

TRANSNET FREIGHT RAIL

an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

[SERVICES]

**FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
AT TRANSNET FREIGHT RAIL FOR A PERIOD OF ONE YEAR**

| | |
|-----------------------------|----------------------------------|
| RFP NUMBER | CRAC-HO-12180 |
| ISSUE DATE: | 08 OCTOBER 2013 |
| CLOSING DATE: | 15 OCTOBER 2013 |
| CLOSING TIME: | 10:00 |
| BID VALIDITY PERIOD: | 90 days from Closing Date |

SCHEDULE OF BID DOCUMENTS**Section No**

Section 1: NOTICE TO BIDDERS

Section 2: SCOPE OF REQUIREMENTS

Section 3: PRICING AND DELIVERY SCHEDULE

Section 4: PROPOSAL FORM

Section 5: VENDOR APPLICATION FORM

Section 6: SIGNING POWER RESOLUTION BOARD OF DIRECTORS

Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

Section 8: CERTIFICATE OF ACQUAINTANCE WITH THE TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES TO TRANSNET

Section 9: RFP DECLARATION FORM

Section 10: RFP CLARIFICATION REQUEST FORM

Section 11: BREACH OF LAW FORM

Section 12: SUPPLIER CODE OF CONDUCT

Section 13: B-BBEE PREFERENCE POINTS CLAIM FORM

SECTION 14: CERTIFICATE OF ACQUAINTANCE WITH SPECIFICATIONS

Section 15: NON DISCLOSURE AGREEMENT

RFP ANNEXURES:

RFP APPENDICES:

APPENDIX (I) TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

"PREVIEW COPY ONLY"

LIST OF ACRONYMS

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

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED FOR A PERIOD OF ONE YEAR**

Section 1: NOTICE TO BIDDERS

1 PROPOSAL REQUEST

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**] for the provision Of PCM Support and maintenance as and when required [**the Services**] to Transnet.

On or after 08 October 2013 the RFP documents may be inspected at, and are obtainable from the Transnet Tender Advice Centre, Ground Floor, Inyanda House 1, 21 Wellington Road, Parktown, on payment of an amount of R 150.00 (inclusive of VAT) per set. Payment is to be made as follows:

| | |
|-----------------|-----------------------|
| Bank: | Standard Bank |
| Account Number: | 00203158598 |
| Branch: | Braamfontein |
| Branch code: | 004805 |
| Account Name: | Transnet Freight Rail |
| Reference: | CRAC/HO/12180 |

NOTES –

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

RFP documents will only be available for collection between 08H00 until 15H00 until 14th October 2013. Therefore payment must be effected and the RFP collected, prior to the above deadline.

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

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

2 PROPOSAL SUBMISSION

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

RFP No: CRAC-HO-12180

Description: For the provision of PCM Support and Maintenance as and when required for Transnet freight rail for a period of one year.

Closing date and time: 15 October 2013, 10:00

Closing address *[Refer to options in paragraph 4 below]*

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

3 DELIVERY INSTRUCTIONS FOR RFP

3.1 Delivery by hand

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

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

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 2 above.
- b) It should also be noted that the above tender box is located in the foyer at the main entrance of Inyanda House 1, 21 Wellington Road, and Parktown and is accessible to the public 24 hours a day, 7 days a week.
- c) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 2 above.

It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week

3.2 Dispatch by courier

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

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

- 3.3 Please note that this RFP closes punctually at **10:00 on Tuesday 15 October 2013.**
- 3.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "NON-RESPONSIVE" and will be disqualified.
- 3.5 No email or facsimile responses will be considered, unless otherwise stated herein.
- 3.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
- 3.7 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 3.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope.
- 3.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [*Alterations made by the Respondent to Bid Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

4 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

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

Transnet would therefore prefer to do business with enterprises who share these same values and who are prepared to contribute to meaningful B-BBEE initiatives [including, but not limited to

subcontracting and Joint Ventures] as part of their tendered responses. All procurement transactions will be evaluated accordingly.

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

4.1 B-BBEE Scorecard and Rating

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

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

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

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

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

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

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

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

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

- Automatic rating of B-BBEE Level 4 irrespective of race or ownership
- Black¹ ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

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

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

In this RFP, Transnet will accordingly allocate a maximum of **10 [ten] points** in accordance with the **90/10** preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. [Refer **Section 14** for further details].

