

## **Transnet Property**

an Operating Division **TRANSNET SOC LTD**

[Registration Number 1990/000900/30]

## **REQUEST FOR PROPOSAL (RFP)**

**FOR THE TENDER RELATING TO SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED GALVANISED STEEL TOPPING AT KASERNE PARK PRECINCT**

<b>RFP NUMBER</b>	<b>: TP/2026/03/0048/3401/RFP</b>
<b>ISSUE DATE</b>	<b>: AS PER SYSTEM GENERATED</b>
<b>CLOSING DATE</b>	<b>: AS PER SYSTEM GENERATED</b>
<b>CLOSING TIME</b>	<b>: AS PER SYSTEM GENERATED</b>
<b>TENDER VALIDITY PERIOD</b>	<b>: 12 WEEKS FROM CLOSING DATE</b>

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## T1.1 TENDER NOTICE AND INVITATION TO TENDER

### SECTION 1: NOTICE TO TENDERERS

#### 1. INVITATION TO TENDER

Responses to this Tender [hereinafter referred to as a **Tender**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as a Tenderer].

<b>DESCRIPTION</b>	<b>Tender relating to Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanised steel topping at Kaserne Park Precinct</b>
<b>TENDER DOWNLOADING</b>	<b>This Tender may be downloaded directly from the National Treasury eTender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> and the Transnet website at <a href="https://esupplierportal.transnet.net">https://esupplierportal.transnet.net</a> (please use Google Chrome to access Transnet link) <b>FREE OF CHARGE.</b></b>

<b>COMPULSORY BRIEFING SESSION</b>	No Briefing Session will be held
<b>COMMUNICATION: CLARIFICATION &amp; COMPLAINTS</b>	Specific queries relating to this RFP before closing date of the RFP should be submitted Online ( <a href="https://esupplierportal.transnet.net">https://esupplierportal.transnet.net</a> ) before <b>12:00 pm</b> on the <b>10 June 2026</b> .
<b>CLOSING DATE</b>	<b>AS PER SYSTEM GENERATED</b> Tenderers must ensure that tenders are uploaded timeously onto the system. <b>If a tender is late, it will not be accepted for consideration.</b>

#### 2. TENDER SUBMISSION

Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.

a) The Transnet e-Tender Submission Portal can be accessed as follows:

Log on to the Transnet eTenders management platform website (<https://esupplierportal.transnet.net>);

- Click on "ADVERTISED TENDERS" to view advertised tenders;
- Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);



- Click on "SIGN IN/REGISTER" - to sign in if already registered;
  - Toggle (click to switch) the "Log an Intent" button to submit a bid;
  - Submit bid documents by uploading them into the system against each tender selected.
  - **Tenderers are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Tenderer can upload 30mb per upload and multiple uploads are permitted.**
- b) Each company must register its profile using its company details and use the corresponding registered profile to log an intent to bid as well as submitting any bid.
- c) Transnet will not accept a bid or will disqualify a bidder who submits a bid in the Transnet e-tender submission through another bidders'/Company's profile. In other words, each bidder must register the intent to bid and submit its bid through its own profile under the same company name that will eventually bid for the tender. No company shall submit a bid on behalf of another company regardless of the company being a subsidiary or holding company.
- d) In case of a Joint Venture, any of the parties/companies to the Joint Venture may use its registered profile to submit a bid on behalf of the Joint Venture.
- e) The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.
- f) Submissions must not contain documents relating to any Tender other than that shown on the submission.

### 3. CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidentiality. In this regard Tenderers are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Works, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.



#### 4. DISCLAIMERS

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

- 4.1. Award the business to the highest scoring Tenderer/s unless objective criteria justify the award to another tenderer.
- 4.2. Not necessarily accept the lowest priced tender or an alternative Tender;
- 4.3. Go to the open market if the quoted rates (for award of work) are deemed unreasonable;
- 4.4. Should the Tenderers be awarded business on strength of information furnished by the Tenderer, which after conclusion of the contract is proved to have been incorrect, Transnet reserves the right to terminate the contract;
- 4.5. Not to award more than 1 precinct/tender to 1 bidder to minimise risk of performance and payment issues;
- 4.6. Request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 4.7. Not accept any changes or purported changes by the Tenderer to the tender rates after the closing date;
- 4.8. Verify any information supplied by a Tenderer by submitting a tender, the Tenderer/s hereby irrevocably grant the necessary consent to the Transnet to do so;
- 4.9. Conduct the evaluation process in parallel. The evaluation of Tenderers at any given stage must therefore not be interpreted to mean that Tenderers have necessarily passed any previous stage(s);
- 4.10. Modify the RFX's Goods/Services and request Tenderers to re-bid on any such changes;
- 4.11. Unless otherwise expressly stated, each tender lodged in response to the invitation to tender shall be deemed to be an offer by the Tenderer. The Employer has the right in its sole and unfettered discretion not to accept any offer.
- 4.12. Not be held liable if tenderers do not provide the correct contact details during the clarification session and do not receive the latest information regarding this RFP with the possible consequence of being disadvantaged or disqualified as a result thereof.
- 4.13. Transnet reserves the right to exclude any Tenderers from the tender 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, as amended. Tenderers are required to indicate in tender returnable on **T2.2-17, [Breach of Law]** whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.

- 4.14. Transnet reserves the right to cancel the bid process.
- 4.15. Transnet reserves the right to award a contract for only a portion of the proposed Goods/Service which are reflected in the scope of this RFP;
- 4.16. Transnet reserves the right to split the award of the contract between more than one Supplier/Service provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or development considerations;
- 4.17. Transnet reserves the right to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognized in law;
- 4.18. Transnet reserves the right to perform a risk analysis on the preferred tenderer to ascertain if any of the following might present an unacceptable commercial risk to the employer:
  - *unduly high or unduly low tendered rates or amounts in the tender offer;*
  - *contract data of contract provided by the tenderer; or*
  - *the contents of the tender returnables which are to be included in the contract.*
- 4.19. Transnet will not reimburse any Tenderer for any preparatory costs or other work performed in connection with this Tender, whether or not the Tenderer is awarded to contract.

## 5. NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Tenderer are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. The CSD can be accessed at <https://secure.csd.gov.za/>. Tenderer are required to provide the following to Transnet in order to enable it to verify information on the CSD:

Supplier Number..... and Unique registration reference number.....(**Tender Data**)

**Transnet urges its clients, suppliers and the general public  
to report any fraud or corruption to  
TIP-OFFS ANONYMOUS: 0800 003 056 OR [Transnet@tip-offs.com](mailto:Transnet@tip-offs.com)**



## T1.2 TENDER DATA

The conditions of tender are the Standard Conditions of Tender as contained in Annex C of the CIDB Standard for Uniformity in Engineering and Construction Works Contracts. The Standard for Uniformity in Construction Procurement was first published in Board Notice 62 of 2004 in Government Gazette No 26427 of 9 June 2004. It was subsequently amended in Board Notice 67 of 2005 in Government Gazette No 28127 of 14 October 2005, Board Notice 93 of 2006 in Government Gazette No 29138 of 18 August 2006, Board Notice No 9 of 2008 in Government Gazette No 31823 of 30 January 2009, Board Notice 86 of 2010 in Government Gazette No 33239 of 28 May 2010, Board Notice 136 of 2015 in Government Gazette 38960 of 10 July 2015 and Board Notice 423 of 2019 in Government Gazette No 42622 of 8 August 2019.

This edition incorporates the amendments made in Board Notice 423 of 2019 in Government Gazette 42622 of 8 August 2019. (see [www.cidb.org.za](http://www.cidb.org.za)).

The Standard Conditions of Tender make several references to Tender data for detail that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.

Each item of data given below is cross-referenced in the left-hand column to the clause in the Standard Conditions of Tender to which it mainly applies.

Clause	Data
C.1.1	The <i>Employer</i> is <b>Transnet SOC Ltd</b> <b>(Reg No. 1990/000900/30)</b>
C.1.2	The tender documents issued by the <i>Employer</i> comprise: <p><b>Part T: The Tender</b></p> <p>Part T1: Tendering procedures      T1.1 Tender notice and invitation to tender T1.2 Tender data</p> <p>Part T2: Returnable documents      T2.1 List of returnable documents T2.2 Returnable schedules</p> <p><b>Part C: The contract</b></p> <p>Part C1: Agreements and contract data      C1.1 Form of offer and acceptance C1.2 Contract data (Part 1 &amp; 2) C1.3 Form of Securities</p> <p>Part C2: Pricing data      C2.1 Pricing instructions C2.2 Price List</p> <p>Part C3: Scope of work      C3.1 Works Information</p>



	Part C4: Affected Property	C4.1 Site Plan
C.1.4	The Employer's agent is:  Name:  Address:  Tel No.  E – mail	Procurement Officer  Pumla Ngamlana  150 Commissioner Street, Marshalltown, Johannesburg  011 037 9844  Pumla.Ngamlana@transnet.net
C.1.5	<p><b>Cancellation and Re-Invitation of Tenders</b></p> <p>C1.5.1 An employer may, prior to the award of the tender, cancel a tender if-</p> <ul style="list-style-type: none"> <li>a) Due to changed circumstances, there is no longer a need for the engineering and construction works specified in the invitation;</li> <li>b) Funds are no longer available to cover the total envisaged expenditure; or</li> <li>c) No acceptable tenders are received.</li> <li>d) There is a material irregularity in the tender process.</li> </ul> <p>C1.5.2 The decision to cancel a tender invitation must be published in the same manner in which the original tender invitation was advertised</p> <p>C1.5.3 An employer may only with the prior approval of the relevant cancel a tender invitation for the second time.</p>	
C.2.1	<p>Only those tenderers who satisfy the following eligibility criteria are eligible to submit tenders:</p> <p><b>1. Stage One - Eligibility in terms of the Construction Industry Development Board (Mandatory Returnable Document):</b></p> <ul style="list-style-type: none"> <li>a) Only those tenderers who are registered with the CIDB, or are capable of being so prior to the evaluation of submissions, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations, designation of <b>6SQ or higher</b> class of construction work, are eligible to have their tenders evaluated (<i>certificate must be active during the validity period of the tender</i>).</li> <li>b) Professional registration Certificates for:               <ul style="list-style-type: none"> <li>i. Construction Project Manager registered with SACPCMP (Pr. CPM)</li> <li>ii. Safety Officer registered with SACPCMP</li> </ul> </li> </ul> <p><b><i>Any tenderer that fails to submit the stipulated mandatory returnable documents will be disqualified.</i></b></p>	

c) Joint Venture (JV)

Joint ventures are eligible to submit tenders subject to the following:

1. every member of the joint venture is registered with the CIDB;
2. the lead partner has a contractor grading designation of not lower than one level below the required class of construction works under consideration and possesses the required recognition status; and
3. the combined Contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a **6SQ or higher** class of construction work or a value determined in accordance with Regulation 25(1B) or 25(7A) of the Construction Industry Development Regulations
4. The tenderer shall provide a certified copy of its signed joint venture agreement.

***Any tenderer that fails to meet the stipulated eligibility criteria will be regarded as an unacceptable tender.***

**2. Stage Two - Functionality:**

<b>Functionality Criteria</b>	<b>Maximum number of points</b>
<b>1. Management &amp; CV's of Key Personnels Project Manager (20) Site Agent (5) Safety Officer (5)</b>	<b>30</b>
<b>2. Company Previous Experience</b>	<b>20</b>
<b>3. Method Statement for Civil / Structural works</b>	<b>15</b>
<b>4. Project Plan (in the form of a Gantt chart)</b>	<b>15</b>
<b>5. Health &amp; Safety Plan for Construction of a concrete fence wall</b>	<b>20</b>
<b>Maximum possible score for Functionality</b>	<b>100</b>

Only those tenderers who obtain the minimum qualifying score for functionality will be evaluated further in terms of price and the applicable preference point system. The minimum qualifying for score for functionality is **70** points.

The evaluation criteria for measuring functionality and the points for each criteria and, if any, each sub-criterion are as stated in C.3.11.3 below.




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***Any tenderer that fails to meet the stipulated eligibility criteria will be regarded as an unacceptable tender.***

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C.2.7 N/A

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C.2.12 No alternative tender offers will be considered.

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C.2.13.3 Each tender offer shall be in the **English Language**.

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C.2.13.5 The *Employer's* details and identification details that are to be shown on each tender offer package are as follows:

Identification details:	The tender documents must be uploaded with: <ul style="list-style-type: none"> <li>▪ Name of Tenderer (Company Name):</li> <li>▪ Contact person and details (number &amp; email):</li> <li>▪ The Tender Number:</li> <li>▪ The Tender Description</li> </ul>
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Documents must be marked for the attention of: ***Employer's Agent:***

#### **Communication (Clarification and Complaints)**

1. Specific queries relating to this RFP before closing date of the RFP should be submitted Online (<https://esupplierportal.transnet.net>) before **12:00 pm on 10 June 2026**. In the interest of fairness and transparency Transnet's response to such a query will then be made available to other bidders.
2. Specific complaints relating to this RFP before or after the closing date should be formally submitted by emailing to [groupscmcomplaints@transnet.net](mailto:groupscmcomplaints@transnet.net). Once the complaint has been submitted, the Transnet SCM Complaints office will acknowledge your complaint and send you a complaint form for completion.
3. It is prohibited for Respondents to attempt, either directly or indirectly, to canvas any office or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.
4. Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
5. The outcome of the process will be communicated, via email, to all bidders as soon as the process is concluded. Should a bidder not receive any communication from Transnet 30 days after the expiry of the validity period of his bid, the bidder can consider its bid not being successful.

All unsuccessful bidders have a right to request Transnet to furnish reasons for their bid not being successful. This requested must be directed to the contact person stated in the Tender Data.

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C.2.13.9 Telephonic, telegraphic, facsimile or e-mailed tender offers will not be accepted.

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C.2.15 The closing time for submission of tender offers is:  
Time: **AS PER SYSTEM GENERATED**

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Location: The Transnet e-Tender Submission Portal: (<https://esupplierportal.transnet.net>);

Bidders must ensure that bids are uploaded timeously onto the system. As a general rule, if a bid is late, it will not be accepted for consideration.

**NO LATE TENDERS WILL BE ACCEPTED**

C.2.16 The tender offer validity period is **12 weeks** after the closing date. Tenderers are to note that they may be requested to extend the validity period of their tender, on the same terms and conditions, if Transnet's internal evaluation and governance approval processes has not been finalised within the validity period.

C.2.23 The tenderer is required to submit with his tender:

**Mandatory for Bidding Company:**

- a) A valid CIDB Certificate in the correct designated grading – **6SQ or higher**.
- b) Professional registration Certificates for:
  - i. Construction Project Manager registered with SACPCMP (Pr. CPM)
  - ii. Safety Officer registered with SACPCMP

All the above requirements are Mandatory. Bidders who fail to submit all documents shall be immediately disqualified.

All certified copies must not be older than 3 months from the closing date of this tender.

**Essential Documents for Bidding Company:**

1. A valid Tax Clearance Certificate issued by the South African Revenue Services.  
**Tenderers also to provide Transnet with a TCS PIN to verify Tenderers compliance status.**
2. A **valid B-BBEE Certificate** from a Verification Agency accredited by the South African Accreditation System [**SANAS**], or a **sworn affidavit** confirming annual turnover and level of black ownership, in line with the code of good practice, together with the tender;
3. Proof of registration on the Central Supplier Database;
4. Letter of Good Standing with the Workmen's compensation fund by the tendering entity or separate Letters of Good Standing from all members of a newly constituted JV;

**Note:** Refer to Section T2.1 for List of Returnable Documents

C3.11 The minimum number of evaluation points for functionality is: **70**

The procedure for the evaluation of responsive tenders is Functionality, Price and Preference:

**Only those tenderers who attain the minimum number of evaluation points for Functionality will be eligible for further evaluation, failure to meet the minimum threshold will result in the tender being disqualified and removed**

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**from any further consideration.**

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### **Functionality Criteria**

The functionality criteria and maximum score in respect of each of the criteria are as follows:

<b>Evaluation Criteria</b>	<b>Maximum points</b>
1. Management & CV's of Key Personnels	30
2. Company Previous Experience	20
3. Method Statement	15
4. Project Plan	15
5. Health and Safety Plan	20
<b>TOTAL</b>	<b>100</b>

Functionality shall be scored independently by not less than two (2) evaluators and averaged in accordance with the following schedules:

- T2.2.03 Project Manager and CVs of Key Persons
- T2.2.04 Company Previous Experience
- T2.2.05 Method Statement
- T2.2.06 Project Plan
- T2.2.07 Health and Safety Plan

**Note: Any tender not complying with the above-mentioned requirements, will be regarded as non-responsive and will therefore not be considered for further evaluation. This note must be read in conjunction with Clause C.2.1.**

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C.3.11. Only tenders that achieve the minimum qualifying score for functionality will be evaluated further in accordance with the **80/20** preference points systems as described in Preferential Procurement Regulations.

80 where the financial value of one or more responsive tenders received have a value equal to or below R50 million, inclusive of all applicable taxes,

Thresholds	Minimum Threshold
Technical / functionality	70

Evaluation Criteria	Final Weighted Scores
Price	80
Specific goals - B-BBEE	20
<b>TOTAL SCORE:</b>	<b>100</b>

Up to 100 minus  $W_1$  tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed. **Should the evidence required for any of the Specific Goals applicable in this tender not be provided, a tenderer will score zero preference points for that particular "Specific Goal".**

In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, the following preference points must be awarded to a bidder who provides the relevant required evidence for claiming points

Selected Specific Goal: BBBEE certificate	Number of points allocated (80/20)
B-BBEE Level of contributor - (Level 1) – 10 points EME or QSE 51% Black Owned – 5 points Local Content - (LC Annexure C D and E) – 5 points	20
Non-Compliant and/or B-BBEE Level 3-8 contributors	0

**The following Table represents the evidence to be submitted for claiming preference points for applicable specific goals in a particular tender:**

Specific Goals	Acceptable Evidence
B-BBEE	B-BBEE Certificate / Sworn-Affidavit B-BBEE Certificate (of JV, a consolidate scorecard will be accept) as per DTI guidelines



30% Black Women Owned Entities	B-BBEE Certificate / Sworn-Affidavit / CIPC B-BBEE Certificate (in case of JV, a consolidate scorecard will be accept) as per DTIC guidelines
50% Black Youth Owned Entities	Certified copy of ID Documents of the Owners and B-BBEE Certificate / Affidavit (in case of JV, a consolidate scorecard will be accept)
Entities Owned by People with Disability (PWD)	Certified copy of ID Documents of the Owners and Doctor's note confirming the disability and/or Employment Equity Act 1(EEA1) form.
Entities/Black People living in rural areas	Entity's Municipal/ESKOM bill or letter from Induna/chief confirming residential address not older than 3 months
South African Enterprises	CIPC Registration Documents
EME or QSE 51% Black Owned	B-BBEE Certificate / Affidavit (in case of JV, a consolidate scorecard will be accept) as per DTIC guidelines
Entities that are 51 % Black Owned	B-BBEE Certificate / Sworn-Affidavit B-BBEE Certificate (in case of JV, a consolidate scorecard will be accept) as per DTIC guidelines
Promoting exports orientated production for Job creation	Returnable section/annexure.....on job creation
Local Content and Local Production	Returnable Local Content and production Annexures
NIPP	NIPP Returnable documents
Creation of new jobs and labour intensification	Returnable section/annexure.....on job creation.
The promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to South African Companies which are: <ul style="list-style-type: none"> <li>I. 30% Black Women, 51% Black Youth and 51% Black People with disabilities</li> <li>II. Entities with a specified minimum B-BBEE level (1 and 2)</li> <li>III. EMEs and/or QSEs who are 51% Black-owned</li> </ul>	Sub-contracting agreements and Declaration / Joint Venture Agreement. Certified copy of ID Documents of the Owners and B-BBEE Certificate / Affidavit (in case of JV, a consolidate scorecard will be accept) of the sub-contracted entities.
The promotion of enterprises located in a specific province/region/municipal area for work to be done or services to be rendered in that province/region/municipal area	CIP - Registered address of entity

The maximum points for this bid are allocated as follows:

DISCRIPTION	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
B-BBEE Status Level 1 – 10 points	
EME or QSE 51% Black-owned – 5 points	
Local Content - (LC Annexure C D and E) – 5 points	100
Total points for Price and Specific Goals must not exceed	

**Note:** Transnet reserves the right to carry out an independent audit of the tenderers scorecard components at any stage from the date of close of the tenders until completion of the contract.

C.3.13 Tender offers will only be accepted if:

1. The tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;
2. the tenderer does not appear on Transnet’s list for restricted tenderers and National Treasury’s list of Tender Defaulters;
3. the tenderer has fully and properly completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the tenderer’s ability to perform the contract in the best interests of the Employer or potentially compromise the tender process and persons in the employ of the state.
4. Transnet reserves the right to award the tender to the tenderer who scores the highest number of points overall, unless there are **objective criteria** which will justify the award of the tender to another tenderer. Objective criteria include but are not limited to the outcome of a due diligence exercise to be conducted. The due diligence exercise may take the following factors into account inter alia.

the tenderer:

- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer’s procurement,



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- b) is not undergoing a process of being restricted by Transnet or other state institution that Transnet may be aware of,
  - c) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
  - d) has the legal capacity to enter into the contract,
  - e) is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
  - f) complies with the legal requirements, if any, stated in the tender data and
  - g) is able, in the option of the employer to perform the contract free of conflicts of interest.

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C.3.17 The number of paper copies of the signed contract to be provided by the Employer is 1 (one).

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## **T2.2 List of Returnable Documents**

### **2.2.1 These schedules are required for pre-qualification (mandatory), eligibility and functionality purposes:**

#### **T2.2-01 Stage One: CIDB Registration & Professional Registration Certificates**

##### **a) CIDB Registration of 6SQ or Higher**

##### **b) Professional Registration Certificates for:**

- i.** Construction Project Manager registered with SACPCMP (Pr. CPM)
- ii.** Safety Officer registered with SACPCMP

### **2.2.2 Stage Two: These schedules will be utilised for Functionality evaluation purposes:**

- T2.2-02 Evaluation Schedule:** Management and CVs of Key Persons
- T2.2-03 Evaluation Schedule:** Company Previous Experience
- T2.2-04 Evaluation Schedule:** Method Statement
- T2.2-05 Evaluation Schedule:** Project Plan
- T2.2-06 Evaluation Schedule:** Health and Safety Plan

### **Returnable Schedules:**

#### **2.2.3 General:**

- T2.2-07** Authority to submit tender
- T2.2-08** Letter of Good Standing
- T2.2-09** Record of addenda to tender documents
- T2.2-10** Local Content Annexure C D and E
- T2.2-11** Availability of Equipment and Other Resources
- T2.2-12** Schedule of proposed Subcontractors

#### **Agreement and Commitment by Tenderer:**

- T2.2-13** CIDB SFU ANNEX G Compulsory Enterprise Questionnaire
- T2.2-14** Certificate of Acquaintance with Tender Document
- T2.2-15** Non-Disclosure Agreement
- T2.2-16** RFP Declaration Form
- T2.2-17** RFP – Breach of Law
- T2.2-18** Service Provider Integrity Pact
- T2.2-19** Supplier Code of Conduct
- T2.2-20** Agreement in terms of Protection of Personal Information Act, 4 of 2013 (“POPIA”)

T2.2-21 Domestic Prominent Influential Persons (DPIP) or Foreign Prominent Public Officials (FPPO)

**Bonds/Guarantees/Financial/Insurance:**

- T2.2-22 Insurance provided by the Contractor
- T2.2-23 Three (3) years audited financial statements
- T2.2-24 Capacity and ability to meet delivery schedule
- T2.2-25 Job-Creation Schedule

**C1.1 Offer portion of Form of Offer & Acceptance**

**C1.2 Contract Data**

**C2.1 Pricing Instructions**

**C2.2 Bill of Quantities**

**Part C3: Scope of Work**

**Part C4: Site Information**

**Annexure A: Technical Evaluation**

**Local Content – Annexure C D and E**

**Annexure 1: Practice Guide – Implementation of Indirect Targeting Clients**

**Annexure 2: Practice Guide - Implementation of Skills Standard Clients**

**Annexure 3: Standard for developing skills through infrastructure contracts**



## T2.2-01: Eligibility Criteria Schedule - CIDB Grading Designation

### Note to tenderers:

Tenderers are to indicate their CIDB Grading by filling in the table below. **Attach a copy of the CIDB Grading Designation or evidence of being capable of being so registered.**

CRS Number	Status	Grading	Expiry Date

- Only those tenderers who are registered with the CIDB, or are capable of being so prior to the evaluation of submissions, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations, for a **6SQ or Higher** class of construction work, are eligible to have their tenders evaluated.

Only those tenderers who have submitted active CIDB certification by the closing date of the tender will be evaluated.

### 2. Joint Venture (JV)

Joint ventures are eligible to submit tenders subject to the following:

- every member of the joint venture is registered with the CIDB;
- the lead partner has a contractor grading designation of not lower than one level one level below the required grading designation in the class of construction works under consideration and possesses the required recognition status; and
- the combined Contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a **6SQ or Higher** class of construction work or a value determined in accordance with Regulation 25(1B) or 25(7A) of the Construction Industry Development Regulations
- the Contractor shall provide the employer with a certified copy of its signed joint venture agreement;
- and in the event that the joint venture is an 'Incorporated Joint Venture' the Memorandum of Incorporation to be provided within 4 (four) weeks of the Contract Date.

## **T2.2-02: Evaluation Schedule - Management & CV's of Key Personnel**

The tender must be able to demonstrate that the project personnel have sufficient knowledge, experience and qualifications to provide the required services and submit the following documents as a minimum with the tender:

1. The experience of assigned key persons in relation to the scope of work will be evaluated from three different points of view, namely:
  - i. Relevant experience – (total duration of construction activity) and positions held of each discipline specific team member.
  - ii. The education, training and skills of the assigned staff in the specific sector, field, subject, etc. which is directly linked to the Scope of Works. Proof of education and training must be attached to the C.V.
  - iii. The key staff members' / experts' knowledge of issues which the tenderer considers pertinent to the project e.g., local conditions, affected communities, legislation, techniques etc.
2. Comprehensive CV's should be attached to this schedule:

As a minimum each CV should address the following, but not limited to;

- i. Personal particulars
    - a. Name
    - b. Date and place of birth
    - c. Tertiary education and dates associated therewith
    - d. Professional awards
  - ii. Qualifications (degrees, diplomas, grades of membership of professional societies and professional registrations)
  - iii. Name of current employer and position in enterprise
  - iv. Overview of post graduate experience (year, organization and position)
  - v. Outline of recent assignments / experience that has a bearing on the Scope of Works
3. The bidder must submit CV's, qualifications, certificates demonstrating practical experience of a personnel in prestressed concrete panel installation. The submission should include the following key resources:

### **a. Project Manager:**

- Minimum qualification National Diploma or Higher in Civil / Structural, CV with Project Management experience.

**b. Site Agent:**

- Minimum qualification National Diploma or Higher in Civil / Structural, CV, and Project Management experience and relevant experience in Site Supervision.

**c. Safety Officer:**

- Minimum qualification National Diploma or Higher in Occupational Health and Safety, CV and with practical experience in Health and Safety in Construction.

List of Key Persons assigned to the above disciplines

No.	Key Persons	Name and Surname	CV attached (Yes/No)
1	Project Manager		
2	Site Agent		
3	Safety Officer		

The scoring of the Management & CV's of Key Persons will be as follows:

	<b>Project Manager</b>
<b>Score 0</b>	No Previous Experience submitted / irrelevant experience submitted
<b>Score 20</b>	CV with minimum 8 years of experience in concrete wall installation
	Qualification in Civil / Structural Engineering
	<b>Site Agent</b>
<b>Score 0</b>	No Previous Experience submitted / irrelevant experience submitted
<b>Score 5</b>	CV with minimum 5 years of experience in concrete wall installation
	Qualification in Civil / Structural Engineering
	<b>Safety Officer</b>
<b>Score 0</b>	No Previous Experience submitted / irrelevant experience submitted
<b>Score 5</b>	CV with minimum 5 years of experience in Health and Safety
	Qualification certificate in Occupational Health and Safety

TRANSNET PROPERTY

Tender Number: TP/2026/03/0048/3401/RFP

Description of the Works: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanised steel topping at Kaserne Park Precinct

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**Index of documentation attached to this schedule:**

.....

.....

.....

.....

## T2.2-03: Evaluation Schedule: Previous Experience

### Note to tenderers:

Tenderers are required to demonstrate performance in comparable projects of similar size and nature by supplying the following:

- A list of past / current comparable projects.
- The extent of the work required for the supply and installation perimeter concrete wall includes but not limited to the following:
  - General small works
  - Earth works and formation
  - Shallow excavations where applicable
  - Site clearance
  - Structural steel works
  - Remove and disposal of existing fence
  - Installation of new prestressed concrete wall panels
  - Install new galvanized steel high-steel gates
- Sufficient references to substantiate experience indicated (Client name and contact details, project description, duration and contract value)

### Index of documentation attached to this schedule

	<b>DOCUMENT NAME</b>
<b>1</b>	
<b>2</b>	
<b>3</b>	
<b>4</b>	
<b>5</b>	
<b>6</b>	
<b>7</b>	

<b>Score</b>	<b>Previous Experience</b>
	<p>Bidder must demonstrate their experience in any type of prestressed concrete wall panel fencing.</p> <ul style="list-style-type: none"> <li>- Proof of experience attached in the form of client letterhead.</li> <li>- Completion certificates with contact details, Project title and work description.</li> <li>- Work done as the main Contractor or Sub-Contractor is allowed</li> </ul>
<b>0</b>	No evidence provided
<b>5</b>	Bidder has successfully completed <b>1 to 3</b> similar Projects
<b>10</b>	Bidder has successfully completed <b>4</b> similar Projects
<b>15</b>	Bidder has successfully completed <b>5</b> similar Projects
<b>20</b>	Bidder has successfully completed <b>6</b> or more similar Projects

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## T2.2-04: Evaluation Schedule: Method Statement

### Note to tenderers:

Submit a method statement which responds to the scope of work and outlines construction methodology including that relating but not limited to quality, safety and understanding of the project objective.

The Tenderers must as such explain his / her understanding of the objectives of the works and the Employer's stated and implied requirements, highlight the issues of importance, and explain the construction sequencing they would adopt to address them. The method statement should explain the methodologies which are to be adopted and demonstrate its compatibility. The approach should also include and outline processes, procedures and associated resources, to meet the requirements and indicate how risks will be managed.

