



**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-13398**

**FOR THE PROVISION OF: AUDIO VISUAL SERVICES AS AND WHEN  
REQUIRED**

**FOR DELIVERY TO: ESSELENPARK COMPUS  
ROAD P91/ OFF R25 (KEMPTOM PARK)**

**ISSUE DATE: 28 FEBRUARY 2014**

**CLOSING DATE: 18 MARCH 2014**

**CLOSING TIME: 10:00**

**OPTION DATE : 30 MAY 2014**

**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-13398

**DESCRIPTION: FOR THE PROVISION OF: AUDIO VISUAL SERVICES AS AND WHEN REQUIRED**

#### NOTICE TO BIDDERS

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

**METHOD:** By hand

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

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#### 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 that the following preference point system is applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included).
- Bidders are to note that if the 80/20 preference point system is stipulated in this RFP and all Bids received exceed R1 000 000.00, the RFP must be cancelled.

The value of this bid is estimated to be below R1000 000 (all applicable taxes included) and therefore the **80/20** system shall be applicable.

When Transnet invites prospective suppliers to submit Proposals for its various expenditure programmes, it requires Respondents to have their B-BBEE status verified in compliance with the Codes of Good Practice issued in terms of the Broad Based Black Economic Empowerment Act No. 53 of 2003.

The Department of Trade and Industry recently revised the Codes of Good Practice on 11 October 2013 [Government Gazette No. 36928]. The Revised Codes will replace the Black Economic Empowerment Codes of Good Practice issued on 9 February 2007. The Revised Codes provide for



**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 on the order/s between more than one Supplier/Service Provider; or
- make no award at all.

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

**13 Transnet's supplier integrity pact**

Transnet's Integrity Pact requires a commitment from suppliers and Transnet that they will not engage in any corrupt and fraudulent practices, anti-competitive practices; and act in bad faith towards each other. The Integrity Pact also serves to communicate Transnet's Gift Policy as well as the remedies available to Transnet where a Respondent contravenes any provision of the Integrity Pact.

Respondents are required to familiarise themselves with the contents of the Integrity Pact which is available on the Transnet Internet site [[www.transnet.net/Tenders/Pages/default.aspx](http://www.transnet.net/Tenders/Pages/default.aspx)] or on request. Furthermore, Respondents are required to certify that they have acquainted themselves with all the documentation comprising the Transnet Integrity Pact and that they fully comply with all the terms and conditions stipulated in the Transnet Supplier Integrity Pact as follows:

<b>YES</b>	
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<b>NO</b>	
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Should a Respondent need to declare previous transgressions or a serious breach of law in the preceding 5 years as required by Annexure A to the Integrity Pact, such declaration must accompany the Respondent’s bid submission.

**14 Evaluation Criteria**

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

Criterion/Criteria	Explanation
<b>Administrative responsiveness</b>	Completeness of response and returnable documents
<b>Substantive responsiveness</b>	•
<b>Functionality Threshold</b>	<p>As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that functionality is included as a threshold with a prescribed percentage threshold of 100%. Compliance to specification / quality, previous performance, delivery lead-time will be considered as part of the technical evaluation – Technical Questionnaire 1</p> <ul style="list-style-type: none"> <li>• Company must provide proof of experience, a minimum of three years in the provision of Audio Visual Services</li> <li>• Sound technicians/engineers must have a minimum of 2 years of experience in Audio Visual Support</li> <li>• Must be able to provide support on short notice period, e.g. today for today</li> </ul>
<b>Final weighted evaluation based on 80/20 preference point system as indicated in paragraph Error! Reference source not found.</b>	<ul style="list-style-type: none"> <li>• 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</li> <li>• B-BBEE status of company - Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Annexure A.</li> </ul>

<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.

**15 Validity Period**

Transnet desires a validity period of 30 [thirty] days from the closing date of this RFQ.  
 This RFQ is valid until \_\_\_\_\_.