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

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

R _____

*All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as **Section 14**.*

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

4.2 **B-BBEE Joint Ventures, Consortiums and/or Subcontractors**

In addition to the above, Respondents who would wish to enter into a Joint Venture [JV] or consortium with, or subcontract portions of the contract to, B-BBEE entities, must state in their RFPs the percentage of the total contract value that would be allocated to such B-BBEE entities, should they be successful in being awarded any business. A valid B-BBEE Verification Certificate in respect of such B-BBEE JV or consortium partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFP Bid to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form appended hereto as Section 14.

a) **JVs or Consortiums**

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

(i) Incorporated JVs/Consortiums

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

(ii) Unincorporated JVs/Consortiums

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

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

b) **Subcontracting**

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

qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

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

4.3 B-BBEE Registration

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

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

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

5 COMMUNICATION

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

5.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted before 12:00 on 14 October 2013 contact Selowa Koketso telephone number 011 584 0688 email Koketso.selowa@Transnet.net, substantially in the form set out in Section 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the correct contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

5.2 After the closing date of the RFP, a Respondent may only communicate with the Secretary of the Transnet Acquisition Council, at telephone number 011 544 9486, email prudence.nkabinde@transnet.net on any matter relating to its RFP Proposal.

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

6 INSTRUCTIONS FOR COMPLETING THE RFP

- 6.1 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.
- 6.2 Both sets of documents are to be submitted to the address specified in paragraph 3 above.
- 6.3 All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.

7 COMPLIANCE

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

8 ADDITIONAL NOTES

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

**FAILURE TO OBSERVE ANY OF THE AFOREMENTIONED
REQUIREMENTS**

MAY RESULT IN A PROPOSAL BEING REJECTED

9 DISCLAIMERS

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

- 9.1 Modify the RFP's Services and request Respondents to re-bid on any such changes;
- 9.2 Reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 9.3 Disqualify Proposals submitted after the stated submission deadline [Closing Date];
- 9.4 Not necessarily accept the lowest priced Proposal or an alternative bid;
- 9.5 Reject all Proposals, if it so decides;
- 9.6 Withdraw the RFP on good cause shown;
- 9.7 Award a contract in connection with this Proposal at any time after the RFP's closing date;
- 9.8 Award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;
- 9.9 Split the award of the contract between more than one Service Provider; or
- 9.10 make no award of a contract.

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches of the Competition Act 89 of 1998. Respondents are required to indicate in Section 11 [Breach of Law] whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.

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

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

10 LEGAL REVIEW

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

Transnet urges its clients, suppliers and the general public

To report any fraud or corruption to

TIP-OFFS ANONYMOUS: 0800 003 056

"PREVIEW COPY ONLY"

RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED FOR A PERIOD OF ONE YEAR

Section 2: SCOPE OF REQUIREMENTS

Support Agreement Tasks and Responsibilities

1. Time Arrangements:

- Number of FTEs (Full Time Employees): 1
- Hours needed Per Month: 80

The FTE will be available and present onsite and/or through VPN from the 25th of the month to the 6th of the following month. The before mentioned dates are dependent on the availability of data and may change in accordance to the data availability.

2. Task Arrangements

- Assisting with the monthly running of the SAP PCM model. This task will involve the following subtasks (all tasks are performed for Budget and Actual per month):
 - **Loading of the Activity Driver Values**
 - Preparation of all necessary raw data files.
 - Preparation, calculation and export of the Activity Driver Values through the Bulk Import Tool.
 - Checking of the Activity Driver Values for any anomalies, missing data values etc.
 - Loading of the Activity Driver Values into the SAP PCM Model through Data Bridge.
 - Investigation of new Cost Centers and/or Activities present in the TFR COCE File
 - Loading of new Parent Child structures.
 - Preparation and loading of the General Ledger Data.
 - Loading of Resource Driver Split file.
 - Loading of Cost Object Driver file.
 - Loading of Cost Object Assignment file.
 - Balancing of Line Item Values in PCM.
 - Checking for Unassigned Activities.
 - Running of Calculations.
 - Checking calculated results for anomalies and/or inconsistencies.

