of 2002:**

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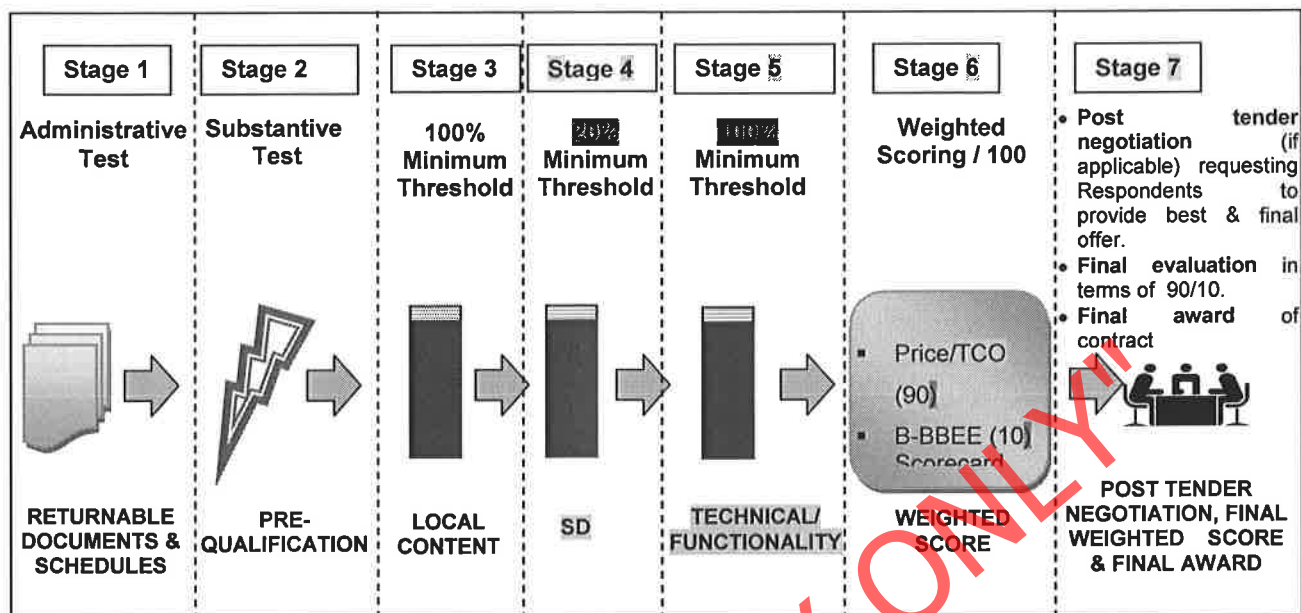
**20 REFERENCES**

Please indicate below a minimum of four company names and contact details of previous and/or existing customers whom Transnet may contact to seek third party evaluations of your current service levels:

NAME OF COMPANY	CONTACT PERSON	TELEPHONE

## 21 PRE-QUALIFICATION AND EVALUATION METHODOLOGY AND CRITERIA

Transnet will utilise the following methodology and criteria in selecting a preferred Supplier, if so required:



### 21.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
• Whether the Bid has been lodged on time	Section 1 paragraph 3
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 4
• Verify the validity of all returnable documents	Section 4, page 31,32 and 33

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

## 21.2 STAGE TWO: Test for Substantive Responsiveness to RFP

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

Pre-Qualification Criteria	RFP Reference
<ul style="list-style-type: none"> <li>Whether any pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>Section 1 paragraphs 6, 10.3</i> <i>Section 4 – validity period</i> <i>Section 8, General Bid Conditions clause 19</i> <i>Sections 6, 10, 11</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a priced offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	<i>All Sections</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a commitment that the monetary value of all SD initiatives to be undertaken by the Respondent will not be less than 20 % [Twenty percent] of the contract value.</li> </ul>	<i>Section 1 paragraph 5.5</i>

***The test for substantive responsiveness [Stage Two] must be passed for a Respondent's Proposal to progress to Stage Three for the evaluation of Local Content***

## 21.3 STAGE THREE: Test Minimum Threshold for Local Content

PRE-QUALIFICATION CRITERION	RFP REFERENCE
<ul style="list-style-type: none"> <li>100% Local Content of Goods offered</li> </ul>	<i>Section 2, paragraph 3.2</i> <i>Annexures B and C</i>

***The test for meeting the Local Content threshold [Stage Three] must be passed for a Respondent's proposal to progress to Stage Four for further pre-qualification***

## 21.4 STAGE FOUR: Test Minimum Threshold of 20% for Supplier Development Initiatives

**Supplier Development Bid Document and SD Value Summary:**

*[Refer Section 16, plus Annexure G*

PRE-QUALIFICATION CRITERIA	RFP REFERENCE
Supplier Development Bid Document: <ul style="list-style-type: none"> <li>Job creation</li> <li>Job Preservation</li> <li>Small business promotion</li> </ul>	
Supplier Development Value Summary	<i>Annexure G</i>

***The test for meeting the SD threshold [Stage Four] must be passed for a Respondent's proposal to progress to Stage Five for further pre-qualification***

**21.5 STAGE FIVE: Test Minimum Threshold of 100% for Technical Criteria and Functional Requirements**

The test for the Technical and Functional threshold will include the following with the threshold indicated per sub-criteria:

Pre-Qualification Criteria	% Weightings	RFP Reference
• Capability Report (100%)	100	Section 2, paragraph 15.1
• Compliance to Basic Conditions of Employment Act (100%)	100	Section 2, paragraph 15.2
• Compliance to Specification (100%)	100	Section 2, paragraph 15.3
• Delivery lead times (80%)	80	Section 2 paragraph 7.3 & Section 3 Annexure "A"

The following applicable values will be utilised when scoring each criterion mentioned above:

Points	Interpretation
0	Non Responsive
1	Poor
2	Average
3	Good
4	Very good
5	Excellent

***The minimum threshold for technical/functionality [Stage Five] must be met or exceeded for a Respondent's Proposal to progress to Stage Six for final evaluation***

**21.6 STAGE SIX: Evaluation and Final Weighted Scoring**

**a) Broad-Based Black Economic Empowerment criteria** [Weighted score 10 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form [Annexure A]

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

B-BBEE Status Level of Contributor	Number of points (90/10 system)
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

**21.7 SUMMARY: Pre-Qualification Threshold and Final Evaluated Weightings**

Pre-Qualification Criteria	Minimum Threshold [%]
Local Content	100%
Supplier Development	20%
Technical / functionality	80 - 100% as indicated

Evaluation Criteria	Final Weighted Scores
Price and Total Cost of Ownership	90
B-BBEE - Scorecard	10
<b>TOTAL SCORE:</b>	<b>100</b>

**21.8 STAGE FIVE/SIX: Post Tender Negotiations (if applicable)**

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 90/10 and the contract will be negotiated and awarded to the successful Respondent(s).



