



**TRANSNET FREIGHT RAIL**, a division of

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

[Hereinafter referred to as **Transnet**]

**REQUEST FOR QUOTATION [RFQ] NO CRAC-JHB-12937**

**FOR THE SUPPLY / PROVISION OF: TRANSNET FREIGHT RAIL CUSTOMISED LEAN SIMULATION TOOLKIT THAT COMPROMISE OF TOOLS AND TRAINING MATERIAL.THE TOOL MUST CATER FOR A CLASS OF 20 PEOPLE PER SESSION FOR A PERIOD OF 8 WEEKS.**

<b>FOR DELIVERY TO</b>	<b>PARKTOWN</b>
<b>ISSUE DATE</b>	<b>21 JANUARY 2014</b>
<b>BRIEFING DATE</b>	<b>N/A</b>
<b>CLOSING DATE :</b>	<b>11 FEBRUARY 2014</b>
<b>CLOSING TIME :</b>	<b>10:00 AM</b>
<b>OPTION DATE:</b>	<b>30 MAY 2014</b>

**ON CLOSING DATE PLEASE SUBMIT TWO (2) DOCUMENTS ORIGINAL & COPY IN ONE ENVELOPE IT MUST BE INSCRIBED ON THE OUTSIDE WITH THE TENDER NUMBER AND THE CLOSING DATE.**



## **Section 1**

### **RFQ NUMBER CRAC-JHB-12937**

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## **NOTICE TO BIDDERS**

Quotations which must be completed as indicated in Section 2 of this RFQ are to be submitted as follows:

**METHOD:** [By hand or courier]

**CLOSING VENUE:** The Secretary, Transnet Freight Rail, Acquisition Council, and Tender Box on the Ground floor, Inyanda House 1, 21 Wellington Road, and Parktown.

### **1 Responses to RFQ**

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

### **2 Broad-Based Black Economic Empowerment [B-BBEE]**

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. Transnet will accordingly allow a "preference" to companies who provide a valid B-BBEE Verification Certificate. All procurement transactions will be evaluated accordingly.

#### **2.1 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:

- Functionality is included at a pre-qualification stage with a prescribed percentage threshold of 60%
- 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 or Services.



- The 80/20 preference point system applies where the acquisition of the Services will be less than R1 000 000.00.
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the RFQ will be cancelled.
- The 80/20 preference point system applies where acquisition of the Services will exceed R1 000 000.00
- If the 90/10 preference point system is stipulated and all Bids received are equal to or below R1 000 000.00, the RFQ will be cancelled.
- In this RFQ, Transnet will apply **80/20** preference point system prescribed in the PPPFA.

In compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011, as from 1 October 2011 valid B-BBEE Verification Certificates must be issued by:

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

Enterprises will be rated by such agencies based on the following:

**a) Large Enterprises [i.e. annual turnover greater than R35 million]:**

- Rating level based on all seven elements of the B-BBEE scorecard

**b) 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

**c) 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 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 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 or accounting officer or a certificate from a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, black ownership / black female ownership, B-BBEE status level and validity date.

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

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- B-BBEE Preference Points Claim Form** 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.

### 3 Communication

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

A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

Name: Koketso Selowa  
Telephone: 011 584 0688  
Email: koketso.selowa@transnet.net

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

Telephone 011 544 9486  
Email [prudence.nkabinde@transnet.net](mailto:prudence.nkabinde@transnet.net)

The tender document is for free

### 4 Tax Clearance

**The Respondent's original valid Tax Clearance Certificate must accompany the Quotation. Failure to provide this document with the RFQ submission will result in disqualification.**

### 5 VAT Registration

The valid VAT registration number must be stated here: \_\_\_\_\_ [if applicable].

### 6 Legal Compliance

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

### 7 Changes to Quotations

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

### 8 Pricing

All prices must be quoted in South African Rand on a fixed price basis, excluding VAT.

### 9 Prices Subject to Confirmation

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

**10 Negotiations**

Transnet reserves the right to undertake post-tender negotiations with selected Respondents or any number of short-listed Respondents.

**11 Binding Offer**

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

**12 Disclaimers**

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

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider; or
- make no award at all.