Bidder to provide a proposal demonstrating ability to deliver a service with completeness and quality in consideration of but not limited to the following key elements:

1. Sequence of work (i.e. Site Preparation, Excavation, Installation, Material Testing & Commissioning)
2. Resources allocation (i.e. People Management, Tools, Plant & Equipment, Material & Budget)
3. Environmental (i.e. Stakeholder Engagement, Dust Control, Waste management & Site Cleanliness)
4. Transportation and delivery (i.e. Transport panels, offload & Barricade)
5. Quality and Assurance (i.e. Quality Control Plan (QCP), Inspection and testing, Project closure & Handover)

The method statement shall include as a minimum but not limited to the following (the contractor must refer to the works information for a full description of the scope of the works):

- 1) Supply and installation of prestressed perimeter concrete wall panels with razor mesh wire and install new galvanised high tensile gates at Kaserne precinct, and any other work that may arise out of or incidental to the above or required of the Contractor for the proper completion of the Works in accordance with the true meaning and intent of this contract.
- 2) The works that the Contractor is to perform involve the following:
  - General small works
  - Earth works and formation
  - Shallow excavations where applicable
  - Site clearance
  - Structural steel works
  - Concrete works

The table below will be used as guidelines for scoring / evaluating the method statement submitted by the Tenderer:

<b>Score 0</b>	No submission or fewer than 5 key required elements
<b>Score 5</b>	The Method statement covers all <b>5</b> key elements on how the contractor will execute the prestressed concrete installation. <b>Not signed by the Project Technician</b>
<b>Score 10</b>	The Method statement covers all <b>5</b> key elements on how the contractor will execute the prestressed concrete installation. <b>Signed by the Project Technician</b>
<b>Score 15</b>	The Method statement covers all <b>5</b> key elements on how the contractor will execute the prestressed concrete installation. <b>Signed by the Project Technician and Project Manager</b>

## T2.2-05: Evaluation Schedule: Project Plan

Submit a Project Plan which satisfies the technical and quality requirements of the works, identifying all procedures, reviews, audits, controls, and records used to control and verify compliance with the Works Information.

The Tenderer must attach his / her project plan to this page.

The project plan shall include as a minimum but not limited to the following (the contractor must refer to the works information for a full description of the scope of the works):

Project plan/schedule to indicate all activities that will be undertaken for the implementation stage of the project (in the form of Gantt chart). The project is anticipated to be completed with 12 months and must include the following critical key elements:

1. Timelines and schedules (with start and finish date)
2. Work breakdown structure
3. Milestones (highlighting important stages or phases)
4. Task dependencies and sequence
5. Resource plan

<b>Score 0</b>	No Submission or Gantt chart at Level 1, and fewer that the required 5 key elements
<b>Score 5</b>	Project plan covers all <b>5</b> key elements in how the contractor will execute the activities that will be undertaken for the implementation stage of the project in line with the project scope and deliverables.  <b>Gantt chart at level 2</b>
<b>Score 10</b>	Project plan covers all <b>5</b> key elements in how the contractor will execute the activities that will be undertaken for the implementation stage of the project in line with the project scope and deliverables.  <b>Gantt chart at level 3</b>
<b>Score 15</b>	Project plan covers all <b>5</b> key elements in how the contractor will execute the activities that will be undertaken for the implementation stage of the project in line with the project scope and deliverables.  <b>Gantt chart at level 4</b>

**(NB: Project Plan/Schedule that is not submitted in the form of a Gantt chart will not be accepted)**

## **T2.2-06: Evaluation Schedule: Health and Safety Management**

The tenderer must submit the following documents as a minimum with the tender submission:

Contract specific Health & Safety plan for construction of a concrete fence wall works including the following:

Submission of Health and Safety Plan to demonstrate the contractor's commitment to Health and Safety and to ensure compliance with stated Employer's Works Information. Valid Letter/s of Good Standing with the Workmen's compensation fund (Letters of Good Standing from all members of a newly formed JV).

Safety, Health & Environmental Company Policy signed by the accounting.

officer. Indicating as minimum the following mentioned key elements:

1. Health and Safety Policy
2. Task-Specific Hazard Identification, Risk Assessment and Control measures
3. Compliance with Legal Requirements
4. Valid Letter of good standing and Public Liability (Insurance)
5. PPE Adherence, Resources Accountabilities and Responsibilities
6. Competence, Training and Awareness
7. Communication, Participation and Consultation
8. Operational Control
9. Emergency Preparedness and Response
10. Incident Reporting and Investigation
11. Non-Conformance and Action Management
12. Performance Assessment and Auditing
13. Measuring and Monitoring

The scoring of the Tender’s Health and Safety criteria is as follows:

<b>Total Points (20)</b>	<b>Scoring Guideline</b>
<b>(Score 0)</b>	No Submission of Health and Safety Plan or submission does not refer to the construction of concrete fence wall, and there are less than <b>6</b> key elements
<b>(Score 5)</b>	The bidder has submitted a Health and Safety Plan that covered <b>7</b> or <b>8</b> of the key elements that demonstrate the contractor’s commitment to Health and Safety and to ensure compliance with stated Employer’s Work Information.
<b>(Score 10)</b>	The bidder has submitted a Health and Safety Plan that covered <b>9</b> or <b>10</b> of the key elements that demonstrate the contractor’s commitment to Health and Safety and to ensure compliance with stated Employer’s Work Information.
<b>(Score 15)</b>	The bidder has submitted a Health and Safety Plan that covered <b>11</b> or <b>12</b> of the key elements that demonstrate the contractor’s commitment to Health and Safety and to ensure compliance with stated Employer’s Work Information.
<b>(Score 20)</b>	The bidder has submitted the Health and Safety Plan that includes all <b>13</b> key elements that demonstrate the contractor’s commitment to Health and Safety and to ensure compliance with stated Employer’s Work Information.

<p><b>Attached submissions to this schedule:</b></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
--

## T2.2-07: Authority to submit a Tender

Indicate the status of the tenderer by ticking the appropriate box hereunder. The tenderer must complete the certificate set out below for his category of organisation or alternatively attach a certified copy of a company / organisation document which provides the same information for the relevant category as requested here.

A - COMPANY	B - PARTNERSHIP	C - JOINT VENTURE	D - SOLE PROPRIETOR

### A. Certificate for Company

I, \_\_\_\_\_ chairperson of the board of directors \_\_\_\_\_  
 \_\_\_\_\_, hereby confirm that by resolution of the  
 board taken on \_\_\_\_\_ (date), Mr/Ms \_\_\_\_\_,  
 acting in the capacity of \_\_\_\_\_, was authorised to sign all  
 documents in connection with this tender offer and any contract resulting from it on behalf of  
 the company.

Signed

Date

Name

Position

Chairman of the Board of Directors



## B. Certificate for Partnership

We, the undersigned, being the **key partners** in the business trading as \_\_\_\_\_  
\_\_\_\_\_ hereby authorise Mr/Ms \_\_\_\_\_  
acting in the capacity of \_\_\_\_\_, to sign all documents in  
connection with the tender offer for Contract \_\_\_\_\_ and any  
contract resulting from it on our behalf.

Name	Address	Signature	Date

**NOTE:** This certificate is to be completed and signed by the full number of Partners necessary to commit the Partnership. Attach additional pages if more space is required.

### C. Certificate for Joint Venture

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

This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

Furthermore we attach to this Schedule a copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners.

Name of firm	Address	Authorising signature, name (in caps) and capacity



#### **D. Certificate for Sole Proprietor**

I, \_\_\_\_\_, hereby confirm that I am the sole owner of the  
business trading as \_\_\_\_\_.

Signed

Date

Name

Position

Sole Proprietor

## **T2.2-08 Letter/s of Good Standing with the Workmen's Compensation Fund**

Attached to this schedule is the Letter/s of Good Standing.

- 1.
- 2.
- 3.
- 4.

Name of Company/Members of Joint Venture:

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

## T2.2-09: Record of Addenda to Tender Documents

This schedule as submitted confirms that the following communications received from the Purchaser before the submission of this tender offer, amending the tender documents, have been taken into account in this specific tender offer:

	<b>Date</b>	<b>Title or Details</b>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

## SBD 6.2

### T2.2-10: Pre-qualification Criteria Schedule: Declaration of Certificate for Local Production and Content for Designated Sectors

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

#### 1. General Conditions

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) makes provision for the promotion of local production and content.
- 1.2. Regulation 8.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial\\_development/ip.jsp](http://www.thedti.gov.za/industrial_development/ip.jsp) at no cost.**

- 1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

#### 2. Definitions

- 2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;
- 2.2. **"bid price"** price offered by the bidder, excluding value added tax (VAT);
- 2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

- 2.4. **"designated sector"** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;
- 2.5. **"duly sign"** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility(close corporation, partnership or individual).
- 2.6. **"imported content"** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
- 2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and
- 2.9. **"sub-contract"** means the primary contractor's assigning, leasing, 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.
3. **The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
• Steel Substation Structures and Street Light Steel Poles;	100%
• Electrical and Telecom Cables;	90%
• Transformers and Shut Reactors Class 1	80%
• Valves Products and Actuators	70%
• Steel Value-Added Products	100%
• Plastic Pipes	100%
• Furniture Products: Office Furniture	85%

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 4.1. If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<b>Currency</b>	<b>Rates of exchange</b>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

TRANSNET PROPERTY

TENDER NUMBER: TP/2026/03/0048/3401/RFP

DESCRIPTION OF THE WORKS: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanized steel topping at Kaserne Park Precinct

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NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.



**LOCAL CONTENT DECLARATION  
(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. TP/2026/03/0048/3401/RFP**

**ISSUED BY:** TRANSNET PROPERTY ON BEHALF OF TRANSNET SOC LTD

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on [http://www.thdti.gov.za/industrial\\_development/ip.jsp](http://www.thdti.gov.za/industrial_development/ip.jsp). Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names), do hereby declare, in my capacity as ..... of.....(name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Price of the Designated commodity ..... Ex VAT	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

Price of the Designated commodity ..... Ex Vat	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

Price of the Designated commodity ..... Ex Vat	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

Price of the Designated commodity ..... Ex Vat	R
Imported content (x), as calculated in terms of SATS 1286:2011	R

DESCRIPTION OF THE WORKS: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanized steel topping at Kaserne Park Precinct

Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	
Price of the Designated commodity ..... Ex Vat	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	
Price of the Designated commodity ..... Ex Vat	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	
Price of the Designated commodity ..... Ex Vat	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.**

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**NOTE TO TENDERERS: Failure to fully complete, declare, sign & date this SBD6.2 Declaration as well as the accompanying Annexure C “local content declaration - summary schedule” may result in the tender submission being non-responsive and disqualified from any further evaluation.**

## Schedule A – Non-compliance for Local Content

### Non-compliance Penalties for Local Content:

- a) If for any reason the *Contractor* is unable to achieve the local content undertaking, the *Contractor* must approach the Department of Trade and Industry (“DTI”) to obtain exemption in order to supply the goods at a lower local content threshold. The *Contractor* is obliged to approach DTI for exemption within 10 (ten) days of determining that it is unable to achieve any milestone target or local content threshold.
- b) Should the DTI provide exemption, the *Contractor* shall be entitled to provide the goods at the lower local content threshold set by DTI. In such event, the Parties shall in good faith renegotiate the milestone targets or local content undertaking to ensure that the lowered local content thresholds are achieved.
- c) Should DTI not provide the necessary exemption, the *Contractor* shall be obliged to meet each milestone target as stated in the Local Content Plan or the local content undertaking.
- d) Should the *Contractor* fail to meet any milestone target or the local content undertaking, the following remedies shall apply without limiting any of the *Employer’s* other rights in law:
  - i. The *Employer* shall afford the *Contractor* a period of thirty (30) days to remedy its non-compliance.
  - ii. Should the *Contractor* fail to meet its obligations within the further 30 day period, the *Contractor* shall pay a Non-Compliance penalty (“Non-compliance Penalty”) to the *Employer* in respect of such Non-compliance as set out in clause iv below. The penalties shall be imposed per milestone measurement for non-delivery of committed values in the case of a Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately.
  - iii. To the extent that the Actual Local Content Spend<sup>1</sup> is lower than the Required Local Content Spend<sup>2</sup> (or the Adjusted Required Local Content Spend<sup>3</sup>, as the case may be), the *Contractor* shall be liable for Penalties which is the difference in value between the Actual Local Content Spend and the Required Local Content Spend (or the Adjusted Required Local Content Spend, as the case may be) plus an additional percentage of such difference. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately, in accordance with clause iv below.
  - iv. Non-compliance penalties shall apply at the following rate: the difference in value between the Required Local Content Spend and the Actual Local Content Spend, plus 5% of such difference.
  - v. In order to guarantee that the *Contractor* meets its obligations in terms of the Local Content Plan or its committed local content undertaking, the *Employer* shall be entitled to retain a Non-compliance Penalty at the rate of 1% of every monthly payment due by the *Employer* to the *Contractor* over the contract period (“the Local Content Retention Amount”). The Local Content Retention Amount shall be set off against any penalties payable by the *Contractor* at any milestone assessment.
- e) Should no penalties be imposed during the duration of the contract, the *Employer* shall refund the full value of the Local Content Retention Amount to the *Contractor* at the end of the contract period.
- f) Should any unpaid penalties remain at the end of the contract period, then without limiting other rights that the *Employer* may have in law, the *Contractor* shall forfeit the Local Content Retention Amount and shall have no further claim against the *Employer* for the repayment of such amount.

### Non-compliance Penalty Certificate:

- a) If any Non-compliance Penalty arises, the *Employer* shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.

<sup>1</sup> Actual Local Content Spend means the monetary value of local content initiatives actually delivered by the Supplier during the period under review.

<sup>2</sup> Required Local Content Spend means the monetary value of local content obligations that the Supplier has agreed to deliver during the period under review.

<sup>3</sup> Adjusted Required Local Content Spend means any adjustment to the Required Local Content Spend as prescribed by DTI through the process of exemption referred to in clause c) above and as agreed to between the parties, reduced to writing and signed by the parties.

- 
- b) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the *Contractor* disputes any of the amounts set out in a Non-compliance Penalty Certificate:
- the dispute shall be resolved in accordance with the provisions of the Contract; and
  - if pursuant to that referral, it is determined that the *Contractor* owes any amount to the *Employer* pursuant to the Non-compliance Penalty Certificate, then the *Contractor* shall pay such amount to the *Employer* within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

**Payment of Non-compliance Penalties:**

- a) Subject to Clause i) above, the *Contractor* shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of the *Employer* issuing a valid Tax Invoice to the *Contractor* for the amount set out in that certificate. If the *Employer* does not issue a valid Tax Invoice to the *Contractor* for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- b) The *Contractor* shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from the *Employer*, failing which Transnet shall, without prejudice to any other rights of the *Employer* under this Agreement, be entitled to call for payment which may be in any form the *Employer* deems reasonable and appropriate.
- c) It is agreed that the *Employer*, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the *Contractor's* compliance with its obligations under the Local Content Plan. To this end, the *Contractor* shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.

The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the *Contractor*.





## T2.2-12: Schedule of Proposed Subcontractors

The tenderer is required to provide details of all the sub-contractors that will be utilised in the execution of the *works*.

### Note to tenderers:

- In terms of PPPFA Regulation 6 (5), A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- In terms of PPPFA Regulation 12 (3), A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor that the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the contract.

**Tenderer to note that after award, any deviations from this list of proposed sub-contractors will be subject to acceptance by the *Project Manager* in terms of the Conditions of Contract.**

Provide information of the Sub-contractors below:

Name of Proposed Subcontractor			Address		Nature of work		Amount of Worked	Percentage of work
% Black Owned	EME	QSE	Youth	Women	Disabilities	Rural/ Underdeveloped areas/ Townships	Military Veterans	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Name of Proposed Subcontractor			Address		Nature of work		Amount of Worked	Percentage of work
% Black Owned	EME	QSE	Youth	Women	Disabilities	Rural/ Underdeveloped areas/ Townships	Military Veterans	



	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Name of Proposed Subcontractor</b>			<b>Address</b>		<b>Nature of work</b>		<b>Amount of Worked</b>	<b>Percentage of work</b>
<b>% Black Owned</b>	<b>EME</b>	<b>QSE</b>	<b>Youth</b>	<b>Women</b>	<b>Disabilities</b>	<b>Rural/ Underdeveloped areas/ Townships</b>	<b>Military Veterans</b>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Name of Proposed Subcontractor</b>			<b>Address</b>		<b>Nature of work</b>		<b>Amount of Worked</b>	<b>Percentage of work</b>
<b>% Black Owned</b>	<b>EME</b>	<b>QSE</b>	<b>Youth</b>	<b>Women</b>	<b>Disabilities</b>	<b>Rural/ Underdeveloped areas/ Townships</b>	<b>Military Veterans</b>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

## T2.2-13: ANNEX G Non-Compulsory Enterprise Questionnaire

The following particulars hereunder must be furnished.

In the case of a Joint Venture, separate enterprise questionnaires in respect of each partner/member must be completed and submitted.

**Section 1: Name of enterprise:**

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

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

**Section 4: CSD number:**

**Section 5: Particulars of sole proprietors and partners in partnerships**

Name	Identity number	Personal income tax number

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

**Section 6: Particulars of companies and close corporations**

Company registration number \_\_\_\_\_

Close corporation number \_\_\_\_\_

Tax reference number: \_\_\_\_\_

**Section 7: The attached SBD4 must be completed for each tender and be attached as a tender requirement.**

**Section 8: The attached SBD 6 must be completed for each tender and be attached as a requirement.**



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

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

Signed	Date
-----	-----
Name	Position
-----	-----
Enterprise name	-----
-----	

**SBD 6.1**

**PREFERENCE POINTS CLAIM FORM**

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Specific Goals contribution. Transnet will award preference points to companies who provide valid proof of evidence as per the table of evidence in paragraph 4.1 below.

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.

1.3 Preference points for this bid shall be awarded for:

- (a) Price;
- (b) B-BBEE Status Level of Contribution; and
- (c) Any other specific goal determined in the Transnet preferential procurement policy

1.4 The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	
B-BBEE Status Level 1 – 10 points	<b>20</b>
51% Black Owned EME's and QSE's – 5 points	
Local Content – LC Annexure C D and E) – 5 points	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of evidence required for any of the specific goals together with the bid will be interpreted to mean that preference points for that specific goal are not claimed.

1.6 The purchaser 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 the purchaser.

**2. DEFINITIONS**

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level 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;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"**
  - i) the B-BBEE status level certificate issued by an authorised body or person;
  - ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
  - iii) any other requirement prescribed in terms of the B-BBEE Act.
- (j) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (k) **"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.
- (l) **"Specific goals"** means targeted advancement areas or categories of persons or groups either previously disadvantaged or falling within the scope of the Reconstruction and Development Programme identified by Transnet to be given preference in allocation of procurement contracts in line with section 2(1) of the PPPFA.

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:  
80/20

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P<sub>s</sub> = Points scored for comparative price of bid under consideration

P<sub>t</sub> = Comparative price of bid under consideration

$P_{min}$  = Comparative price of lowest acceptable bid

#### 4. EVIDENCE REQUIRED FOR CLAIMING SPECIFIC GOALS

4.1 In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, preference points must be awarded to a bidder for providing evidence in accordance with the table below:

Specific Goals	Acceptable Evidence
B-BBEE Status contributor	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
30% Black Women Owned Entities	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
+50% Black Youth Owned Entities	Certified copy of ID Documents of the Owners and B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Entities Owned by People with Disability (PWD)	Certified copy of ID Documents of the Owners / Doctor's note and /or EEA1 form confirming the disability
Entities/Black People living in rural areas	Entity 's Municipal/ESKOM bill or letter from Induna/chief confirming residential address not older than 3 months.
South African Enterprises	CIPC Certificate
EME or QSE 51% Black Owned	B-BBEE Certificate / Sworn-Affidavit / CIPC Certificate
Entities that are 51 % Black Owned	CI B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Promoting exports Orientated for Job creation	Section.....Job Creation Schedule Returnable documents
Local Content and Local Production	Returnable Local Content and production Annexures
NIPP	NIPP Returnable documents
Creation of new jobs and labour intensification	Section.....Job Creation Schedule Returnable documents
The promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to South African Companies which are: <ul style="list-style-type: none"> <li>I. 30% Black Women, 51% Black Youth and 51% Black people with disabilities</li> <li>II. Entities with a specified minimum B-BBEE level (1 and 2)</li> <li>III. EMes and/or QSEs who are 51% black-owned</li> </ul>	Sub-contracting agreements and Declaration / Joint Venture Agreement and CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate as per DTIC guideline
The promotion of enterprises located in a specific province/region/municipal area for work to be done or services to be rendered in that province/region/municipal area	CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guidelines and Proof Registered address of entity

- 4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

Enterprise	B-BBEE Certificate & Sworn Affidavit
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a> .]
<b>EME<sup>1</sup></b>	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

- 4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.5 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 sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 4.6 A person awarded a contract may not sub-contract more than 25% 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 sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

## 5. BID DECLARATION

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

## 6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

<sup>1</sup> In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a sworn affidavit as the generic codes are not applicable to them.



6.1 B-BBEE Status Level of Contribution: . = .....(maximum of 20 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**7. SUB-CONTRACTING**

7.1 Will any portion of the contract be sub-contracted?

( *Tick applicable box* )

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE.

( *Tick applicable box* )

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------


**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

8.6 COMPANY CLASSIFICATION



- Manufacturer
- Supplier
- Professional Supplier/Service provider
- Other Suppliers/Service providers, e.g. transporter, etc.

[ *TICK APPLICABLE BOX* ]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor,, which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser 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) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
  - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
  - (f) forward the matter for criminal prosecution.

WITNESSES
1. ....
2. ....

.....
SIGNATURE(S) OF BIDDERS(S)
DATE: .....



## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>2</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of institution	State

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:  
.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

**YES/NO**

2.3.1 If so, furnish particulars:  
.....  
.....

### 3 DECLARATION

<sup>2</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

---

<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

**APPENDIX B**

Affidavit or Solemn Declaration as to VAT registration status

**Affidavit or Solemn Declaration**

I, \_\_\_\_\_ solemnly  
swear/declare that \_\_\_\_\_ is not a  
registered VAT vendor and is not required to register as a VAT vendor because the combined value  
of taxable supplies made by the provider in any 12-month period has not exceeded or is not expected  
to exceed R1million threshold, as required in terms of the Value Added Tax Act.

Signature:

Designation:

Date:

**Commissioner of Oaths**

Thus signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_  
day of \_\_\_\_\_ 20 \_\_\_\_\_,

the Deponent having knowledge that he/she knows and understands the contents of this Affidavit,  
and that he/she has no objection to taking the prescribed oath, which he/she regards binding on  
his/her conscience and that the allegations herein contained are all true and correct.

\_\_\_\_\_  
Commissioner of Oaths

VENDOR REGISTRATION DOCUMENTS CHECKLIST

	Yes	No
1. Complete the "Supplier Code of Conduct" (SCC).		
2. Copy of cancelled cheque OR letter from the bank verifying banking details (with <b>bank stamp not older than 3 Months &amp; sign by Bank Teller</b> ).		
3. Certified ( <b>Not Older than 3 Months</b> ) copy of Identity document of Shareholders/Directors/Members (where applicable).		
4. Certified copy of certificate of incorporation, CM29 / CM9 (name change).		
5. Certified copy of share Certificates of Shareholders, CK1 / CK2 (if CC).		
6. A letter with the company's letterhead confirming both <b>Physical</b> and <b>Postal</b> address.		
7. Original or certified copy of SARS Tax Clearance certificate and Vat registration certificate.		
8. BBBEE certificate and detailed scorecard from a <b>SANAS</b> Accredited Verification Agency and/or Sworn Certified Affidavit.		
9. Central Supplier Database (CSD) Summary Registration Report.		

## T2.2-14 Certificate of Acquaintance with Tender Documents

NAME OF TENDERING ENTITY:

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1. By signing this certificate I/we acknowledge that I/we have made myself/ourselves thoroughly familiar with, and agree with all the conditions governing this RFP. This includes those terms and conditions of the Contract, the Supplier Integrity Pact, Non-Disclosure Agreement etc. contained in any printed form stated to form part of the documents thereof, but not limited to those listed in this clause.
2. I/we furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any tender/contract condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.
3. I/we understand that the accompanying Tender will be disqualified if this Certificate is found not to be true and complete in every respect.
4. For the purposes of this Certificate and the accompanying Tender, I/we understand that the word "competitor" shall include any individual or organisation, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) has been requested to submit a Tender in response to this Tender invitation;
  - b) could potentially submit a Tender in response to this Tender invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Services as the Tenderer and/or is in the same line of business as the Tenderer
5. The Tenderer has arrived at the accompanying Tender independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive Tendering.
6. In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;



Description of the Works: Tender relating to Supply and installation of Prestressed Perimeter concrete wall at Kaserne Precinct.

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

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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SIGNATURE OF TENDERER



## **T2.2-15 NON-DISCLOSURE AGREEMENT**

**[..... 2020]**



**Note to tenderers: This Non-Disclosure Agreement is to be completed and signed by an authorised signatory:**

**THIS AGREEMENT** is made effective as of ..... day of ..... 20..... by and between:

**TRANSNET SOC LTD**

(Registration No. 1990/000900/30), a company incorporated and existing under the laws of South Africa, having its principal place of business at Transnet Corporate Centre 138 Eloff Street , Braamfontein , Johannesburg 2000

**and**

.....

(Registration No. ....), a private company incorporated and existing under the laws of South Africa having its principal place of business 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 Tender 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** (hereinafter Tender) means Transnet's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the **Disclosing Party**] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the **Receiving Party**] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:

- 1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
- 1.3.2 was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or
- 1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Tender or for the subsequent performance of any contract between the parties in relation to the Tender.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- 2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 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
- 2.3.2 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 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

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

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

### **4. ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Tender 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 Tender 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 Tender 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 Tender 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 Tender 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.

Signed		Date	
	.....		.....
Name		Position	
	.....		.....
Tenderer	.....		

## T2.2-16: RFP DECLARATION FORM

NAME OF COMPANY:

\_\_\_\_\_

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

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

FULL NAME OF OWNER/MEMBER/DIRECTOR/

PARTNER/SHAREHOLDER:

ADDRESS:

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



Indicate nature of relationship with Transnet:

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

We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet (other than any existing and appropriate business relationship with Transnet) which could unfairly advantage our company in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

6. We accept that any dispute pertaining to this tender will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. (Refer "Important Notice to respondents" below).
7. We further accept that Transnet reserves the right to reverse a tender award or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.
8. We have acquainted ourselves and agree with the content of **T2.2-18** "Service Provider Integrity Pact".

For and on behalf of ..... ..... duly authorised thereto
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Name:
Signature:
Date:

### **IMPORTANT NOTICE TO TENDERERS**

- Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of tenders exceeding R5,000,000.00 (five million S.A. Rand) in value. Should a Tenderer have any material concern regarding an tender process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.
- It is incumbent on the Tenderer to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).
- An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net)
- For transactions below the R5,000,000.00 (five million S.A. Rand) threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.
- All Tenderers should note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a tenderer on its List of Excluded Bidders.

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## T2.2-17: REQUEST FOR PROPOSAL – BREACH OF LAW

NAME OF COMPANY:

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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 Tenderer 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:

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DATE OF BREACH:

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

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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SIGNATURE OF TENDER

Transnet Property.

Tender Number: TP/2026/03/0048/3401/RFP

Description of the Works: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanized steel topping at Kaserne Precinct.

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## **T2.2-18 Service Provider Integrity Pact**

**Important Note: All potential tenderers must read this document and certify in the RFP Declaration Form that that have acquainted themselves with, and agree with the content.**

**The contract with the successful tenderer will automatically incorporate this Integrity Pact and shall be deemed as part of the final concluded contract.**

### **INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

The Contractor (hereinafter referred to as the "Tenderer/Service Providers/Contractor")

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## **PREAMBLE**

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Tenderers/Service Providers/Contractors.

In order to achieve these goals, Transnet and the Tenderer/Service Provider/Contractor hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Tenderer's/Service Provider's/Contractor's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and/or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Tenderers/Service Providers/Contractor's will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

## **1 OBJECTIVES**

- 1.1 Transnet and the Tenderer/Service Provider/Contractor agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence/unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
- a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
  - b) Enable Tenderers/Service Providers/Contractors to abstain from bribing or participating in any corrupt practice in order to secure the contract.

## **2 COMMITMENTS OF TRANSNET**

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Tenderer, either for themselves or for any person, organisation or third

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party related to the contract in exchange for an advantage in the tendering process, Tender evaluation, contracting or implementation process related to any contract.

- 2.2 Transnet will, during the registration and tendering process treat all Tenderers/ Service Providers/Contractor with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Tenderers/Service Providers/Contractors the same information and will not provide to any Tenderers/Service Providers/Contractors confidential/additional information through which the Tenderers/Service Providers/Contractors could obtain an advantage in relation to any tendering process.
- 2.3 Transnet further confirms that its employees will not favour any prospective Tenderers/Service Providers/Contractors in any form that could afford an undue advantage to a particular Tenderer during the tendering stage, and will further treat all Tenderers/Service Providers/Contractors participating in the tendering process in a fair manner.
- 2.4 Transnet will exclude from the tender process such employees who have any personal interest in the Tenderers/Service Providers/Contractors participating in the tendering process.

### 3 OBLIGATIONS OF THE TENDERER / SERVICE PROVIDER

- 3.1 Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours or benefits.
  - a) Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.
  - b) Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.
  - c) Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.
  - d) Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefit or services. Such favours will be considered to constitute corruption.

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- 3.2 The Tenderer/Service Provider/Contractor commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its Tender or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Tenderer/Service Provider/Contractor commits to the following:
- a) The Tenderer/Service Provider/Contractor will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the tendering process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the tendering process; and
  - b) The Tenderer/Service Provider/Contractor will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the tendering process, or to any person, organisation or third party related to the contract in exchange for any advantage in the tendering, evaluation, contracting and implementation of the contract.
- 3.3 The Tenderer/Service Provider/Contractor will not collude with other parties interested in the contract to preclude a competitive Tender price, impair the transparency, fairness and progress of the tendering process, Tender evaluation, contracting and implementation of the contract. The Tenderer / Service Provider further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Tenderer/Service Provider/Contractor will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Tenderers/Service Providers/Contractors. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the tendering process.
- 3.5 The Tenderer/Service Provider/Contractor will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Tenderer/Service Provider/Contractor will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 3.6 A Tenderer/Service Provider/Contractor of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or tendering process. Similarly, the Tenderer / Service Provider / Contractor of South African nationality shall furnish

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the name and address of the foreign principals, if any, involved directly or indirectly in the registration or tendering process.