- Running of SAP PCM Reports.
 - Exporting of SAP PCM Results to the Production Database to enable the creation of BOBJ reports.
- Assistance with flash reporting runs. These are reports that are pulled from SAP PCM prior to the final GL values utilized in the BOBJ reporting export.
- Assistance with the changes to the model methodology. These include the following:
 - Changes in the Responsibility Center assignments.
 - Changes to the Cost Object Drivers.
 - Changes to the Activity Assignments.
- Assistance with the running of the Ad Hoc/Quotation tool. This includes the following tasks:
 - Extracting and importing of the following table from SAP PCM into the Ad Hoc/Quotation tool:
 - Activity Cost Object Value.
 - Activity Driver Value.
 - ParentChild.
 - Cost Object Driver.
 - Cost Object Assignment.
 - Checking and balancing of figures
- Assisting with user queries relating to the following applications:
 - Ad Hoc/Quotation Tool.
 - Bulk Import Tool.
 - SAP PCM.
 - SAP PCM Data Bridge.
 - BOBJ Reporting (relating to the SAP PCM results).

1 GENERAL SERVICE PROVIDER OBLIGATIONS

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

2 EXCHANGE AND REMITTANCE

The attention of the Respondents is directed to clause 16 *[Exchange and Remittance]* of the General Bid Conditions appended hereto. If Transnet is requested by the Respondent to effect payment overseas direct to the Respondent's principal or service provider, which is not a registered South African Company please complete the details below, using the rate of exchange published by the South African Reserve Bank 7 [seven] calendar days before the closing date of this RFP:

- 2.1 ZAR 1.00 [South African currency] being equal to _____ *[foreign currency]*
- 2.2 _____ % in relation to tendered price(s) to be remitted overseas by Transnet
- 2.3 _____ *[Name of country to which payment is to be made]*
- 2.4 Beneficiary details:
 - Name *[Account holder]* _____
 - Bank *[Name and branch code]* _____
 - Swift code _____
 - Country _____
- 2.5 _____ *[Applicable base date of Exchange Rate used]*

Respondents should note that Transnet would prefer to receive fixed price offers expressed in South African Rand [ZAR].

3 SERVICE LEVELS

- 3.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 3.2 Transnet will have quarterly reviews with the Service Provider's account representative on an on-going basis.
- 3.3 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.
- 3.4 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 specifications
- b) On-time deliverables

3.5 The Service Provider must provide a telephone number for customer service calls.

3.6 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] days' notice to the Service Provider of its intention to do so.

Acceptance of Service Levels:

| | |
|-----|--|
| YES | |
|-----|--|

| | |
|----|--|
| NO | |
|----|--|

3.7

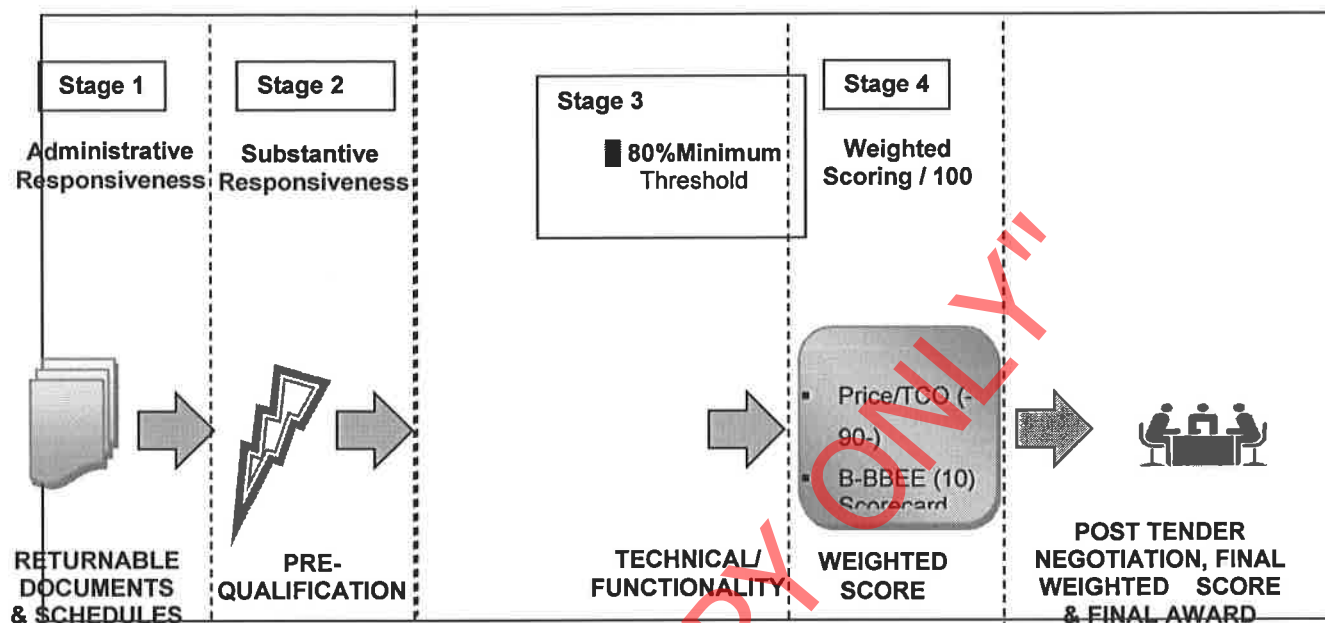
4 REFERENCES

Please indicate below a minimum of 7 company names and contact details of previous and/or existing customers whom Transnet may contact to seek third party evaluations of your current service levels:

| NAME OF COMPANY | CONTACT PERSON | TELEPHONE |
|-----------------|----------------|-----------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

PRE-QUALIFICATION AND EVALUATION METHODOLOGY AND CRITERIA

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



4.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

| Administrative responsiveness check |
|---|
| <ul style="list-style-type: none"> Whether the Bid has been lodged on time |
| <ul style="list-style-type: none"> Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time |
| <ul style="list-style-type: none"> Verify the validity of all returnable documents |

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

4.2 STAGE TWO: Test for Substantive Responsiveness, weather all returnable documents returned by the closing date to RFP.

| Substantive responsiveness check |
|--|
| <ul style="list-style-type: none"> SAP Partnership. |
| <ul style="list-style-type: none"> CV for Staff Employees. |
| <ul style="list-style-type: none"> Reference on previous work done. |

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

4.3 STAGE THREE:

| Pre-Qualification Criteria | % Weightings |
|---|--------------|
| • SAP Partnership. | 60 |
| • CV for Staff Employees | 20 |
| • Reference on previous work done | 20 |
| Total Weighting: | 100% |
| Minimum qualifying score required: | 80% |

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

4.4 STAGE FOUR: Evaluation and Final Weighted Scoring

a) Price Criteria [Weighted score 90 points]:

| Evaluation Criteria |
|---------------------|
| • Commercial offer |
| • BBBEE scorecard |

b) **Broad-Based Black Economic Empowerment criteria** [Weighted

c) score 10 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form [Section 14]

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

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

Final Evaluated Weightings

| Evaluation Criteria | Final Weighted Scores |
|----------------------------|------------------------------|
| Price | 90 |
| B-BBEE - Scorecard | 10 |
| TOTAL SCORE: | 100 |

5 STAGE FIVE: Post Tender Negotiations (if applicable)

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

RFP FOR THE PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR

Section 3: PRICING AND DELIVERY SCHEDULE

| DESCRIPTION | QUANTITY | Unit Price /HOUR(ZAR) | Total Price (ZAR) |
|--|-----------------|----------------------------------|----------------------------------|
| NUMBER OF FULL TIME EMPLOYEES | | | |
| HOURS NEEDED PER MONTH | | | |
| GRAD TOTAL | | | |

- a) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

RFP FOR THE PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED**FOR A PERIOD OF ONE YEAR****Section 4: PROPOSAL FORM**

I/We _____

*[Name of entity, company, close corporation or partnership]*Of *[full address]*

_____Carrying on business trading/operating as

Represented

by _____

in my capacity as

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

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

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

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

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the provision of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of one (1) years only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us should the delivery of the Services be delayed due to non-performance by ourselves.

ADDRESS FOR NOTICES

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

Name _____ of _____ Entity:

Facsimile:

Address:

NOTIFICATION OF AWARD OF RFP

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

VALIDITY PERIOD

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

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

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

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

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

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

CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to complete and return a signed copy of the Non-Disclosure Agreement appended hereto as **Section 17**. 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 Services, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

DISCLOSURE OF PRICES TENDERED

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

| | |
|-----|--|
| YES | |
|-----|--|

| | |
|----|--|
| NO | |
|----|--|

PRICE REVIEW

The successful Respondent(s) [the Service Provider] will be obliged to submit to an annual price review. Transnet will be benchmarking this price offering(s) against the lowest price received as per a benchmarking exercise. If the Service Provider's price(s) is/are found to be higher than the benchmarked price(s), then the Service Provider shall match or better such price(s) within 30 [thirty] days, failing which the contract may be terminated at Transnet's discretion or the particular service(s) purchased outside the contract.