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 below whether or not they have been found guilty of a serious breach of law during the past 5 [five] years:

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.



### 13 Evaluation Criteria

Transnet will utilise the following criteria [not necessarily in this order] in choosing a Supplier/Service Provider, if so required:

#### **Phase 1: Administrative responsiveness - Completeness of response and returnable documents**

#### **Phase 2: Substantive responsiveness – Prequalification criteria**

- **Compliance to specification**

Toolkit simulate and explains specified Lean principles, the training material should detail the objectives and benefits of using the tools)

- **Free demonstration session for adjudication purposes**

Training session will be provided to TFR employees for free for half a day. The training should educate the employees of Lean principles using physical objects like Lego cars and the team will use those to apply Lean principles. A committee will be selected to evaluate the training material and tools after the session has been concluded.

- **Experience in the field.**

- (Number of years in the field will be used: 0 – 2 years = 5%, 2 - 4 years = 8% and 8 and above = 100%).

- **Tools**

Lean principles explained on the training session.

**FOR SUPPLIER TO MOVE TO THE NEXT STAGE(PHASE 3) THE MINIMUM SCORE OF 60% MUST BE ACHIEVED (PASS).FROM THE ABOVE LISTED PREQUALIFICATION(PHASE)**

#### **Phase 3: COMMERCIAL (80/20 in respect of price and preference claimed points)**

Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts<sup>1</sup> will be critical

B-BBEE status of company

<sup>1</sup> Only unconditional discounts will be taken into account during evaluation. A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment is effected.



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 (80/20 system)
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

#### 14 Validity Period

Transnet desires a validity period of 90 [ninety] days from the closing date of this RFQ.

This RFQ is valid until 04 MAY 2014

#### 15 Banking Details

BANK: \_\_\_\_\_

BRANCH NAME / CODE: \_\_\_\_\_

ACCOUNT HOLDER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

#### 16 Company Registration

Registration number of company / C.C. \_\_\_\_\_

Registered name of company / C.C. \_\_\_\_\_

#### 17 Disclosure of Prices Quoted

Respondents must indicate here whether Transnet may disclose their quoted prices and conditions to other Respondents:

YES

☐

NO

☐

#### 18 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 Quotations the **mandatory Returnable Documents**, as detailed below.

***Failure to provide all these Returnable Documents at the Closing Date and time of this RFQ will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.***



SECTION 2 : Quotation Form	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures / Sub-contractors must submit a separate Tax Clearance Certificate for each party]	

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 [Yes or No] in the table below:

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

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

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 [Yes or No] in the table below:

Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
- Valid B-BBEE Verification Certificate [RSA 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 [RSA 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	
- SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Services to Transnet	
SECTION 4 : 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 C.C.]	
- Entity's letterhead	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	





Returnable Documents	Submitted [Yes or No]
ANNEXURE A – B-BBEE Preference Points Claim Form	

**NB: FAILURE TO OBSERVE ANY OF THE  
AFOREMENTIONED REQUIREMENTS  
MAY RESULT IN A QUOTATION BEING REJECTED**

#### COMPANY INFORMATION

19. STATEMENT OF WORK (S) SUCCESSFULLY CARRIED OUT BY THE TENDERER:

- Tenderers are to advise which other companies have they successfully provided or are currently providing similar services.

Service Description	For whom done	Period	Contact person and Telephone or Cell number




**SECTION 2****RFQ NUMBER CRAC-JHB-12937**

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**QUOTATION FORM**

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

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

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

- the Standard Terms and Conditions for the Supply of Goods or Services to Transnet [Section 3 hereof]; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.