**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 3 : PRICING, BRAND AND DELIVERY SCHEDULE**

Respondents are required to complete the attached table:

**Notes to Pricing:**

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) Prices to be quoted on a delivered basis to Warehouse 762, Langlaagte
- c) Transnet requires that pricing be fixed for 12 month periods. Confirm same below.

Prices fixed for 12 month periods: (YES / NO) \_\_\_\_\_ (insert whichever is applicable)

If "NO" for what period will the price be firm \_\_\_\_\_

**PROPOSED ESCALATION FORMULA:**

Prices will be subject to review and escalation annually in terms of the Production Price Index (PPI). Base pricing will be adjusted in terms of Table 1 –PPI for final manufactured goods and the applicable increase will apply. Price adjustments are to include all cost variations through the 12 month periods between reviews. Requests for price adjustments must be submitted annually, 2 months prior to the intended effective date and will need to be agreed between the parties.

**PRICING, BRAND AND DELIVERY SCHEDULE. SECTION 3 ANNEXURE "A"**  
**RFP HOAC/HO/9715 BELTS**

**BELTS**

TFR Item #	Short Text	UOM	Estimated quantity	100% Local (Y /N)	Price	Delivery Time (weeks)	Remarks
35154084	BELT TRSRS;MTRL LEATHR, WAIST 75 CM,BLACK	EA	639				
35154096	BELT TRSRS;MTRL LEATHR, WAIST 80 CM,BLACK	EA	1576				
35154100	BELT TRSRS;MTRL LEATHR, WAIST 85 CM,BLACK	EA	2571				
35154112	BELT TRSRS;MTRL LEATHR, WAIST 90 CM,BLACK	EA	3598				
35154124	BELT TRSRS;MTRL LEATHR, WAIST 95 CM,BLACK	EA	4434				
35154136	BELT TRSRS;MTRL LEATHR, WAIST 100 CM	EA	5976				
35154148	BELT TRSRS;MTRL LEATHR, WAIST 105 CM	EA	3394				
35154161	BELT TRSRS;MTRL LEATHR, WAIST 110 CM	EA	2813				
35154173	BELT TRSRS;MTRL LEATHR, WAIST 115 CM	EA	1423				
35154185	BELT TRSRS;MTRL LEATHR, WAIST 120 CM	EA	800				
35154197	BELT TRSRS;MTRL LEATHR, WAIST 125 CM	EA	405				
35154201	BELT TRSRS;MTRL LEATHR, WAIST 130 CM	EA	295				
35154213	BELT TRSRS;MTRL LEATHR, WAIST 135 CM	EA	328				
35154214	BELT TRSRS;MTRL LEATHR, WAIST 140 CM	EA	0				
35154215	BELT TRSRS;MTRL LEATHR, WAIST 145 CM	EA	12				
35154216	BELT TRSRS;MTRL LEATHR, WAIST 150 CM	EA	7				
35154217	BELT TRSRS;MTRL LEATHR, WAIST 155 CM	EA	5				
35154218	BELT TRSRS;MTRL LEATHR, WAIST 160 CM	EA	7				
35154219	BELT TRSRS;MTRL LEATHR, WAIST SPCL,BLACK	EA	0				
35099612	BELT TRSRS;LEATHR, WAIST 75 CM,BLACK	EA	5				
35099624	BELT TRSRS;LEATHR, WAIST 80 CM,BLACK	EA	5				
35099636	BELT TRSRS;LEATHR, WAIST 85 CM,BLACK,MALE	EA	15				Quote to sample
35099648	BELT TRSRS;LEATHR, WAIST 90 CM,BLACK	EA	15				
35099661	BELT TRSRS;LEATHR, WAIST 95 CM,BLACK	EA	26				
35099673	BELT TRSRS;LEATHR, WAIST 100 CM,BLACK	EA	8				
35099685	BELT TRSRS;LEATHR, WAIST 105 CM,BLACK	EA	32				
35099697	BELT TRSRS;LEATHR, WAIST 110 CM,BLACK	EA	20				
35099701	BELT TRSRS;LEATHR, WAIST 115 CM,BLACK	EA	2				
35099713	BELT TRSRS;LEATHR, WAIST 120 CM,BLACK	EA	4				
35099725	BELT TRSRS;LEATHR, WAIST 125 CM,BLACK	EA	14				
35099737	BELT TRSRS;LEATHR, WAIST 130 CM,BLACK	EA	5				Quote to sample
35099749	BELT TRSRS;LEATHR, WAIST 135 CM,BLACK	EA	4				
35099750	BELT TRSRS;LEATHR, WAIST 140 CM,BLACK	EA	2				
35099751	BELT TRSRS;LEATHR, WAIST 145 CM,BLACK	EA	5				
35099752	BELT TRSRS;LEATHR, WAIST 150 CM,BLACK	EA	5				
35099753	BELT TRSRS;LEATHR, WAIST 155 CM,BLACK	EA	5				