- 3.7 The Tenderer/Service Provider/Contractor will not misrepresent facts or furnish false or forged documents or information in order to influence the tendering process to the advantage of the Tenderer/Service Provider/Contractor or detriment of Transnet or other competitors.
- 3.8 Transnet may require the Tenderer/Service Provider/Contractor to furnish Transnet with a copy of its code of conduct. Such code of conduct must address the compliance programme for the implementation of the code of conduct and reject the use of bribes and other dishonest and unethical conduct.
- 3.9 The Tenderer/Service Provider/Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Tenderer/Service Provider/Contractor confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Transnet as follows:
- a) Human Rights
- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
  - Principle 2: make sure that they are not complicit in human rights abuses.
- b) Labour
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
  - Principle 4: the elimination of all forms of forced and compulsory labour;
  - Principle 5: the effective abolition of child labour; and
  - Principle 6: the elimination of discrimination in respect of employment and occupation.
- c) Environment
- Principle 7: Businesses should support a precautionary approach to environmental challenges;
  - Principle 8: undertake initiatives to promote greater environmental responsibility; and

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- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

d) Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

#### **4 INDEPENDENT TENDERING**

4.1 For the purposes of that Certificate in relation to any submitted Tender, the Tenderer declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Tenderer, whether or not affiliated with the Tenderer, who:

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

4.2 The Tenderer has arrived at his submitted Tender independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive tendering.

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

- a) prices;
- b) geographical area where Goods or Services will be rendered [market allocation];
- c) methods, factors or formulas used to calculate prices;
- d) the intention or decision to submit or not to submit, a Tender;
- e) the submission of a Tender which does not meet the specifications and conditions of the RFP; or
- f) tendering with the intention of not winning the Tender.

4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her tender relates.

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- 4.5 The terms of the Tender as submitted have not been, and will not be, disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official Tender opening or of the awarding of the contract.
- 4.6 Tenderers are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to Tenders and contracts, Tenders that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [**NPA**] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.
- 4.7 Should the Tenderer find any terms or conditions stipulated in any of the relevant documents quoted in the Tender unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Tender. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

## **5 DISQUALIFICATION FROM TENDERING PROCESS**

- 5.1 If the Tenderer/Service Provider/Contractor has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Tenderer/Service Provider/Contractor into question, Transnet may reject the Tenderer's / Service Provider's / Contractor's application from the registration or tendering process and remove the Tenderer/Service Provider/Contractor from its database, if already registered.
- 5.2 If the Tenderer/Service Provider/Contractor has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Tenderer/Service Provider /Contractor from future tendering processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Tenderer/Service Provider/Contractor and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

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- 5.3 If the Tenderer/Service Provider/Contractor can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

## **6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)**

- 6.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Tender shall be awarded to a Tenderer whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Tenderer should it be established, at any time, that a tenderer has been restricted with National Treasury by another government institution.
- 6.2 All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual (CPM included) are included herein by way of reference. Below follows a condensed summary of this restriction procedure.
- 6.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website.
- 6.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 6.5 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to restricting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 6.6 A Service Provider or Contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

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6.7 Grounds for blacklisting include: If any person/Enterprise which has submitted a Tender, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Tender or contract:

- a) Has, in bad faith, withdrawn such Tender after the advertised closing date and time for the receipt of Tenders;
- b) has, after being notified of the acceptance of his Tender, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Tender documents;
- c) has carried out any contract resulting from such Tender in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

6.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Service Providers or Register of Tender Defaulters.

6.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for

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blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

## **7 PREVIOUS TRANSGRESSIONS**

- 7.1 The Tenderer/Service Provider/Contractor hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Tenderer's/Service Provider's/Contractor's database or any tendering process.
- 7.2 If it is found to be that the Tenderer/Service Provider/Contractor made an incorrect statement on this subject, the Tenderer/Service Provider/Contractor can be rejected from the registration process or removed from the Tenderer/Service Provider/Contractor database, if already registered, for such reason (refer to the Breach of Law Returnable Form contained in the document.)

## **8 SANCTIONS FOR VIOLATIONS**

- 8.1 Transnet shall also take all or any one of the following actions, wherever required to:
- a) Immediately exclude the Tenderer/Service Provider/Contractor from the tendering process or call off the pre-contract negotiations without giving any compensation the Tenderer/Service Provider/Contractor. However, the proceedings with the other Tenderer/Service Provider/Contractor may continue;
  - b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Tenderer/Service Provider/Contractor;
  - c) Recover all sums already paid by Transnet;
  - d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Tenderer/Service Provider/Contractor, in order to recover the payments, already made by Transnet, along with interest;
  - e) Cancel all or any other contracts with the Tenderer/Service Provider/Contractor; and
  - f) Exclude the Tenderer/Service Provider/Contractor from entering into any Tender with Transnet in future.

## **9 CONFLICTS OF INTEREST**

- 9.1 A conflict of interest includes, inter alia, a situation in which:
- a) A Transnet employee has a personal financial interest in a tendering / supplying entity; and

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b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:

- a) Private gain or advancement; or
- b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any Tender committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Tenderer/Service Provider/Contractor has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s)/ member(s)/director(s)/partner(s)/shareholder(s) and a Transnet employee/ member of Transnet's Board of Directors in respect of a Tender which will be considered for the Tender process, the Tenderer/Service Provider/ Contractor:

- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
- b) must notify Transnet immediately in writing once the circumstances has arisen.

9.4 The Tenderer/Service Provider/Contractor shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Tenderer/Service Provider/Contractor.

## 10 DISPUTE RESOLUTION

10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Tenderer / Service Provider / Contractor. When a dispute arises between Transnet and its Tenderer / Service Provider / Contractor, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;

- b) **Perjury:** where a Tenderer / Service Provider / Contractor make a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a Tenderer / Service Provider / Contractor makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a Tenderer / Service Provider / Contractor abuses the court process in order to gain a competitive advantage during a Tender process.

**11 GENERAL**

- 11.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 11.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 11.3 The validity of this Integrity Pact shall cover all the tendering processes and will be valid for an indefinite period unless cancelled by either Party.
- 11.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 11.5 Should a Tenderer/Service Provider/Contractor be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Tenderer/Service Provider/Contractor to report this behaviour directly to a senior Transnet official/employee or alternatively by using Transnet’s “Tip-Off Anonymous” hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties’ knowledge and belief, the information provided in this Integrity Pact is true and correct.

I ..... duly authorised by the tendering entity, hereby certify that the tendering entity are **fully acquainted** with the contents of the Integrity Pact and further **agree to abide by it** in full.

Signature .....

Date .....

## T2.2-18 : Supplier Code of Conduct

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

- The Transnet Procurement Policy – A guide for Tenderers.
- Section 217 of the Constitution - the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act (PFMA);
- The Broad Based Black Economic Empowerment Act (BBBEE)
- The Prevention and Combating of Corrupt Activities Act (PRECCA); and
- The Construction Industry Development Board Act (CIDB Act).

This code of conduct has been included in this contract to formally appraise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

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

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

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

- Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with, and payments to, our suppliers.
- Employees must not accept or request money or anything of value, directly or indirectly, from suppliers.
- Employees may not receive anything that is calculated to:
  - Illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;

- 
- Win or retain business or to influence any act or decision of any person 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 SOC Limited 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 practices.
- Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing BBBEE spend (fronting).

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

- Generally, suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
  - Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
  - Collusion;
  - Failure to disclose accurate information required during the sourcing activity (ownership, financial situation, BBBEE status, etc.);
  - Corrupt activities listed above; and
  - Harassment, intimidation or other aggressive actions towards Transnet employees.
- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence 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 SOC Limited.

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

Where possible, contracts will be negotiated to include the above in the terms of such contracts. To the extent such terms are not included in contractual obligations and any of the above code is breached, then Transnet reserves its right to review doing business with these suppliers.

I, \_\_\_\_\_ of \_\_\_\_\_  
*(insert name of Director or as per Authority Resolution from Board of Directors)* *(insert name of Company)*

hereby acknowledge having read, understood and agree to the terms and conditions set out in the "Transnet Supplier Code of Conduct."

Signed this on day \_\_\_\_\_ at

\_\_\_\_\_

\_\_\_\_\_

Signature

**GENERAL BID CONDITIONS**

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## 1 DEFINITIONS

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

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 1.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.14 **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 SUBMITTING OF BID DOCUMENTS

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

## 4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.

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

## **5 BID FEES**

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document provided the Bid Documents are also made available free of charge on the National Treasury eTender Publication Portal.

## **6 VALIDITY PERIOD**

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

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

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

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

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

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

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the Chairperson of the relevant Bid Preparation and Evaluation Committee.

## **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Where Bids are submitted to the Chairperson of the relevant Bid Preparation and Evaluation Committee, 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 Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

## **11 RETURNABLE DOCUMENTS**

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

## **12 DEFAULTS BY RESPONDENTS**

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

- 12.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 12.2 accept an order in terms of the Bid;
- 12.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 12.4 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.

## **13 CURRENCY**

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

## **14 PRICES SUBJECT TO CONFIRMATION**

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

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

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

## **16 EXCHANGE AND REMITTANCE**

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

## **17 ACCEPTANCE OF BID**

- 17.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

## **18 NOTICE TO UNSUCCESSFUL RESPONDENTS**

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

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

- 19.1 The Supplier/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.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be. Respondents will be afforded an opportunity to withdraw an unacceptable deviation, failing which the respondent will be disqualified.

## **20 CONTRACT DOCUMENTS**

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

## **21 LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## **22 IDENTIFICATION**

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

## **23 RESPONDENT'S SAMPLES**

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

## **24 SECURITIES**

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.124.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 24 will be for the account of the Supplier/Service Provider.

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

- 25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working

days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

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

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

## **26 EXPORT LICENCE**

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

## **27 QUALITY OF MATERIAL**

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

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

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

## **29 VALUE-ADDED TAX**

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

29.2 In respect of foreign Services rendered:

- a) 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
- b) 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.

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

30.1 Method of Payment

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

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

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

### 30.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Supplier/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 as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

## 31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

### 31.1 Contract Quantities

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

### 31.2 Delivery Period

- a) Period Contracts and Fixed Quantity Requirements

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

- b) Progress Reports

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

- c) Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/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 supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or Partial Failure to Perform the*

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

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

### **32.1 Copyright**

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

### **32.2 Drawings and specifications**

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

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

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

### **32.4 Foreign specifications**

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

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

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

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

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

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

a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

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

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

33.5 If payment is to be made in South Africa, the foreign Supplier/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]:

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

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

#### **34 DATABASE OF RESTRICTED SUPPLIERS**

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

#### **35 CONFLICT WITH ISSUED RFX DOCUMENT**

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

**oooOOOooo**



**MASTER AGREEMENT**

entered into by and between

**TRANSNET PROPERTY AN OPERATING DIVISION OF  
TRANSNET SOC LTD**

[Registration Number 1900/0009900/30]

and

.....

**FOR THE SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER  
CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED GALVANISED STEEL  
TOPPING AT KASERNE PARK PRECINCT**

<b>Agreement Number</b>	<b>AS PER SYSTEM GENERATED</b>
<b>Commencement Date</b>	.....
<b>Expiry Date</b>	.....

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### SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

## 1 INTRODUCTION

This Agreement is entered into by and between:

**Transnet SOC Ltd** [Registration Number 1990/000900/30] whose registered address is **150 Commissioner Street, Johannesburg, 2000**, Republic of South Africa [**Transnet**]

and

..... [Registration Number .....] whose registered address is  
..... [**Service Provider**].

### NOW THEREFORE, IT IS AGREED:

- 1.1 Transnet hereby appoints the Service Provider to provide, and Transnet undertakes to accept the supply of Goods / provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements / Work Orders issued as a schedule to this Agreement; and
- 1.2 the Service Provider hereby undertakes to provide the Goods/Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

## 2 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:

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Goods/Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods / provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 **Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.
- 2.4 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.5 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.6 **Cession** refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party.

- 2.7 **Commencement Date** means ....., notwithstanding the signature date of this Agreement;
- 2.8 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
- a) information relating to methods of operation, data and plans of the disclosing Party;
  - b) the contents of this Agreement;
  - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
  - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
  - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
  - f) information relating to the past, present and future research and development of the disclosing Party;
  - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
  - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
  - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
  - j) Copyright works;
  - k) commercial, financial and marketing information;
  - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
  - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
  - n) information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
  - o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.9 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions,

photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

- 2.10 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;
- 2.11 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.12 **Expiry Date** means ..... ;
- 2.13 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.14 **Goods** means the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;
- 2.15 **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- 2.16 **Imported content** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
- 2.17 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.18 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.19 **Local content** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 2.20 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.21 **Party** means either one of these Parties;

- 2.22 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.23 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.24 **Price(s)** means the agreed Price(s) for the Goods/Services to be purchased from the Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.25 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Goods or Services;
- 2.26 **Service(s)** means..... , the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;
- 2.27 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Goods/Services to be provided by the Service Provider;
- 2.28 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.29 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.30 **Schedule of Requirements** means Schedule 1 hereto;
- 2.31 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.32 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.33 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.34 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.35 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.36 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.

- 2.37 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time.

### 3 INTERPRETATION

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

### 4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 422 [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

## **5 AUTHORITY OF PARTIES**

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

## **6 DURATION/TERM AND CANCELLATION**

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is ..... and the duration shall be for a ..... [.....] year period, expiring on ....., unless:
- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
  - b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2 Notwithstanding clause 299 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## **7 RISK MANAGEMENT**

- 7.1 Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.
- 7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period

## **8 TRANSNET'S OBLIGATIONS**

- 8.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Goods/Services as may be necessary for the Service Provider to provide the Goods/Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

- 8.2 The Service Provider shall give Transnet reasonable notice of any information it requires.
- 8.3 Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

## **9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

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

- a) render the supply of the Goods/Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- g) treat all enquiries from Transnet in connection with the supply of the Goods/Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods/Services or ancillary Services to Transnet;
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
- o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision

applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

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

## **10 SERVICE PROVIDER'S PERSONNEL**

10.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.

10.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.

10.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.

10.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

10.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

## **11 SUBCONTRACTING**

- 11.1 The Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.
- 11.2 If the Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Service Provider up to 10% of the value of the contract.
- 11.3 Where the Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Service Provider (main contractor) and the subcontractor.
- 11.4 Should Transnet approve the Supplier's/Service Provider's subcontracting arrangement, the Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 11.5 The Service Provider may not subcontract in such a manner that the the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.6 The Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Service Provider, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the Subcontract.

## **12 PAYMENT TO SUB-CONTRACTORS**

- 12.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Service Provider, subject to the following conditions:
  - a) Receipt of an undisputed invoice from the sub-contractor; and
  - b) Receipt of written confirmation from the Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.
- 12.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Service Provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.
- 12.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.
- 12.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Service Provider, whatsoever.

## **13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS**

### **13.1 B-BBEE Scorecard**

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
  - (i) a change in the Supplier's/Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Supplier's/ Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 299.
- e) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 299 shall apply.

### 13.2 **Green Economy/Carbon Footprint**

- a) The Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

### 13.3 **Reporting**

- a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with its Local Content obligations (if applicable) and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning its Local Content obligations.
- b) The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

## 14 **LOCAL CONTENT OBLIGATIONS**

- 14.1 In terms of Annexure A (SBD 6.2) and Annexure C of the RFP, the Supplier has undertaken to implement the local content and production requirements set by National Treasury for the ..... designated sector ("local content undertaking"). It is recorded

that the local content undertaking was a prequalification criterion of the RFP and it is therefore mandatory for the Supplier to comply with Annexures A and C in order for it to fulfil its local content obligations.

- 14.2 The Supplier is required to note that Transnet, the Department of Trade, Industry and Competition [DTIC] and/or the body appointed by the DTIC as the verification authority for local content may conduct compliance audits with regard to the local content requirements as prescribed in Regulation 9 of the Preferential Procurement Regulations, 2011 issued in terms of the Preferential Procurement Policy Framework Act.
- 14.3 The Supplier is required to continuously update Declarations C, D and E of the Local Content Declaration templates with the actual local content values for the duration of the contract.
- 14.4 Breach of Local Content obligations also provides Transnet cause to terminate the contract in certain cases where material non compliance with Local Content requirements are not achieved.

## **15 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME (NIPP)**

- 15.1 In terms of SBD 5, the Supplier has undertaken to enter into a NIPP obligation agreement with the DTIC. In consultation with the DTIC, Transnet may monitor compliance to the NIPP obligation agreement and in the event of non-compliance by the Supplier, penalties will be applied as per paragraph 8.3 of the NIPP Guidelines as issued by the DTIC.

## **16 JOB-CREATION**

- 16.1 In terms of Section ..... of the RFP, the Supplier has undertaken to create new jobs (either by them or their subcontractor).

## **17 PENALTIES**

### **17.1 Penalties for Non-compliance to Service Level Agreement**

Where the Service Provider fails to deliver the Goods/Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at 5% of the contract value, amount deducted from the last invoice.

### **17.2 Non-compliance Penalties for Local Content:**

- a) The Parties have agreed on the following milestone targets ("the Local Content Plan"):  
.....
- b) If for any reason the Supplier is unable to achieve any milestone target indicated in the Local Content Plan **OR** the local content undertaking, the Supplier must approach the Department of Trade and Industry ("DTI") to obtain exemption in order to supply the goods at a lower local content threshold. The Supplier is obliged to approach DTI for exemption within 10 (ten) days of determining that it is unable to achieve any milestone target or local content threshold.
- c) Should the DTI provide exemption, the Supplier shall be entitled to provide the goods at the lower local content threshold set by DTI. In such event, the Parties shall in good faith renegotiate the milestone targets or local content undertaking to ensure that the lowered local content thresholds are achieved.

- d) Should DTI not provide the necessary exemption, the Supplier shall be obliged to meet each milestone target as stated in the Local Content Plan or the local content undertaking.
- e) Should the Supplier fail to meet any milestone target or the local content undertaking, the following remedies shall apply without limiting any of Transnet's other rights in law:
  - i. Transnet shall afford the Supplier a period of thirty (30) days to remedy its non-compliance.
  - ii. Should the Supplier fail to meet its obligations within the further 30 day period, the Supplier shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance as set out in clause iv below. The penalties shall be imposed per milestone measurement for non-delivery of committed values in the case of a Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately.
  - iii. To the extent that the Actual Local Content Spend<sup>1</sup> is lower than the Required Local Content Spend<sup>2</sup> (or the Adjusted Required Local Content Spend<sup>3</sup>, as the case may be), the Supplier shall be liable for Penalties which is the difference in value between the Actual Local Content Spend and the Required Local Content Spend (or the Adjusted Required Local Content Spend, as the case may be) plus an additional percentage of such difference. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately, in accordance with clause iv below.
  - iv. Non-compliance penalties shall apply at the following rate: the difference in value between the Required Local Content Spend and the Actual Local Content Spend, plus 5% of such difference.
  - v. In order to guarantee that the Supplier meets its obligations in terms of the Local Content Plan or its committed local content undertaking, Transnet shall be entitled to retain a Non-compliance Penalty at the rate of 2% of every monthly payment due by Transnet to the Supplier over the contract period ("the Local Content Retention Amount"). The Local Content Retention Amount shall be set off against any penalties payable by the Supplier at any milestone assessment.
- f) Should no penalties be imposed during the duration of the contract, Transnet shall refund the full value of the Local Content Retention Amount to the Supplier at the end of the contract period.
- g) Should any unpaid penalties remain at the end of the contract period, then without limiting other rights that Transnet may have in law, the Supplier shall forfeit the Local Content

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<sup>1</sup> Actual Local Content Spend means the monetary value of local content initiatives actually delivered by the Supplier during the period under review.

<sup>2</sup> Required Local Content Spend means the monetary value of local content obligations that the Supplier has agreed to deliver during the period under review.

<sup>3</sup> Adjusted Required Local Content Spend means any adjustment to the Required Local Content Spend as prescribed by DTCI through the process of exemption referred to in clause c) above and as agreed to between the parties, reduced to writing and signed by the parties.

Retention Amount and shall have no further claim against Transnet for the repayment of such amount.

**Non-compliance Penalty Certificate:**

- h) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- i) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier disputes any of the amounts set out in a Non-compliance Penalty Certificate:
  - the dispute shall be resolved in accordance with the provisions of the Agreement; and
  - if pursuant to that referral, it is determined that the Supplier owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

**Payment of Non-compliance Penalties:**

- j) Subject to Clause i) above, the Supplier shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Supplier for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- k) The Supplier shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and appropriate.
- l) It is agreed that Transnet, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the Contractor's compliance with its obligations under the Local Content Plan. To this end, the Contractor shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.
- m) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

**17.3 Non-compliance penalties for subcontracting**

- a) Breach of subcontracting obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.
- b) If the Service Provider fails to achieve its subcontracting commitments as per their bid submission ("a **Non-Compliance**"), the Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.

- c) Such penalty shall be calculated based on the difference in value between the committed and delivered subcontracting value (i.e. 100% of the undelivered subcontracting value) plus an additional 10% (ten per cent) of such difference.

**Non-compliance Penalty Certificate:**

- d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.
- e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
- the dispute shall be resolved in accordance with the provisions of the Agreement; and
  - if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

**Payment of Non-compliance Penalties:**

- f) Subject to Clause (e) above, the Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- g) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- h) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- i) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

**17.4 Non-compliance penalties for Job Creation**

- a) Breach of job creation obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.
- b) If the Service Provider fails to achieve its job creation commitments as per their bid submission ("a **Non-Compliance**"), the Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.
- c) Such penalty shall be calculated based on the difference between the committed and delivered jobs. For every job not created, a penalty of 2% of the contract value will be applied.

**Non-compliance Penalty Certificate:**

- d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.
- e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
  - the dispute shall be resolved in accordance with the provisions of the Agreement; and
  - if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

**Payment of Non-compliance Penalties:**

- f) Subject to Clause (e) above, the Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- g) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- h) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

**18 FEES AND EXPENSES RELATING TO SERVICES**

- 18.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 18.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 18.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
  - a) are agreed by Transnet in advance;
  - b) are incurred in accordance with Transnet's standard travel and expenses policies;

- c) are passed on to Transnet at cost with no administration fee; and
  - d) will only be reimbursed if supported by relevant receipts.
- 18.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## **19 INVOICES AND PAYMENT**

- 19.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 19.2 Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Goods/Services ordered, in terms of clause 19.5 below.
- 19.3 Transnet may, pending an investigation, withhold any payments to the Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 19.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 19.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 19.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 19.7 The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

## **20 PRICE ADJUSTMENTS**

- 20.1 Prices for Goods/Services supplied in terms of this Agreement shall be subject to review as indicated in the Schedule of Requirements/Works Order annexed hereto.
- 20.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The

Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Goods/Services.

- 20.3 Pursuant to clause 20.2 above, the Service Provider shall keep full and accurate records of all costs associated with the supply of the Goods/Services to Transnet, in a form to be approved in writing by Transnet. The Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- 20.4 Should Transnet and the Service Provider fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 39 of the Master Agreement [Dispute Resolution].
- 20.5 If during the period of this Agreement Transnet can purchase similar Goods/Services of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Goods/Services purchased hereunder from the Service Provider, Transnet may notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Price of the Goods/Services purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Goods/Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.
- 20.6 If during the period of this Agreement the Service Provider sells any materials which are the same as, equivalent to, or substantially similar to the Goods/Services herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Service Provider has an opportunity to adjust its Price for the Goods/Services purchased hereunder within 30 [thirty] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Goods/Services from any other such supplier, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Service Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

## **21 WARRANTIES APPLICABLE TO GOODS**

The Supplier warrants that:

- 21.1 pursuant to clause 9.3 [General Obligations of the Supplier], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;

- 21.2 the execution and performance of this Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and
- 21.3 it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

## **22 WARRANTIES APPLICABLE TO SERVICES**

- 22.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;
  - b) it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
  - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
  - d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
  - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 22.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 22.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 22.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.
- 22.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.
- 22.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

- 22.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 22.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 422 [*Amendment and Change Control*].
- 22.7 The Service Provider warrants that:
- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
  - b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.
- The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.
- 22.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 22.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 22.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

### **23 THIRD PARTY INDEMNITY**

The Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 21.2 above.

### **24 INSPECTION APPLICABLE TO GOODS**

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

- 24.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- 24.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- 24.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- 24.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 24.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).
- 24.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- 24.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 244.

## **25 DEFECTIVE GOODS**

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

- b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.
- 25.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.
- 25.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.
- 25.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.
- 25.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

## **26 TOTAL OR PARTIAL FAILURE TO PERFORM**

- 26.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:
- a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or
  - b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),
- then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of this Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.
- 26.2 The Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Goods/Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed Goods/Services. Where an integral or essential part of the work has not been completed, the amount to be paid to the Service Provider will be calculated on the basis of Transnet's enrichment. The Service Provider shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.
- 26.3 Whenever, in any case not covered by clause 26.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods/Services as required by the terms of this Agreement

or Purchase Order, or if any Goods/Services are rejected on any of the grounds mentioned in clause 255 [Defective Goods], Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods/Services, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

## **27 NON CONFORMANCE OF GOODS/SERVICES PROCURED**

*27.1 In the case of Goods/services manufactured for and procured by Transnet from the Service Provider in terms of this Agreement, being found not to conform to the Transnet standards, specifications and requirements, Transnet at any time may be entitled to raise a Non Conformance Report (NCR) against a Service Provider whose Goods/ Services do not conform to Transnet standards, specifications and requirements directing the Service Provider to investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.*

*27.2 Failure by the Service Provider to fully comply with NCR within the period stated in sub-clause 26.1 above, shall entitle Transnet to further conditions to which the Supplier/ Service Provider must discharge in order to close the NCR or to terminate the order without giving the Service Provider written notice of termination in terms of this Agreement.*

## **28 RIGHTS ON CANCELLATION**

28.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 266 [Total or Partial Failure to Perform], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

28.2 Any amount which may be recoverable from the Service Provider in terms of clause 28.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider.

## **29 BREACH AND TERMINATION**

29.1 Termination in accordance with clause 6 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

29.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

29.3 To the extent that any of the Deliverables and property referred to in clause 29.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

- 29.4 In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.** [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**9 [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 29.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 29.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts;
  - b) its winding-up or dissolution;
  - c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
  - d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 29.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 29.8 Notwithstanding this clause 299, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or
- 29.9 The provisions of clauses 2 [Definitions], 212 [Warranties], 288 [Rights on Cancellation], 323 [Confidentiality], 355 [Limitation of Liability], 36 [Intellectual Property Rights], 399 [Dispute Resolution] and 43.1 [Governing Law] shall survive termination or expiry of this Agreement.

### **30 CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023**

- 30.1 The Service Provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:
- a) Cession must only be applicable to the transfer of right to payment for goods/services delivered/rendered by a Service Provider to an FSP or State Institutions;
  - b) The written request for cession must be by the Service Provider and not a third party; and
  - c) The written request by the Service Provider must be accompanied by the cession agreement.

- 30.2 The Service Provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency and competitiveness.

### **31 FORCE MAJEURE**

- 31.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.
- 31.2 Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

### **32 PROTECTION OF PERSONAL INFORMATION**

- a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):
- consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA
- b) Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:
- Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
- c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
- i. they process personal information only for the express purpose for which it was obtained;

- ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
  - iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
  - iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
  - v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
  - vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
  - vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 32.1 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- 32.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.
- 32.3 The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 32.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.

- 32.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 32.6 Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.
  - b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
  - c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
  - d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

### **33 CONFIDENTIALITY**

- 33.1 The Parties hereby undertake the following with regard to Confidential Information:
- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
  - b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
  - c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party,

except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

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

33.2 The duties and obligations with regard to Confidential Information in this clause 333 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or

- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

33.3 This clause 333 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## **34 INSURANCES**

- 34.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 34.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 34.3 Subject to clause 34.4 below, if the Service Provider fails to effect adequate insurance under this clause 34.4, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 34.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 34.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

## **35 LIMITATION OF LIABILITY**

- 35.1 The Service Provider's liability under this clause 355 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 35.2 Neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
  - b) fraud or theft.
- 35.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement. The Service Provider's liability arising out of this clause 35.3 shall be limited to direct damages.
- 35.4 Subject always to clauses 35.1 and 35.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 35.5 Subject to clauses 35.1 to 35.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 35.6 If for any reason the exclusion of liability in clause 35.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 35.3 above.
- 35.7 Nothing in this clause 355 shall be taken as limiting the liability of the Parties in respect of clauses 323 [*Confidentiality*] and 366 [*Intellectual Property Rights*].

## **36 INTELLECTUAL PROPERTY RIGHTS**

### **36.1 Title to Confidential Information**

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.
- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Service Provider to sub-license to other parties.
- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

- e) The above shall not pertain to any software licenses procured by the Service Provider from third parties and used in the supply of the Goods/Services.

### 36.2 **Title to Intellectual Property**

- a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in Transnet and the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Service Provider shall not at any time during or after the termination or cancellation of this Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of this Agreement. The Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.
- e) Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

### 36.3 **Title to Improvements**

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

### 36.4 **Unauthorised Use of Confidential Information**

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

**36.5 Unauthorised Use of Intellectual Property**

- a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.
- b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

**37 NON-WAIVER**

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

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

**38 PARTIAL INVALIDITY**

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

**39 DISPUTE RESOLUTION**

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

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

- 39.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 39.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 39.
- 39.5 This clause 399 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 39.6 This clause 399 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

**40 ADDRESSES FOR NOTICES**

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

a) **Transnet**

(i) For legal notices: Office of the CE, Transnet Property  
150 Commission Street  
Johannesburg  
2000  
Fax No. 011 308 1034  
Attention: Group Legal Department

(ii) For commercial notices: .....  
.....  
.....  
Fax No. ....  
Attention: Legal Department

b) **The Service Provider**

(i) For legal notices: .....  
.....  
.....  
Fax No. ....  
Attention: .....

(ii) For commercial notices: .....  
.....  
.....  
Fax No. ....  
Attention: .....

40.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.

40.3 Any notice shall be deemed to have been given:

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

#### **41 WHOLE AND ONLY AGREEMENT**

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

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

#### **42 AMENDMENT AND CHANGE CONTROL**

42.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.

42.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 399 [*Dispute Resolution*].

#### **43 GENERAL**

##### **43.1 Governing Law**

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

##### **43.2 Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the

changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 399 [*Dispute Resolution*] above.

#### 43.3 Counterparts

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

#### 44 DATABASE OF RESTRICTED SUPPLIER

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

**Thus signed by the Parties and witnessed on the following dates and at the following places:**

For and on behalf of <b>TRANSNET SOC LTD</b> duly authorised hereto	For and on behalf of  duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

## **T2.2-20 Agreement in terms of Protection of Personal Information Act, 4 of 2013 ("POPIA")**

### **1. PREAMBLE AND INTRODUCTION**

- 1.1. The rights and obligation of the Parties in terms of the Protection of Personal Information Act, 4 of 2013 ("POPIA") are included as forming part of the terms and conditions of this contract.