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

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

## PRICE SCHEDULE

### Price Schedule

I/We quote as follows for the goods required, on a "delivered nominated destination" basis, excluding VAT:

Item No	Description of Goods /Services	Unit of Measure	Quantity	Unit Price (ZAR)	Total Price (ZAR)
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Item No	Description of goods/Services	Unit of measure	Quantity	Unit Price (ZAR)	Total Price (ZAR)
1	Develop and delivery of classroom based Lean training simulation material to be used during training session	Customised to TFR Training material	7 copies of training material		
2	1 x free training session for evaluation purpose  Note: the training material for evaluation can be any model and not TFR necessarily as long the principles are Lean.	Training session delivered	1		
3	Delivery of 7 x copies of the customised toolkits (Simulation tools) after approval of the contract for operational areas (Yards)	Toolkit resources customised to TFR eg, Wagon, Loco, telemeter			

**Delivery Lead-Time from date of purchase order:** \_\_\_\_\_ [days/weeks]

### Notes to Pricing:

- a) All Prices must be quoted in South African Rand, exclusive of VAT



- b) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being disqualified.
- c) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional bases

## Purpose

The design of a simulated toolkit which can be used both during a Lean Improvement training session, or be played with shop floor level staff as part of a Lean awareness session.

The objective of the toolkit is to simulate TFR operational problem in a class room environment that all the trainees can familiarize themselves with. The toolkit will be used in conjunction with a Lean Process Improvement Methodology, and operational problems simulated by the toolkit, should be relevant to be solved by Lean Improvement methodologies.

## Technical Specification

### a. Introduction

The purpose of the technical specification is to clearly describe the elements for the proposed Simulation toolkit to be utilized in TFR.

### b. Scope

The scope of this technical specification is as follows:

The scope includes:

- Design, development and delivering of a class room based simulation toolkit to be used during training sessions.
- 1 x Concept design for evaluation purposes.
- Development of TFR training material.
- Delivery of 7 x copies of the toolkits after approval of contract for operational area (Yards).
- Tools used to replicate TFR current resources
- the scope excludes:
- Any updates or continuous improvements to the toolkit

### c. Functional Requirements:

The proposed Lean simulation toolkit shall effectively satisfy the following technical requirements:

- Simulate real life operational problem currently experienced in TFR.
- Should depict typical TFR abbreviations and documentation.
- Trainees should immediately relate the training, to their actual working environment.



- Able to use toolkit in conjunction with a Lean improvement methodology.
- Should stimulate business problems which can be improved with Lean tools.
- Easily transportable to and from venues.
- Should easily be scaled up to create more games if needed.
- The Toolkit shall simulate at least (but not limited) the following key Lean improvement principles:
  - 5s
  - Standardized work, including SOP & work sequencing
  - Visual Management
  - Problem solving (Pareto Analysis, Fishbone and 5 Why)
  - Quality defect/ reworks
  - Takt time
  - Bottleneck / process constraints
  - Heijunka (production levelling)
  - A3 problem solving and reporting
  - Kanban systems
- Should include all forms and material necessary to investigate and solve simulated operational problems, using Lean Improvement Methodologies

### **Section 3**

#### **RFQ NUMBER CRAC-JHB-12937**

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#### **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. A letter on the company's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate



7. **Certified copy** of VAT Registration Certificate
8. **Certified copy** of valid Company Registration Certificate [if applicable]
9. A signed letter from your auditor or accountant confirming most recent annual turnover figures.

## Vendor Application Form

Company trading name			
Company registered name			
Company Registration Number or ID Number if a Sole Proprietor			
Form of entity [v]	CC	Trust	Pty Ltd
	Limited	Partnership	Sole Proprietor
VAT number [if registered]			
Company telephone number			
Company fax number			
Company email address			
Company 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 company provide	Products		Services		Both
Area of delivery	National		Provincial		Local
Is your company a public or private entity			Public		Private
Does your company have a Tax Directive or IRP30 Certificate			Yes		No
Main product or services [e.g. Stationery/Consulting]					

*Complete B-BBEE Ownership Details:*

% Black ownership		% Black women ownership		% Disabled Black ownership	
Does your company have a B-BBEE certificate	Yes	No			
What is your B-BBEE status [Level 1 to 9 / Unknown]					
How many personnel does the firm 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 Company / Organisation:*

Name		Designation	
Signature		Date	





#### Section 4

### **STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS OR SERVICES TO TRANSNET**

**A Supplier shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation 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.**

#### **1 SOLE AGREEMENT**

Unless otherwise agreed in writing, these terms [**Terms** and each **Term**] and Transnet's purchase order(s) [**Order** or **Orders**] represent the only conditions upon which Transnet SOC Ltd [**Transnet**] procures goods or services specified in the Order [collectively, the **Products**] from the person to whom the Order is addressed [**the Supplier**]. Transnet does not accept any other conditions which the Supplier may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

#### **C) CONFORMITY WITH ORDER**

Products shall conform strictly with the Order. The Supplier shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Supplier warrants that the Products shall be fit for their purpose and of satisfactory quality.