**PRICING, BRAND AND DELIVERY SCHEDULE. SECTION 3 ANNEXURE "A"**  
**RFP HOAC/HO/9715 BELTS**

**BELTS**

TFR Item #	Short Text	UOM	Estimated quantity	100% Local (Y / N)	Price	Delivery Time (weeks)	Remarks
35099754	BELT TRSRs;LEATHR,WAIST 160 CM,BLACK	EA	5				Quote to sample
35099755	BELT TRSRs;LEATHR,WAIST 165 CM,BLACK	EA	2				
35099756	BELT TRSRs;LEATHR,WAIST SPCL,BLACK	EA	0				
35161456	BELT TRSRs;LEATHR,WAIST 75 CM,BLACK	EA	2				Quote to sample
35161468	BELT TRSRs;LEATHR,WAIST 80 CM,BLACK	EA	5				
35161481	BELT TRSRs;LEATHR,WAIST 85 CM,BLACK	EA	15				
35161493	BELT TRSRs;LEATHR,WAIST 90 CM,BLACK	EA	14				Quote to sample
35161508	BELT TRSRs;LEATHR,WAIST 95 CM,BLACK	EA	28				
35161521	BELT TRSRs;LEATHR,WAIST 100 CM,BLACK	EA	14				
35161533	BELT TRSRs;LEATHR,WAIST 105 CM,BLACK	EA	40				Quote to sample
35161545	BELT TRSRs;LEATHR,WAIST 110 CM,BLACK	EA	20				
35161557	BELT TRSRs;LEATHR,WAIST 115 CM,BLACK	EA	2				
35161569	BELT TRSRs;LEATHR,WAIST 120 CM,BLACK	EA	4				Quote to sample
35161570	BELT TRSRs;LEATHR,WAIST 125 CM,BLACK	EA	14				
35161582	BELT TRSRs;LEATHR,WAIST 130 CM,BLACK	EA	4				
35161594	BELT TRSRs;LEATHR,WAIST 135 CM,BLACK	EA	4				Quote to sample
35161609	BELT TRSRs;LEATHR,WAIST 140 CM,BLACK	EA	2				
35161610	BELT TRSRs;LEATHR,WAIST 145 CM,BLACK	EA	2				
35161622	BELT TRSRs;LEATHR,WAIST 150 CM,BLACK	EA	2				Quote to sample
35161634	BELT TRSRs;LEATHR,WAIST 155 CM,BLACK	EA	2				
35161646	BELT TRSRs;LEATHR,WAIST 160 CM,BLACK	EA	2				
35161658	BELT TRSRs;LEATHR,WAIST 165 CM,BLACK	EA	4				Quote to sample
35161671	BELT TRSRs;LEATHR,WAIST SPECIAL CM,BLACK	EA	0				

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 4: PROPOSAL FORM**

I/We \_\_\_\_\_

*[name of entity, company, close corporation or partnership]*

of *[full address]*

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

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

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

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

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as the case may be, dated \_\_\_\_\_ a certified copy of which is annexed hereto, hereby offer to supply the above-mentioned Goods at the prices quoted in the schedule of prices in accordance with the terms set forth in the accompanying letter(s) reference \_\_\_\_\_ and dated \_\_\_\_\_ *[if any]* and the documents listed in the accompanying schedule of RFP documents.

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

- (i) Terms and Conditions of Contract - Goods;
- (ii) General Bid Conditions – Goods; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Goods within 8 [eight] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of 2 years only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us should the delivery of the Goods be delayed due to non-performance by ourselves.

**ADDRESS FOR NOTICES**

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

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

Name of Entity: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [the Supplier] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Supplier and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

**VALIDITY PERIOD**

Transnet requires a validity period of 90 [ninety] days [from closing date] against this RFP.

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

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

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

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

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

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

**CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to complete and return a signed copy of the Non-Disclosure Agreement appended hereto as **Section 15**. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Goods, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

**DISCLOSURE OF PRICES TENDERED**

Respondents must indicate below whether Transnet may disclose their tendered prices and conditions to other Respondents:

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

**RETURNABLE DOCUMENTS**

**Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

- a) Respondents are required to submit with their Proposals the **mandatory Returnable Documents**, as detailed below.

***Failure to provide all these Returnable Documents will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these Documents are returned with their Proposals.***

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these mandatory Returnable Documents by so indicating [✓] in the table below:

Returnable Documents	Submitted [Yes/No]
SECTION 2 : Background, Overview and Scope of Requirements	
SECTION 3 : Pricing and Delivery Schedule	
SECTION 5 : Original valid Tax Clearance Certificate [ Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
ANNEXURE B – Declaration Certificate for Local Production and Content [SBD6.2]	
ANNEXURE C – Local Content Declaration: Summary Schedule	
ANNEXURE F : Technical Submission/Questionnaire	
Section 16: Supplier Development Initiatives - Supplier Development Bid Document	
ANNEXURE G : Supplier Development Value Summary	

- b) In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **essential Returnable Documents** as detailed below.



***Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.***

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these essential Returnable Documents by so indicating [✓] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
SECTION 1 : Notice to Bidders	
- Receipt for payment of RFP documents [paragraph 1]	
SECTION 2: Background, Overview and Scope of Requirements	
SECTION 3: Pricing and Delivery Schedule	
SECTION 4 : Proposal Form	
SECTION 5 : Vendor Application Form	
Original cancelled cheque or bank verification of banking details	
Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Certified copy of share certificates [CK1/CK2 if CC]	
- Entity's letterhead	
- Certified copy of valid VAT Registration Certificate	
- Valid B-BBEE Verification Certificate [Large Enterprises and QSEs] - Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [EMEs] - Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
- Certified copy of valid VAT Registration Certificate	
- Audited Financial Statements for previous 3 years	
SECTION 6 : Signing Power - Resolution of Board of Directors	
SECTION 7 : Certificate of Acquaintance with RFP Documents	
SECTION 8 : Certificate of Acquaintance with General Bid Conditions – Goods	
SECTION 9 : Certificate of Acquaintance with Terms and Conditions of Contract	
SECTION 10 : RFP Declaration Form	

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
SECTION 11 : Breach of Law Form	
SECTION 12: RFP Clarification Request Form	
SECTION 13 : Supplier Code of Conduct	
SECTION 14 : Certificate of Acquaintance with Specifications and Drawings	
SECTION 15 : Non-Disclosure Agreement	
ANNEXURE A – B-BBEE Preference Points Claim Form	
ANNEXURE D – Imported Content Declaration: Supporting Schedule to Annexure C	
ANNEXURE E – Local Content Declaration: Supporting Schedule to Annexure C	

- c) In addition to the requirements of paragraphs (a) and b) above, Respondents are further requested to submit with their Proposals the following **additional documents** as detailed below.