### **2. PROTECTION OF PERSONAL INFORMATION**

- 2.1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. of 2013"(POPIA"):  
consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
- 2.2. The Operator will process all information by the Transnet in terms of the requirements contemplated in Section 4(1) of the POPIA:  
Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
- 2.3. The Parties acknowledge and agree that, in relation to personal information of Transnet and the information of a third party that will be processed pursuant to this Agreement, the Operator is (... insert name of Tenderer/Contractor) hereinafter Operator and the Data subject is "Transnet". Operator will process personal information only with the knowledge and authorisation of Transnet and will treat personal information and the information of a third party which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.
- 2.4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Agreement and the Operator is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
- 2.5. In terms of this Agreement, the Operator acknowledges that it will obtain and have access to personal information of Transnet and the information of a third party and agrees that it shall only process the information disclosed by Transnet in terms of this Agreement and only for the purposes as detailed in this Agreement and in accordance with any applicable law.
- 2.6. Should there be a need for the Operator to process the personal information and the information of a third party in a way that is not agreed to in this Agreement, the Operator must request consent

Description of the Works: Tender relating to Supply and installation of Prestressed Perimeter concrete wall at Kaserne Precinct.

from Transnet to the processing of its personal information or and the information of a third party in a manner other than that it was collected for, which consent cannot be unreasonably withheld.

- 2.7. Furthermore, the Operator will not otherwise modify, amend or alter any personal information and the information of a third party submitted by Transnet or disclose or permit the disclosure of any personal information and the information of a third party to any third party without prior written consent from Transnet.
- 2.8. The Operator shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to the services offered to Transnet in terms of this Agreement (physically, through a computer or any other form of electronic communication).
- 2.9. The Operator shall notify Transnet in writing of any unauthorised access to personal information and the information of a third party, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Operator must inform Transnet of the breach as soon as it has occurred to allow Transnet to take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and the information of a third party and to restore the integrity of the affected personal information as quickly as is possible.
- 2.10. Transnet may, in writing, request the Operator to confirm and/or make available any personal information and the information of a third party in its possession in relation to Transnet and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA.
- 2.11. Transnet may further request that the Operator correct, delete, destroy, withdraw consent or object to the processing of any personal information and the information of a third party relating to the Transnet or a third party in the Operator's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
- 2.12. In signing this addendum that is in terms of the POPIA, the Operator hereby agrees that it has adequate measures in place to provide protection of the personal information and the information of a third party given to it by Transnet in line with the 8 conditions of the POPIA and that it will provide to Transnet satisfactory evidence of these measures whenever called upon to do so by Transnet.

**The Operator is required to provide confirmation that all measures in terms of the POPIA are in place when processing personal information and the information of a third party received from Transnet:**



Description of the Works: Tender relating to Supply and installation of Prestressed Perimeter concrete wall at Kaserne Precinct.

<b>YES</b>	
------------	--

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

2.13. Further, the Operator acknowledges that it will be held liable by Transnet should it fail to process personal information in line with the requirements of the POPIA. The Operator will be subject to any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that Transnet submitted to it.

2.14. Should a Tenderer have any complaints or objections to processing of its personal information, by Transnet, the Tenderer can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

**3. SOLE AGREEMENT**

3.1. The Agreement, constitute the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this and no amendment/variation/change shall be of any force and effect unless reduced to writing and signed by or on behalf of both parties.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2021

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

Title: \_\_\_\_\_

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

\_\_\_\_\_  
(Operator)

Authorised signatory for and on behalf of \_\_\_\_\_ who warrants that he/she is duly authorised to sign this Agreement.

**AS WITNESSES:**

1. Name: \_\_\_\_\_ Signature: \_\_\_\_\_

2. Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Transnet Property

Tender Number: TP/2026/03/0048/3401/RFP

Description of the Works: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanized steel topping at Kaserne Precinct.

## T2.2-21 Domestic Prominent Influential Persons (DPIP) Or Foreign Prominent Public Officials (FPPO)

Transnet is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Transnet shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website

<https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP>, Respondents are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.						
Is the Respondent (Complete with a "Yes" or "No")						
A DPIP/FPPO			Closely Related to a DPIP/FPPO		Closely Associated to a DPIP/FPPO	
List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

Transnet Property

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Respondents declaring a commercial relationship with a DPIP or FPPO are to note that Transnet is required to annually publish on its website a list of all business contracts entered into with DPIP or FPPO. This list will include successful Respondents, if applicable.

## 2. SERVICE LEVELS

2.1 Transnet reserves the right to request that any member of the Service provider's team involved on the

Transnet account be replaced if deemed not to be adding value for Transnet.

2.2 The Service provider guarantees that it will achieve a 95% [ninety-five per cent] service level on the following measures:

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

2.3 The Service provider must provide a telephone number for customer service calls.

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

### Acceptance of Service Levels:

YES	
-----	--

NO	
----	--

## T2.2-22: Insurance provided by the *Contractor*

Clause 83.1 in NEC3 Term Service Contract (June 2005) (amended June 2006 and April 2013) requires that the *Contractor* provides the insurance stated in the insurance table except any insurance which the *Employer* is to provide as stated in the Contract Data.

Please provide the following details for insurance which the *Contractor* is still to provide. Notwithstanding this information all costs related to insurance are deemed included in the tenderer's rates and prices.

<b>Insurance against (See clause 83.1 of the TSC)</b>	<b>Name of Insurance Company</b>	<b>Cover</b>	<b>Premium</b>
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract			
Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R5 000 000/R10 000 000.			
Insurance in respect of loss of or damage to own property and equipment.			
(Other)			

## **T2.2-23: Three (3) years audited financial statements**

Attached to this schedule is the last three (3) years audited financial statements of the single tenderer/members of the Joint Venture.

NAME OF COMPANY/IES and INDEX OF ATTACHMENTS:

.....

.....

.....

.....

.....

.....

.....

.....



## C1.1: Form of Offer & Acceptance

### Offer

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

#### Title of the Contract

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

#### Offer not filled in and signed will be deemed as non-responsive

The offered total of the Prices exclusive of VAT is	<b>R</b>
Value Added Tax @ 15% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(in words)	

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

Signature(s)

Name(s)

Capacity

**For the tenderer:**

(Insert name and address of organisation)

Name & signature of witness

Date

Tenderer's CIDB registration number:

## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any).



**Transnet Property**

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Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

**for the  
Employer**

Transnet SOC Ltd

*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date



**Schedule of Deviations**

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		

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

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

	<b>For the tenderer:</b>	<b>For the Employer</b>
Signature	.....	.....
Name	.....	.....
Capacity	.....	.....
On behalf of	<i>(Insert name and address of organisation)</i>	Transnet SOC Ltd
Name & signature of witness	.....	.....
Date	.....	.....

## C1.2 Contract Data

### Part one - Data provided by the *Employer*

Clause	Statement	Data
1	<b>General</b>  The <i>conditions of contract</i> are the core clauses and the clauses for main Option	<b>A: Priced contract with Activity schedule</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	<b>X2: Changes in the law</b>
		<b>X7: Delay damages</b>
		<b>X13 Performance bond</b>
		<b>X16: Retention</b>
		<b>X18: Limitation of liability</b>
		<b>Z: <i>Additional conditions of contract</i></b>
	of the NEC3 Engineering and Construction Contract June 2005 (amended June 2006 and April 2013)	
10.1	The <i>Employer</i> is:	Transnet SOC Ltd (Registration No. 1990/000900/30)

Transnet Property

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	Address	Registered address: Transnet Corporate Centre 96 Rissik Street Johannesburg 2001
	Having elected its Contractual Address for the purposes of this contract as:	Transnet Property 3rd Floor Carlton Centre 150 commissioner street Johannesburg 2001  Postal Address: P O Box 1048 Johannesburg South Africa 2000
10.1	The <i>Project Manager</i> is: (Name)	Asanda Wulana
	Address	150 commissioner street Johannesburg 2001
	Tel	011 308 4000
	e-mail	Asanda.wulana@transnet.net
11.2(13)	The <i>works</i> are	Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanised steel topping at Kaserne Precinct
11.2(14)	The following matters will be included in the Risk Register	Service Level Performance Adherence & Compliance to OHS Act
11.2(15)	The <i>boundaries of the site</i> are	As stated in Part C4.1." Description of the Site and it surroundings"
11.2(16)	The Site Information is in	Part C4
11.2(19)	The Works Information is in	Part C3
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 weeks
2	The <i>Contractor's</i> main responsibilities	No additional data is required for this section of the <i>conditions of contract</i> .

Transnet Property

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Description of the Works: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanised steel topping at Kaserne Precinct

3	Time	
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	TBC
30.1	The <i>access dates</i> are	To be confirmed on the approval of the Safety File
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	2 weeks of the Contract Date.
31.2	The <i>starting date</i> is	To be confirmed on the approval of the Safety File
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	2 weeks of the Contract Date.
4	Testing and Defects	
42.2	The <i>defects date</i> is	52 (fifty-two) weeks after Completion of the whole of the <i>works</i> .
43.2	The <i>defect correction period</i> is	2 weeks
5	Payment	
50.1	The <i>assessment interval</i> is	25 <sup>th</sup> (twenty fifth) day of each successive month. monthly on the
51.1	The <i>currency of this contract</i> is	South African Rand. the
51.2	The period within which payments are made is	Payment will be affected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.
51.4	The <i>interest rate</i> is	the prime lending rate of Standard Bank of South Africa.

6	Compensation events	
60.1(13)	The weather measurements to be recorded for each calendar month are,	<p><b>the cumulative rainfall (mm)</b></p> <p><b>the number of days with rainfall more than 10 mm</b></p> <p><b>the number of days with minimum air temperature less than 0 degrees Celsius</b></p> <p><b>the number of days with snow lying at 08:00 hours South African Time</b></p> <p><b>and these measurements: N/A</b></p>
	The place where weather is to be recorded (on the Site ) is: The weather data are records of past weather measurements for each calendar month which were recorded at: and which are available from:	<p><b>The Contractor's Site establishment area</b></p> <p><b>Johannesburg</b></p> <p><b>South African Weather Service 012 367 6023</b> <b>or info3@weathersa.co.za.</b></p>
7	Title	No additional data is required for this section of the <i>conditions of contract</i> .
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	None
84.1	The <i>Employer</i> provides these insurances from the Insurance Table	
	1 Insurance against:	Loss of or damage to the <i>works</i> , Plant and Materials is as stated in the Insurance policy for Contract Works/ Public Liability.
	Cover / indemnity:	to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are:	as stated in the insurance policy for Contract Works / Public Liability
	2 Insurance against:	Loss of or damage to property (except the <i>works</i> , Plant and Materials & Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising out of or in connection with the performance of the Contract as stated in the insurance policy for Contract Works / Public Liability

Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability
The deductibles are	as stated in the insurance policy for Contract Works / Public Liability
3 Insurance against:	Loss of or damage to Equipment (Temporary Works only) as stated in the insurance policy for contract Works and Public Liability
Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability
The deductibles are:	As stated in the insurance policy for Contract Works / Public Liability
4 Insurance against:	Contract Works SASRIA insurance subject to the terms, exceptions and conditions of the SASRIA coupon
Cover / indemnity	Cover / indemnity is to the extent provided by the SASRIA coupon
The deductibles are	The deductibles are, in respect of each and every theft claim, 0,1% of the contract value subject to a minimum of R2,500 and a maximum of R25,000.
Note:	The deductibles for the insurance as stated above are listed in the document titled "Certificate of Insurance: Transnet (SOC) Limited Principal Controlled Insurance."

84.1 The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is

The *Contractor* must comply at a minimum with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.

The *Contractor* provides these additional Insurances

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

- 2 Where the contract involves manufacture, and/or fabrication of Plant & Materials, components or other goods to be incorporated into the *works* at premises other than the site, the *Contractor* shall satisfy the *Employer* that such plant & materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication and transportation to the site.
  - 3 Should the *Employer* have an insurable interest in such items during manufacture, and/or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any sub-contractor
  - 4 Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R 5 000 000
  - 5 The insurance coverage referred to in 1, 2, 3 and 4 above shall be obtained from an insurer(s) in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and the duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.
-

84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is	Whatever the <i>Contractor</i> requires in addition to the amount of insurance taken out by the <i>Employer</i> for the same risk.
84.2	The insurance against loss of or damage to the works, Plant and Materials as stated in the insurance policy for contract works and public liability selected from:	Principal Controlled Insurance policy for Contract OR Project Specific Insurance for the contract
9	Termination	There is no additional Contract Data required for this section of the <i>conditions of contract</i> .
10	Data for main Option clause	
A	Priced contract with Activity schedule	No additional data is required for this Option.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i> , the Chairman of the Association of Arbitrators will appoint an <i>Adjudicator</i> .
W1.2(3)	The <i>Adjudicator nominating body</i> is:  If no <i>Adjudicator nominating body</i> is entered, it is:	The Chairman of the Association of Arbitrators (Southern Africa)  the Association of Arbitrators (Southern Africa)
W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	Johannesburg Gauteng, South Africa

	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	The Chairman of the Association of Arbitrators (Southern Africa)
	- if the arbitration procedure does not state who selects an arbitrator, is	
12	Data for secondary Option clauses	
X2	Changes in the law	No additional data is required for this Option
X7.1	Delay damages for Completion of the whole of the <i>works</i> are	R1000. A day capped to 10% of the total contract value
X13	Performance bond	
X13.1	The amount of the performance bond is	5% of the total of the Prices
X16	Retention	
X16.1	The retention free amount is	Nil
	The retention percentage is	10% on all payments certified.
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	The Total of the Prices
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	The deductible of the relevant insurance policy
X18.3	The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited to:	The cost of correcting the Defect

X18.4 The Contractor’s total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to: The Total of the Prices

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Z *Additional conditions of contract*

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Z.1 Additional clause relating to Performance Bonds and/or Guarantees

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Z1.1 The Performance Guarantee under X13 above shall be an irrevocable, on-demand performance guarantee, to be issued exactly in the form of the Pro Forma documents provided for this purpose under C1.3 (Forms of Securities), in favour of the Employer by a financial institution reasonably acceptable to the Employer.

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Z2 **Obligations in respect of Supplier Development Programme (SDP)**

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Z2.1 As a general rule, Transnet must ensure that where opportunities for empowerment are identified and feasible to apply. Each bidder interested in participating in this tender should be cognisant that it is a condition of contract the winning bidder will be required to contract with Transnet on the following transformation initiatives:  
 > Skills Development

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Z2.2

On 28 April 2023, the Construction Industry Development Board gazette the best practice standard for Developing Skills through Infrastructure Contracts. These standard mandate construction companies to spend a percentage of the contract value to developing skills development. For this transaction, the following skills development initiatives should be undertaken by the contractor:

- Specialist works (SQ -wire perimeter fencing, diamond perimeter fencing, palisade steel fencing) 0.25% of the tender amount.

Z3

**Additional clauses relating to Joint Venture**

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Z3.1

**27.5. In the instance that the Contractor is a joint venture, the Contractor shall provide the Employer with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract Date. The Joint Venture agreement shall contain but not be limited to the following:**

**A brief description of the Contract and the Deliverables.**

- **The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;**
-

Z3.1

**The constituent's interests;**

- **A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;**

- **Details of an internal dispute resolution procedure;**

- **Written confirmation by all of the constituents:**

- **Financial requirements for the Joint Venture:**

- iv. the working capital requirements for the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time;**

- v. the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.**

**27.6. The Contractor shall not alter its composition or legal status of the Joint Venture without the prior approval of the Employer.**

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Z4

**Obligations in respect of Termination**

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<b>Z4.1</b>		<p>The following will be included under core clause 91.1:</p> <p>In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and Under the second main bullet, insert the following additional bullets after the last sub-bullet:</p> <ul style="list-style-type: none"> <li>• commenced business rescue proceedings (R22)</li> <li>• repudiated this Contract (R23)</li> </ul>
<b>Z4.2</b>	Termination table	<p>The following will be included under core clause 90.2 Termination Table as follows:</p> <p>Amend a reason other than R1- R21 to a reason than R1- R21</p>
<b>Z4.3</b>		<p>Amend a reason R1- R15 -R18, or R1- R15 -R, R18, R22,R23</p> <p>(Refer to C3.2 Service Level Agreement table of the Employer's Service Information)</p>

<b>Z5</b>	<b>Right Reserved by the Employer to Conduct Vetting through SSA</b>	<p><b>The Employer reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any Contractor who has access to National Key Points for the following without limitations:</b></p> <ol style="list-style-type: none"> <li><b>1. Confidential – this clearance is based on any information which may be used by malicious, opposing or hostile elements to harm the objectives and functions of an organ of state.</b></li> <li><b>2. Secret – clearance is based on any information which may be used by malicious, opposing or hostile elements to disrupt the objectives and functions of an organ of state.</b></li> <li><b>3. Top Secret – this clearance is based on information which may be used by malicious, opposing or hostile elements to neutralise the objectives and functions of an organ of state.</b></li> </ol>
<b>Z5.1</b>		
<b>Z7</b>	<b>Additional Clause Relating to Collusion in the Construction Industry</b>	<p>The contract award is made without prejudice to any rights the <i>Employer</i> may have to take appropriate action later with regard to any declared tender rigging including blacklisting.</p>
<b>Z8</b>	<b>Protection of Personal Information Act</b>	<p>The <i>Employer</i> and the <i>Contractor</i> are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act.</p>
<b>Z9</b>	<b>Cession delegation and assignment</b>	<p>The contractor does not cede, delegate or assign his rights to any person without the written consent of the Employer</p>

Transnet Property

Tender Number: TP/2026/03/0048/3401/RFP

Description of the Works: Supply and installation of Prestressed Perimeter concrete wall panels with multi spike splayed galvanised steel topping at Kaserne Precinct

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Notwithstanding the above, the Employer may on written notice to the Contractor cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its division or operations which may be converted

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## C1.2 Contract Data

### Part two - Data provided by the *Contractor*

The tendering *Contractor* is advised to read both the NEC3 Engineering and Construction Contract - June 2005 (with amendments June 2006 and April 2013) and the relevant parts of its Guidance Notes (ECC3-GN) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 Guidance Notes.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	
	The <i>subcontracted fee percentage</i> is	
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	

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		<b>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Not applicable</b>
31.1	The programme identified in the Contract Data is	<b>Not applicable</b>
<b>A</b>	<b>Activity Schedule</b>	
11.2(21)	The Activity schedule is in	<b>C2.1 Pricing Data</b>
11.2(31)	The tendered total of the Prices is	(in figures)  (in words), excluding VAT

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**PART C2: PRICING DATA**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing instructions: Option A	3
C2.2	Price List	5

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## **C2.1 Pricing instructions: Option A**

### **1.1 The *conditions of contract***

### **1.2 How the contract prices work and assesses it for progress payments**

Clause 11 in NEC3 Term Services Contract (TSC), June 2005 (with amendments June 2006)

Option A states:

**Identified  
and  
defined  
terms**

- 11.2 (17) The Price for Services Provided to Date is the total of
- the Price for each lump sum item in the Price List which the *Contractor* has completed and
  - Where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

(19) The Prices are the amounts stated in the Price column of the Price List, where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

### **1.3 Measurement and Payment**

- 1.3.1 The Price List provides the basis of all valuations of the Price for Services Provided to Date, payments in multiple currencies and general progress monitoring.
- 1.3.2 The amount due at each assessment date is based on activities and/or milestones completed as indicated on the Price List.
- 1.3.3 The Price List work breakdown structure provided by the *Contractor* is based on the activity/milestone provided by the Employer. The activities listed by the *Employer* are the minimum activities acceptable and identify the specific activities which are required to achieve Completion. The Price List work breakdown structure is compiled to the satisfaction of the *Employer* with any additions and/or amendments deemed necessary.
- 1.3.4 The *Contractor's* detailed Price List summates back to the activity/milestone provided by the *Employer* and is sufficient detail to monitor completion of activities related to the operations on the Accepted Plan in order that payment of completed activities may be assessed.
- 1.3.5 The Prices are obtained from the Price List. The Prices includes for all direct and indirect costs, overheads, profits, risks, liabilities, obligations, etc. relative to the contract.

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Item no.	Description	Quantity	Unit	Rate	Price
A.1	<b>PRELIMINARY AND GENERAL:</b> Preliminary and general (P&G). Preliminaries are those items that a project cannot do without but are not directly involved with the final product. Including all mechanical plant, tools and equipment.	1	sum		
A.2	Health and safety: Adherence to the Construction Regulations of the OHSA (Act No 85 of 1993), and COVID-19 regulations. Safety includes PPE safety file etc.	1	sum		
	<b>PRE-STRESSED CONCRETE WALL TOPPED WITH A HIGH-DENSITY GALVANIZED STEEL PALISADE FENCE WITH MULTI SPIKE SPLAYED</b>				
<b>B</b>	<b>SABS 1200 C: SITE CLEARANCE</b>				
B.1	Clear and grub 2m on both sides of the fence line all material such as trees with girth, weeds, grass, debris etc.	14000	m <sup>2</sup>		
<b>C</b>	<b>SABS 1200 DA: EARTHWORKS (SMALL WORKS)</b>				
C.1	Excavate in all materials and use for embankment, backfill, and dispose of excess material as ordered: -				
C.1.1	Excavate for a foundation of 600 mm wide by 600 mm deep x 3000 m length and use selected excavated material for backfilling after the installation of the post and the first panel, then compact to 95%.	1260	m <sup>3</sup>		
C.1.2	Excavation for foundation in trenches for the H section post 600 mm x 600 mm by 800 mm deep.	170	m <sup>3</sup>		

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C.2	Importing of material from commercial sources: -				
C.2.1	Allowance. Supply and lay gravel with a G7 COLTO specification, complete, level, and compact.	60	m <sup>3</sup>		
<b>D</b>	<b>SABS 1200 GA: CONCRETE (SMALL WORKS)</b>				
D.1.	SCHEDULED CONCRETE ITEMS:				
D.1.1	Supply and lay 25 MPa ready-mix concrete on the foundation for the H-section galvanized steel post compact and ensure the posts are straight and level.	170	m <sup>3</sup>		
D.1.2	Supply and lay 25 MPa ready-mix concrete, 150 mm thick, 600 mm wide, and 3500 m long.	315	m <sup>3</sup>		
D.2	Class 35Mpa to prestressed concrete wall panels: -				
D.2.1	Supply and install 1.2 m x 6 m x 150 mm thick hollow-core pre-stressed concrete wall panels complete with at least 5 m long hot-dipped galvanized steel H-section columns bolted and installed in a 600 mm deep by 600 mm wide, 25 MPa concrete foundation. The wall is to be embedded 600 mm in the ground with a maximum height of 3000 mm above ground level. Item includes grouting between post and panels.	3000	m		
D.3	Allow for water drainage holes, as per manufacturer specifications, at the bottom of the concrete wall at about 50m intervals to create rainwater runoff and minimize flooding.	1	sum		
<b>E</b>	<b>SABS 1200 HA: STRUCTURAL STEELWORK (SUNDRY ITEMS)</b>				
E.1	Structural steel (sliding gates, and steel posts) as well as high steel galvanized palisade 600mm: -				
E.2	Supply and install a galvanized 600 mm high steel palisade fence at least 3 mm thick with Multi Spike Splayed toppings above the prestressed concrete fence panel. Palisade to be bolted and welded on the posts.	3000	m		

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E.3	Sliding gate: Manufacture, transport to site, and install new double opposite sliding galvanized high-tensile steel gates of 5.0 m wide, including all excavations, concrete, formwork, gate rail, and reinforcement for the gate rails and locks. Gate height is 3.6 m, and the total sliding opening is 10 m wide.	3	item		
E.4	Make allowance to remove the old brick & concrete fence completely and stockpile as directed by the project manager.	1500	m		
E.5	Make allowance to remove the old concrete palisade fence completely and stockpile as directed by the project manager.	600	m		
	Total Cost Excluding VAT				
	Add 15% VAT				
	Total Including VAT				

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## PART C3: SCOPE OF WORK

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<b>Total number of pages</b>		<b>27</b>

## C3.1 EMPLOYER'S WORKS INFORMATION

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## SECTION 1

### 1 Description of the *works*

#### 1.1 Executive overview

The *works* that the Contractor is to perform involve removing existing fencing, supplying and installing prestressed perimeter concrete wall panels topped with multi-spike splayed galvanized steel, and installing new galvanized steel high-tensile gates at the Kaserne precinct, along with any additional work that may arise or be necessary for the proper completion of the Works in accordance with the true meaning and intent of this contract.

Prior to commencing any work, a safety file must be submitted within 7 days following the issuing of the letter of award. The Contractor is to conduct a site survey prior to any construction and to ensure a high level of accuracy in the placing of the steel columns and the formwork.

The Contractor shall ensure the safety of their personnel, other contractors, and Transnet employees in the vicinity of the works by complying with the OHS Act and construction regulations.

The *works* that the Contractor is to perform *involve* the following:

- General small *works*
- Earth *works* and formation
- Shallow excavations where applicable
- Site clearance
- Structural steel works
- Remove and disposal of existing fence
- Installation of new prestressed concrete wall panels
- Install new galvanized steel high-tensile gates

#### 1.2 Employer's objectives

It is the objective of the *Employer* to achieve completion of the above *works* as soon as possible whilst still maintaining the highest quality and safety standards.

#### 1.3 Interpretation and terminology

The following abbreviations are used in this Works Information:

Abbreviation	Meaning given to the abbreviation
AIA	Authorised Inspection Authority
BBBEE	Broad Based Black Economic Empowerment
CEMP	Construction Environmental Management Plan
CD	Compact Disc
CDR	Contractor Documentation Register
CDS	Contractor Documentation Schedule
CRL	Contractor Review Label
CSHEO	Contractor's Safety, Health and Environmental Officer
CM	Construction Manager

DTI	Department of Trade and Industry
DGN	.....
DWG	Drawings
EDMS	.....
EO	Environmental Officer
HAW	Hazard Assessment Workshop
HAZOP	Hazard and Operability Study
HSSP	Health and Safety Surveillance Plan
INC	Independent Nominated Consultant
IP	Industrial Participation
IR	Industrial Relations
IPP	Industrial Participation Policy
IPO	Industrial Participation Obligation
IPS	Industrial Participation Secretariat
IRCC	Industrial Relations Co-ordinating Committee
JSA	Job Safety Analysis
CIRP	Contractor's Industrial Relations Practitioner
Native	Original electronic file format of documentation
PES	Project Environmental Specifications
PHA	Preliminary Hazard Assessment
PIRM	Project Industrial Relations Manager
PIRPM	Project Industrial Relations Policy and Management Plan
PLA	Project Labour Agreements
PSIRM	Project Site Industrial Relations Manager
PSPM	Project Safety Program Manager
PSSM	Project Site Safety Manager
ProgEM	Programme Environmental Manager
ProjEM	Project Environmental Manager
QA	Quality Assurance
R&D	Research and Development
SANS	South African National Standards
SASRIA	South African Special Risks Insurance Association
SES	Standard Environmental Specification
SHE	Safety, Health and Environment
SHEC	Safety, Health and Environment Co-ordinator
SIP	Site Induction Programme
SMP	Safety Management Plan
SSRC	Site Safety Review Committee
.....	.....
.....	.....

## 2 Engineering and the *Contractor's* design

### 2.1 *Employer's* design

2.1.1 The *Employer's* design for the *works* is:

- Works Information

- Technical specifications

## 2.2 Parts of the works which the Contractor is to design

2.2.1 The Contractor is to design the following parts of the works:

- All temporary works
- All other items required for the works

2.2.2 Unless expressly stated to form part of the design responsibility of the Employer as stated under 2.1 Employer's design above and whether or not specifically stated to form part of the design responsibility of the Contractor under this paragraph 2.2, all residual design responsibility and overall responsibility for the total design solution for the works rests with the Contractor.

## 2.3 Procedure for submission and acceptance of Contractor's design

2.3.1 The Contractor shall address the following procedures:

The Contractor submits details of his design, temporary works and all other items required for the works to the Project Manager for acceptance.

The Contractor shall submit to the Project Manager samples of all materials to be used in the Works and which are to be supplied by the Contractor for the approval of the Project Manager prior to their incorporation into the work. If accepted, the samples so submitted will be kept by the Project Manager as standards for the duration of the Contract. No materials inferior in quality, workmanship or appearance to the accepted samples shall be used.

All alternative materials not defined herein or SANS proposed by the Contractor shall be tested for acceptability by the Contractor and the results of the tests made available to the Project Manager. All such materials then require the approval of the Project Manager. The costs of the tests shall be borne by the Contractor.

The Project Manager's approval is required for any manufacturer's published instructions prior to their use by the Contractor.

## 2.4 Review and Acceptance of Contractor Documentation

The Contractor submits documentation as the 'Works Information' requires to the Project Manager for review and acceptance.

In undertaking the 'Works' (including all incidental services required), the Supplier shall conform and adhere to the requirements of the 'Contractor Document Submittal Requirements' Standard

## 2.5 Other requirements of the Contractor's design

None

## 2.6 Use of Contractor's design

2.6.1 The Contractor grants the Employer a licence to use the copyright in all design data presented to the Employer in relation to the works for any purpose in connection with the construction, reconstruction, refurbishment, repair, maintenance and extension of the works with such licence being capable of transfer to any third party without the consent of the Contractor.

## 2.7 Design of Equipment

None

## 2.8 Equipment required to be included in the works

None

## 2.9 As-built drawings, operating manuals and maintenance schedules

- 2.9.1 The Contractor provides the following: The Contractor shall be required to furnish brochure for the prestressed perimeter concrete wall to be supplied in terms of this contract.

## 3 Construction

### 3.1 Temporary works, Site services & construction constraints

#### 3.1.1 Employer's Site entry and security control, permits, and Site regulations

The work to be carried out is at Kaserne Precinct located in Johannesburg, Gauteng province, Transnet Property Inland Region and is in an access-controlled area.

The areas are restricted, and the *Contractor* must ensure compliance with the regulations of Transnet SOC Ltd in every way. The safety file must be submitted within 7 days following the issuing of the letter of award. The *Contractor* and any sub-contractors shall be required to apply for permission to enter the restricted area in writing. A list of workmen shall be given to the *Project Manager* to arrange for the necessary permits. 48 Hours minimum notice is necessary for the processing of these permits. This includes changes to staff during the contract period.

The *Contractor* shall ensure the safe passage of traffic to and around the working areas at all times. This shall entail the provision of flagmen, protective barriers, lanterns, signs, etc. for protection, direction and control of traffic. No lights are to be fixed anywhere without written approval from the *Project Manager*.

In the event where nearby buildings, roads or the area where the *Contractor* is working is being used by Transnet employees or the public, the *Contractor* shall organise the work to cause the least possible inconvenience to any operations at the various Transnet Property assets.