#### **D) DELIVERY AND TITLE**

- a. The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier's obligations under the Order.
- b. The Supplier will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier if such a delay becomes, in Transnet's absolute opinion, significant.
- c. Risk of loss or damage to Products shall pass to Transnet on delivery, and title shall pass to Transnet when payment to the Supplier for the Products has been effected.
- d. If on delivery, the Products do not conform to the Order, Transnet may reject the Products and the Supplier shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Products at the Supplier's expense within the specified delivery times, without any liability due by Transnet. Products shall be subject to such testing and/or inspection as Transnet may consider necessary.



**E) PRICE AND PAYMENT**

- a. Prices specified in an Order cannot be increased. Payment for the Products shall be made by Transnet against an original undisputed invoice(s) [a **Tax Invoice**], supporting documentation and month-end statement from the Supplier. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.
- b. Payment of the Supplier's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorised additional expenses incurred, provided that the authorised expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier, taking into account any deduction or set-off and bank charges.

**F) PROPRIETARY RIGHTS LIABILITY**

If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Products or any written material provided to Transnet relating to any Products or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Supplier hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Supplier following a design or process originated and furnished by Transnet. The Supplier shall either

procure for Transnet the right to continue using the infringing Products; or

modify or replace the Products so that they become non-infringing,

provided that in both cases the Products shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier may remove, with Transnet's prior written consent, such Products and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier shall have no liability in respect of any continued use of the infringing Products after Supplier's prior written request to remove the same.

**G) PROPRIETARY INFORMATION**

All information which Transnet has divulged or may divulge to the Supplier and any information relating to Transnet's business which may have come into the Supplier's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Supplier shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

**H) DEVELOPMENT WORK IN THE PRODUCTION OF PRODUCTS**

If the production or provision of any Products involves research and/or development which is wholly or partly funded by Transnet, then all intellectual property or other rights as a result thereof shall be the property of Transnet on creation.

**I) PUBLICITY**

The Supplier shall not name Transnet or use its trademarks, service marks [whether registered or not] or Products in connection with any publicity without Transnet's prior written consent.

**J) AFTER SALES SERVICE**

The Supplier shall provide replacement parts necessary to ensure the uninterrupted operation of the Products supplied for the duration of the warranty period, from delivery of any particular item of the Products and if requested by Transnet shall make these parts available to a third party maintainer of Transnet's choice at the same price as if the parts had been supplied to Transnet. The Supplier undertakes to provide a maintenance service for Products, should Transnet so request, on terms to be agreed. If the Order so indicates, the Supplier will provide a warranty service for the Products at a level to be agreed with Transnet.

**K) TERMINATION OF ORDER**

- a. Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier, or when there is a change in control of the Supplier or the Supplier commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier when such work on the Order shall stop.
- b. Transnet shall pay the Supplier a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier, at the time of termination, and the Supplier shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier under this clause will not in any event exceed the total amount that would have been payable to the Supplier had the Order not been terminated.
- c. In the event of termination the Supplier must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- d. If the Products are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier shall compensate Transnet for any costs incurred in obtaining substitute Products or any damage caused due to the failure or delay in the delivery.

**L) ACCESS**

The Supplier shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's employees. The Supplier shall ensure that



any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

**M) WARRANTY**

The Supplier warrants that it is competent to supply the Products in accordance with these Terms to the reasonable satisfaction of Transnet and that all Products delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to *[inter alia]* the supply, manufacture and use of the Products in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of any kind. The Supplier hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

**N) INSOLVENCY**

If the Supplier shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Supplier compounds with its creditors or passes a resolution for the writing up or administration of the Supplier, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

**O) ASSIGNMENT**

The Supplier shall not assign its obligations under an Order without Transnet's prior written consent, which consent shall not be unreasonably withheld or delayed.