Please confirm submission of these additional documents by so indicating [Yes or No] in the table below:

ADDITIONAL DOCUMENTS	SUBMITTED [Yes or No]
Section 17: B-BBEE Improvement Plan	

#### CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

By signing these RFP documents, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

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

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

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

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

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 5 : VENDOR APPLICATION FORM**

*Respondents are to furnish the following documentation and complete the Vendor Application Form below:*

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [**with bank stamp**]
2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members [*where applicable*]
3. **Certified copy** of Certificate of Incorporation, CM29 / CM9 [*name change*]
4. **Certified copy** of Share Certificates [CK1/CK2 if CC]
5. **Original** letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate [RSA entities only]
7. **Certified copy** of VAT Registration Certificate [RSA entities only]
8. A signed letter from your entity's auditor or accountant confirming most recent annual turnover figures
9. **Certified copy** of valid Company Registration Certificate [*if applicable*]

**Note:** *No contract shall be awarded to any South African Respondent whose tax matters have not been declared by SARS to be in order.*

## Vendor Application Form

Entity's trading name						
Entity's registered name						
Entity's Registration Number or ID Number if a Sole Proprietor						
Form of entity [v]	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
How many years has your entity been in business?						
VAT number [if registered]						
Entity's telephone number						
Entity's fax number						
Entity's email address						
Entity's website address						
Bank name			Branch & Branch code			
Account holder			Bank account number			

Postal address				Code	
Physical address				Code	
Contact person					
Designation					
Telephone					
Email					
Annual turnover range [last financial year]	< R5 m		R5 - 35 m		> R35 m
Does your entity provide	Products		Services		Both
Area of delivery	National		Provincial		Local
Is your entity a public or private entity	Public			Private	
Does your entity have a Tax Directive or IRP30 Certificate	Yes			No	
Main product or services [e.g. Stationery/Consulting]					

**Complete B-BBEE Ownership Details:**

% Black ownership		% Black women ownership		% Disabled Black ownership	
Does your entity have a B-BBEE certificate		Yes		No	
What is your B-BBEE status [Level 1 to 9 / Unknown]					
How many personnel does the entity employ		Permanent		Part time	

*If you are an existing Vendor with Transnet please complete the following:*

Transnet contact person			
Contact number			
Transnet Operating Division			

*Duly authorised to sign for and on behalf of Entity / Organisation:*

Name		Designation	
Signature		Date	



**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
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**Section 6 : SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS**

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

It was resolved at a meeting of the Board of Directors held on \_\_\_\_\_ that

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

in his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to this Proposal and any subsequent Agreement for the supply of Goods.

FULL NAME \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE CHAIRMAN

FULL NAME \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE SECRETARY



**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 7 : CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS**

NAME OF ENTITY:

---

1. I/we

---

do hereby certify that i/we acquainted myself/ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by Transnet SOC Ltd for the carrying out of the proposed supply/service/works for which I/we submitted my/our Proposal.

2. I/we furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.

3. I/we understand that the accompanying Bid will be disqualified if this Certificate is found not to be true and complete in every respect.

4. For the purposes of this Certificate and the accompanying Bid, I/we understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:

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

5. The Bidder has arrived at the accompanying Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

6. In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- a) prices;
- b) geographical area where Goods or Services will be rendered [market allocation]
- c) methods, factors or formulas used to calculate prices;
- d) the intention or decision to submit or not to submit, a Bid;

- e) the submission of a Bid which does not meet the specifications and conditions of the RFP;  
or
  - f) bidding with the intention not winning the Bid.
7. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which this RFP relates.
8. The terms of the accompanying Bid have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
9. I/We am/are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 8 : CERTIFICATE OF ACQUAINTANCE WITH THE GENERAL BID CONDITIONS -  
GOODS**

NAME OF ENTITY:

\_\_\_\_\_

I/We

\_\_\_\_\_ do  
hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the General  
Bid Conditions - Goods as received on \_\_\_\_\_ [insert date] from Transnet SOC Ltd for the  
carrying out of the proposed supply for which I/we submitted my/our Proposal.

I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an  
allegation that I/we overlooked any terms and conditions of the General Bid Conditions or failed to take it  
into account for the purpose of calculating my/our offered prices or otherwise.

I/We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the  
entire General Bid Conditions as confirmation in terms of the Returnable Schedule.

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

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT



**GENERAL BID CONDITIONS - GOODS**

**[April 2013]**

"PREVIEW COPY ONLY"

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## 1 DEFINITIONS

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

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

## 2 GENERAL

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

## 3 SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4 USE OF BID FORMS

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



## **5 BID FEES**

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document.
- 5.2 Where necessary, only Respondents that have paid the Bid fee and provided proof of payment when submitting their proposal will be considered.

## **6 VALIDITY PERIOD**

- 6.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.

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

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

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

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must direct such queries to the contact person listed in the RFX Document in the stipulated manner.

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

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the Chairperson or the Secretary of the relevant Acquisition Council.

## **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

After Bids are submitted, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential suppliers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

## **11 RETURNABLE DOCUMENTS**

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

## **12 DEFAULTS BY RESPONDENTS**

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

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

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

12.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as **the Supplier**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:

- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
- b) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or
- c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
- d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- f) has made any misleading or incorrect statement either:
  - (i) in the affidavit or certificate referred to in clause 18 [Notice to Unsuccessful Respondents]; or
  - (ii) in any other document submitted as part of its bid submissionand is unable to prove to the satisfaction of Transnet that:
  - it made the statement in good faith, honestly believing it to be correct; and
  - before making such statement, it took all reasonable steps to satisfy itself of its correctness.
- g) caused Transnet damage, or to incur costs in order to meet the Supplier's requirements which could not be recovered from the Supplier;
- h) has litigated against Transnet in bad faith;
- i) has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 [five] years;
- j) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters;

then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 12.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

- 12.3 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the person with delegated authority within Transnet SOC Ltd Group, whose decision shall be final.
- 12.4 Any disqualification [**Blacklisting**] imposed upon any person or enterprise or company, may also apply to any other enterprise under the same or different names of disqualified persons or enterprise or company [or associates thereof] and may also be applied to any agent or employee of the person or enterprise or company concerned.