RETURNABLE DOCUMENTS

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. **Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

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

Failure to provide all mandatory Returnable Documents at the closing date and time of this tender will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these Documents are returned with their Proposals.

Please confirm submission of these mandatory Returnable Documents by so indicating [Yes or No] in the table below:

| MANDATORY RETURNABLE DOCUMENTS | SUBMITTED [Yes/No] |
|---|-----------------------|
| SECTION 2 : Scope of Requirements | |
| SECTION 3 : Pricing and Delivery Schedule | |
| SECTION 5 : Original valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party] | |

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

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

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

| ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES | SUBMITTED [Yes or No] |
|--|--------------------------|
| SECTION 1 : Notice to Bidders | |
| Receipt for payment of RFP documents [paragraph 1] | |
| SECTION 4 : Proposal Form | |
| SECTION 5 : Vendor Application Form | |
| - Original cancelled cheque or bank verification of banking details | |
| - Certified copies of IDs of shareholder/directors/members [as applicable] | |

| | |
|--|--|
| - Certified copy of Certificate of Incorporation [CM29/CM9 name change] | |
| - Certified copy of share certificates [CK1/CK2 if CC] | |
| - Entity's letterhead | |
| - Certified copy of valid VAT Registration Certificate | |
| - Valid B-BBEE Verification Certificate [Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard | |
| - Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [EMEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard | |
| - In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement | |
| - Certified copy of valid VAT Registration Certificate | |
| - Audited Financial Statements for previous 3 years | |
| SECTION 6 : Signing Power - Resolution of Board of Directors | |
| SECTION 7 : Certificate of Acquaintance with RFP Documents | |
| SECTION 8 : Certificate of Acquaintance with General Bid Conditions – Services | |
| SECTION 9 : Certificate of Acquaintance with Terms and Conditions of Contract | |
| SECTION 10 : RFP Declaration Form | |
| SECTION 11 : Breach of Law Form | |
| SECTION 12 : Supplier Code of Conduct | |
| SECTION 13 : B-BBEE Preference Points Claim Form | |
| SECTION 14 : Certificate of Acquaintance with Specifications | |
| SECTION 15 : Non-Disclosure Agreement | |

c) CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

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

SIGNED at _____ on this ____ day of
_____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____
Name _____

2 _____
Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

**RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS ANS WHEN
REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 5: VENDOR APPLICATION FORM

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

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

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

Vendor Application Form

| | | | | | | |
|--|----|-------|---------|---------|-------------|-----------------|
| Entity's trading name | | | | | | |
| Entity's registered name | | | | | | |
| Entity's Registration Number or ID Number if a Sole Proprietor | | | | | | |
| Form of entity [v] | CC | Trust | Pty Ltd | Limited | Partnership | Sole Proprietor |
| How many years has your entity been in business? | | | | | | |
| VAT number [if registered] | | | | | | |
| Entity's telephone number | | | | | | |

| | | | |
|--|----------|----------------------|---------|
| Entity's fax number | | | |
| Entity's email address | | | |
| Entity's website address | | | |
| Bank name | | Branch & Branch code | |
| Account holder | | Bank account number | |
| Postal address | | | Code |
| Physical address | | | Code |
| Contact person | | | |
| Designation | | | |
| Telephone | | | |
| Email | | | |
| Annual turnover range [last financial year] | < R5 m | R5 - 35 m | > R35 m |
| Does your entity provide | Products | Services | Both |
| Area of delivery | National | Provincial | Local |
| Is your entity a public or private entity | Public | Private | |
| Does your entity have a Tax Directive or IRP30 Certificate | Yes | No | |
| Main product or services [e.g. Stationery/Consulting] | | | |

Complete B-BBEE Ownership Details:

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

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

| | |
|-----------------------------|--|
| Transnet contact person | |
| Contact number | |
| Transnet Operating Division | |

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

Respondent's Signature

Date & Company Stamp

| | | | |
|-----------|--|-------------|--|
| Name | | Designation | |
| Signature | | Date | |

"PREVIEW COPY ONLY"

**RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS ANS WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 6: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS.