**16 Banking Details**

BANK: \_\_\_\_\_  
 BRANCH NAME / CODE: \_\_\_\_\_  
 ACCOUNT HOLDER: \_\_\_\_\_  
 ACCOUNT NUMBER: \_\_\_\_\_

**17 Company Registration**

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

**18 Disclosure of Prices Quoted**

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

YES  NO

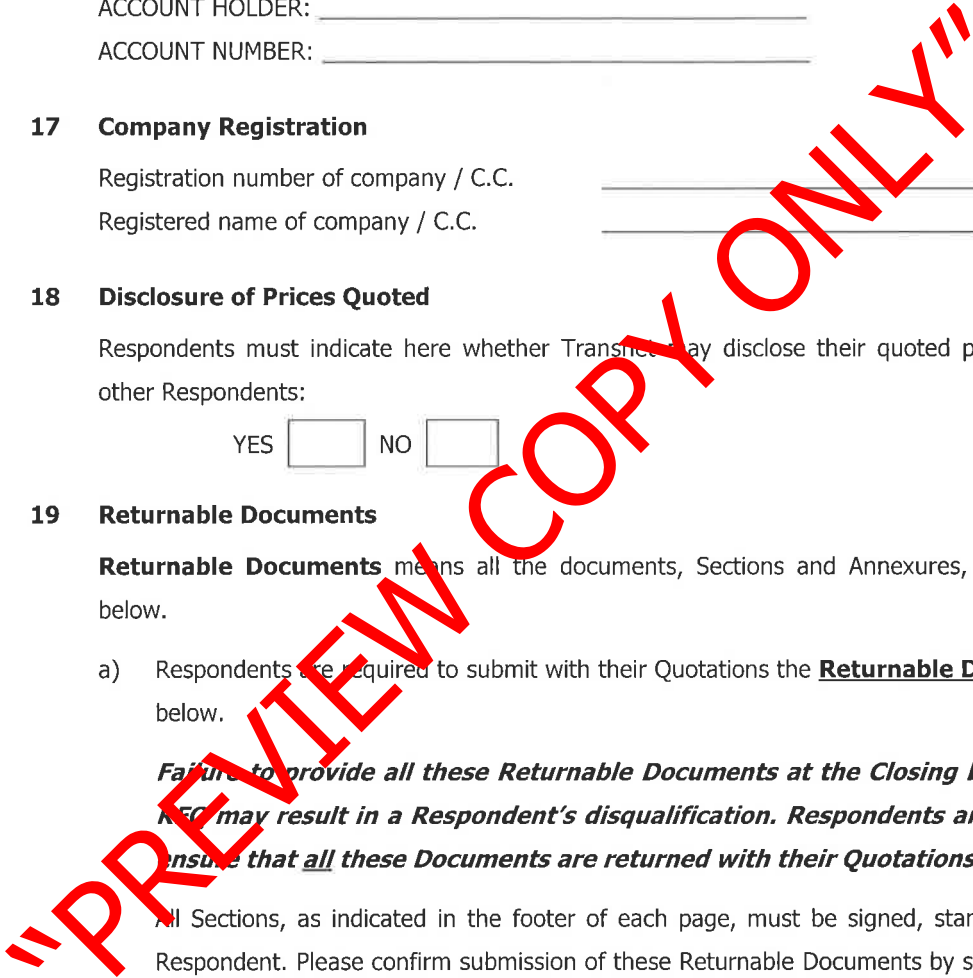
**19 Returnable Documents**

**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 **Returnable Documents**, as detailed below.

***Failure to provide all these Returnable Documents at the Closing Date and time of this RFQ 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 Returnable Documents by so indicating [Yes or No] in the table below:



Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
<ul style="list-style-type: none"> <li>- Valid and original B-BBEE Verification Certificate or certified copy thereof [Large Enterprises and QSEs]                      Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the RFQ will result in an automatic score of zero for preference</li> </ul>	
<ul style="list-style-type: none"> <li>- Valid and original B-BBEE certificate/sworn affidavit or certified copy thereof from auditor, accounting officer or SANAS accredited Verification Agency</li> </ul>	

Returnable Documents	Submitted [Yes or No]
[EMEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the RFQ will result in an automatic score of zero being allocated for preference	
- 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	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
SECTION 2 : Quotation Form	
SECTION 3: Vendor Application Form	
• Original cancelled cheque or bank verification of banking details	
• Certified copies of IDs of shareholder/directors/member [if applicable]	
• Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)	
• Certified copies of the company's shareholding/director's portfolio	
• Entity's letterhead	
• Certified copy of VAT Registration Certificate [RSA entities only]	
• Certified copy of valid Company Registration Certificate [if applicable]	
Financial Statements signed by your Accounting Officer or Audited Financial Statements for previous 3 years	
ANNEXURE A – B-BBEE Preference Points Claim Form	
ANNEXURE ..... Technical Submission/Questionnaire	

b) In addition to the requirements of paragraph a) 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:

**COMPANY INFORMATION**

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

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

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




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**SECTION 2**

**RFQ NUMBER CRAC-JHB-13398**

**DESCRIPTION: FOR THE PROVISION OF: AUDIO VISUAL SERVICES AS AND WHEN REQUIRED**

**SCOPE OF WORK FOR OUTSOURCING OF AUDIO VISUAL SUPPLIER:**

The technicians/engineers must have the ability to operate all in-house audio and visual equipment in a professional and skilful manner so as to contribute to the success of all events and functions.

The technician/engineers must be able to operate lighting systems, including complex light control boards, spotlights, and backdrop color variance. Also operate the audio system within the same entertainment area, including the audio mixing console, microphone correlation and speaker output. Assist the in-house technician or any technical personnel in the setting up of special lighting and/or audio equipment. Perform other related duties as assigned.

Skilled in the operation of very complex sound (audio) and lighting systems in the function/event/conference facilities. Knowledge in light control boards, spotlights, backdrop color variance, audio mixing console, microphone correlation, and speaker output. Possess sufficient knowledge of the internal parts of projectors and their interplay to be able to troubleshoot malfunctions and quickly make corrections.