Access permits shall be made by the *Contractor* to a standard acceptable to the *Project Manager*, be allowed for within the *Contractor's* access control provision and shall include at least the following information:

- Company name and logo.
- Employees name and ID number.
- Date of issue and period of validity.
- Company details
  - Telephone number
  - Fax number
  - E-mail address

#### 3.1.2 Restrictions to Access on Site, hours of work, conduct and records

The normal working hours are between 07:30 and 16:30 Mondays to Fridays. If it is required to work outside the stated normal working hours the *Contractor* must obtain written permission at least 48 hours before such work needs to be undertaken. Transnet will not unreasonably withhold permission; however, the *Contractor* may have to pay for Transnet's supervisory personnel, should this be required.

#### 3.1.3 The *Contractor* complies with the following hours of work for his people (including Subcontractors) employed on the Site:

People restrictions on Site; hours of work, conduct and records:

The *Contractor* keeps daily records of his people engaged on the Site and Working Areas (including Subcontractors) with access to such daily records available for inspection by the *Project Manager* at all reasonable times.

Working hours are from 07:30 – 16:30 Mondays – Fridays.

#### 3.1.4 Health and safety facilities on Site

The provision of security for the *Contractor's* site establishment shall be his own responsibility.

Both the "Factories, Machinery and Building work Act (Act 22 of 1941) and the "Machinery and Occupational Safety Act (Act 6 of 1983)" shall, wherever they appear in the SANS 1200 standardized specifications, be substituted by the "Occupational Health and Safety Act (Act 85 of 1993)".

#### 3.1.5 Title to Materials from demolition and excavations

Before any material arising from the demolitions is removed from site, the material must be offered to Transnet at no cost.

#### 3.1.6 Cooperating with and obtaining acceptance of others

The *Contractor* shall not commit or permit any act that may interfere with the performance of the other parties operating in the area and shall carry out work in close liaison with the *Project Manager*.

#### 3.1.7 Publicity and progress photographs

The Contractor shall obtain the permission and approval of the *Employer* before erecting any notice boards or using the details of the contract in any advertising media.

The *Contractor* does not advertise the contract or the project to any third party, nor communicate directly with the media (in any jurisdiction) whatsoever without the express written notification and consent of the *Project Manager*.

#### 3.1.8 *Contractor's* Equipment

The Contractor keeps daily records of his Equipment used on Site and the Working Areas (distinguishing between owned and hired Equipment) with access to such daily records available for inspection by the *Project Manager* at all reasonable times. As part of the submission the Contractor is required to submit proof of plant ownership or rental.

All equipment or any other equipment necessary shall be supplied by the *Contractor* to successfully execute the *Works* safely, to completion. All tools, test equipment, i.e., wind-speed indicators, rain meter gauges etc. shall be supplied by the *Contractor*.

All plant used by the *Contractor* on site shall be properly maintained and operated. All vehicles on public roads shall be roadworthy, with the necessary licenses, permits and safety requirements. No transporting of people in the load box of an LDV's without the correct seating and seatbelts or a Kombi may be utilised providing that it has RWC.

#### 3.1.9 Equipment provided by the *Employer*

No equipment will be provided by the *Employer*.

#### 3.1.10 Site services and facilities:

The *Contractor* shall make his own arrangements for the supply of services such as electricity, potable water, ablutions, fire protection, lighting and all other services required for undertaking the *works*. The *Contractor* shall provide, maintain and finally remove proper portable latrines of sufficient number at his cost. Latrines shall be properly constructed and placed in suitable positions and maintained in a clean and sanitary working condition.

Where any of the above services can be made available by the *Employer*, the cost of meters, connections, reticulation and all other usage costs associated with the provision of services shall be to the Contractor's account.

The applicable tariffs will be those that the Local Authority charges Transnet and these charges shall be applicable to the *Contractor*.

#### 3.1.11 The *Employer* provides the following facilities for the *Contractor*:

A suitable construction site will be made available free of charge to the *Contractor* for the duration of the contract.

The site shall be clearly sign posted as being a construction site and shall be compliant with the relevant prevailing safety regulations and restrictions that might be in place until the *Contractor*

has de-established from site and has been approved by the *Project Manager* or his duly appointed representative.

The layout of any construction site, if required, shall be submitted to the *Project Manager* for his approval before the Contractor starts erecting his camp.

- 3.1.12 Wherever the *Employer* provides facilities (including, *inter alia*, temporary power, water, waste disposal, telecommunications etc) for the *Contractor's* use within the Working Areas and the *Contractor* adapts such facilities for use, then the *Contractor* makes good and provides full reinstatement to the land (including all apparatus of the *Employer* and Others in, on or under the land) and surrounding areas to its original standard upon dismantling of such facilities and hand-back to the *Employer*.

- 3.1.13 Facilities provided by the *Contractor*:

The *Contractor* shall make his own arrangements for the accommodation of all labour and comply with the requirements of the respective authorities.

No accommodation for the *Contractor's* and/or *sub-contractor's* employees will be available on site. No employee, with the exception of security watchmen, may, without written approval from the *Employer's* Representative, be accommodated on site.

The *Contractor* shall, at his own expense, provide for security and access to his construction sites as he may require. Control of access for construction plant onto public roads shall be in accordance with the requirements of the relevant roads authority and *Project Manager*.

No liability will be accepted by Transnet for the safekeeping of the *Contractor's* materials/equipment/plant. The Contractor will not be required to provide any facilities for the use of the *Project Manager*.

- 3.1.14 Wherever the *Contractor* provides facilities (either his own or for the *Project Manager* and/or *Supervisor*) and all items of Equipment, involving, *inter alia*, offices, accommodation, laboratories, Materials storage, compound areas etc. within the Working Areas, then the *Contractor* makes good and provides full reinstatement to the land (including all apparatus of the *Employer* and Others in, on or under the land) and surrounding areas to its original standard, upon dismantling of such facilities and items of Equipment.

- 3.1.15 Unless expressly stated as a responsibility of the *Employer* as stated under 5.1.11 Site services and facilities, all residual requirements for the provision of facilities and all items of Equipment necessary for the *Contractor* to Provide the *Works* remains the responsibility of the *Contractor*.

- 3.1.16 Existing premises, inspection of adjoining properties and checking work of Others.

The *Contractor* and the *Project Manager* will inspect the immediate surroundings and record any damage before work is started.

The Contractor shall ensure that no damage occurs to adjoining property.

The *Contractor* shall negotiate with the property owner(s) for permission to work on their land for the purpose of carrying out the work (if necessary).

The *Contractor* shall ensure that his workmen do not abuse any permissions granted by adjoining property owners allowing them on to their property for the execution of the work.

- 3.1.17 Underground services, other existing services, cable and pipe trenches and covers.

The *Contractor* is required to liaise with the *Project Manager* and establish as accurately as possible, the location of the various existing services situated within the *Works* area and record all such information on a suitable "marked-up" drawing for reference at all times. No services drawings are to be supplied.

All existing services shall at all times be protected and/or barricaded where these maybe affected by the *Works* or where these may endanger the safety of personnel.

Any pipe, cable, conduit or other services of any nature whatsoever indicated to the Contractor and subsequently damaged as a result of the Contractor's operations, shall be repaired and reinstated forthwith by the Contractor or by the Authority concerned, all at the expense of the *Contractor* and to the satisfaction of the *Project Manager*.

Whenever unknown services are encountered which interfere with the execution of the *Works* and which require to be moved and relocated, the *Contractor* shall advise the *Project Manager*, in writing within 24 hours of such encounter, and the *Project Manager* will determine the extent

of the work, if any, to be undertaken by the relevant authority or the *Contractor* in removing, relocating and reinstating such services. Should known services be damaged by construction, the cost of repairs will be for the *Contractors* account.

Where the *Contractor* damages a service due to negligence, he shall bear full cost of repairs to the service. These repairs will be carried out by the relevant authority, or at their discretion, by the *Contractor* to the satisfaction of the relevant authority.

### 3.1.18 Control of noise, dust, water and waste

Equipment used on site shall be properly muffled and maintained so as to reduce noise generation to the minimum. Working procedures shall be structured so as to avoid the unnecessary generation of noise, dust and pollution of water.

### 3.1.19 The *Contractor* complies with the following:

Dust has been identified as having a serious environmental impact. The *Contractor* is required to prevent the creation of dust.

The *Contractor* shall ensure that no dust is generated during the mixing process of construction materials used during any stage of the construction process.

The *Contractor* shall, at all times, comply with the statutes that prohibit pollution of any kind.

These statutes are enacted in the following legislation:

- National Environmental Management (Act 107 of 1998); and
- The Environmental conservation Act, 73/1989; and
- The National Water Act, 36/1998

The *Contractor* shall appoint a responsible person to ensure that no incident shall occur on site that could cause pollution. Where the *Contractor* was negligent and caused any form of pollution the damage shall be rectified at the *Contractor's* cost.

### 3.1.20 Giving notice of work to be covered up

The *Contractor* shall give 24 hours' notice to the *Project Manager* before covering any work.

### 3.1.21 The *Contractor* notifies the *Supervisor* (prior) of the following elements of the *works* which are to be covered up:

- Backfilling of trenches for foundations
- Backfilling on any excavated material
- Pouring of concrete
- Applying any surfacing material to finished surfaces
- And any other *works* that require inspections by the *Supervisor* before being covered up

### 3.1.22 Sequences of construction or installation

The *Contractor* is to sequence the works to suite his programme requirements.

### 3.1.23 Restoring of work site

The *Contractor* shall keep the site tidy at all times and remove all old material such as rubble, off-cuts, demolished material, surplus material and carry away and dump or store onto or at an approved site.

A permit must be obtained from the Municipalities to transport material on their roads, when required.

On completion of the *Works*, the *Contractor* shall clear the site of all leftover items of material, rubble, etc. to the satisfaction of the *Project Manager*.

The site must be cleaned and cleared of all facilities and released material within 72 hours after completion of all the work that will form part of the final handing over.

## 3.2 Completion, testing, commissioning and correction of Defects

### 3.2.1 The work to be done by the Completion Date

On or before the Completion Date the *Contractor* shall have done everything required to Provide the *Works* including the work listed below which is to be done before the Completion Date and in any case before the dates stated. *The Project Manager* cannot certify Completion until all the work listed below has been done and is also free of Defects, which would have, in his opinion, prevented the *Employer* from using the *works* and others from doing their work.

### 3.2.2 The *Contractor* ensures that the documentation as described under paragraph 3.8 of the *Works Information* is presented to the *Project Manager* before Completion.

### 3.2.3 The *Contractor* ensures that the *Project Manager* has a full and accurate dossier of As-built documents that represent the status of the completed *works* (to include Plant within the *works*) to present to the *Employer*.

### 3.2.4 Where the *Contractor* has presented to the *Project Manager* at take-over, the *Contractor* modifies and updates As-built documents as necessary prior to Completion.

### 3.2.5 Access given by the *Employer* for correction of Defects

*The Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of part of the works which he has taken over if they are needed for correcting a Defect. In this case the defect correction period begins when the necessary access and use have been provided.

## 4 Plant and Materials Standards and Workmanship

### 4.1 Investigation, Survey and Site Clearance

#### 4.1.1 The Contractor will be responsible for the setting out of the works.

#### 4.1.2 Site clearance shall be done according to the employer's scope of work

### 4.2 Building works

#### 4.2.1 Where the Association of South African Quantity Surveyors Model Preamble for Trades 1999 are used within the *Works Information*, the following interpretations and meanings shall apply:

#### 4.2.2 In case of any conflict in interpretation, ambiguity or discrepancy between any Model Preamble for Trades 1999 (whether standard or written as a particular project specification) contained in the *Works Information* and the *conditions of contract*, the *conditions of contract* take precedence within the ECC Contract.

#### 4.2.3 In case of any conflict in interpretation, ambiguity or discrepancy between any Model Preamble for Trades 1999 (whether standard or written as a particular project specification) contained in this paragraph 4.2 of C3.1 *Employer's Works Information* and specific statements contained elsewhere in C3.1 *Employer's Works Information*, the specific statements contained elsewhere shall prevail, without prejudice to the *Project Manager's* express duty to resolve any ambiguity or inconsistency in the *Works Information* under ECC Clause 17.1.

#### 4.2.4 Within the Model Preambles for Trades 1999, the following amendments and interpretations shall apply:

Where the word or expression "Principal Agent" is used, read "*Project Manager*" or "*Supervisor*" as the context requires.

Where the word or expression "*Contractor*" is used, read "*Contractor*".

Where the word or expression "Engineer" is used, read "*Project Manager*" or "*Supervisor*" as the context requires.

Where the Model Preambles for Trades 1999 mention "rates" for measured work and any contractual statements relating to payment, all such statements shall be discounted, with the ECC *conditions of contract* taking precedence.

#### 4.2.5 Within the Model Preambles for Trades 1999, A. GENERAL, the following amendments and interpretations shall apply:

Where the word or expression “bills of quantities” is used, this shall be discounted for the purposes of the *Works Information*. The ECC Contract Data - Part One states the main option to apply within the ECC Contract between the Parties.

- 4.2.6 Within the Model Preambles for Trades 1999, B. ALTERATIONS, B.2 MATERIALS FROM THE ALTERATIONS, CREDIT, ETC and C. EARTHWORKS, C1.4 Materials from demolitions shall not apply. C3.1 *Employer’s Works Information* paragraph 3.1.6 states details of the *Contractor’s* title (if any) to Materials arising from excavations and/or demolitions and how such Materials are either to be disposed of or re-used in the *works*.
- 4.2.7 Within the Model Preamble for Trades 1999 Q. PLUMBING AND DRAINAGE, Q.24 TESTS shall be deemed to be included within paragraph 3.2.1 of C3.1 *Employer’s Works Information*.
- 4.2.8 Within the Model Preamble for Trades 1999 U. EXTERNAL WORKS, U.3.8 Process control tests shall be deemed to be included within paragraph 3.2.1 of C3.1 *Employer’s Works Information*.
- 4.2.9 The principles, meanings and interpretation stated and established within paragraphs 6.2.1 to 6.2.8 with respect to the Model Preambles for Trades 1999 equally apply to the other Model Preambles for Trades 1999 references used within this paragraph 4.2 of C3.1 *Employer’s Works Information*.

### 4.3 Civil Engineering and Structural Works

- 4.3.1 Where the SANS 1200 series of Specifications are used within the *Works Information*, the following interpretations and meanings shall apply:
- 4.3.2 In case of any conflict in interpretation, ambiguity or discrepancy between any SANS 1200 Specification (whether standard or written as a particular project specification) contained in the *Works Information* and the conditions of contract, the conditions of contract take precedence within the ECC contract.
- 4.3.3 In case of any conflict in interpretation, ambiguity or discrepancy between any SANS 1200 Specification (whether standard or written as a particular project specification) contained in this paragraph 4.3 of the *Employer’s Works Information* and specific statements contained elsewhere in C3.1 *Employer’s Works Information*, the specific statements contained elsewhere shall prevail, without prejudice to the Project Manger’s express duty to resolve any ambiguity or inconsistency in the *Works Information* under ECC Clause 17.1.
- 4.3.4 Within SANS 1200 A: GENERAL, the following amendments and interpretations shall apply:  
Where the word or expression “Employer” is used, read “*Employer*”;  
Where the word or expression “Contractor” is used, read “*Contractor*”;  
Where the word or expression “Engineer” is used, read “*Project Manager*” or “*Supervisor*” as the context requires;  
Where the word or expression “schedule of quantities” is used, this is deleted in entirety. Assessment and payment is in accordance with the *conditions of contract* (and the ECC main and secondary options stated therein);
- 4.3.5 Within SANS 1200 A: GENERAL 2.3 DEFINITIONS, the following apply:  
“Acceptable. Approved (Approval)” is interpreted as either a *Project Manager* or a *Supervisor* communication or instruction in relation to *Works Information* compliance, consistent with the *conditions of contract* as the context requires;  
“Adequate” is deleted. The *Project Manager* notifies the *Contractor* where the *Contractor* has not complied with the *Works Information*;  
“Measurement and payment” and the further definitions contained within 6.3 c) are deleted. Assessment and payment is in accordance with the conditions of contract (and the ECC main and secondary options stated therein);
- 4.3.6 Within SANS 1200 A: GENERAL 2.6 APPROVAL, the following applies:  
“Approval” by either the *Project Manager* and/or the *Supervisor* is without prejudice to ECC Clause 14.1 and, inter alia, ECC Clauses 13.1, 14.3 and 27.1.



TRANSNET PROPERTY

CONTRACT NUMBER:

DESCRIPTION OF THE WORKS: TENDER RELATING TO SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED AND INSTALL NEW GALVANIZED HIGH TENSILE GATES AT KASERNE PRECINCT

- 4.3.7 SANS 1200 A: GENERAL 2.8 ITEMS IN SCHEDULE OF QUANTITIES, is deleted in entirety. Assessment and payment is in accordance with the *conditions of contract* (and the ECC main and secondary options stated therein).
- 4.3.8 SANS 1200 A: GENERAL 3.2 STRUCTURES AND NATURAL MATERIAL ON SITE, applies only to the extent that it is consistent with paragraph 3.1.6 of C3.1 *Employer's Works Information*.
- 4.3.9 Within SANS 1200 A: GENERAL 7.1 PLANT, the following applies:  
Where the word or expression "Plant" is used, read "Equipment".
- 4.3.10 SANS 1200 A: GENERAL 7.2 *CONTRACTOR'S OFFICES, STORES AND SERVICES*, applies but the *Project Manager* resolves any inconsistency with statements included within paragraph 3.1.12 of C3.1 *Employer's Works Information*.
- 4.3.11 SANS 1200 A: GENERAL 3.1 SURVEY, applies only to the extent that it is consistent with paragraph 3.1.14 of C3.1 *Employer's Works Information*.
- 4.3.12 Within SANS 1200 A: GENERAL 3.2 WATCHING, BARRICADING, LIGHTING AND TRAFFIC CROSSINGS, the following applies:  
Where the word or expression "specification" is used, read "Works Information".
- 4.3.13 SANS 1200 A: GENERAL 3.4 PROTECTION OF OVERHEAD AND UNDERGROUND SERVICES applies only to the extent that it is consistent with the specific statements made elsewhere in C3.1 *Employer's Works Information* and in any case and at all times consistent with the *conditions of contract*.
- 4.3.14 Within SANS 1200 A: GENERAL 5 TESTING, the following applies:  
Where the word or expression "Engineer" is used, read "*Supervisor*".
- 4.3.15 SANS 1200 A: GENERAL 8 MEASUREMENT AND PAYMENT, is deleted in entirety. Assessment and payment is in accordance with the conditions of contract (and the ECC main and secondary options stated therein).
- 4.3.16 The principles, meanings and interpretation stated and established within paragraphs 6.3.1 to 6.3.15 with respect to SANS 1200 series and to SANS 1200 A: GENERAL equally apply to the other SANS 1200 specification references [state particulars of SANS 1200 used] used within this paragraph 6.3 of C3.1 *Employer's Works Information*.

#### 4.4 Other [Particular Specifications]

##### Removal and disposal:

The *Contractor* will be responsible for the removal of all existing installations that are on the way of the new wall fences, these include, concrete palisade fence and gates. It is the responsibility of the *Contractor* to familiarise themselves with the details of how these installations are fixed on the ground.

##### Earthworks

Generally, all earthworks shall comply with the following:

- All excavations to be done in accordance with SANS 1200A and as detailed in drawings.
- Open excavations to be always barricaded with high visibility barricading tape.
- *Contractor* to obtain excavation permits prior to commencing with excavation activity.

##### Fence dimensions and material

- The total fence length is 3000m at 3000mm above ground level
- 35 Mpa Prestressed concrete wall panels to be used over 3000m of new fence to be erected with Hot dipped H-Section steel columns to be used
- Supply and install a galvanized 600 mm high steel palisade fence at least 3 mm thick with Multi Spike Splayed above the prestressed concrete fence panel.

##### Clearing and grubbing and construction of formation

- The site should be cleared of bushes, debris, weeds, logs, trees, etc. over the full width and length as specified.

All concrete work

- Concrete Foundation: Cast concrete to be 25 MPa and place on all areas requiring this specified concrete strength (foundations). After the concrete has been placed, all exposed surfaces shall be kept continuously damp for at least 7 days covered with plastic sheeting or covered by sand.
- Concrete for foundations shall have 25 MPa compressive strength unless, otherwise specified.
- Prestressed concrete wall panels: Class 35Mpa to prestressed concrete wall panels are to be installed according to manufacture specification.
- Movement joints shall be included and cut straight and neat where applicable.
- Steel columns: These are to be 5 m in length steel H-section columns, provided at 6.0m centre to centre. The columns shall be bolted in concrete footings measuring 600mm x 600mm wide x 600mm deep and embedded 600mm below ground. Concrete strength must be 25Mpa (minimum) after 28 days. Concrete must consist of cement, concrete sand and 19mm concrete stone. All posts shall be vertically straight and shall be aligned in a horizontal straight line.
- Removal of old brick fence and concrete palisade: Completely remove the old brick fence, stockpile it, remove precast, and then remove the old concrete palisade.

High tensile galvanized steel gates

- Sliding gate: Manufacture, transport to site, and install new double opposite sliding galvanized high-tensile steel gates of 5.0 m wide, including all excavations, concrete, formwork, gate rail, and reinforcement for the gate rails and locks. Gate height is 3.6 m, and the total sliding opening is 10 m wide.

## 5 List Of Drawings

### 5.1 Drawings issued by the *Employer*

Drawing number	Revision	Title
None		

## SECTION 2

### 6 Management and start up

#### 6.1 Management meetings

Regular meetings of a general nature may be convened and chaired by the *Project Manager* as follows:

*Table below to be completed by the Project Manager*

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on [To be advised ]	[To be advised ]	[state Project Manager (and appropriate delegates), Supervisor (as necessary and appropriate delegates) and Contractor (appropriate key persons)]
Overall contract progress and feedback	Monthly on [To be advised ]	[To be advised ]	Employer, Contractor (appropriate key persons), Supervisor (as necessary and appropriate delegates), and Project Manager (and appropriate delegates)
<b>[SHE meetings (see paragraph 6.4)]</b>	<i>[To be advised ]</i>	<i>[To be advised ]</i>	<i>[To be advised ]</i>
<b>[Safety Action Meetings (see paragraph 6.3)]</b>	<i>[To be advised ]</i>	<i>[To be advised ]</i>	<i>[To be advised ]</i>
<b>[Safety Pre-Mobilisation Meeting (see paragraph 6.3)]</b>	<i>[[To be advised ]</i>	<i>[To be advised ]</i>	<i>[To be advised ]</i>
<i>[To be advised ]</i>	<i>[To be advised ]</i>	<i>[To be advised ]</i>	<i>[To be advised ]</i>

Meetings of a specialist nature may be convened as specified elsewhere in this *Works Information* or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *works*. Records of these meetings are to be submitted to the *Project Manager* by the person convening the meeting within five days of the meeting.

All meetings are to be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register are not to be used for the purpose of confirming actions or instructions under the contract as these are to be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

#### 6.2 Documentation Control

In undertaking the '*Works*' (including all incidental services required), the *Contractor* shall conform and adhere to the requirements of the '*Contractor Documentation Submittal Requirements*' Standard.

The *Contractor* is to ensure that the latest versions of the required application software and a suitable 'IT' Infrastructure are in place to support the electronic transmission of documentation at its expense.

## 6.3 Safety risk management

### 6.3.1 General

The *Contractor's* attention is directed to the Health and Safety Specification TFR-ISM-RN-R&C-FM009, and in particular to his Health & Safety Program, which must be submitted with his tender, as well as the requirements of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended and Regulations issued in terms thereof or un-repealed regulations issued in terms of the former Act no. 6 of 1983, in their entirety.

Without derogating from the Act or any un-repealed regulations issued in terms of legislation, or without purporting to limit the *Contractor's* responsibilities, the following are brought to the *Contractor's* attention:

- (a) For the purpose of the Act the site/s, to be demarcated as agreed to between the *Contractor* and the *Project Manager* before the works start, will be transferred to the control of the *Contractor* for the duration of the contract.
- (b) The *Contractor* shall appoint a health and safety coordinator to liaise at least fortnightly with the *Project Manager* on matters pertaining to occupational health and safety.
- (c) The *Contractor* is an 'employer' in his own right as defined in Section 1 of the Act 85 of 1993 and he shall fulfil all his obligations as an employer in terms of the Act.
- (d) The *Contractor* shall furnish the *Project Manager* with full particulars of any Sub-Contractor which he may involve in the contract and the Sub-Contractor shall be made aware of all the clauses in this contract pertaining to health and safety.
- (e) The *Contractor* shall advise the *Project Manager* of any hazardous or potentially hazardous situation, which may arise from, work being performed either by the *Contractor* or Sub-Contractor.
- (f) A letter of good standing in terms of Section 80 (*Employer* to register with the Compensation Commissioner) of the Compensation for Occupational Injuries and Deceases Act 1993 (Act 130 of 1993), must also be furnished.
- (g) The *Contractor* shall comply with the current Transnet Specification TFR-ISM-RN-R&C-FM009, Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act, Act 85 of 1993 and Regulations, and shall, before commencement with the execution of the Contract, which shall include site establishment and delivery of construction plant, equipment or materials, submit to the *Project Manager*:
  - Documentary proof of his procedural compliance with the Act, and
  - Particulars of the Health and Safety Program to be implemented on the site in accordance with the Transnet Specification TFR-ISM-RN-R&C-FM009.
  - The *Contractor's* Health and Safety Program will be subject to agreement by the *Project Manager*, who may order supplementary and/or additional safety arrangements and/or different safe working methods to ensure full compliance by the *Contractor* with his obligations as an employer in terms of the Act.
- (h) All clauses in this contract pertaining to health and safety form an integral part of this contract and if not complied with may be construed as breach of contract entitling the *Employer* to the appropriate remedies.

NB: The *Contractor* and his employees shall have valid safety inductions and medical certificates when accessing or working on site. Copies of which shall be submitted to the *Project Manager*. This will be at a time and location Transnet will arrange.

### 6.3.2 Hazard identification and risk assessment

The *Contractor's* appointed Site Representative and the Project Manager shall finalize a site-specific HIRA (Hazard Identification and Risk Assessment) document, on the day of site handover to the Contractor. This site-specific HIRA document, based on a continuous HIRA, must cover site-specific hazards and the safe management of these hazards. The HIRA document must be signed by the abovementioned representatives, and be accepted by the Project Manager, before any construction work can commence.

### 6.3.3 Substance abuse

The OHS Act (Act 85 of 1993) clearly states in the Safety Regulations no. 2A "INTOXICATION" An employer or user, as the case may be, shall not permit any person who appears to be under the influence of intoxicating liquor or drugs, to enter or remain at a workplace". Transnet Freight Rail RME enforces this legislation by means of its Substance Abuse Policy, and therefore reserves the right to do substance abuse testing on anyone who enters their premises.

### 6.3.4 Safety meetings

The Contractor shall ensure that a safety representative is appointed and regular safety meetings are held. Written minutes of these safety meetings shall be forwarded to the Project Manager. All costs related to the safety aspects required under this contract will be carried by the Contractor's and therefore be covered under the rates tendered.

NB: The tendered amount shall include for all costs to confirm to the Health and Safety requirements.

## 6.4 Environmental constraints and management

*(To be completed in conjunction with the Environmental Manager)*

*Describe or cross-refer to environmental constraints applicable to the Contractor's design and his activities on Site and how they should be managed. Include here or cross-refer to an Annexure to the Works Information.*

*Please place within the ECC tender documentation the Construction Environmental Management Plan. However, some of this information is couched in overall requirements of several parties including PMG and not purely the Contractor's obligations. With this in mind, I have re-drafted the Contractor's obligations he must discharge as Works Information under "CEMP" as per the statements below:*

### 6.4.1 The *Contractor* complies with the following ENV-STD-001 Rev01 (CEMP):

The *Contractor* performs the *works* and all construction activities within the Site and Working Areas having due regard to the environment and to environmental management practices as more particularly described within the SES and PES.

The SES describes the minimal acceptable standard for environmental management for a range of environmental aspects commonly encountered on construction projects and sets environmental objectives and targets, which the *Contractor* observes and complies.

The PES may require higher minimal standards than those described in the SES as may be required by the *Project Manager* or Others.

The overarching obligations of the *Contractor* under the CEMP before construction activities commence on the Site and/or Working Areas is to provide an environmental method statement for a particular construction operation at the Site and/or Working Area by the *Contractor* and where requested by the CM and to comply with the following:

Where relevant, method statements, as detailed in the SES and PES, shall be provided by the *Contractor*. These include, but are not limited to, the following where applicable:

- Establishment of construction lay down area
- Hazardous and non-hazardous solid waste management
- Storm water management
- Contaminated water management
- Prevention of marine pollution
- Hydrocarbon spills
- Diesel tanks and refuelling procedures

- Dust control
- Spoil dumping
- Sourcing, excavating, transporting and dumping of fill material
- Noise and vibration control
- Removal of rare, endemic or endangered species
- Removal and stockpiling of topsoil
- Rodent and pest control
- Environmental awareness training
- Site division
- Emergency procedures for environmental incidents
- *Contractor's* SHE Officer
- Closure of construction laydown area

The *Contractor* shall ensure that his management, foremen and the general workforce, as well as all suppliers and visitors to Site have attended the Induction Programme [please define, state parameters and include as an Annexure as necessary] prior to commencing any *work* on Site. If new personnel commence work on the Site during construction, the *Contractor* shall ensure that these personnel undergo the Induction Programme and are made aware of the environmental specifications on Site.

*Please insert Annexure index within the Works Information Contents page.*

Where applicable, the *Contractor* ensures that he appoints a suitably qualified Subcontractor, to be approved by the *Project Manager*, to undertake the "Removal of rare, endemic or endangered species". This appointment must be completed at least three weeks before commencement of any other work on Site.

The Protection of the Environment Form [please insert relevant details via Environmental Department] shall be signed and submitted to the CM within 14 days after the Contract Date.

Where required, one of the first actions to be undertaken by the *Contractor* shall be to erect and maintain a temporary fence along the boundaries of the Site and Working Areas as applicable, and around any no-go areas identified on the layout plans, to the satisfaction of the *Project Manager*.

The plant search and rescue (if applicable) must be undertaken and completed prior to any Site clearance or any other construction activity that may damage the vegetation can commences on Site.

The *Contractor* must appoint a sufficient number of named assistants to the CSHEO to monitor environmental issues e.g. litter, spills, illegal activities, fence patrol, dust etc. These appointments, along with details of the individuals being appointed and job descriptions, must be sent to the *Project Manager* for his approval.