NAME OF ENTITY: _____

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

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

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

FULL NAME _____

SIGNATURE CHAIRMAN

FULL NAME _____

SIGNATURE SECRETARY

**RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS AND WHEN
REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

NAME OF ENTITY:

1. I/we

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

2. I/we furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.
3. I/we understand that the accompanying Bid will be disqualified if this Certificate is found not to be true and complete in every respect.
4. For the purposes of this Certificate and the accompanying Bid, I/we understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
 - a) Has been requested to submit a Bid in response to this Bid invitation;
 - b) Could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
 - c) Provides the same Services as the Bidder and/or is in the same line of business as the Bidder
5. The Bidder has arrived at the accompanying Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

6. In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- a) Prices;
 - b) Geographical area where Services will be rendered [market allocation]
 - c) Methods, factors or formulas used to calculate prices;
 - d) The intention or decision to submit or not to submit, a Bid;
 - e) The submission of a Bid which does not meet the specifications and conditions of the RFP; or
 - f) Bidding with the intention not winning the Bid.
7. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Services to which this RFP relates.
8. The terms of the accompanying Bid have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
9. I/We am/are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

SIGNED at _____ on this _____ day of
_____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

**RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS ANS WHEN
REQUIRED
FOR A PERIOD OF ONE YEAR**

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

[Appended hereto as Appendix (i)]

NAME OF ENTITY:

I/We

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

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

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

**RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS ANS WHEN
REQUIRED
FOR A PERIOD OF ONE YEAR**

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

[Appended hereto as Appendix (ii)]

NAME OF ENTITY:

I/We

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

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

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

Respondents should also note the obligations as set out in
Clause 19 [Terms and Conditions of Contract]
Of the General Bid Conditions [Appendix (i)] which reads as follows:

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

**RFP FOR THE PROVISION OF PCM SUPPORT AND MAINTENANCE AS ANS WHEN
REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 10: RFP DECLARATION FORM

NAME OF ENTITY: _____

We _____ do hereby certify
that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
3. at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
4. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and
5. furthermore, we declare that a family, business and/or social relationship exists / does not exist [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group.
6. If such a relationship exists, Respondent is to complete the following section:

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

7. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
8. We accept that any dispute pertaining to this Bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. [Refer "Important Notice to Respondents" overleaf].
9. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at _____ on this ____ day of _____
20 ____

| | |
|---|-------------|
| For and on behalf of _____ duly authorised hereto | AS WITNESS: |
| Name: | Name: |
| Position: | Position: |
| Signature: | Signature: |
| Date: | |
| Place: | |

IMPORTANT NOTICE TO RESPONDENTS

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

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 11: BREACH OF LAW FORM

NAME

OF

ENTITY:

I/We

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

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

NATURE OF BREACH:

DATE

OF

BREACH:

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

SIGNED at

on this

day of

20

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

Respondent's Signature

Date & Company Stamp

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 12: RFP CLARIFICATION REQUEST FORM

RFP No: CRAC-HO-12180

RFP deadline for questions / RFP Clarifications: Before 12:00 on 14 October 2013

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

RFP Clarification No [to be inserted by Transnet]



REQUEST FOR RFP CLARIFICATION

Respondent's Signature

Date & Company Stamp

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 13: SUPPLIER CODE OF CONDUCT

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

- The Transnet Supply Chain Policy
- Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fairness, equity, transparency, competitiveness and cost effectiveness;
- The Public Finance Management Act [PFMA];
- The Preferential Procurement Policy Framework Act [PPFPA];
- The Broad-Based Black Economic Empowerment Act [B-BBEE]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFP to formally apprise prospective Transnet Suppliers of Transnet's expectations regarding the behaviour and conduct of its Suppliers.

Prohibition of bribes, kickbacks, unlawful payments, and other corrupt practices

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

a) Transnet will not participate in corrupt practices and therefore expects its Suppliers to act in a similar manner.

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

- win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
 - gain an improper advantage.
 - There may be an occasion when a Supplier is confronted with fraudulent or corrupt behaviour by a Transnet employee. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].
- b) *Transnet is firmly committed to the ideas of free and competitive enterprise.*
- Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust.
 - Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing B-BBEE spend [fronting].
- c) *Transnet's relationship with Suppliers requires us to clearly define requirements, exchange information and share mutual benefits.*
- Generally, Suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our Suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
 - misrepresentation of their product [e.g. origin of manufacture, specifications, intellectual property rights];
 - collusion;
 - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
 - corrupt activities listed above; and
 - Harassment, intimidation or other aggressive actions towards Transnet employees.
 - Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the Supplier is expected to participate in an honest and straight forward manner.
 - Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