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

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

Physical effort is required in lifting, carrying, loading and unloading equipment. Position requires standing, walking, stooping, bending, lifting, and carrying in the performance of duties. Must be in the possession of a valid scaffold license.

The company must provide technicians/engineers that are willing to

- work late hours and weekends
  - work long hours (set up and break down)
- be able to provide a service on extremely short notice periods

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Respondent's Signature

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Date & Company Stamp

**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 [available on request]; 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**

I/We quote as follows for the services 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)
1					
2					
3					
4					
5					
6					
	Total				
	VAT				
	Grand Total				

**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

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

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

- 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 basis.

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## Section 3

**RFQ NUMBER CRAC-JHB-13398**

**DESCRIPTION: FOR THE PROVISION OF: AUDIO VISUAL SERVICES AS  
AND WHEN REQUIRED**

**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 copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
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. **A valid and original** B-BBEE Verification Certificate / sworn affidavit **or certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice
9. **Certified copy** of valid Company Registration Certificate [if applicable]

## Vendor Application Form

Company trading name						
Company registered name						
Company Registration Number or ID Number if a Sole Proprietor						
Form of entity [✓]	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
VAT number [if registered]						
Company telephone number						
Company fax number						
Company 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 Director 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	% Youth 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 Company / Organisation:*

Name		Designation	
Signature		Date	



**Appendix (i)**

**GENERAL BID CONDITIONS - SERVICES**

**[January 2014]**

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## 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:

**Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;

**Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;

**Day** shall mean any day other than a Saturday, Sunday or public holiday;

**Respondent(s)** shall mean a respondent/bidder to a Bid Document;

**RFP** shall mean Request for Proposal;

**RFQ** shall mean Request for Quotation;

**RFX** shall mean RFP or RFQ, as the case may be;

**Services** shall mean the services required by Transnet as specified in its Bid Document;

**Service Provider** shall mean the successful Respondent;

**Tax Invoice** shall mean the document as required by Section 90 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

**Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and

**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.

## 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.

## SUBMISSION OF BID DOCUMENTS

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.

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.

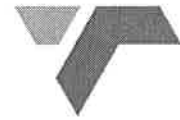
The Respondent's return address must be stated on the reverse side of the sealed envelope.

## USE OF BID FORMS

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.

Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.

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.

**BID FEES**

A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.

Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

**VALIDITY PERIOD**

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.

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.

**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.

**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.

**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.

**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.

**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.

**DEFAULTS BY RESPONDENTS**

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

enter into a formal contract when called upon to do so within such period as

Transnet may specify; or

accept an order in terms of the Bid;

furnish satisfactory security when called upon to do so for the fulfilment of the contract; or

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.

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:

has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or

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

has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or

has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or

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

has made any misleading or incorrect statement either

in the affidavit or certificate referred to in clause 0 [*Notice to Unsuccessful Respondents*]; or

in any other document submitted as part of its Bid submission

and 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; or

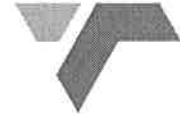
caused Transnet damage, or to incur costs in order to meet the Service Provider's requirements which could not be recovered from the Service Provider;

has litigated against Transnet in bad faith;

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;

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;

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then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 0 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

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.

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.

#### **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.

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

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

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.

#### **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.

#### **EXCHANGE AND REMITTANCE**

The Respondent should note that where the whole or a portion of the contract or order value is to be permitted 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.

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.

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.

The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

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].

#### **ACCEPTANCE OF BID**

Transnet does not bind itself to accept the lowest priced or any Bid.

Transnet reserves the right to accept any Bid in whole or in part.

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.

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.

#### **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.

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

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.

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.

#### **CONTRACT DOCUMENTS**

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.

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.

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.

#### **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.

#### **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.

#### **CONTRACTUAL SECURITIES**

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.

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.

Such security, if required, shall be an amount which will be stipulated in the Bid Documents.

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.

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 0 will be for the account of the Service Provider.

#### **DELETION OF ITEMS TO BE EXCLUDED FROM BID**

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

#### **VALUE-ADDED TAX**

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.

In respect of foreign Services rendered:

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

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.



## IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

### Method of Payment

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.

However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

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.

The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 00 above. Failure to comply with clause 00 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 0 above [*Contractual Securities*].

### 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.

## DELIVERY REQUIREMENTS

### Period Contract

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.

### Progress Reports

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

### 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.

## SPECIFICATIONS AND COPYRIGHT

### 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.

### 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.

### BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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.

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.

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.

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.

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.

The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

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.

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.

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]:

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

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.





**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 COPY ONLY"**



Appendix (ii)

NON DISCLOSURE AGREEMENT - SERVICES

[January 2014]

**"PREVIEW COPY ONLY"**



**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 as indicated in the RFP bid response hereto**

**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 hereof. 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:
- a) 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
  - b) 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 2.3 b) 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:
- (i) return all written Confidential Information [including all copies]; and
  - (ii) 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 b) 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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