### **13 CURRENCY**

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

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

- 14.1 Prices which are quoted subject to confirmation will not be considered.
- 14.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

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

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

### **16 EXCHANGE AND REMITTANCE**

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

## **17 ACCEPTANCE OF BID**

- 17.1 Transnet does not bind itself to accept the lowest priced or any Bid.
- 17.2 Transnet reserves the right to accept any Bid in whole or in part.
- 17.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.4 Where the Respondent has been informed by Transnet of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

## **18 NOTICE TO UNSUCCESSFUL RESPONDENTS**

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

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

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

## **20 CONTRACT DOCUMENTS**

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

## **21 LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall,

therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## **22 IDENTIFICATION**

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

## **23 RESPONDENT'S SAMPLES**

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

## **24 SECURITIES**

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 24 will be for the account of the Supplier.



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

25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [ICC Incoterms 2010] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

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

- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
- b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [ICC Incoterms 2010] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

## **26 EXPORT LICENCE**

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

## **27 QUALITY OF MATERIAL**

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

## **28 DELETION OF ITEMS EXCLUDED FROM BID**

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

## **29 VALUE-ADDED TAX**

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

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

### **30.1 Method of Payment**

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



- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 30.1a) above. Failure to comply with clause 30.1a) above may preclude a Bid from further consideration.

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

### **30.2 Conditional Discount**

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

## **31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS**

### **31.1 Contract Quantities**

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

### **31.2 Delivery Period**

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

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

#### **b) Progress Reports**

The Supplier may be required to submit periodical progress reports with regard to the delivery of the Goods.

#### **c) Emergency Demands as and when required**

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

*Perform the Scope of Supply* section in the Terms and Conditions of Contract will not be applicable in these circumstances.

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

#### **32.1 Copyright**

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

#### **32.2 Drawings and specifications**

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

#### **32.3 Respondent's drawings**

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

#### **32.4 Foreign specifications**

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

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

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

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

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

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

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

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

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

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

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

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

#### 34 CONFLICT WITH ISSUED RFX DOCUMENT

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

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**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 9 : CERTIFICATE OF ACQUAINTANCE WITH THE TERMS AND CONDITIONS OF  
CONTRACT FOR THE SUPPLY OF GOODS TO TRANSNET**

NAME OF ENTITY:

\_\_\_\_\_

I/We

\_\_\_\_\_ do  
hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the Terms  
and Conditions of Contract as received on \_\_\_\_\_ [insert date] from Transnet SOC Ltd for  
the carrying out of the proposed supply for which I/we submitted my/our Proposal.

I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an  
allegation that I/we overlooked any Terms and Conditions of Contract or failed to take it into account for  
the purpose of calculating my/our offered prices or otherwise.

I/We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the  
entire Terms and Conditions of Contract as confirmation in terms of the Returnable Schedule.

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

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT



**TERMS AND CONDITIONS OF CONTRACT  
FOR THE SUPPLY OF GOODS TO TRANSNET  
[April 2013]**

"PREVIEW COPY ONLY"

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## 1 INTRODUCTION

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

## 2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements, the technical specifications for the Goods and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Supplier [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;
- 2.6 **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 the 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
  - o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.9 **Expiry Date** means [●];
- 2.10 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;
- 2.11 **Goods** means [●], the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;
- 2.12 **ICC Incoterms 2010** means the set of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [Transnet] and the seller [the Supplier]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of the Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for the Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;

- 2.13 **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;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.16 **Party** means either one of these Parties;
- 2.17 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.18 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.19 **Price(s)** means the agreed Price(s) for the Goods to be purchased from the Supplier by Transnet, as detailed in the Schedule of Requirements, issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;
- 2.20 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier for the supply of Goods or ancillary Services;
- 2.21 **Services** means Services provided to Transnet including activities such as consultation, advisory services, implementation services and day-to-day assistance provided by the Supplier, pursuant to the Schedule of Requirements in terms of the Agreement;
- 2.22 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.23 **Schedule of Requirements** means Schedule 1 hereto;
- 2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- 2.26 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.27 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking; and
- 2.28 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

### 3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word or phrase used in the Agreement, other than those defined under the clause heading "*Definitions*" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

### 4 NATURE AND SCOPE

- 4.1 The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the supply to Transnet of the Goods which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier in accordance with the Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements.
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements in accordance with procedures set out in clause 28 [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Schedule of Requirements conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

### 5 AUTHORITY OF PARTIES

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

## 6 DURATION AND CANCELLATION

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if the Agreement is [●] and the duration shall be for a [●] [[●]] year period, expiring on [●], unless:
- a) the Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
  - b) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2 Notwithstanding clause 16 [*Breach and Termination*], either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party, provided that in such instance, the Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## 7 GENERAL OBLIGATIONS OF THE SUPPLIER

### 7.1 The Supplier shall:

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



7.2 The Supplier acknowledges and agrees that it shall at all times:

- a) render the supply of the Goods and ancillary Services and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- g) treat all enquiries from Transnet in connection with the supply of the Goods and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods or ancillary Services to Transnet.

7.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods and ancillary Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of the Agreement,



to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## **8 INVOICES AND PAYMENT**

- 8.1 Transnet shall pay the Supplier the amounts stipulated in each Purchase Order, subject to the terms and conditions of the Agreement.
- 8.2 Transnet shall pay such amounts to the Supplier upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Supplier for the delivery of the Goods ordered, in terms of clause 8.4 below.
- 8.3 All Prices set out in the Agreement and the Schedule of Requirements hereto are exclusive of VAT.
- 8.4 Unless otherwise provided for in the Schedule of Requirements appended to the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] days after date of receipt by Transnet of the Supplier's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 8.5 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause 8, the Supplier shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 8.6 The Supplier shall remain the owner of all plant, material, machinery, equipment and the like [collectively, the Supplier's Goods] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

## **9 PRICE ADJUSTMENTS**

- 9.1 Prices for Goods supplied in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements annexed hereto.
- 9.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Goods.
- 9.3 Pursuant to clause 9.2 above, the Supplier shall keep full and accurate records of all costs associated with the supply of the Goods to Transnet, in a form to be approved in writing by Transnet. The Supplier shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- 9.4 Should Transnet and the Supplier fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 25 of the Master Agreement [Dispute Resolution].

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

## 10 WARRANTIES

The Supplier warrants that:

- 10.1 pursuant to clause 7.3 [*General Obligations of the Supplier*], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;
- 10.2 the execution and performance of the Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and
- 10.3 It has taken all reasonable precautions to ensure that, in the event of a disaster, the Impact of such disaster on the ability of the Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

## 11 THIRD PARTY INDEMNITY

The Supplier hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 10.2 above.