During the construction period, the *Contractor* complies with the following:

A copy of the SES, and the relevant PES shall be available on Site, and the *Contractor* shall ensure that all the personnel on Site (including Subcontractors and their staff) as well as suppliers are familiar with and understand the specifications contained in the SES (as amended by the PES).

Method statements that are required during construction must be submitted to the *Project Manager* for approval at least 20 days prior to the proposed commencement of the activity. Emergency construction activity method statements may also be required. The activities requiring method statements cannot commence if they have not been approved by the *Project Manager*.

The method statements for Completion by the Contractor are contained within Annexure [insert relevant Annexure].

Where applicable, the *Contractor* shall provide job-specific training on an *ad hoc* basis when workers are engaged in activities, which require method statements.

The *Contractor* shall ensure that any Materials delivery drivers are informed of all procedures and restrictions (e.g. which access roads to use, no go areas, speed limits, noise, etc) required by the CEMP before they arrive at Site and off load any Materials.



The Contractor shall be responsible for rehabilitating and re-vegetating all areas to the satisfaction of the Project Manager as detailed in the SES and PES.

The Contractor shall clear and clean the Site and Working Areas and ensure that everything not forming part of the works is removed from the Site and Working Areas and that all rehabilitation has taken place in accordance with the PES. An Environmental Closure Certificate [insert relevant details from Environmental Department and include in an Annex] has been issued by the SHEC and signed off by the Project Manager.

The Contractor complies with environmental inspections and audits as contained within Annexure ENV-STD-.....

The Contractor makes copies of the CEMP, SES and PES available at the offices of the Contractor on Site. The Contractor ensures that all personnel on Site (including Subcontractors) are familiar with and understand the requirements of the CEMP.

6.4.2 The Contractor complies with the following SES:

The Contractor shall identify the kinds of environmental impacts that will occur as a result of his activities and then prepare separate method statements describing how each of those impacts will be prevented or managed so that the standards set out in this document are achieved. These method statements will be prepared in accordance with the requirements set out in the CEMP.

To ensure that environmental issues are taken into account in the establishment of the Site offices and all other facilities on Site.

6.4.3 The Contractor complies with the following PES:

.....

Insert relevant details

6.4.4 The lines of communication of the various personnel acting on behalf of the Project Manager who communicate to the Contractor and his keys persons with respect to the CEMP are contained within Annexure , see ENV-STD-.....

[insert contract specific details for ProjEM, SHEC, EO, ProgEM, CM – see ENV-STD-..... .HOWEVER, Fig 2.1 is not ECC compliant or friendly and requires a properly constructed Organogram to be included for effective communication to the Contractor. DO NOT INCLUDE INDIVIDUALS ON THE ORGANOGRAM WHO HAVE NO LINES OF COMMUNICATION WITH THE CONTRACTOR DIRECTLY OR WHO ARE NOT IDENTIFIED AS POSSESSING A ROLE UNDER THE "Project Manager". Its absolutely vital that the ECC tender document compiler states the roles of personnel acting on behalf of the Project Manager under paragraph 6.5 of the Works Information as part of the Employer's Quality Plan. This task gets difficult with respect to the CM (Construction Manager) as this named individual might have other delegated authority under the "Project Manager" (stated in Contract Data - Part 1 and used throughout ECC conditions of contract) so make the responsibility of the CM here in respect of environmental issues only]. Please insert Annexure index within the Works Information Contents page.

6.4.5 The roles and responsibilities of the various personnel acting on behalf of the Project Manager with respect to environmental issues are stated in the paragraphs following.

6.4.6 The ProjEM is responsible for ensuring that the Contractor complies with the CEMP. The ProjEM acts on behalf of the Project Manager.

The ProjEM specific tasks are:

.....

Insert relevant details Please insert specific details as to what the ProjEM does which the Contractor needs to understand to perform the works and discharge the CEMP, SES & PES. This is not Works Information. The CM is responsible (in the context of the CEMP only) for environmental management on the Site and Working Areas and reports to the Project Manager. The CM acts on behalf of the Project Manager.

The CM specific tasks (in the context of the CEMP) are:

.....

*Insert relevant details*

*Please insert specific details as to what the CM does which the Contractor needs to understand to perform the works and discharge the CEMP, SES & PES. Do not include duties internal to HMG only. This is not Works Information. The CSHEO submits daily, weekly and monthly checklists [state what type of checks and in what format] to the SHEC. The role of the CSHEO is stated under paragraph 6.7 of the Works Information.*

- 6.4.7 The Contractor complies with the CEMP, SES and PES. The Contractor abides by the instructions of the Project Manager regarding the implementation of the CEMP.

*Please include all the above default statements under paragraph 4.4 of the Works Information.*

## 6.5 Quality assurance requirements

*To be completed in conjunction with the Quality Manager*

*Specify minimum requirements for the Contractor's Quality Plan and Work Procedures or provide the Employer's Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the working areas. Indicate how the Contractor's QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.*

- 6.5.1 The Contractor shall have, maintain and demonstrate its use to the Project Manager (and/or the Supervisor) to satisfy the requirements of paragraphs 7.4, 7.5, 3.2.1 and 3.2.8 as appropriate) the documented Quality Management System to be used in the performance of the works. The Contractor's Quality Management System shall conform to International Standard ISO 9001 (or an equivalent standard acceptable to the Project Manager).
- 6.5.2 The Contractor submits his Quality Management System documents to the Project Manager as part of his programme under ECC Clause 31.2 to include details of:
- Quality Plan for the contract;
  - Quality Policy
  - Index of Procedures to be used; and
  - A schedule of internal and external audits during the contract
- 6.5.3 The Contractor develops and maintains a comprehensive register of documents that will be generated throughout the contract including all quality related documents as part of its Quality Plan.
- 6.5.4 The Project Manager indicates those documents required to be submitted for either information, review or acceptance and the Contractor indicates such requirements within his register of documents. The register shall indicate the dates of issue of the documents with the Project Manager responding to documents submitted by the Contractor for review or acceptance within the period for reply prior to such documents being used by the Contractor.
- 6.5.5 The Quality Plan means the Contractor's statement, which outlines strategy, methodology, resources allocation, QA and Quality Control co-ordination activities to ensure that the works meet the standards stated in the Works Information [state further details as necessary which explains and defines what the Quality Plan involves]
- 6.5.6 The Quality Policy means ..... [insert relevant details].
- 6.5.7 The Index of Procedures means ..... [insert relevant details].

*Please include the above default statements under paragraph 2.5 of the Works Information.*

*Please note that only the Project Manager and the Supervisor are stated under ECC. There are a number of other stated named individuals for various roles mentioned in a number of Transnet quality documents and therefore I have described throughout C3.1 Employer's Works Information. This can only lead to the conclusion that an overall Organogram showing lines of communications and delegated authority from the Project Manager and/or the Supervisor in discrete and specific matters is the requirement. A link in the overall Organogram with the Contractor's key people (at least those Key people required by the Employer) and how such key people interact with the Project Manager, Supervisor and their delegates through specific communication channels is necessary. [*

*Please include specific QA details of how the various elements of the works are to be approached with respect to Quality issues. Consider Contractor design issues (receipt of information), and works outside the Working Areas (this also is all the more pertinent where (e.g.) Plant and Materials, required for inclusion in the works, originate outside the Republic of South Africa) – what Quality control procedures apply and how does the Project Manager and Supervisor police such procedures?*

## 6.6 Programming constraints

### 6.6.1 General

The programme, progress reports, subsequent updates, revisions and supplementary programmes as detailed in this section are an essential part of the iPAS project control system used by the *Employer* for managing the Works and in monitoring the progress of the work under the Contract. The information and data provided by the *Contractor* pursuant to this procedure must therefore be reliable, accurate and timely in presentation.

### 6.6.2 Programme submission

As identified in the Contract Data Part 2, a program is to be submitted with the tender. This program shall comply with the requirements as indicated in the *Works Information* and with specific reference 31.2 of the NEC3 Engineering Construction Contract. The program shall be submitted in both hard and soft copy forms using a computer software package accepted by the *Project Manager*.

The preferred software package is Microsoft Projects.

### 6.6.3 Progress Reporting

To demonstrate the actual progress of the work under the Contract the *Contractor* shall, on a weekly basis, update and submit to the *Project Manager*;

a) The revised program, in the form of a three week look-ahead, that shall show two (2) separate bars for each activity as per i) and ii) below so as to enable a comparison of the actual progress with the first program;

(i) The first programme activity bar, and

(ii) The revised activity bar identifying the currently forecast start and finish dates of the activity, and the status (% complete of each activity)

b) The progress 'S curves' based on the latest Accepted Programme

c) Deviations of the "current" activity schedule from the "baseline" activity schedule together with the 'S curves' will form the basis for assessing progress and performance.

### 6.6.4 Progress monitoring and review

Monitoring and review of the progress of work under the Contract shall consist of an assessment of all activities currently in progress. The following shall be determined:

- percentage complete;
- forecast completion date;
- S-curves showing actual versus baseline figures;
- deviations from the Accepted Programme; and
- Actions required remedying any deviations.

Weekly progress reviews shall be conducted to assist control of the work under the Contract. The *Contractor* shall provide this information upon request from the *Project Manager*; however any identified deviations shall be automatically reported to the *Project Manager*.

6.6.5 Monthly Status Report

The Contractor shall provide a written status report by the 20<sup>th</sup> of each month or such other reporting period as may be required by the *Project Manager* from time-to-time. The report shall summarize progress and problems encountered during that month in respect of all parts of the work under the Contract.

As a minimum the report shall include:

- progress against the Accepted Programme;
- summary of progress achieved during the period using progress ‘S curves’;
- list of milestones achieved during the period;
- status of design, procurement, and off-site works;
- status of on-site works;
- deviations from the Accepted Programme and in particular, the forecast completion dates of activities which have or should have commenced;
- status of approvals;
- actual or anticipated problems with corresponding action plans to minimize the impact;
- summary of works planned for the following period, and
- Cash flow status versus the original forecast.

The progress report shall form the basis of the monthly progress meeting between the *Project Manager* and the *Contractor*.

**6.7 Contractor’s management, supervision and key people**

The *Contractor* shall provide an organogram showing his key people and their lines of authority and communication.

The *Contractor* shall not change the project team as detailed in the organogram submitted by the *Contractor* and accepted by the *Project Manager* without the prior written approval of the *Project Manager*, which approval will not unreasonably be withheld by the *Project Manager*.

The contract work must conform to current professional engineering practices, standards and specifications and the work must be completed to the satisfaction of the *Project Manager*.

The *Contractor* and his sub-contractors, if any shall have suitably qualified *Supervisors* in charge of the project. The names and qualifications of the *Supervisors* together with full details of their experience in this field of work must be furnished. The tenderer must furnish the names and addresses of all proposed *sub-contractors*, which is subject to approval.

Key Personnel required.

At Tender stage, the contractor is to provide the following list of key personnel.

Skill	Name and Surname
Project Manager	
Site Agent	
Safety Officer	

## 6.8 Training workshops and technology transfer

No training workshops will be required on this project.

## 6.9 Insurance provided by the Employer

6.9.1 Insurance provided by the Employer is contained in the Contract Data – Part 1.

## 6.10 Contract change management

6.10.1 No additional requirements apply to ECC Clause 60 series.

6.10.2 Transnet will manage internally any specific requirements for Transnet prior to approval and/or notification to a proposed compensation event assessment (time and cost) before the *Project Manager* notifies implementation under ECC clause 65.1.

## 6.11 Provision of bonds and guarantees

6.11.1 The form in which a bond or guarantee required by the conditions of contract (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

6.11.2 The *Contractor* provides a bond or guarantee as required by the conditions of contract concurrently with the execution by the Parties of the form of agreement for the ECC contract.

## 6.12 Records of Defined Cost, payments & assessments of compensation events kept by Contractor

6.12.1 The *Contractor* keeps the following records available for the *Project Manager* to inspect:

- Records of design employees location of work (if appropriate)

## 6.13 The Contractor's Invoices

6.13.1 When the *Project Manager* certifies payment (see ECC Clause 51.1) following an assessment date, the *Contractor* complies with the *Employer's* procedure for invoice submission.

6.13.2 The invoice must correspond to the *Project Manager's* assessment of the amount due to the *Contractor* as stated in the payment certificate.

6.13.3 The invoice states the following:

Invoice addressed to Transnet SOC Ltd;

Transnet SOC Limited's VAT No: 4720103177;

Invoice number:

The *Contractor's* VAT Number; and

The Contract number

The invoice contains the supporting detail

6.13.4 The invoice is presented either by post or by hand delivery.

6.13.5 Invoices submitted by post are addressed to:

None

6.13.6 Invoices submitted by hand are presented to:

Transnet Property  
101 Loveday Street  
Johannesburg  
2001  
For the attention of Sibusiso Mazibuko  
The invoice is presented as an original.

## 6.14 People

6.14.1 Minimum requirements of people employed on the Site

6.14.2 The *Contractor* complies with the following PIRPMP

### 7.3.2.1 CONTRACTOR LIABILITY

- 1.1. The *Contractor* warrants that it will be liable to Transnet for any loss or damage caused by strikes, riots, lockouts or any labour disputes by and/or confined to the *contractor's* employees, which loss will include any indirect or consequential damages.
- 1.2. The *Contractor* warrants that no negotiations or feedback meetings by the *Contractor's* employees shall take place on Transnet premises, whether owned or rented by Transnet.
- 1.3. The *Contractor* shall give notice to Transnet of any industrial action by the *Contractor's* employees immediately upon becoming aware of any actual or contemplated action that is or may be carried out on Transnet's premises, whether owned or rented, and shall notify Transnet of all matters associated with such action that may potentially affect Transnet.
- 1.4. The *Contractor* is responsible for educating its employees on relevant provisions of the Labour Relations Act which deal with industrial action processes, and the risks of non-compliance.
- 1.5. The *Contractor* is required to develop a Contingency Strike Handling Plan, which plan the *Contractor* is obliged to update on a three-monthly basis. The *Contractor* must provide Transnet with this plan and all updates to the Plan. The *Contractor* is responsible to communicate with its employees on site details of the plan.

## 2. INDUSTRIAL ACTION BY CONTRACTOR EMPLOYEES

- 2.1. In the event of any industrial action by the Contractor's employees, the Contractor is required to provide competent contingency resources permitted in law to carry out any of the duties that are or could potentially be interrupted by industrial action in delivering the Service.
- 2.2. The Contractor warrants that it will compensate Transnet for any costs Transnet incurs in providing additional security to deal with any industrial action by the Contractor's employees.
- 2.3. In the event of any industrial action by the Contractor's employees, the Contractor is obliged:
  - 2.3.1. To prepare and deliver to Transnet, within two (2) hours of the commencement of industrial action an Industrial Action Report. If the industrial action persists the Contractor is required to deliver the report at 8h30 each day.

2.3.2. The Industrial Action Report must provide at least the following information:

- 2.3.2.1. Industrial incident report,
- 2.3.2.2. Attendance register,
- 2.3.2.3. Productivity / progress to schedule reports,
- 2.3.2.4. Operational contingency plan,
- 2.3.2.5. Site security report,
- 2.3.2.6. Industrial action intelligence gathered.

2.3.3. The final Industrial Action Report is to be delivered 24 hours after finalization of the industrial action.

2.3.4. The management of the Contractor is required to hold a daily industrial action teleconference with personnel identified by Transnet to discuss the industrial action, settlement of the industrial action, security issues and the impact on delivery under the contract.

2.4. The resolution of any disputes or industrial action by the Contractor's employees is the sole responsibility of the Contractor.

2.5. Access to Transnet premises by the Contractor and its employees is only provided for purposes of the Contractor delivering its services to Transnet. Should the Contractor and its employees not, for any reason, be capable of delivering its services Transnet is entitled to restrict or deny access onto its premises and unless otherwise authorized; such person will be deemed to be trespassing.

6.14.3 The Contractor complies with the requirements of the IRCC involving the engineering construction Contractors engaged (including all future Contractors) by the Employer [include details as appropriate ex:

6.14.4 The roles and responsibilities of the various personnel acting on behalf of the Project Manager with respect to IR issues are stated in the paragraphs following:

The PIRM is responsible for ensuring that the Contractor complies with the PIRPMP. The PIRM acts on behalf of the Project Manager.

## 6.15 Plant and Materials

6.15.1 The Contractor provides Plant and Materials for inclusion in the works in accordance with SANS 1200A sub-paragraph 2.1, unless otherwise stated elsewhere in the Works Information provided by the Employer. All Plant and Materials are new, unless the use of old or refurbished goods and/or Materials are expressly permitted as stated elsewhere in this Works Information or as may be subsequently instructed by the Project Manager.

6.15.2 Where Plant and Materials for inclusion in the works originate from outside the Republic of South Africa, all such Plant and Materials are new and of merchantable quality, to a recognised national standard, with all proprietary products installed to manufacturers' instructions.

6.15.3 The Contractor replaces any Plant and Materials subject to breakages (whether in the Working Areas or not) or any Plant and Materials not conforming to standards or specifications stated and notifies the Project Manager and the Supervisor on each occasion where replacement is required.

6.15.4 The Plant and Materials provided by the Employer are solely at the risk of the Contractor for inclusion in the works. The Contractor takes responsibility for ensuring the Plant and Materials do not contain a Defect(s) and are in compliance with the standards stated elsewhere in the Works Information.

6.15.5 The Contractor provides all other Plant and Materials necessary for the works not specifically stated to be provided "free issue" by the Employer.

## **6.16 Tests and inspections before delivery**

6.16.1 The Contractor must submit to the Supervisor details to certify that all the materials complies with the quality as per specification requirements.

## **6.17 Marking Plant and Materials outside the Working Areas**

6.17.1 The Contractor prepares and marks items of Plant and Materials outside the Working Areas with the contactor's logo.

## **6.18 Contractor's Equipment (including temporary works).**

None

## **6.19 Preparation of post Completion contracts**

None

## SECTION 3

### C3.2 CONTRACTOR'S WORKS INFORMATION

*This section of the Works Information will always be contract specific depending on the nature of the works.*

*It is most likely to be required for design and construct contracts where the tendering contractor will have proposed specifications and schedules for items of Plant and Materials and workmanship, which once accepted by the Employer prior to award of contract now become obligations of the Contractor per core clause 20.1.*

*Typical sub headings could be:*

- a) Contractor's design*
- b) Plant and Materials specifications and schedules*
- c) Other*

*This section could also be compiled as a separate file.*

*It is recommended that C3.2 Contractor's Works Information should always be a separate file.*

*NEVER design the works for the Contractor and then refer to such design as "Works Information provided by the Contractor". Either leave alone altogether for the Contractor to create its own authorship, or do the minimum as stated above and include sub-headings only for the Contractor to fill out itself.*

*See Contract Data - Part 2 optional statement:*

*If the Contractor is to provide Works Information for his design*

- The Works Information for the Contractor's design is in.*

*NB, it is a quality decision (involving, inter alia, available programme) as to whether or not the ECC tender document compiler includes the optional statement in Contract Data - Part 2 (with corresponding statements in the tender document 'Instructions to Tenderers') for the Contractor to provide design solutions (and to what extent) at tender return via Contract Data insertions (for inclusion in the Contract) at tender return. The reason for including the optional statement at Contract Data - Part 2 is to undertake appraisal of the (tendering) Contractor's design solutions at tender return, for comparison of solutions by tenderers, which might form the basis of tender evaluation criteria (and to ensure there are no surprises or wacky design solutions on offer).*

*If the Contract Data - Part 2 optional statement is not used by the ECC tender document compiler, then the Project Manager is in receipt of the Contractor's design post Contract and has to accept or otherwise under ECC Clauses 21.2 and*



## **PART 4: SITE INFORMATION**

Core clause 11.2(16) states

“Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

### **1. Description of the Site and its surroundings**

#### **1.1. General description**

The site entrance is situated at the corner of Droste Cres and Maritzburg St, closer to the M2 (Francois Oberholzer Fwy) opposite Motus Toyota in Johannesburg 2094.

Description of the works: tender relating to supply and installation of prestressed perimeter concrete wall panels with multi spike splayed and install new galvanized high tensile gates at Kaserne precinct.

#### **1.2. Existing buildings, structures, and plant & machinery on the Site**

- There are no drawings for the existing fence.
- The site plan layout from Google Earth is provided below, along with typical pictures of the required fence.
- There are building structures inside the site, and plans are not available for those buildings and services.

#### **1.3. Hidden services**

The contractor must perform a site inspection to verify that no services are located in the area where the work will be conducted.

Transnet Property

Enquiry Number:

DESCRIPTION OF THE WORKS: TENDER RELATING TO SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED AND INSTALL NEW GALVANIZED HIGH TENSILE GATES AT KASERNE PRECINCT



Transnet Property

Enquiry Number:

DESCRIPTION OF THE WORKS: TENDER RELATING TO SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED AND INSTALL NEW GALVANIZED HIGH TENSILE GATES AT KASERNE PRECINCT

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Transnet Property

Enquiry Number:

DESCRIPTION OF THE WORKS: TENDER RELATING TO SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED AND INSTALL NEW GALVANIZED HIGH TENSILE GATES AT KASERNE PRECINCT

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## EVALUATION CRITERIA

### Gatekeepers (Mandatory)

1. CIDB 6 SQ Grade or higher
2. Professional registration Certificates for:
  - a. Construction Project Manager registered with SACPCMP (Pr.CPM)
  - b. Safety Officer registered with SACPCMP

**All above requirements are mandatory. Bidders who fail to submit all documents shall be immediately disqualified.**

**All certified copies must not be older than 3 months from the closing date of this tender.**

### Functionality Criteria (Threshold 70 points)

The functionality criteria and maximum score in respect of each of the criteria are as follows:

Pre-qualifying Quality criteria	Sub-Criteria	Sub-Criteria Point Allocation	Maximum number Of Points
<b>Management and CVs of Key Personnel</b> The bidder must submit CVs, qualification certificates, and demonstrating practical experience of all the key personnel in prestressed concrete panel installation. The submission should include the following key resources: <ol style="list-style-type: none"> <li>1. <u>Project Manager</u> Minimum qualification National Diploma or Higher in Civil/Structural, CV with Project management experience.</li> <li>2. <u>Site Agent</u></li> </ol>	<b>Project Manager</b>		30
	No Previous Experience submitted/irrelevant experience submitted	0	
	CV with minimum 8 years of experience in concrete wall installation	20	
	Qualification certificate in Civil/Structural engineering		
	<b>Site Agent</b>		
	No Previous Experience submitted/irrelevant experience submitted	0	
	CV with minimum 5 years of experience in concrete wall installation	5	
	Qualification certificate in Civil/Structural engineering		
	<b>Safety Officer</b>		
	No Previous Experience submitted/irrelevant experience submitted	0	
CV with minimum 5 years of experience in Health and safety	5		
Qualification certificate in Occupational Health and Safety			

Pre-qualifying Quality criteria	Sub-Criteria	Sub-Criteria Point Allocation	Maximum number Of Points
<p>Minimum qualification National Diploma or Higher in Civil/Structural, CV, Project management experience and relevant experience in site supervision.</p> <p>3. <u>Safety officer</u> Minimum qualification National Diploma or Higher in Occupational Health and Safety, CV and with practical experience in health and safety in construction.</p>			
<p><b>Company Previous Experience</b> Bidders must demonstrate their experience in any type of prestressed concrete wall panel fencing.</p> <ul style="list-style-type: none"> <li>• Proof of experience attached in the form of client letterhead</li> <li>• Completion certificates with contacts details, project title and work description</li> <li>• Work done as the main Contractor or Sub-contractor is allowed.</li> </ul>	No evidence provided	0	20
	Bidder has successfully completed 1 to 3 similar Projects	5	
	Bidder has successfully completed 4 similar Projects	10	
	Bidder has successfully completed 5 similar Projects	15	
	Bidder has successfully completed 6 or more similar Projects	20	

Pre-qualifying Quality criteria	Sub-Criteria	Sub-Criteria Point Allocation	Maximum number Of Points
<p><b>Method statement</b></p> <p>Bidder to provide a proposal demonstrating ability to deliver a service with completeness and quality in consideration of but not limited to the following key elements:</p> <ol style="list-style-type: none"> <li>1. Sequence of work (i.e., Site Preparation, Excavation, Installation, Material Testing &amp; Commissioning)</li> <li>2. Resources allocation (i.e., People management, Tools, Plant &amp; equipment, Material &amp; Budget)</li> <li>3. Environmental (i.e., Stakeholder Engagement, Dust Control, Waste management &amp; Site Cleanliness)</li> <li>4. Transportation and delivery (i.e., Transport panels, offload &amp; Barricade)</li> <li>5. Quality and Assurance (i.e., Quality Control Plan, Inspection and testing, Project closure &amp; Handover)</li> </ol>	<p>No submission or fewer than 5 key required elements</p>	<p>0</p>	<p>15</p>
	<p>The method statement covers all 5 key elements on how the contractor will execute the prestressed concrete installation.</p> <p><b>Not signed by the Project Technician</b></p>	<p>5</p>	
	<p>The method statement covers all 5 key elements on how the contractor will execute the prestressed concrete installation.</p> <p><b>Signed by the Project Technician</b></p>	<p>10</p>	
	<p>The method statement covers all 5 key elements on how the contractor will execute the prestressed concrete installation.</p> <p><b>Signed by the Project Technician and Project manager</b></p>	<p>15</p>	
	<p>No submission or Gantt chart at level 1, and fewer than the required five key elements.</p> <p>Project plan covers all 5 key elements in how the contractor will execute the activities that will be undertaken for the implementation stage of the project in line with the project scope and deliverables.</p> <p><b>Gantt chart at level 2</b></p>	<p>0</p> <p>5</p>	

Pre-qualifying Quality criteria	Sub-Criteria	Sub-Criteria Point Allocation	Maximum number Of Points
<p>be completed within 12 months and must include the following critical key elements (NB: Project plan/schedule that is not submitted in the form of a Gantt chart will not be accepted.)</p> <ol style="list-style-type: none"> <li>1. Timelines and schedules (with start and finish date)</li> <li>2. Work breakdown</li> <li>3. Milestones (highlighting important stages or phases)</li> <li>4. Task dependencies and sequence.</li> <li>5. Resource plan</li> </ol>	<p>Project plan covers all 5 key elements in how the contractor will execute the activities that will be undertaken for the implementation stage of the project in line with the project scope and deliverables. <b>Gantt chart at level 3</b></p>	10	15
	<p>Project plan covers all 5 key elements in how the contractor will execute the activities that will be undertaken for the implementation stage of the project in line with the project scope and deliverables. <b>Gantt chart at level 4</b></p>	15	
<p><b>Health and Safety:</b> Bidders are to provide a health &amp; safety plan that covers 13 key elements:</p> <p>Key elements:</p> <ol style="list-style-type: none"> <li>1. Health and Safety Policy</li> <li>2. Task-Specific Hazard Identification, Risk Assessment and control measures</li> <li>3. Compliance with Legal Requirements</li> <li>4. Valid letter of good standing &amp; public liability (insurance).</li> <li>5. PPE Adherence, Resources Accountabilities and Responsibilities</li> </ol>	<p>No submission of health and safety or submission does not refer to the construction of a concrete fence wall, and there are less than <b>6</b> key elements.</p>	0	20
	<p>The bidder has submitted a health and safety plan that covered <b>7</b> or <b>8</b> of the key elements that demonstrate the contractor's commitment to health and safety and ensure compliance with the stated employer's work information.</p>	5	
	<p>The bidder has submitted a health and safety plan that covered <b>9</b> or <b>10</b> of the key elements that demonstrate the contractor's commitment to health and safety and ensure compliance with the stated employer's work information.</p>	10	
	<p>The bidder has submitted a health and safety plan that covered <b>11</b> or <b>12</b> of the key elements that demonstrate the contractor's commitment to health and safety and ensure compliance with the stated employer's work information.</p>	15	

Transnet Property  
Enquiry Number:

DESCRIPTION OF THE WORKS: TENDER RELATING TO SUPPLY AND INSTALLATION OF PRESTRESSED PERIMETER CONCRETE WALL PANELS WITH MULTI SPIKE SPLAYED AND INSTALL NEW GALVANIZED HIGH TENSILE GATES AT KASERNE PRECINCT.

Pre-qualifying Quality criteria	Sub-Criteria	Sub-Criteria Point Allocation	Maximum number Of Points
6. Competence Training and Awareness 7. Communication, Participation and Consultation 8. Operational Control 9. Emergency Preparedness and Response 10. Incident Reporting and Investigation 11. Non-conformance and Action Management 12. Performance Assessment and Auditing 13. Measuring and Monitoring	The bidder has submitted the Health and Safety plan that includes all <b>13</b> key elements that demonstrate their commitment to health and safety and ensure compliance with the stated employer's works information.	20	
<b>Total Weighting:</b>			<b>100</b>

## **Practice Guide (For Clients):**

### **Implementation of the Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts, published in Gazette Notice No.36190 of 25 February 2013**

#### **1. Introduction**

This Practice Guide provides guidance to clients on the application of the cidb Standard for Indirect Targeting for Enterprise Development through Construction works Contracts (herein after referred to as the Standard) and is applicable to contracts in cidb Grades 7 to 9, in the General Building (GB) and Civil Engineering (CE).

The standard establishes Contract Participation Goals (CPGs) for development of targeted enterprises, to promote enterprise development by providing for a minimum of 5% of the total project value on selected contracts to be undertaken by joint-venture partners or to be sub-contracted to developing contractors. The standard requires employers to ensure that the lead partner or the main contractor dedicate a minimum of 5% of the total project value and to provide developmental support to a targeted sub-contractor/s and JV partners.

The standard is obtainable from the cidb's website [www.cidb.org.za](http://www.cidb.org.za)

#### **2. Condition of Contract**

##### **Part T1: Tendering procedures**

###### **T1.1 Tender Notice and Invitation to Tender**

Alerts prospective contractors to the nature of construction works required by the employer and should contain sufficient information to enable them to respond appropriately.

It is estimated that tenderers must have a cidb contractor grading designation of .... or .... or higher....

###### **T1.2 Tender Data**

##### **Part T2: Returnable documents**

###### **T2.1 List of Returnable Documents**

Ensures that everything the employer requires a tenderer to submit with his/her tender is included in, or returned with, his/her tender submission. In the case of the Standard there are no returnable documents, notwithstanding this the Employer shall, after the award of the contract, provide the proforma documents to be completed by the contractors. (Refer to Annexure 1-3 Proforma documents, In the case of the Standard there are no returnable schedules).

The proforma documents are provided in the tender data for information purposes only.