**P) NOTICES**

Notices under these Terms shall be delivered by hand to the relevant addresses of the parties in the Order or may be served by facsimile or by email, in which event notice shall be deemed served on acknowledgement of receipt by the recipient.

**Q) LAW**

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South Africa, which rules are deemed incorporated by reference in this clause. The reference to arbitration shall not prevent Transnet referring the matter to any South African courts, having jurisdiction, to which the Supplier hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Supplier in other jurisdictions and/or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision in other courts or from instituting in any court of competent jurisdiction any proceedings for an interdict or any other injunctive relief. If the Supplier does not have a registered office in the South Africa it will at all times maintain an agent for service of process in South Africa and shall give Transnet the name and address of such agent as such may be amended, in writing, from time to time.

**R) GENERAL**

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses f), g), h), i) and



m). Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

**S) COUNTERPARTS**

These Terms and conditions may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by signing any such counterpart.

"PREVIEW ONLY COPY"



By signing this RFQ document, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFQ, 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 to properly take it into account for the purpose of calculating quoted prices or otherwise.

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

\*\*\*\*\*  
SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE

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

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

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

PHYSICAL ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Respondent's contact person:** *[Please complete]*

Name	:
Designation	:
Telephone	:
Cell Phone	:
Facsimile	:
Email	:
Website	:

**Transnet urges its clients, suppliers and the general public**

**to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS: 0800 003 056**

**Section 5****RFQ NUMBER CRAC-JHB-12937****NON-DISCLOSURE AGREEMENT**

Entered into by and between

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

And

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

**RFQ NUMBER CRAC-JHB-12937****TABLE OF CONTENTS**

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**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:





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

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

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

## 2. CONFIDENTIAL INFORMATION

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

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

**2.3** Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information: to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or

to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

**2.4** In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 0 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.

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

**2.5** 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: return all written Confidential Information (including all copies); and 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 0 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 of the Bill of Rights (Section 14) 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.

oooOOOooo



## Section 6

### **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 points** 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 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
- 2.11 and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.12 **"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;
- 2.13 **"non-firm prices"** means all prices other than "firm" prices;
- 2.14 **"person"** includes reference to a juristic person;
- 2.15 **"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;
- 2.16 **"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;
- 2.17 **"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;
- 2.18 **"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
- 2.19 **"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:

B-BBEE Status Level of Contributor	Number of Points [Maximum 10]
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

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

- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 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.
- 4.7 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.
- 4.8 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]

Total number of years the company/firm has been in business

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**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: .....

.....

.....



**SECTION 7****Appendix (i)****GENERAL BID CONDITIONS - SERVICES****[February 2013]****TABLE OF CONTENTS**

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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:

- a) **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- b) **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- c) **Day** shall mean any day other than a Saturday, Sunday or public holiday;
- d) **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- e) **RFP** shall mean Request for Proposal;
- f) **RFQ** shall mean Request for Quotation;
- g) **RFX** shall mean RFP or RFQ, as the case may be;
- h) **Services** shall mean the services required by Transnet as specified in its Bid Document;
- i) **Service Provider** shall mean the successful Respondent;
- j) **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;
- k) **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- l) **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2) GENERAL

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

## 3) SUBMISSION OF BID DOCUMENTS

- a) 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.
- b) 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.
- c) The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4) USE OF BID FORMS

- a) Where special forms 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 not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- b) Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.



- c) Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

#### **5) BID FEES**

- a) A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.
- b) Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

#### **6) VALIDITY PERIOD**

- a) Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the RFX.
- b) 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 VISIT / BRIEFING SESSION**

Respondents may be requested to attend (i) a site visit where it is considered necessary to view the site prior to the preparation of Bids, or (ii) an RFX briefing session when Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid 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 RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

#### **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 Secretary of the relevant Acquisition Council.

#### **10) UNAUTHORISED COMMUNICATION ABOUT BIDS**

Where Bids are submitted to the Secretary of an Acquisition Council, 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 service providers 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, could 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**