## 12 INSPECTION

- 12.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.

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

### **13 DEFECTIVE GOODS**

- 13.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in the Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.
- 13.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.
- 13.3 If such Goods are rejected, the Supplier will pay the following costs:
- a) for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or
  - b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and Insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have

been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.

- 13.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.
- 13.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.
- 13.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.
- 13.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

#### 14 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY

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

- a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or
- b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out with reasonable adherence to the promised delivery rate(s) or time(s),

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

- 14.2 The Supplier shall thereupon, as soon as possible after such date, deliver to Transnet the Goods [if any] already completed, and payment for the part performance shall be made on a *pro rata* basis, provided the uncompleted part is not an integral or essential part of the completed Goods. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier will be calculated on the basis of Transnet's enrichment. The Supplier shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.
- 14.3 Whenever, in any case not covered by clause 14.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods as required by the terms of the Agreement or Purchase Order, or if any Goods are rejected on any of the grounds mentioned in clause 13 [Defective Goods], Transnet may cancel the Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.



## 15 RIGHTS ON CANCELLATION

- 15.1 If the Agreement or Purchase Order is cancelled in whole or in part in terms of clause 14 [*Total or Partial Failure to Perform the Scope of Supply*], Transnet may execute or complete the Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's default.
- 15.2 Any amount which may be recoverable from the Supplier in terms of clause 15.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier.

## 16 BREACH AND TERMINATION

- 16.1 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 10 [ten] Business Days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 16.2 Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts;
  - b) its winding-up or dissolution;
  - c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
  - d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 16.3 Transnet may terminate the Agreement at any time within 2 [two] months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 16.4 Notwithstanding this clause 16, Transnet may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the Service Provider.
- 16.5 The provisions of clauses 2 [*Definitions*], 10 [*Warranties*], 15 [*Rights on Cancellation*], 19 [*Confidentiality*], 21 [*Limitation of Liability*], 22 [*Intellectual Property Rights*], 25 [*Dispute Resolution*] and 29.1 [*Governing Law*] shall survive termination or expiry of the Agreement.

## 17 CESSION

- 17.1 Upon written notice to the Supplier, Transnet shall be entitled:
- a) to appoint Transnet's financier of the Goods as first payer under the Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and

- b) to cede, assign and transfer its right, title and interest in the Goods to such financier as part of the funding consideration for the Goods.

17.2 The Supplier is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of the Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

## 18 FORCE MAJEURE

18.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under the 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, 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.

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

## 19 CONFIDENTIALITY

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

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
- 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 the Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the



composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;

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

19.2 The duties and obligations with regard to Confidential Information in this clause 19 shall not apply where:

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

19.3 This clause 19 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to

the Supplier by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## **20 INSURANCES**

- 20.1 Without limiting the liability of the Supplier under the Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against including any liability it may have as a result of its activities under the Agreement for theft, destruction, loss of or damage to Goods, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier.
- 20.2 The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] days after date of policy renewals.
- 20.3 Subject to clause 20.4 below, if the Supplier fails to effect adequate insurance under this clause 20, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.
- 20.4 In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 20.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Supplier or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

## **21 LIMITATION OF LIABILITY**

- 21.1 The Supplier's liability under this clause 21 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to the Agreement.
- 21.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
  - b) fraud.
- 21.3 Neither Party accepts liability for damages and claims of a special, indirect or consequential nature arising as a result of the performance or non-performance of the Agreement, provided that such loss, damages or claims are not the direct result of the wilful acts or omissions and/or negligence or of any event which could reasonably have been foreseen and avoided on the part of the other Party. The phrase, "special, indirect or consequential" is deemed to include economic loss, loss of opportunity, loss of profit or revenue, and loss or damage in connection with claims against the principal by third parties.

21.4 Nothing in this clause 21 shall be taken as limiting the liability of the Parties in respect of clauses 19 [*Confidentiality*] and 22 [*Intellectual Property Rights*].

## 22 INTELLECTUAL PROPERTY RIGHTS

### 22.1 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 licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier to sub-license to other parties.
- c) The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Supplier shall grant Transnet access to the Supplier's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

### 22.2 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 the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- 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 the Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

- e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld], the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

### **22.3 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.

### **22.4 Unauthorised Use of Confidential Information**

The Supplier shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

### **22.5 Unauthorised Use of Intellectual Property**

- a) 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.
- b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- c) The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

## **23 NON-WAIVER**

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

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

## 24 PARTIAL INVALIDITY

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

## 25 DISPUTE RESOLUTION

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

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

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

25.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 25.

25.5 This clause 25 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

25.6 This clause 25 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## 26 ADDRESSES FOR NOTICES

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

### a) Transnet

(i) For legal notices:

[•]

Fax No. [•]

Attention: Legal Department

(ii) For commercial notices:

[•]

Fax No. [•]

Attention: [•]

### b) The Supplier

(i) For legal notices:

[•]

Fax No. [•]

Attention: [•]



(ii) For commercial notices: [•]

Fax No. [•]

Attention: [•]

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

26.3 Any notice shall be deemed to have been given:

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

## 27 WHOLE AND ONLY AGREEMENT

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

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

## 28 AMENDMENT AND CHANGE CONTROL

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

## 29 GENERAL

### 29.1 Governing Law

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

### 29.2 Change of Law

In the Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 25 [*Dispute Resolution*] above.



**29.3 Counterparts**

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

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"PREVIEW COPY ONLY"

**Respondents should also note the obligations as set out in  
clause 19 [Terms and Conditions of Contract]  
of the General Bid Conditions which reads as follows:**

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

"PREVIEW COPY ONLY"

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 10 : RFP DECLARATION FORM**

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

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

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];
3. 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 entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and
5. furthermore, we declare that a family, business and/or social relationship exists / does not exist [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group.
6. If such a relationship exists, Respondent is to complete the following section:

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

ADDRESS:

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Indicate nature of relationship with Transnet:

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

7. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
8. 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].
9. We further accept that Transnet reserves the right to reverse an award of business 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 hereto	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 RFPs exceeding R5,000,000.00 [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.
- It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).
- An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net)
- For transactions below the R5,000,000.00 [five million S.A. Rand] threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.
- All 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.