###### **T2.2 Returnable Schedules**

Contains documents that the tenderer is required to complete for the purpose of evaluating tenders and other schedules which upon acceptance become part of the subsequent contract. (In the case of the Standard there are no returnable schedules)

##### **Part C1: Agreement and Contract Data**

###### **C1.1 Form of offer and Acceptance**

Formalises the legal process of offer and acceptance

Note: Tenderer signs offer and employer signs acceptance to form the contract

## C1.2 Contract data

States the applicable conditions of contract and associated contract specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract

It will be a condition of contract that:

The contractor shall, in the performance of the contract, achieve the Contract Participation Goals (CPG) relating to the engagement of targeted enterprises as established in the Standard.

## Part C2: Pricing data

### C2.1 Pricing assumptions

Provides the criteria and assumptions (in the contract) that the tenderer has considered, when developing his/her prices

**The employer shall include the following statement in the pricing assumptions:**

The Employer shall determine the amount to be paid for the Contract Participation Goal (CPG) on the contract and this amount shall be stated under the section Enterprise Development as a **Provisional Sum** in the Preliminaries and Generals (P&Gs).

The rates given in **Table 1**. are the recommended rates to guide the Employer to determine the amount for Enterprise Development per targeted enterprise. The Employer may adjust these rates which may be affected by factors such as location of the project. The Employer must include this amount as a **Provisional Sum** in the Preliminary and General (P&G) section as illustrated in **Table 1**.

**Note: This item should not be a determinant in the competitiveness of the bid.**

### Preliminary and General (Extract Indicating Provisional Sum from P&Gs)

**Table 1. Breakdown of the items per Targeted Enterprise to be included in the tender data**

Item	Description	Unit	Rate	Quantity	Amount (R)
15	Health and Safety				
<b>16</b>	<b>Enterprise Development</b>				
16.1	Enterprise Development of Targeted Enterprise or JV partners				
16.1.1	Needs Analysis and Enterprise Development Plan per Targeted Enterprise	No.	5000	1	5000
16.1.2	Monitoring and Interim reporting per targeted enterprise	Per Quarter	20000	4	80000
16.1.3	Project Completion report per Targeted Enterprise	No.	5000	1	5000
	<b>Provisional Sum</b>				<b>90 000</b>

In **Table 1**:

Item 16.1.1 refers to the Needs Analysis the contractor shall perform on the targeted enterprise and / or JV partner to identify the developmental goals at a rate of R5000.00 (five thousand rands) per targeted enterprise.

Item 16.1.2 refers to the Monitoring and Interim reporting to be performed by the contractor as per the Standard at a rate of R20 000.00 (twenty thousand rands) per quarter.

Item 16.1.3 refers to the Completion report, the contractor shall submit the Completion report to the Employer's representative as per the Standard at a rate of R5000.00 (five thousand rands) per targeted enterprise.

**Table1.2 Final Tender Summary – Example CE Class of Works**

Item	Description	Unit	Rate	Quantity	Amount
	P&Gs				R10 000 000
	Concrete				R10 000 000
	Mechanical				R10 000 000
	Electrical				R10 000 000
	Landscaping				R5 000 000
	Civils				R15 000 000
	Sub-total				R60 000 000
	VAT (15%)				R9 000 000
	Total Tender amount				R69 000 000

## **C2.2 Pricing schedules / Activity Schedule or Bills of Quantities**

Records the contractor's prices for providing engineering and construction works which are described in a specification within the Scope of Work section of the contract.

The contractor shall be paid as follows:

1. Needs analysis and enterprise development plan per Targeted Enterprise;
2. Mentoring and interim reporting per Targeted Enterprise; and
3. Project completion report per Targeted Enterprise.

## **Part C3: Scope of Work**

### **C3: Scope of work**

Specifies and describes the construction works to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed

### **DESCRIPTION OF THE WORKS**

#### **Employer's objectives**

The employer shall, in no uncertain terms, include the following statement in the tender documents:

- a. The objective of the project is to provide for a minimum contract participation goal (CPG) of 5% of the total project value and to develop targeted enterprises by the main or lead partner contractors.
- b. The successful contractor shall:
  1. Subcontract a minimum of 5% of the total project value to targeted enterprises;
  2. develop the targeted enterprise/s in two development areas as specified in the Standard, and agreed by both the main contractor and the targeted enterprise/s;
  3. perform needs analysis on the targeted enterprise to identify developmental goals;
  4. provide internal mentorship support to improve the targeted enterprise/s performance;
  5. develop a project specific enterprise development plan to improve the targeted enterprise/s performance in the identified developmental areas;
  6. monitor and report the progress of the agreed development areas with the targeted enterprise/s; and
  7. submit a project completion report to the Employer's representative for each targeted enterprise.

- c. The development of the Targeted Enterprise shall be guided by the **CIDB Competence Standard for Contractors Gazette No. 41237, 10 November 2017**. **Table 2.** below outlines the minimum recognised qualifications to which development of targeted enterprises must be undertaken by the main contractor.

**Table 2. Recognised Qualifications**

CIDB Grade	Minimum NQF Level	Recognised Qualifications
<b>Business Management</b>		
5 & 6	5	<ul style="list-style-type: none"> <li>National Occupational Qualification in Business Management NQF 5</li> </ul>
2 to 4	2	<ul style="list-style-type: none"> <li>National Certificate: Construction Contracting NQF 2</li> </ul>
<b>Building and Construction Works Management</b>		
5 & 6	5	<ul style="list-style-type: none"> <li>National Certificate: Management of Building Construction Processes NQF 5</li> </ul>
2 to 4	3	<ul style="list-style-type: none"> <li>NCV 4: Civil Engineering and Building Construction, or</li> <li>National Certificate: Supervision of Construction Processes</li> </ul>
<b>Civil Engineering Construction Works</b>		
5 & 6	5	<ul style="list-style-type: none"> <li>National Certificate: Management of Civil Engineering Processes NQF 5, or</li> <li>National Diploma: Civil Engineering and Building Diploma</li> </ul>
2 to 4	3	<ul style="list-style-type: none"> <li>NCV 4: Civil Engineering and Building Construction or</li> <li>National Certificate: Supervision of Construction Processes, or</li> <li>Further Education and Training Certificate: Supervision of Construction Processes</li> </ul>

*Source; cidb Competence Standard for Contractors; Gazette Notice No. 41237*

An example of the implementation of the Standard, a Civil Engineering contractor in grade 3 is the targeted enterprise that receives development in the two areas identified below:

1. Contractual knowledge transfer, planning, tendering and programming skills transfer.

The main contractor must develop a training plan to address the developmental needs of the Targeted Enterprise. As a guide the development plan should refer to applicable unit standards that reside in NFQ level 3 National Certificate: Supervision of Construction Process qualification or equivalent. Contractual knowledge development and planning, tendering and programming skills transfer must be pitched at the level of NQF 3 and aligned to the outcomes of the applicable unit standard.

**Note: the development will not necessarily translate into an accredited outcome.**

## **Part C4: Site information**

### **PROCUREMENT**

The Employer shall stipulate in the tender data that the contractor shall provide a minimum Contract Participation Goal (CPG) of 5% of the total project value and develop targeted enterprises in the two agreed developmental areas.

The contractor shall appoint an Enterprise Development Co-ordinator who shall:

- a) develop a project specific Enterprise Development plan to improve the targeted enterprise's performance in the identified developmental areas and shall allocate resources to monitor progress in relation to improved performance; and
- b) shall, submit to the employer's representative a monthly enterprise development report (Performa – ED105P) which documents all mentoring activities that have taken place during that month and the progress made in improving the targeted enterprise's performance in the agreed developmental areas, countersigned by the targeted enterprise.

### **Competence Criteria for an Enterprise Development Co-ordinator**

The enterprise development co-ordinator shall have the following competencies:

- 2.1 Minimum experience of 5 years in the construction industry at Managerial level as a Site Agent, Contracts Manager, Site Manager, Construction Manager, Business Development Manager or Enterprise Development Manager.
- 2.2 Minimum experience of 2 years in training and development in Building or Construction; and
- 2.3 National Diploma or B Degree in the Built Environment or Business Management

## **Part C4: Site information**

### **MANAGEMENT**

#### **State the requirements for development:**

The contractor shall provide a competent person/s to provide internal mentorship to the Targeted Enterprise/s in the two agreed developmental areas.

#### **The Format of Communications**

The contractor shall submit to the Employer's representative:

1. Project interim reports in the specified format (ED105P) detailing interim value of the CPG that was achieved. Such a report shall also contain a monthly progress report, compiled by the employer's representative and the contractor, detailing an assessment of the enterprise development support provided.
2. Project completion report, in the specified format (ED101P), to the Employer's Representative for acceptance within 15 days of achieving practical completion. The report shall include the value of the CPG that was certified in accordance with the contract, cidb registration numbers of each and every targeted enterprise and the value of the subcontracted works or the participation parameter of the joint venture entered into; and
3. Enterprise development declaration (ED104P).

**The Key Personal:**

The contractor shall appoint an Enterprise Development Co-ordinator and a competent person/s to provide internal mentorship.

**Management Meetings:**

The contractor shall report to the Employer's Representative on the implementation and progress of the targeted enterprise development and CPG.

**The Forms for contract administration:**

The contractor shall submit to the Employer's Representative the following proformas:

- Form ED 105P Project Interim Report
- Form ED 104P Enterprise Development Declaration
- Form ED 101P Project Completion Report

**Records:**

The contractor shall:

- keep records of the targeted enterprise development,
- keep records of the payments made to the targeted enterprises in relation to the CPG,
- ensure all the documentation required in terms of the Standard is provided in a timely manner and according to a prescribed format where applicable.

**Payment Certificates:**

The contractor shall:

- achieve the measurable CPG and providing enterprise development support to the targeted enterprise/s as per the Standard,
- submit payment certificates to the Employer Representative at intervals determined in the Contract.

**PRO-FORMA DOCUMENTS**

Annexure 1 - Form ED 105P Project Interim Report

Annexure 2 - Form ED 104P Enterprise Development Declaration

Annexure 3 - Form ED 101P Project Completion Report

**Annexure 1 PRO-FORMA DOCUMENTS**  
**Project Interim Report (ED105P)**

cidb PROJECT ASSESSMENT SCHEME; STANDARD FOR INDIRECT TARGETING PROJECT INTERIM REPORT To be completed for each qualifying enterprise	
<b>Section A: Employer Information</b>	
cidb Employer Number	<input type="text"/>
Employer Name	<input type="text"/>
	<input type="text"/>
<b>Section B: Contractor / JV Information</b>	
cidb Contractor Registration Number of main / lead contractor	<input type="text"/>
Name of contractor	<input type="text"/>
cidb Contractor Registration Number of Joint Venture Partner 2	<input type="text"/>
Name of contractor /Joint Venture	<input type="text"/>
cidb Contractor Registration Number of Joint Venture Partner 3	<input type="text"/>
Name of contractor /Joint Venture	<input type="text"/>
cidb Contractor Registration Number of Joint Venture Partner 4	<input type="text"/>
Name of contractor /Joint Venture	<input type="text"/>

**Project Completion Report (ED101P)**

cidb PROJECT ASSESSMENT SCHEME; STANDARD FOR INDIRECT TARGETING PROJECT COMPLETION REPORT To be completed for each qualifying enterprise	
Section A: Employer Information	
cidb Employer Number	<input style="width: 100%;" type="text"/>
Employer Name	<input style="width: 100%;" type="text"/> <input style="width: 100%;" type="text"/>
Section B: Contractor / JV Information	
cidb Contractor Registration Number of main / lead contractor	<input style="width: 100%;" type="text"/>
Name of contractor	<input style="width: 100%;" type="text"/>
cidb Contractor Registration Number of Joint Venture Partner 2	<input style="width: 100%;" type="text"/>
Name of contractor /Joint Venture	<input style="width: 100%;" type="text"/>
cidb Contractor Registration Number of Joint Venture Partner 3	<input style="width: 100%;" type="text"/>
Name of contractor /Joint Venture	<input style="width: 100%;" type="text"/>
cidb Contractor Registration Number of Joint Venture Partner 4	<input style="width: 100%;" type="text"/>
Name of contractor /Joint Venture	<input style="width: 100%;" type="text"/>
Contact Person	Title <input style="width: 100px;" type="text"/> Initials <input style="width: 50px;" type="text"/> Surname <input style="width: 150px;" type="text"/>

**Declaration (ED104P)**

cidb PROJECT ASSESSMENT SCHEME; STANDARD FOR INDIRECT TARGETING TARGETED ENTERPRISE DECLARATION To be completed for each targeted enterprise	
Section A: Employer Information	
cidb Employer Number	<input style="width: 100%;" type="text"/>
Employer Name	<input style="width: 100%;" type="text"/> <input style="width: 100%;" type="text"/>
Section B: Contract Data	
cidb Contract Number	<input style="width: 100%;" type="text"/>
Contract Title	<input style="width: 100%;" type="text"/> <input style="width: 100%;" type="text"/> <input style="width: 100%;" type="text"/>
Date of Practical Completion	<input style="width: 40px;" type="text"/> Y <input style="width: 40px;" type="text"/> Y <input style="width: 40px;" type="text"/> Y <input style="width: 40px;" type="text"/> Y <input style="width: 40px;" type="text"/> M <input style="width: 40px;" type="text"/> M <input style="width: 40px;" type="text"/> D <input style="width: 40px;" type="text"/> D
Contract Amount at Award(Inclusive of VAT)	R <input style="width: 60px;" type="text"/> <input style="width: 60px;" type="text"/> <input style="width: 60px;" type="text"/> <input style="width: 60px;" type="text"/> .00
Section C: Main Contractor / JV Information	
cidb Contractor Registration Number of main / lead contractor	<input style="width: 100%;" type="text"/>

## **Practice Guide (For Clients):**

### **Implementation of the Standard for Developing Skills through Infrastructure Contracts, published in Gazette Notice 48491 of 28 April 2023**

#### **1. Introduction**

This Practice Guide provides guidance to clients on the application of the cidb Standard for Developing Skills through Infrastructure Contracts, published in **Gazette Notice 48491 of 28 April 2023** (herein after referred to as the Standard).

This standard should be applied to a contract, or an order issued in terms of a framework that has a duration of 12 months or more and a contract amount exceeding R20 million in the case of an engineering and construction works, or design and build contract or an order issued in terms of such contract. The Standard is applicable to all cidb Classes of Works.

This standard establishes a minimum contract skills development goal to be achieved in the performance of a contract in relation to the provision of different types of workplace opportunities, linked to work associated with a contract culminating in or leading to:

- a) a part or full occupational qualification registered on the National Qualification Framework;
- b) a trade qualification leading to a listed trade (GG No. 35625, 31 August 2012)
- c) a national diploma registered on the National Qualification Framework; and
- d) registration in a professional category by one of the professional bodies listed in the standard

The Client shall ensure that the contractor achieves the contract skills development goals (CSDG) on the contract.

The standard is obtainable from the cidb's website [www.cidb.org.za](http://www.cidb.org.za)

#### **2. Condition of Tender**

##### **Part T1: Tendering procedures**

###### **T1.1 Tender Notice and Invitation to Tender**

Alerts prospective contractors to the nature of construction works required by the employer and should contain sufficient information to enable them to respond appropriately.

It is estimated that tenderers must have a cidb contractor grading designation of .... or .... or higher....

###### **T1.2 Tender Data**

##### **Part T2: Returnable documents**

###### **T2.1 List of Returnable Documents**

Ensures that everything the employer requires a tenderer to submit with his/her tender is included in, or returned with, his/her tender submission. In the case of the Standard there are no returnable documents, notwithstanding this the Employer shall, after the award of the contract, provide the proforma documents that shall be completed by the contractors. (Refer to Annexure 1–5 Proforma documents, In the case of the Standard there are no returnable schedules)

###### **T2.2 Returnable Schedules**

Contains documents that the tenderer is required to complete for the purpose of evaluating tenders, and other schedules which upon acceptance become part of the contract. (In the case of the Standard there are no returnable schedules)

**Part C1: Agreement and Contract Data**

**C1.1 Form of offer and Acceptance**

Formalises the legal process of offer and acceptance

Note: Tenderer signs offer and employer signs acceptance to form the contract

**C1.2 Contract data**

States the applicable conditions of contract and associated contract specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract

It will be a condition of contract that:

The contractor shall, in the performance of the contract, achieve the Contract Skills Development Goal (CSDG) established in the Standard.

**Part C2: Pricing data**

**C2.1 Pricing assumptions**

Provides the criteria and assumptions (in the contract) that the tenderer has considered when developing his/her prices.

**The employer shall include the following statement in the pricing assumptions:**

The contractor shall determine the CSDG, expressed in Rand, which shall not be less than the sub-total multiplied by a percentage (%) factor given in **Table 2 of the Standard for the applicable class of construction works**. The Employer shall state the percentage (%) factor in the Final Tender Summary section dependant on the Class of Construction Works.

**Table 2: Construction skills development goals for different classes of engineering and construction works contracts.**

Class of construction works as identified in terms of the cidb regulation		Construction skills development goal (%)
Designation	Description	
CE	Civil Engineering	0.25
CE and GB	Civil Engineering and General Building	0.375
EB	Electrical Engineering work (buildings)	0.25
EP	Electrical Engineering works (infrastructure)	0.25
GB	General Building	0.5
ME	Mechanical Engineering	0.25
	Specialist works	0.25

**The Final Tender Summary**

The contractor’s attention is brought to the following:

The Employer shall include a line item under the Skills Development in the Final Tender Summary section described as “Minimum Contract Skills Development Goal (CSDG)” as illustrated in table 1.1 and 1.2 below:

**To prevent a tender being non-responsive, the Employer shall bring to the Contractor’s attention the required CSDG percentage (%) as prescribed in the final tender summary section. The percentage (%) factor multiplied by the sub-total of the tender amount will determine the minimum CSDG that needs to be achieved on the contract.**

**Table 1.1 Final Tender Summary – Contract Skills Development Goal Example**

Item	Description	Percentage (%) Factor	Sub-total of Tender Amount	Amount (Rands)
16	Skills Development			
16.1	Minimum Contract Skills Development Goal (CSDG) sum = CE (0.25%) x Subtotal of the tender amount	0.25%	R60 000 000	R150 000

**Table1.2 Final Tender Summary – Example CE Class of Works**

Item	Description	Unit	Rate	Quantity	Amount
	P&Gs				R10 000 000
	Concrete				R10 000 000
	Mechanical				R10 000 000
	Electrical				R10 000 000
	Landscaping				R5 000 000
	Civils				R15 000 000
	Sub-total				R60 000 000
	CSDG (0.25% factor)				R150 000
	VAT (15%)				R9 022 500
	Total Tender amount				R69 172 500

The Employer may determine the skills Methods to be implemented on the contract or the Employer may elect the contractor to determine the skills Methods to be implemented as per the Standard, provided the CSDG is achieved. The pricing for the skills Methods to be implemented is provided in Table 3 of the Standard for the applicable class of construction works.

**Table 3: The notional cost of providing training opportunities per quarter.**

Type of Training Opportunity	Provision for stipends (Unemployed learners only)	Provisions for mentorship	Provisions for additional costs*	Total costs	
				Unemployed learners	Employed learners
<b>Method 1</b>					
Occupational qualification	R7 000	R0	R9 000	R16 000	R9 000
<b>Method 2</b>					
TVET College graduates	R14 000	R0	R9 000	R23 000	N/A
Apprenticeship	R14 000	R0	R12 000	R26 000	R12 000
<b>Method 3</b>					
P1 and P2 learners	R24 000	R20 000	R4 500	R48 500	N/A
<b>Method 4</b>					
Candidates with a 3 year diploma	R37 000	R20 000	R4 500	R61 500	R20 000
Candidates with 4 year qualification	R47 000	R20 000	R4 500	R71 500	R20 000

In the example below:

**Table 4. Example of the Application of the Skills Methods**

Item	Description	Unit	Qty	Rate	Amount
1	Provision for stipends (unemployed learners) (P1 & P2 - Method 3)	Per quarter	3	R24 000	R72 000
2	Provision for Mentorship (P1 & P2 - Method 3)	Per quarter	3	R20 000	R60 000
3	Provision for additional cost (PPE, Medical assessment, course fees) (P1 & P2 - Method 3)	Per quarter	3	R4 500	R13 500
4	Provision for additional cost, employed learner (PPE, Medical assessment, course fees, assessment and monitoring) (Method 1)	Per quarter	1	R9 000	R9 000
16	Minimum CSDG sum = CE (0.25%) x Subtotal (R60 000 000) =R150 000				R154 000

**Note the CSDG achieved on the contract must be equal to or higher than the minimum CSDG**

Item 1 from Table 4 refers to the placement of one (1) unemployed learner that requires work placement in order to meet the P1 & P2 (Method 3) for the academic requirements to complete the qualification. The learner is placed for a period of 3 quarters (9 months) at R24 000 per quarter which will amount to R72 000.

Item 2 from Table 4 refers to the provision for mentorship of the P1 and P2 (Method 3) learners at R20 000 per quarter which amounts to R60 000 for 3 quarters (9 months).

Item 3 from Table 4 refers to the provision for additional cost as described in the Standard this amounts to R4 500 per quarter which amounts to R13 500 for 3 quarters (9 months).

Item 4 from Table 4 refers to the placement of one (1) employed learner in a skills programme (Method 1) for a period of 1 quarter (3 months) which makes provision for additional cost as described in the Standard this amounts to R9000 per quarter.

Item 16 from Table 4 refers to the total cost of placement of learners employing Methods 1 and 3 in the Standard which amounts to R154 000. In this example the planned CSDG amount is higher than the minimum CSDG of R150 000 as outline in Item 16 which complies with the requirements of the standard. In this case the employer shall agree with the contractor to the planned CSDG and pay the contractor accordingly.

The Employer shall use the same approach as above when determining the CSDG for other Methods as per the Standard.

**C2.2 Pricing schedules / Activity Schedule or Bills of Quantities**

Records the contractor's prices for providing engineering and construction works which are described in a specification within the Scope of Work section of the contract.

The Contractor shall be paid as follows:

Payment to the contractor to accommodate Part/Full Occupational qualification (Method 1), Trade qualifications learners (Method 2), Work Integrated Learners (Method 3) and Candidates for professional registration (Method 4) for Stipends and Provision for Additional Costs.

Based on the agreed skills methods, the employer shall make provision for payment to the contractor for learner and candidate stipends for unemployed persons and a provision for additional cost such as medical assessments, personal protective equipment, tools and course fee for example skills programmes, pre trade test training and registration support programmes as indicated in Table 3 in the Standard as provided in the Final Tender Summary section for the CSDG.

**Provision of payment to Mentors**

**Payment to the contractor for Mentorship to accommodate Work Integrated Learners (Method 3) and Candidates for professional registration (Method 4) only.**

The contractor shall be paid as follows:

Should Work Integrated Learners and/or Candidates for professional registration form part of the agreed skills Method, the Employer shall make provision for payment of the mentor as indicated in Table 3 in the Standard.

Mentoring associated with structured workplace learning for candidates shall be in accordance with the prescripts of the relevant professional body or statutory council.

The contractor shall carry out all the requirements under clause 4.3 Structured Workplace Learning for Candidates in the Standard. The contractor shall:

- a) Identify a suitable mentor for the candidate.
- b) Issue each candidate with a portfolio of evidence file.
- c) Ensure the mentor provides an updated workplace training plan for a candidate.

### **Part C3: Scope of Work**

#### **C3: Scope of work**

Specifies and describes the construction works to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed.

#### **DESCRIPTION OF THE WORKS**

##### **Employer's objectives**

The employer should include the following statement in the tender data, should the employer wish to have specific training Methods carried out as an objective of the project:

One of the objectives of the project is to train .... (Occupational Qualifications (Method 1) and/or Trade Qualification (Method 2) and /or Work Integrated Learners – P1 and P2 Learners (Method 3) and/or Professional Candidates (Method 4).

**Note: Delete that which is not applicable.**

### **Part C4: Site information**

#### **PROCUREMENT**

Based on the agreed skills methods the contractor may employ part/full Occupational Qualification Learners and /or Trade Qualification Learners and/or Work Integrated Learners and/or Candidates **(delete that which is not applicable)** directly or through a Skills Development Agency (SDA), training provider or skills development facilitator (Form A1 - List of cidb accredited SDAs). The contractor shall ensure that no more than one Method shall be applied to any individual concurrently in the calculation of the CSDG for the contract.

The contractor may only place 33% employees employed by him or that of his subcontractors contributing to the CSDG.

The contractor shall employ at least 60% of the learners from a Public FET / TVET college should the contractor select to have trade qualification learners (Method 2) contributing to the CSDG.

#### **MANAGEMENT**

##### **State the requirements for Training:**

The contractor shall achieve the measurable CSDG by providing opportunities to learners requiring structured workplace learning using one or a combination of any of the Skills Methods as agreed: Part/Full Occupational Qualification Learners (Method 1) and/or Trade Qualification Learners (Method 2) and/or Work Integrated Learners (Method 3) and/or Candidates (Method 4) as per the Standard in relation to work directly related to the contract or order as indicated under **clause 4.2 and 4.3 in the Standard.**

**The contractor must ensure all beneficiaries of the Standard are registered with CIDB Skills Development Agency (SDA)**

**The Format of Communications:**

The contractor shall, within 30 days of award of the contract and in the specific format (**Form A2 Baseline Training Plan**), submit to the Employer's representative a baseline training plan.

The contractor shall submit to the Employers Representative:

- an interim contract compliance training report in the specific format (**Form A3 Project Interim Report**) at intervals which do not exceed 3 months; and
- a final contract compliance training report, in the specific format (**Form A5 Project Completion Report**). This report shall, respectively, be submitted within 15 days of; reaching completion, end of the service, the delivery date for all work required or practical completion (in the case of professional service), service, design and construct contracts, and engineering and construction works contracts, .

**The Key Personal:**

For Structured Workplace Learning Opportunities for Learners (Method 1 and Method 2)

The Contractor shall:

- appoint a responsible supervisor to allocate learning tasks, to learners in line with their training plans.
- appoint an artisan in the applicable trade with a minimum of 3 years to mentor learners associated with structured workplace learning.

For Structured Workplace Learning for Candidates (Method 3 and Method 4)

The contractor shall:

- a) appoint a supervisor who is actively engaged in work directly associated with the contract to issue tasks,
- b) appoint a suitable mentor as required by the professional body or statutory council.

**Management Meetings:**

The contractor shall report to the Employer's Representative on the implementation and progress of the CSDG

**The Forms for contract administration:**

The contractor shall submit to the Employer's Representative the following proformas:

- Form A2 Baseline Training Plan
- Form A3 Project Interim Report
- Form A5 Project Completion Report

**Records:**

The contractor shall:

- keep records for learners and candidates of the hours worked and registration with the cidb SDA, Sector Education Training Authorities SETA's (where required) and professional statutory councils (where required) particulars towards compliance with this Standard.
- ensure all the documentation required in terms of clause 4 in the Standard is provided in a timely manner and according to a prescribed format where applicable.
- upon termination of the opportunities provided to satisfy the CSDG, certify the quantum and nature of the opportunity and submit the certificate and counter-certified by the relevant individual, to the Employer's representative for record-keeping purposes.

**Payment Certificates:**

The contractor shall:

- achieve the measurable CSDG as agreed by providing opportunities to learners requiring structured workplace learning using one or a combination of any of the Skills Methods as per the Standard in relation to work directly related to the contract or order as indicated under **clause 4.2 and 4.3 in the Standard**.
- submit payment certificates to the Employer's Representative at intervals determined in the Contract.



## CIDB SKILLS STANDARD BASELINE TRAINING PLAN

Contractor Details						
Contractor Name:	123Building and construction					
CRS Number:	0000000					
Estimated start date	1 April 2021					
Estimated Completion date	2 May 2022					
Size of Organisation	Small (1-49 employees)		Medium (50-149 employees)		Large (≥150 employees)	
				✓		

Contractor Contact Details	
Name of Contact Person	Mr Xolani Smith
Designation of Contact Person	Construction Manager
Contact Details	Cell Number: XXX XXXX XXX
	Landline Number: XXX XXXX XXX
	Email address: <a href="mailto:Smith@123building.co.za">Smith@123building.co.za</a>

Construction Skills Development Goal (CSDG) Baseline Training Plan					
Training Method	Number of Employed Learners	Number of Unemployed Learners	Area/s of Specialisation/Trade	Duration of Placement	Total Notional Cost
Method 1: Skills Programme	1	3	Scaffolding	3 months	R57 000
Method 2: FET College Graduates/ Apprenticeship	0	2	Bricklaying and Plastering	12 months	R92 000
Method 3: P1 and P2 learners or a 240 credit qualification	0	0	-	-	-
Method 4: Candidacy with 360 credit qualification	0	1	Project Management	9 months	R184 500
<b>Total</b>	<b>1</b>	<b>6</b>			<b>R333 500</b>

Note: Refer to Table 3 in the Standard for Developing Skills through Infrastructure Contracts Government Gazette 43495 of 3 July 2020 for the notional costs

Contractor's  
Representative  
Name: \_\_\_\_\_

Designation: \_\_\_\_\_

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

Date: \_\_\_\_\_

Employer's  
Representative  
Name: \_\_\_\_\_

Designation: \_\_\_\_\_

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

Date: \_\_\_\_\_



## Supervisor/Learner Agreement

### Memorandum of understanding between Supervisor and Learner

The Contractor is responsible for the effective management of the learning opportunities provided through the cidb *Standard for the Development of Skills through Infrastructure Contracts* (cidb Skills Standard). The attainment of successful learning outcomes and professional development of the learners is largely dependent on the relationship between the assigned Supervisor and the Learner. As a participant in the implementation of the cidb Skills Standard you agree to the Supervisor relationship and commit to endeavour through the challenges of a construction project to give value to the training programme.

#### The Responsibilities of a Supervisor to the Learner include:

- stimulating a passion for construction,
- sharing technical and practical knowledge,
- fostering the development of technical and leadership skills,
- facilitating networking within the working community,
- instilling an expectation of personal growth and learning by the Learner,
- developing knowledge and understanding in the areas of health, safety, environment, quality and production,
- inculcating professionalism and a desire for continual improvement by the Learner,
- creating a nurturing relationship that instils a sense of discipline and professional pride,
- giving constructive feedback and
- signing the Learners logbook.