Conflicts of interest

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

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

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

"PREVIEW COPY ONLY"

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 14: B-BBEE PREFERENCE POINTS CLAIM FORM

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

1. INTRODUCTION

- 1.1 A total of 10 preference points shall be awarded for B-BBEE Status Level 1 of Contribution.
- 1.2 Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [SANAS] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [IRBA] or an Accounting Officer as contemplated in the Close Corporation Act [CCA] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.
- 1.3 Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

2. GENERAL DEFINITIONS

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

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

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The Bidder obtaining the highest number of total points for the evaluation criteria as

enumerated in Section 2 of the RFP will be awarded the contract, unless objective criteria justifies the award to another bidder.

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

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

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

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

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

- 4.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EME's with B-BBEE Status Level Certificates.
- 4.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 4.4 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.
- 4.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.
- 4.7 A person will not be awarded points for B-BBEE status level if it is indicated in the Bid

documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.

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

5. B-BBEE STATUS AND SUBCONTRACTING

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

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

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

5.2 Subcontracting:

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

If YES, indicate:

(i) What percentage of the contract will be subcontracted?

%

(ii) The name of the subcontractor

(iii) The B-BBEE status level of the subcontractor

...

(iv) Is the subcontractor an EME? YES/NO

5.3 Declaration with regard to Company/Firm

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

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm

☐ Partnership/Joint Venture/Consortium

☐ One person business/sole propriety

☐ Close Corporations

☐ Company (Pty) Ltd

[TICK APPLICABLE BOX]

(v) Describe Principal Business Activities

.....

.....

.....

.....

(vi) Company Classification

☐ Manufacturer

☐ Supplier

☐ Professional Service Provider

☐ Other Service Providers, e.g Transporter, etc

[TICK APPLICABLE BOX]

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

BID DECLARATION

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

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

WITNESSES:

1.

2.

SIGNATURE OF BIDDER

DATE:

COMPANY NAME:

ADDRESS:

.....

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 14: CERTIFICATE OF ACQUAINTANCE WITH SPECIFICATIONS

I/We

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

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

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

**RFP FOR THE PROVISION OF
PCM SUPPORT AND MAINTENANCE AS AND WHEN REQUIRED
FOR A PERIOD OF ONE YEAR**

Section 15: NON DISCLOSURE AGREEMENT

Entered into by and between

TRANSNET SOC LTD

Registration Number 1990/000900/30

and

Registration Number _____

Respondent's Signature

Date & Company Stamp



THIS AGREEMENT is made between

Transnet SOC Ltd [Transnet] [Registration No. 1990/000900/30]

Whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

And

_____ [the **Company**] [Registration No
_____] whose registered office is at

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

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



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

2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- a) to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
 - b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of



such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

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

3. RECORDS AND RETURN OF INFORMATION

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

4. ANNOUNCEMENTS

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

5. DURATION

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



6. PRINCIPAL

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9. GENERAL

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

ooo000ooo



- a) submit its SD Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.
- b) The contract will be conditional on agreement being reached by the parties on the SD Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the SD Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.
- c) Failure to adhere to the milestones and targets defined in an SD Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

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| | | |
|-----------|-----------------------------------|---|
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(XL) DEFINITIONS

(xli) 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:

- (xlii) Bid shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- (xliii) Bid Document(s) shall mean a reference to a Request for Proposal or Request for Quotation;
- (xliv) Day shall mean any day other than a Saturday, Sunday or public holiday;
- (xlv) Respondent(s) shall mean a respondent/bidder to a Bid Document;
- (xlvi) RFP shall mean Request for Proposal;
- (xlvii) RFQ shall mean Request for Quotation;
- (xlviii) RFX shall mean RFP or RFQ, as the case may be;
- (xlix) Services shall mean the services required by Transnet as specified in its Bid Document;
- (l) Service Provider shall mean the successful Respondent;
- (li) 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;
- (lii) Transnet shall mean Transnet SOC Ltd, a State Owned Company; and
- (liii) 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.

(LIV) GENERAL

(lv) 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.

(LVI) SUBMISSION OF BID DOCUMENTS

(lvii) 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.

(lviii) 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.

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

(LX) USE OF BID FORMS

(lxi) Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

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



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

(LXIV) BID FEES

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

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

(LXVII) VALIDITY PERIOD

(lxviii) Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the RFX.

(lxix) 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.