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
FOR A PERIOD OF TWO (2) YEARS**

**Section 11 : BREACH OF LAW FORM**

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

I/We \_\_\_\_\_

do hereby certify that *I/we have/have not been* found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

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

DATE OF BREACH: \_\_\_\_\_

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

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

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT



**RFP FOR THE SUPPLY AND DELIVERY OF  
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**Section 12 : RFP CLARIFICATION REQUEST FORM**

RFP No: HOAC/HO/9715

RFP deadline for questions / RFP Clarifications: Before 12:00 on 28 June 2013

TO: Transnet SOC Ltd  
ATTENTION: The Secretary, Transnet Acquisition Council [TAC]  
EMAIL: prudence.nkabinde@transnet.net  
DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_

RFP Clarification No [to be inserted by Transnet] 

**REQUEST FOR RFP CLARIFICATION**

"PREVIEW COPY ONLY"

Respondent's Signature

Date & Company Stamp

**RFP FOR THE SUPPLY AND DELIVERY OF  
BELTS  
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**Section 13 : SUPPLIER 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:

- 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 Preferential Procurement Policy Framework Act [PPPFA];
- The Broad-Based Black Economic Empowerment Act [B-BBEE]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFP to formally apprise prospective Transnet Suppliers of Transnet's expectations regarding the 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 Company [SOC], 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.

a) *Transnet will not participate in corrupt practices and therefore 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 and payments to our Suppliers.
- Employees must not accept or request money or anything of value, directly or indirectly, to:
  - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
  - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
  - gain an improper advantage.
- There may be an occasion when a Supplier is confronted with fraudulent or corrupt behaviour by a Transnet employee. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].

b) *Transnet is firmly committed to the ideas of free and competitive enterprise.*

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

c) *Transnet's relationship with Suppliers requires us to clearly define requirements, 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 [e.g. origin of manufacture, specifications, intellectual property rights];
  - collusion;
  - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
  - corrupt activities listed above; and
  - harassment, intimidation or other aggressive actions towards Transnet employees.
- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the Supplier is expected to participate in an honest and straight forward manner.
- Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

### **Conflicts of Interest**

A conflict of interest arises when personal interests or activities influence [or appear to influence] the ability to act in the best interests of Transnet. Examples include, but are not limited to:

- Transnet employees awarding business to entities in which their family members or business associates have an interest
- Transnet employees having a financial interest in a bidding entity

Bidding entities are required to disclose any interest/s which exist between themselves and any employee and/or Transnet Board member.

**RFP FOR THE SUPPLY AND DELIVERY OF  
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**Section 14 : CERTIFICATE OF ACQUAINTANCE WITH SPECIFICATIONS**

I/We \_\_\_\_\_  
do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the Specifications for the carrying out of the proposed supply for which I/we submitted my/our Proposal.

I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any provisions of the Specifications or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.

I/We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the Specifications as confirmation in terms of the Returnable Schedule.

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

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT

**BELT, LEATHER UNISEX**

Reference no. 35/154072

1. MATERIAL NOTE:  
Transnet Limited will supply no material.
2. BELT:  
Made from dyed through vegetable tan full grain leather. Stitched down buckle.  
Rounded point Five (5) holes 2,5 cm pitch for adjustment
3. COLOUR:  
"Black" – Sample which can be viewed at:  
Transnet Supply Chain Services (Clothing)  
Quality Assurance  
Langlaagte
4. SIZE:

(a)	Length	:	As specified in relevant contract/order.
(b)	Width	:	40 mm
(c)	Thickness	:	3,5 to 3,8 mm
5. BUCKLE:  
Prong buckle nickel-plated, square corners and 3 cm long.
6. MAKEUP:  
Belt loop 2 cm wide stitched – in with returned end.
7. PACKING:  
Each belt shall be wrapped in Plastic envelope and packed in cartons. 6 to 30 per box
8. MARKING OF CARTON:  
Each carton shall bear the following information in legible indelible marking in a position that is visible when boxes are stacked.
  - (a) The contract/order number
  - (b) The item number
  - (c) The manufacturers name.
  - (d) Contents.

**RFP FOR THE SUPPLY AND DELIVERY OF  
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**Section 15 : NON DISCLOSURE AGREEMENT**

Entered into by and between

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

and

\_\_\_\_\_  
Registration Number \_\_\_\_\_

**RFP Number: HOAC/HO/9715**

"PREVIEW COPY ONLY"

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

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



**THIS AGREEMENT is made between****Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/30]whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,**and**

\_\_\_\_\_ **[the Company]** [Registration No. \_\_\_\_\_] whose  
registered office is at \_\_\_\_\_

**WHEREAS**

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

**IT IS HEREBY AGREED****1. INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
  - 1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or

1.3.2 was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and

1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2. CONFIDENTIAL INFORMATION

2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.

2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

2.3 Notwithstanding clause **Error! Reference source not found.** above, the Receiving Party may disclose Confidential Information:

2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause **Error! Reference source not found.** above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or

2.3.2 to the extent required by law or the rules of any applicable regulatory authority, subject to clause **Error! Reference source not found.** below.

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to

any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.

- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

### **3. RECORDS AND RETURN OF INFORMATION**

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
- 3.3.1 return all written Confidential Information [including all copies]; and
  - 3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

### **4. ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### **5. DURATION**

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

### **6. PRINCIPAL**

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

**7. ADEQUACY OF DAMAGES**

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

**8. PRIVACY AND DATA PROTECTION**

8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

**9. GENERAL**

9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.

9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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**RFP FOR THE SUPPLY AND DELIVERY OF  
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**Section 16: SUPPLIER DEVELOPMENT INITIATIVES**

**1.1 Aim and Objectives**

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

The key focuses of the NGP include:

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

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

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

**1.2 Supplier Development [SD]**

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises [DPE]. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework

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



has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix [**IC<sup>3</sup> Matrix**]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC<sup>3</sup> Matrix. This RFP has been identified as strategic, involving high commercial leverage and high value.

Supplier Development Initiatives are a prerequisite for this RFP. Transnet requires Respondents to meet or exceed a threshold of 20% in respect of their SD commitments on this contract.