Supervisor's name \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### The Responsibilities of a Learner are:

- adhere to the Host Employer's onsite rules and policies,
- have an expectation of personal growth and learning,
- to be enthusiastic and motivated,
- to be open and accept supervision from the Supervisor and other colleagues,
  
- to develop a thorough understanding of health, safety, environment, quality and production,
- to have a positive attitude,
- to display a strong sense of discipline and to be conscious of time management,
- to operate within the team,
- to take the time to learn and practice new skills,

**to make time to fill in your logbook and obtain the Supervisor's signature for completed tasks.**

Intern's Name: \_\_\_\_\_ ID No: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_





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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE****GENERAL NOTICE 1779 OF 2023****Construction Industry Development Board**  
**Standard for Developing Skills through**  
**Infrastructure Contracts****31 MARCH 2023**

In terms of sections 5(2) of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) (the Act), the Construction Industry Development Board is empowered to promote best practice Standards. This best practice Standard for developing skills through infrastructure contracts, establishes the minimum contract skills development goals to be achieved in the performance of such contracts relating to the provision of workplace opportunities, linked to or leading to:

- a) a part- or full occupational qualification registered on the National Qualification Framework;
- b) a trade qualification leading to a listed trade (GG No. 35625, 31 August 2012);
- c) a national diploma registered on the National Qualification Framework; and
- d) registration in a professional category by one of the professional bodies listed in the standard.

Mr Khulile Nzo  
Chairperson: Construction Industry Development Board



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## Standard for developing skills through infrastructure contracts

(31 MARCH 2023)

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Version	Date	Comments
1.0	8 August 2013	
2.0	03 July 2020	
3.0	31 March 2023	

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## Introduction

Procurement may be defined as the process which creates, manages and fulfils contracts. Procurement accordingly commences once a need for goods, services or works has been identified and it ends when the goods are received, or the services or construction works are completed. Public procurement can have a significant impact on social and economic development, if it is used to leverage social and development objectives.

The South African government requires that its considerable expenditure on the delivery, maintenance and operation of infrastructure (fixed assets that are constructed or result from construction operations) contribute to an increase in the number of people who have part or full occupational qualifications registered on the NQF or professional designations awarded by professional bodies or statutory councils. This standard has been prepared to leverage contributions towards the increase of the pool of qualified skilled people, and where required professionally registered, through training on professional services, design and build or engineering and construction works contracts associated with such expenditure. This Standard for developing skills through infrastructure contracts, establishes the minimum contract skills development goals to be achieved in the performance of such contracts relating to the provision of workplace opportunities, linked to or leading to:

- a) a part- or full occupational qualification registered on the National Qualification Framework.
- b) a trade qualification leading to a listed trade (GG No. 35625, 31 August 2012);
- c) a national diploma registered on the National Qualification Framework; and
- d) registration in a professional category by one of the professional bodies listed in Table 1 of this standard.

Contractors are responsible for achieving the contract skills development goals and are provided with a number of methods for measuring their achievements. They may, if need be, devolve their obligations onto subcontractors.

This standard should be applied to;

A contract or an order issued in terms of a framework agreement that has a duration of 12 months or more, and:

- a) a contract of R5 million or more, in the case of a professional service or service contract or an order issued in terms of such a contract; or
- b) a cidb grading designation of grade 7 or higher, in case of an engineering and construction works, or design and build contract or an order issued in terms of such a contract.

This Standard will be subject to review every five years, or sooner if required.

# Standard for developing skills through infrastructure contracts

## 1 Scope

This standard establishes a key performance indicator;

- a) in the form of a contract skills development goal (CSDG) relating to the structured workplace learning of occupational or professional learning, which enables learners to make measurable progress towards the attainment of:
  - (i) a part- or full occupational qualification registered on the National Qualification Framework; or
  - (ii) a trade qualification leading to a listed trade (GG No. 35625, 31 August 2012); or
  - (iii) a national diploma registered on the National Qualification Framework; or
  - (iv) registration in a professional category by a statutory council listed in Table 1.
- b) in the delivery, maintenance and operation of infrastructure through the performance of professional service, engineering and construction works, or design and build contracts or an order associated with such a contract and
- c) sets out the methods by which the key performance indicator is established, measured, quantified and verified in the performance of the contract or the execution of an order.

NOTE 1: Guidance on the manner in which this standard should be incorporated into procurement documents is provided in Annex A.

NOTE 2: This standard can be applied to contracts or to orders (call-offs) issued in terms of framework agreements. Framework agreements are well suited to situations in which long term relationships are entered into. They offer flexibility in attaining contract skills development goals as requirements can be adjusted from one order to another, thus allowing key performance indicators to be improved upon over time.

## 2 Terms and definitions

For the purposes of this document, the following terms and definitions apply:

### **allowance**

amount provided for in the contract or an order by the employer relating to one or more of the following:

- a) the performance by the contractor of work or services that are foreseen but cannot be accurately specified at the time that the contract was entered into or the order issued;
- b) work or services to be performed, or goods provided, by a subcontractor who is either nominated by the employer or is selected by the employer in consultation with the contractor after the award of the contract or the issuing of an order;
- c) provision for price adjustment for inflation; or
- d) other budgetary provisions intended to cover the employer's contractual risks

### **artisan**

a person who has been certified as competent to perform a listed trade in accordance with Section 26B of the Skills Development Act of 1998 (Act No. 97 of 1998)

**black people** mean Africans, Coloureds and Indians, who - (a) are citizens of the Republic of South Africa by birth or descent; or (b) became citizens of the Republic of South Africa by naturalisation - (i) before 27 April 1994; or (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date

**candidate**

a person who is registered in a category of registration which ultimately leads to registration in a professional category by one of the statutory councils listed in Table 1

**cidb**

Construction Industry Development Board, established in terms of the Construction Industry Development Board Act of 2000 (Act 38 of 2000)

**class of construction works**

the class of construction works referred to in Schedule 3 of the Construction Industry Development Regulations 2004, as amended from time to time

**contract amount**

financial value of the contract at the time of the award of the contract or an order at the time of issue, including value added tax but excluding all allowances and expenses

**contract skills development credits**

the number of learners employed by the contractor and placed for continuous training opportunities in a three-month period

**contract skills development goal (CSDG)**

the number of hours or head count of skills development opportunities that a contractor contracts to provide in relation to work directly related to the contract or order, up to:

- a) completion, in the case of a professional service contract;
- b) the end of the service period, in the case of a service contract; and
- c) practical completion, in the case of an engineering and construction works contract

**contractor**

person or organization that contracts to provide professional services, goods and related services, or engineering and construction works

**design and build contract**

engineering and construction works contract where both the design and the construction are the responsibilities of the same contractor

**employed learner**

a learner who was in the employment of an employer prior to the commencement of the contract or execution of the order. Learners deployed from the public sector, other organisations, or other contractors for the purposes of gaining structured workplace learning shall also be considered to be an employed learner, albeit their employer remaining unchanged.

**employer**

person or organization entering into a contract with the contractor for the provision of professional services, goods and related services, engineering and construction works (commonly referred to as the client)

**employer's representative**

person authorized to represent the employer in terms of the contract

**engineering and construction works contract**

contract for the provision of a combination of goods and services arranged for the manufacture, development, extension, refurbishment, rehabilitation or demolition of a fixed asset, including building and engineering infrastructure

**expenses**

costs incurred by the contractor in the performance of the contract or order, which are in terms of the contract recoverable from the employer

**framework agreement**

agreement between an employer and one or more contractors, the purpose of which is to establish the terms of the governing orders to be awarded during a given period, with regard to price and, where appropriate, the quantity envisaged

**mentor**

a qualified and experienced person, in the case of professionals, registered person, designated to guide a learner or candidate through a structured work experience learning component of a learning programme required for the acquisition of a part or full qualification or professional designation

**occupational qualification**

occupational qualification registered on the National Qualifications Framework Act (Act No. 67 of 2008)

**order**

the instruction to carry out construction works, services or professional services under a framework agreement

**part qualification**

an assessed unit of learning that is registered on the National Qualifications Framework as part of an occupational qualification

**practical completion**

the state of completion at the end of construction required in terms of an engineering and construction works contract

NOTE: Practical completion is commonly understood to be a state of readiness for occupation of the whole works although some minor work may be outstanding. Practical completion in an engineering and construction works contract occurs when:

- a) FIDIC Short Form of Contract: the date when the Employer considers that the Works have been completed in accordance with the Contract, except for minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose.
- b) FIDIC Red, Silver and Yellow Book: the date when the Engineer determines that the Works have been completed in accordance with the contract except for minor outstanding works and defects which will not substantially affect the use of the works for their intended purpose.
- c) GCC 2010: the date when the Engineer certifies that the whole or portion of the Works has reached a state of readiness, fit for the intended purpose, and occupation without danger or undue inconvenience to the Employer, although some work may be outstanding.
- d) JBCC 2000 Principal Building Agreement and JBCC Minor Works Agreement: the date when the principal agent decides that the completion of the works has substantially been reached and can be used for the purpose intended.
- e) NEC3 Engineering and Construction Contract: the date when the Project Manager decides that the Contractor has reached Completion as defined in the contract.
- f) NEC3 Engineering and Construction Short Contract: the date when the Employer decides that the Contractor has completed the works in accordance with the Works Information except for correcting notified Defects which do not prevent the Employer from using the works and others from doing their work.

**professional category**

a category of registration identified in Table 1 or such other category recognised by the Employer in the application of this standard

**Table 1: Categories of registration**

<b>Profession</b>	<b>Category of registration</b>	<b>Act</b>
Architectural	Architect, Senior Architectural Technologist, Architectural Technologist or Architectural Draughtsperson	Architectural Profession Act of 2000 (Act No. 44 of 2000)
Construction Health and Safety	Construction Health and Safety Agent, Construction Health and Safety Manager or Construction Health and Safety Officer	Project and Construction Management Professions Act of 2000 (Act No. 48 of 2000)
Construction Project Management	Construction Project Manager	
Construction Management	Construction Manager	
Engineering	Engineer, Engineering Technologist, Engineering Technician or Certificated Engineer	Engineering Profession Act of 2000 (Act No. 46 of 2000)
Landscape Architectural	Landscape Architect, Landscape Technologist, Landscape Technician or Landscape Assistant	Landscape Architectural Profession Act of 2000 (Act No. 45 of 2000)
Planning	Planner or Technical planner	Planning Profession Act, 2002. (Act No. 36 of 2002)
Quantity Surveying	Quantity Surveyor	Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000)
Scientists	Natural Scientists	Natural Scientific Professions Act (Act No. 27 of 2003)
Surveying	Land Surveyor, Engineering Surveyor or Technician Engineering Surveyor	Professional and Technical Surveyors' Act (Act No. 40 of 1984)
Valuers	Valuer or Associate Valuer	Property Valuers Profession Act (Act No. 47 of 2000)

**professional fees**

financial value of a professional service contract at the time of the award of the contract or an order at the time of issue, excluding value added tax (VAT), allowances and expenses

**professional service contract**

contract for the provision of services with the skill and care normally delivered by professionals

**Sector Education and Training Authority (SETA)**

an institution established under section 9 of the Skills Development Act, Act 97 of 1998 and which has the responsibility under this Act to register learners on learning programmes

**service contract**

contract for the provision of labour or work, including knowledge-based expertise, carried out by hand or with the assistance of equipment and plant

**site**

means the land or place made available by the employer, for the purposes of the contract or order, on, under, over, in or through which the works or services are to be executed

**skills development agency (SDA)**

an agency which performs some or all the functions set out in section 4.1.5.

**statutory council**

a council established as follows:

- a) South African Council for the Architectural Profession, established by the Architectural Profession Act of 2000 (Act No. 44 of 2000);
- b) South African Council for the Project and Construction Management Professions, established by the Project and Construction Management Professions Act of 2000 (Act No. 48 of 2000);

- c) Engineering Council of South Africa, established by the Engineering Profession Act of 2000 (Act No. 46 of 2000);
- d) South African Council for the Landscape Architectural Profession, established by the Landscape Architectural Profession Act of 2000 (Act No. 45 of 2000);
- e) South African Council for the Quantity Surveying Profession, established by the Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000);
- f) South African Council for Professional and Technical Surveyors, established by the Professional and Technical Surveyors' of 2000 (Act No. 40 of 1984);
- g) South African Council for Planners, established by the Planning Professions Act of 2002 (Act No. 32 of 2002);
- h) South African Council for Natural Scientific Professions, established by the Natural Scientific Professions Act (Act No. 27 of 2003); or
- i) South African Council for the Property Valuers Profession, established by the Property Valuers Profession Act (Act No. 47 of 2000)

**structured mentorship**

mentorship provided by a person who is registered in a suitable category of professional registration by a professional body or statutory council who leads and directs a candidate towards professional registration

**structured workplace learning**

component of learning in an occupational qualification or work placement for a trade or professional designation whereby a learner is mentored by a suitably qualified, and where required, registered mentor in the application and integration of the knowledge and practical skills learnt, under supervision, in the actual context of a workplace in accordance with the prescripts set by the relevant qualifying authority, professional body or statutory council

**Sub-total**

**financial value of the all the items in the Bills of Quantities or Schedule of Rates or Pricing Schedule, excluding value added tax, allowances and expenses**

**supervisor**

a supervisor is a person in the particular workplace charged with the responsibility of allocating workplace tasks to a learner that are aligned to the prescriptions of their learning programme and of overseeing and reporting on that learning using a formally agreed record keeping system

**Tender sum**

the overall pricing figure proposed by a tendering contractor in accordance with the tender pricing document

**unemployed learner**

a learner who was not in the full-time employment of the contractor prior to the commencement of the contract or execution of the order and is appointed by the contractor or SDA on a limited duration employment contract linked to the prescriptions of a structured workplace learning programme. Their conditions of employment shall not be less favourable than those set out for such learners on learnerships set out in section 18 (3) of the Skills Development Act (Act 97 of 1998)

**work integrated learning**

the workplace learning component required by learners completing a national diploma or bachelor degree at a University of Technology or Comprehensive University

## 3 Requirements

### 3.1 Contract skills development goal (CSDG)

**3.1.1** The contractor shall attain or exceed the contract skills development goal in the performance of the contract or the execution of an order.

**3.1.2** The contract skills development goal shall be expressed as in 3.1.2.1 for engineering and construction works, design and build and services contracts, and as in 3.1.2.2 for professional services contracts.

**3.1.2.1** In the case of engineering and construction works contracts, design and build contracts and services contracts the contract skills participation goals, expressed in Rand, shall be no less than the sub-total multiplied by a percentage (%) factor given in Table 2 for the applicable class of construction works used in the application of the Construction Industry Development Regulations, issued in terms of the Construction Industry Development Board Act of 2000.

**Table 2: Contract skills development goals for different classes of engineering and construction works contracts**

Class of construction works as identified in terms of Regulation 25(3) of the Construction Industry Regulations 2004		Construction skills development goal (CSDG) (%)
Designation	Description	
CE	Civil engineering	0.25
CE or GB	Civil engineering or General Building	0.375
EE	Electrical Engineering works (buildings)	0.25
EP	Electrical Engineering works (Infrastructure)	0.25
GB	General Building	0.50
ME	Mechanical Engineering works	0.25
SB	Specialist	0.25

**Example 1:** The sub-total of the tender sum for an engineering and construction works contract in the GB class of construction works is R65,7m. The contract skills development goal in Rands is  $R65,7m \times 0.5\% = R328\ 500$ .

**3.1.2.2** In the case of professional services contracts the contract skills development goals, expressed in hours, shall be not less than the professional fees in millions of Rand multiplied by 150.

**Example 2:** The contract amount for a professional services contract is R5.6 m. The contract skills development goal in hours is  $R5.6m \times 150 = 840$  hours.

**3.1.2.3** The number of hours for the contract skills development goal shall be revised as the need arises and be published in a Gazette notice.

**3.1.3** Where required in terms of the contract or order, a specified proportion of the learners and candidates shall be selected from persons in the employ of the state who meet the relevant eligibility criteria for the relevant programme.

## **3.2 Achieving the contract skills development goal (CSDG)**

**3.2.1** The contractor shall achieve the measurable contract skills development goal by providing opportunities to learners requiring structured workplace learning using one or a combination of any of the following in relation to work directly related to the contract or order:

**Method 1:** structured workplace learning opportunities for learners towards the attainment of a part or a full occupational qualification;

**Method 2:** structured workplace learning opportunities for apprentices or other artisan learners towards the attainment of a trade qualification leading to a listed trade (GG No. 35625, 31 August 2012) subject to at least 60% of the artisan learners being holders of public TVET college qualifications;

**Method 3:** work integrated learning opportunities for University of Technology or Comprehensive University students completing their national diplomas;

**Method 4:** structured workplace learning opportunities for candidates towards registration in a professional category by a statutory council listed in Table 1 above.

**3.2.2** Employed learners may not account for more than 33 percent of the contract skills development goal.

**3.2.3** Not more than one method may be applied to any individual concurrently in the calculation of the contract skills development goal.

**NOTE:** The principle is that an individual can only be counted once towards the CSDG.

### **3.3 Contract skills development goal credits**

3.3.1 Contract skills development credits will not be awarded for learners enrolled as beneficiaries of other funded or subsidised programmes.

**3.3.2** In the case of engineering and construction works, design and build and services contracts:

- a) The contract skills development goals shall be granted by multiplying the number of people employed by the contractors and placed for continuous training opportunities in a three-month period by the notional values contained in Table 3, or as revised in a Gazette notice.
- b) The contractor may source beneficiaries of the contract skills development goal from the cidb Skills Development Agency (SDA).
- c) All beneficiaries of the Standard must be registered with the cidb SDA.

**NOTE:** The role and function of a cidb SDA is outlined in Annex B

**Table 3: The notional cost of providing training opportunities per quarter**

Type of Training Opportunity	Provision for stipends (Unemployed learners only)	Provisions for mentorship	Provisions for additional costs*	Total costs	
				Unemployed learners	Employed learners
<b>Method 1</b>					
Occupational qualification	R7 000	R0	R9 000	R16 000	R9 000
<b>Method 2</b>					
TVET College graduates	R14 000	R0	R9 000	R23 000	N/A
Apprenticeship	R14 000	R0	R12 000	R26 000	R12 000
<b>Method 3</b>					
P1 and P2 learners, or a 240 credits qualification	R24 000	R20 000	R4 500	R48 500	N/A
<b>Method 4</b>					
Candidates with a 360 credits qualification	R37 000	R20 000	R4 500	R61 500	R20 000
Candidates with 480 or more credits qualification	R47 000	R20 000	R4 500	R71 500	R20 000

\*Additional provisions include provisions for personal protective equipment, insurance, medical assessments, course fees and trade tools (where applicable) assessment, moderation and monitoring of learners.

## NOTE:

- i) Where an unemployed learner is employed directly by the contractor, the contractor shall pay the stipend directly to the learner
- ii) Where an unemployed learner is sourced through an SDA, training provider or skills development facilitator, the contractor may pay the stipend to the SDA, training provider or skills development facilitator who in turn will pay the learner
- iii) The notional cost of providing training opportunities will be reviewed as and when required. The new, revised costs will be published as revised in a Gazette notice.

**Example 3: Training Target Calculation for a R65,7m GB contract**

Sub-total	R65 700 000
Contract duration	12 Months
CSDG	0,50%
Minimum CSDG target	0,5% x R65 700 000
	<b>R328 500</b>

Skills Types	Number of learners	Notional Cost / Learner / Quarter	Notional cost/learner/year	Total Notional Cost over 12 months Contract
<b>Method 2:</b> Workplace learning opportunities, with unemployed TVET graduates	1	R23 000	R92 000	R92 000
<b>Method 4:</b> Candidacy for an unemployed learner with a 3-year qualification	1	R61 500	R246 00	R246 00
Total	2			R338 000

**3.3.3** Credits towards the contract skills development goal for professional services contracts shall be granted by summing the hours of structured workplace learning opportunities provided to P1 and P2 learners as well as professional candidates in accordance with this standard.

**3.3.3.1** No more than 45 hours may be claimed per week for any individual.

**3.3.3.2** Contract skills development goal credits shall be reduced to the extent that they fail to comply with the requirements of this standard.

### **3.4 Denial of credits**

Credits towards the contract skills development goal shall be denied, should:

- a) the opportunities not be provided on site or the opportunities cannot be directly linked to the contract or order;
- b) there be a failure to register all beneficiaries of the Standard with the cidb SDA;
- c) there be a failure to submit a copy of the final contract compliance training report, within 30 days of practical completion;
- d) the following not be provided:
  - 1) the required contract compliance baseline plan, an interim contract compliance report or a final contract compliance report;
  - 2) the required mentorship plan for a candidate;
  - 3) the required training plan for learners;
  - 4) the training reports covering a period;
  - 5) the required records, specified documents and signatures;
  - 6) the structured mentorship in accordance with the requirements of the applicable professional body, statutory council or qualifying authority;
  - 7) the structured workplace learning, in accordance with the curriculum requirements of the part qualification or occupational qualification or prescription for professional registration for which the learner is registered;
- e) conditions of employment and rates of allowances for learners not be in accordance with legislative provisions; and
- f) the contractor not maintain the required training records, or an audit reveals that there is insufficient information to substantiate claims for credits.
- g) the contractor claims credits for learners enrolled as beneficiaries on programme that is funded or subsidised from another source.
- h) the contractor fails to provide sufficient evidence of disciplinary actions taken against a learner who fails to present their interim reports or credentials for assessment, when they have had sufficient structured work experience or structured mentorship to do so.

## **4 Compliance with requirements**

### **4.1 General**

**4.1.1** The contractor shall:

- a) within 30 days of the contract coming into effect or the issuing of an order, submit to the employer's representative a contract compliance baseline training plan, taking into account the skills mix and type of workers that are to be engaged;

- b) at intervals not exceeding three (3) months, submit to the employer's representative interim contract compliance training reports; and
- c) shall within 30 days of reaching completion, end of the service, the delivery date for all work required or practical completion in the case of professional service, design and construct contracts, and engineering and construction works contracts, respectively, submit to the employer's representative a final contract compliance training report

**4.1.2** The information contained in the final contract compliance training report shall include the contract skills development goal achieved (in Rands or in hours) in the performance of the contract and a breakdown of the goal achieved in respect of the following:

- a) the name and contact details of the SDA, (where applicable)
- b) the skills mix and skills types achieved on the contract; and
- c) the names, Identity numbers and period of employment of each beneficiary.

**4.1.3** The contractor shall keep records of the hours worked and registration particulars in compliance with this standard. The contractor shall allow the employer's representative to inspect or audit such training records at any time.

**4.1.4** The employer's representative shall undertake suitable random audits on records to confirm compliance with requirements.

**4.1.5** The learners shall be directly employed by the contractor or SDA and the contractor may enter into a contract agreement with the cidb SDAs, training provider or skills development facilitator of their choice, participating in the implementation of this standard, enabling such contractor to:

- a) prepare training plans for registered learners, including details of the scope of experiential work to be covered and expected outcomes;
- b) register learners with the appropriate Sector Education and Training Authority, established in terms of the Skills Development Act of 2008 (Act 37 of 2008);
- c) manage learner registration with appropriate trade testing authorities as well as preparation for the trade test;
- d) liaise with the supervisor to monitor onsite training progress of learners;
- e) liaise with the supervisor to arrange for summative assessments at appropriate stages of the training; and
- f) liaise with the supervisor to prepare reports for the employer or employer's representative.

## **4.2 Structured workplace learning opportunities for learners**

**4.2.1** Structured workplace learning opportunities shall be aligned to the curriculum requirements set for the part or full occupational qualification or professional designation for which the learner is registered.

**4.2.2** A responsible supervisor will be appointed to allocate learning tasks, under the guidance of a competent person, to learners in line with their training plans.

**4.2.3** Supervision associated with structured workplace learning for artisan learners shall be undertaken by an artisan in the applicable trade with a minimum of 3 years of trade specific experience.

The number of artisan learners supervised by a single supervisor shall, unless otherwise permitted by the National Artisan Moderation Body, not exceed 4 at any one time.

**4.2.4** Mentoring associated with structured workplace learning for learners leading to a part or full occupational qualification other than artisan learners shall be undertaken by a person qualified in the applicable discipline and having a minimum of 3 years of post-qualification experience.

**4.2.5** The contractor shall, within one month of commencing work directly related to the contract or order and in respect of each learner, submit to the employer's representative,

- a) a workplace training plan together with name of the learner's mentor and/or supervisor.
- b) proof of registration as a learner with the relevant SETA where applicable;
- c) a copy of the mentorship agreement entered into with the learner, or the company mentorship agreement entered into with the relevant qualified agency for method 3 and method 4; and
- d) shall, within two weeks of updating and revising the workplace training plan, and at the end of the structured mentorship period, submit to the employer's representative;
  - (i) a quarterly progress report,
  - (ii) a final report (including a log of exposure and interactions with the mentor), signed off by the mentor, the supervisor and the learner, demonstrating compliance with requirements,

**4.2.6** Learners shall, whenever a substantial activity or training period has been completed, be required by the supervisor to complete training reports required by the relevant qualifying authority.

**4.2.7** The mentor and supervisor shall sign off all reports and logbooks to allow the learner to move to other projects or employment and continue the path towards qualification.

### **4.3 Structured workplace learning for candidates**

**4.3.1** Mentoring associated with structured workplace learning for candidates shall be in accordance with the prescripts of the relevant professional body or statutory council.

**4.3.2** The contractor shall:

- a) appoint a supervisor who is actively engaged in work directly associated with the contract to issue tasks, oversee their implementation and provide input to the candidate on an on-going basis;
- b) identify a suitable mentor for the candidate. If the contractor does not have an in-house mentor, the contractor shall enter into a mentoring agreement with the candidate and with an external company as required by the professional body or statutory council; and
- c) issue each candidate with a portfolio of evidence file which is to be kept up to date with all the documentation issued or prepared including the workplace training plan and all revisions thereof as well as copies of the logbook entries and training experience reports.

**4.3.3** The mentor shall from time to time provide an updated workplace training plan for a candidate outlining the activities in which the candidate will be involved, including activities required by the relevant professional body or statutory council. The mentor shall require candidates to maintain a logbook issued by the relevant professional body or statutory council. The mentor shall sign off such logbook at quarterly presentations and progress review meetings.

NOTE: The mentor shall, where the duration of the contract or order exceeds the minimum time to register in a professional category of registration that candidates are exposed to the full range of activities and work towards

assuming the full level of responsibility recommended by the relevant professional body or statutory council. This may require rotations and secondments.

**4.3.4** The contractor shall, in respect of each candidate and within one month of commencing work directly related to the contract or order, submit to the employer's representative,:

- a) a workplace training plan, together with name of the candidates' mentor and supervisor;
- b) proof of registration, as a candidate, with the relevant professional body or statutory council;
- c) a register of all beneficiaries of the Standard, enrolled with the cidb SDA;
- d) a copy of the mentorship agreement entered into with the candidate, or the company mentorship agreement entered into with a professional body or statutory council and
- e) shall, within two weeks of updating a workplace training plan and at the end of the structured mentorship period, submit to the employer's representative;
  - (i) quarterly progress reports,
  - (ii) a final report (including a log of exposure and interactions with the mentor), signed off by the mentor, the supervisor and the learner, demonstrating compliance with requirements,

**4.3.5** Candidates shall be required by the mentor to complete training reports required by the relevant professional body or statutory council whenever a substantial activity or training period has been completed.

**4.3.6** The mentor and supervisor shall, in the event of the contract ending, sign off all reports and logbooks to allow the candidate to move to other projects or employment.

## 5 Records

**5.1** The contractor shall, in a timely manner and where a prescribed format is available, submit all the documentation required in terms of clause 4.

**5.2** The employer's representative shall certify the value of the credits counted towards the contract skills development goal, if any, whenever a claim for payment is issued to the employer, and shall notify the contractor of this amount.

**5.3** To satisfy the contract skills development goal, the contractor shall upon termination of the opportunities provided, certify the quantum and nature of the opportunity and shall submit the certificate, counter-certified, issued by the relevant individual to the employer's representative, for record-keeping purposes.

## 6 Sanctions

In the event that the contractor fails to provide a reasonable explanation to the employer for any failure to achieve the contract skills development goal, the sanctions as provided in the contract or order shall apply.

NOTE: The contract establishes the sanctions that apply. These are set out in a tender evaluation schedule, the scope of work or contract data. Sanctions where tender evaluation points are granted with respect to a tendered CSDG or where a minimum CSDG is specified are usually applied in the form of:

- a) financial penalties (low performance damages), typically formulated on the difference between the contracted CSDG and the CSDG achieved in the performance of the contract; and
- b) the issuing of completion certificates only after the certificates described in clause 5 are received.

## **Annex A: Incorporating this standard in a procurement document**

(Informative)

### **A1 General**

**A1.1** The following clause should be added to the scope of work of a contract or order to establish requirements:

#### **Skills development requirements**

The contractor shall achieve in the performance of the contract the contract skills development goal established in this Standard for developing skills through infrastructure contracts

NOTE: Depending on the context and the form of contract adopted, the term contractor may be changed to "consultant" or "professional service provider" or "supplier" and the term "performance of the contract" may, where the scope of work forms part of an order, be replaced with "execution of an order",.

**A1.2** Where an employer requires that employees of the state be seconded to the contractor in order to be provided with structured workplace learning opportunities, in accordance with the provisions of this standard, the following clause should be included in the scope of work:

The specified number of employees of the state is . . . . . The employer must provide a list of persons for selection by the contractor as prescribed in the implementation guidelines. Persons selected by the contractor shall be seconded to the contractor under the terms and conditions prescribed in the implementation guidelines.

### **A2 Sanctions**

In the event that the contractor fails to provide reasonable explanation to the employer for any failure to achieve the contract participation goal , the sanctions as agreed in the contract shall apply.

## **Annex B: Role and Function of Skills Development Agency**

(Informative)

The Skills Development Agency (SDA) will provide career management and compliance reporting functions for all learners for CSDG compliance in terms of this Standard. Where the contractor provides direct employment to unemployed learners, or enrolls their own employees for CSDG compliance, the contractor shall register them with the cidb SDA.

The roles and functions of the Skills Development Agency (SDA) are summarised below.

### **B1 Career Management and Compliance Reporting**

The contractor may enter into a contract agreement with the cidb SDA, training provider or skills development facilitator to manage their learners according to the provisions given below:

- a) preparing training plans for registered learners, including details of the scope of experiential work to be covered and expected outcomes;
- b) registering learners with the appropriate Sector Educational and Training Authority established in terms of the Skills Development Act of 2008 (Act 37 of 2008);
- c) liaising with the supervisor to monitor onsite training progress of learners;
- d) liaising with the supervisor to arrange for summative assessments at appropriate stages of the training; and
- e) liaising with the supervisor to prepare reports for the employer's representative and cidb at practical completion of the contract.

The relevant training provider or skills development facilitator shall invoice the contractors for the provision of these services as per cost schedule in Table 3.

### **B2 Employment Intermediary**

The cidb SDA may act as an employment intermediary for unemployed learners and may provide contractors with learners qualifying for participation in the CSDG, as well as managing their employment functions such as payment of stipends, workman's compensation, etc.

In such cases, the contractor shall contract directly with an SDA, training provider or skills development facilitator of their choice for the recruitment, placement and management of learners. The contractor shall pay the SDA, training provider or skills development facilitator in accordance with the notional costs provided for in this standard, or as amended by a Gazette.





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