(LXX) SITE VISIT / BRIEFING SESSION

(lxxi) Respondents may be requested to attend (i) a site visit where it is considered necessary to view the site prior to the preparation of Bids, or (ii) an RFX briefing session when Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

(LXXII) CLARIFICATION BEFORE THE CLOSING DATE

(lxxiii) Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

(LXXIV) COMMUNICATION AFTER THE CLOSING DATE

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

(LXXVI) UNAUTHORISED COMMUNICATION ABOUT BIDS

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

(LXXVIII) RETURNABLE DOCUMENTS



(lxxix) 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.

(LXXX) DEFAULTS BY RESPONDENTS

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

(lxxxii) enter into a formal contract when called upon to do so within such period as Transnet may specify; or

(lxxxiii) accept an order in terms of the Bid;

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

(lxxxv) comply with any condition imposed by Transnet,

(lxxxvi) 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.

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

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

(lxxxix) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or

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

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

(xcii) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or

(xciii) has made any misleading or incorrect statement either

(xciv) in the affidavit or certificate referred to in clause (cxxv) [*Notice to Unsuccessful Respondents*]; or

(xcv) in any other document submitted as part of its Bid submission

(xcvi) and is unable to prove to the satisfaction of Transnet that

(xcvii) it made the statement in good faith honestly believing it to be correct; and

(xcviii) before making such statement, it took all reasonable steps to satisfy itself of its correctness; or

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

(c) has litigated against Transnet in bad faith;



- (ci) has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 [five] years;
- (cii) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters;
- (ciii) then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause (civ) below, be disqualified from bidding for any Transnet business through its "blacklisting" process.
- (civ) Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.
- (cv) Any disqualification [Blacklisting] imposed upon any person or enterprise or company, may also apply to any other enterprise under the same or different names of disqualified persons or enterprise or company [or associates thereof] and may also be applied to any agent or employee of the person or enterprise or company concerned.
- (CVI) CURRENCY
- (cvii) All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [ZAR], save to the extent specifically permitted in the RFX.
- (CVIII) PRICES SUBJECT TO CONFIRMATION
- (cix) Prices which are quoted subject to confirmation will not be considered.
- (cx) Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.
- (CXI) ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES
- (cxii) 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.
- (CXIII) EXCHANGE AND REMITTANCE
- (cxiv) The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Service Provider, effect payment overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- (cxv) 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.



(cxvi) The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.

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

(cxviii) Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.

(cxix) 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].

(CXX) ACCEPTANCE OF BID

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

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

(cxxiii) 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.

(cxxiv) Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

(CXXV) NOTICE TO UNSUCCESSFUL RESPONDENTS

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

(CXXVII) TERMS AND CONDITIONS OF CONTRACT

(cxxviii) The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

(cxxix) Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.

(CXXX) CONTRACT DOCUMENTS

(cxxx) 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.



(cxxxii) The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

(cxxxiii) Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Intent, shall constitute a binding contract until the final contract is signed.

(CXXXIV) LAW GOVERNING CONTRACT

(cxxxv) 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.

(CXXXVI) IDENTIFICATION

(cxxxvii) 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.

(CXXXVIII) CONTRACTUAL SECURITIES

(cxxxix) The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.

(cxl) 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.

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

(cxlii) The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] Days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.



(cxliii) Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause (cxxxviii) will be for the account of the Service Provider.

(CXLIV) DELETION OF ITEMS TO BE EXCLUDED FROM BID

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

(CXLVI) VALUE-ADDED TAX

(cxlvii) In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

(cxlviii) In respect of foreign Services rendered:

(cxlix) 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

(cl) 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.

(CLI) IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

(clii) Method of Payment

(cliii) 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.

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

(clv) 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.

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

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

(clviii) Conditional Discount

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

(CLX) DELIVERY REQUIREMENTS



(clxi) Period Contracts

(clxii) 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.

(clxiii) Progress Reports

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

(clxv) Emergency Demands as and when required

(clxvi) If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "*Total or Partial Failure to Perform the Scope of Services*" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

(CLXVII) SPECIFICATIONS AND COPYRIGHT

(clxviii) Specifications

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

(clxx) Copyright

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

(CLXXII) BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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

(clxxiv) 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.

(clxxv) 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.

(clxxvi) 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.

(clxxvii) 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.

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

(clxxix) 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.

(clxxx) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.

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

(clxxxii) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

(clxxxiii) 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.

(CLXXXIV) CONFLICT WITH BID DOCUMENT

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