- a) If the Respondent, after it has been notified of the acceptance of its Bid fails to:
- i) enter into a formal contract when called upon to do so within such period as Transnet may specify; or
  - ii) accept an order in terms of the Bid;
  - iii) furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
  - iv) comply with any condition imposed by Transnet,
- Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.
- b) If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as the **Service Provider**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:
- i) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
  - ii) 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
  - iii) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
  - iv) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
  - v) 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
  - vi) has made any misleading or incorrect statement either
    - (1) in the affidavit or certificate referred to in clause 18) [*Notice to Unsuccessful Respondents*]; or
    - (2) in any other document submitted as part of its Bid submissionand is unable to prove to the satisfaction of Transnet that
    - (a) it made the statement in good faith honestly believing it to be correct; and
    - (b) before making such statement, it took all reasonable steps to satisfy itself of its correctness; or
  - vii) caused Transnet damage, or to incur costs in order to meet the Service Provider's requirements which could not be recovered from the Service Provider;
  - viii) has litigated against Transnet in bad faith;



- ix) 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;
- x) 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 c) below, be disqualified from bidding for any Transnet business through its "blacklisting" process.
- c) Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.
- d) 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 RFX.

### 14) PRICES SUBJECT TO CONFIRMATION

- a) Prices which are quoted subject to confirmation will not be considered.
- b) 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

- a) 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 Service Provider, effect payment overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- b) 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.



- c) 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 to whom payment is to be made.
- d) The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- e) 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 agreement on an overall Rand contract has been reached.

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

- a) Transnet does not bind itself to accept the lowest priced or any Bid.
- b) Transnet reserves the right to accept any Bid in whole or in part.
- c) 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.
- d) Where the Respondent has been informed by Transnet per fax message or email 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 shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

#### 19) TERMS AND CONDITIONS OF CONTRACT

- a) The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- b) Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ 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 amendments/ alternative(s) are acceptable or otherwise, as the case may be.

#### 20) CONTRACT DOCUMENTS

- a) 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.
- b) 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 award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.





- c) 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 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) CONTRACTUAL SECURITIES

- a) 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 an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- b) 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.
- c) Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- d) The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] Days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- e) Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 23) will be for the account of the Service Provider.

## 24) DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it does not wish to tender.



**25) VALUE-ADDED TAX**

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

**26) IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT****a) Method of Payment**

- i) 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.
- ii) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- iii) 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.
- iv) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause a)i) above. Failure to comply with clause a)i) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 23) above [*Contractual Securities*].

**b) 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 from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.

**27) DELIVERY REQUIREMENTS****a) Period Contracts**

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 Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

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

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services 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 Services*" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

**28) SPECIFICATIONS AND COPYRIGHT****a) Specifications**

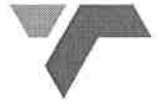
The Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

**b) Copyright**

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

**29) BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

- a) 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.
- b) 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.
- c) 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.
- d) 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.
  - i) 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.



- ii) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- iii) 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.
- iv) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.
- e) If payment is to be made in South Africa, the foreign Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
  - i) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished, or
  - ii) 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.

### 30) CONFLICT WITH BID DOCUMENT

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

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"PREVIEW ONLY COPY"

**RFQ NUMBER CRAC-JHB-12937**

**FOR THE SUPPLY / PROVISION OF: TRANSNET FREIGHT RAIL CUSTOMISED LEAN SIMULATION TOOLKIT THAT COMPROMISE OF TOOLS AND TRAINING MATERIAL. THE TOOL MUST CATER FOR A CLASS OF 20 PEOPLE PER SESSION FOR A PERIOD OF 8 WEEKS.**

**SUPPLIER CODE OF CONDUCT**

Transnet aims to achieve the best value for money when buying or selling goods and/or 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:

The Transnet Procurement Procedures Manual [PPM];

Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fair, equitable, transparent, competitive and cost effective;

The Public Finance Management Act [PFMA];

The Broad Based Black Economic Empowerment Act [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 behaviour and conduct of its Suppliers.

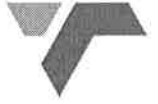
**Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices**

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.

- 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 with 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 times when a Supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].

2. *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].

3. *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. Doing business with family members Having a financial interest in another company in our industry