Accordingly, Respondents are required to provide a commitment of the Supplier Development initiative they will undertake during the contract period. Transnet requires that all Respondents submit a **Supplier Development Bid Document** demonstrating their commitment and support for the New Growth Path Policy and how an appointment in terms of this RFP would assist in achieving the NGP objectives.

The contract which will be concluded with the successful bidder will incorporate the SD undertakings made in the SD Bid Document as a term of the contract.

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

Category	Description
New Industrialisation	Industrial capability building that focuses on globally leading capabilities developed within South Africa
Capability and Capacity Building in South Africa (existing industry)	Industrial capability building that focuses on value-added activities of the South African industry through manufacturing or service-related activities
Transfer of Technology and Intellectual Property Rights [ <b>IPR</b> ]	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Creation/Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms
Rural Integration and Regional Development	Incorporation of the use of rural labour and regional businesses which will contribute to NGP objectives

Green economy / carbon footprint: The potential reduction of the economy's carbon intensity [i.e. creation of a greener economy] should be regarded as a key priority within all the above SD Categories and for all proposed SD initiatives



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

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

Notes for completion of SD Bid Document:

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

### 1.3 Additional contractual requirements

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

- a) The Supplier will be required to submit a Supplier Development Plan within 45 [forty-five] days from the signature date of a Letter of Intent [LOI]. This SD Plan represents additional detail in relation to the SD Bid Document providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the SD Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.
- b) The SD Plan may require certain additions or updates to the initial SD Bid Document in order to ensure that Transnet is satisfied that development objectives will be met.
- c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.
- d) The Supplier will be required to provide:

- (i) monthly status updates to Transnet for each SD initiative. [Detailed requirements will be provided by Transnet];
  - (ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and
  - (iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.
- e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.
- f) The Supplier will be required to submit this SD Plan to Transnet in writing, within 45 [forty-five] days after signature of a Letter of Intent [LOI], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its SD Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.
- g) The contract will be conditional on agreement being reached by the parties on the SD Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the SD Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.
- h) Failure to adhere to the milestones and targets defined in an SD Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

#### 1.4 Supplier Development Documentation

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

Attached herewith is the following documentation:

- **SD Guideline Document – Appendix (v)**

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

- **SD Value Summary – Annexure G**

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

***As these are listed as mandatory returnable documents, failure to submit, or to submit an incomplete Supplier Development Bid Document, which includes all the required Annexures as indicated in this Section, will result in disqualification of your Proposal.***

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**Section 17 : B-BBEE IMPROVEMENT PLAN**

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement and enterprise development will meet or exceed certain minimum targets over the contract period.

**Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) may be contractually committed, *inter alia*, to the following conditions:

- a) The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.
- b) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.
- c) The Supplier will be required to provide:
  - (i) quarterly status reports for Transnet; and
  - (ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.
- d) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals.

**RFP FOR THE SUPPLY AND DELIVERY OF  
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**ANNEXURE A : B-BBEE PREFERENCE POINTS CLAIM FORM**

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

**1. INTRODUCTION**

- 1.1 A total of 10 preference points shall be awarded for B-BBEE Status Level of Contribution.
- 1.2 Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [SANAS] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [IRBA] or an Accounting Officer as contemplated in the Close Corporation Act [CCA] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.
- 1.3 Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

**2. GENERAL DEFINITIONS**

- 2.1 **"all applicable taxes"** include value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **"B-BBEE status of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, works or services;
- 2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];
- 2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;
- 2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;

- 2.8 **"contract"** means the agreement that results from the acceptance of a bid by Transnet;
- 2.9 **"EME"** means any enterprise with an annual total revenue of R5 [five] million or less;
- 2.10 **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **"non-firm prices"** means all prices other than "firm" prices;
- 2.13 **"person"** includes reference to a juristic person;
- 2.14 **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **"subcontract"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
- 2.17 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The Bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFP will be awarded the contract, unless objective criteria justifies the award to another bidder.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored will be rounded off to 2 [two] decimal places.
- 3.4 In the event of equal points scored, the Bid will be awarded to the Bidder scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more Bids have scored equal points including equal preference points for B-BBEE, the successful Bid will be the one scoring the highest score for functionality.
- 3.6 Should two or more Bids be equal in all respect, the award shall be decided by the drawing of lots.

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

- 4.1 In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, 2011, preference points shall be awarded to a Bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

4.2

B-BBEE Status Level of Contributor	Number of Points [Maximum 10]
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

*Note: Refer to Section 1 of the RFP document for further information in terms of B-BBEE ratings.*

- 4.3 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EME's with B-BBEE Status Level Certificates.
- 4.4 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 4.5 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.
- 4.6 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.7 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.
- 4.8 A person will not be awarded points for B-BBEE status level if it is indicated in the Bid documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.
- 4.9 A person awarded a contract may not subcontract more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the



capability and ability to execute the subcontract.

## 5. B-BBEE STATUS AND SUBCONTRACTING

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

B-BBEE Status Level of Contributor \_\_\_\_\_ = \_\_\_\_\_ [maximum of 10 points]

Note: Points claimed in respect of this paragraph 5.1 must be in accordance with the table reflected in paragraph 4.1 above and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the Close Corporation Act.

### 5.2 Subcontracting:

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

If YES, indicate:

- (i) What percentage of the contract will be subcontracted? .....%
- (ii) The name of the subcontractor .....
- (iii) The B-BBEE status level of the subcontractor .....
- (iv) Is the subcontractor an EME? YES/NO

### 5.3 Declaration with regard to Company/Firm

(i) Name of Company/Firm.....

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm

☐ Partnership/Joint Venture/Consortium

☐ One person business/sole propriety

☐ Close Corporations

☐ Company (Pty) Ltd

[TICK APPLICABLE BOX]

(v) Describe Principal Business Activities

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

## (vi) Company Classification

☐ Manufacturer☐ Supplier☐ Professional Service Provider☐ Other Service Providers, e.g Transporter, etc

[TICK APPLICABLE BOX]

(vii) Total number of years the company/firm has been in business.....

"PREVIEW COPY ONLY"

**BID DECLARATION**

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct.
- (ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.
- (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or
  - (e) forward the matter for criminal prosecution.

**WITNESSES:**

1. ....

2. ....

SIGNATURE OF BIDDER

DATE: .....

COMPANY NAME: .....

ADDRESS: .....

.....

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