

**TRANSNET FREIGHT RAIL**

an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP]**

**FOR THE SUPPLY OF LEVEL CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN  
OPTION TO EXTEND FOR A FURTHER YEAR**

**RFP NUMBER** HOAC\_HO\_5872

**ISSUE DATE:** 22 AUGUST 2012

**CLOSING DATE:** 11 SEPTEMBER 2012

**CLOSING TIME:** 10:00

**BID VALIDITY PERIOD:** 90 days

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#### LIST OF ACRONYMS

B-BBEE	Broad-Based Black Economic Empowerment
CD	Compact/computer disc
DAC	Divisional Acquisition Council
DPE	Department of Public Enterprises
DTI	Department of Trade and Industry
EME	Exempted Micro Enterprise
FRC	Further Recognition Criteria
GBC	General Bid Conditions
ID	Identity Document
JV	Joint Venture
LOI	Letter of Intent
NDA	Non-Disclosure Agreement
NGP	New Growth Path
OD	Transnet Operating Division
PTN	Post-Tender Negotiations
QSE	Qualifying Small Enterprise
RFP	Request for Proposal
SD	Supplier Development
SME	Small Medium Enterprise
SOC	State Owned Company
ST&C	Standard Terms and Conditions
TAC	Transnet Acquisition Council
TCO	Total Cost of Ownership
TFR	Transnet Freight Rail
VAT	Value-Added Tax
ZAR	South African Rand

**RFP FOR THE NATIONAL SUPPLY OF  
CROSSING BLOCKS  
FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND FOR A FURTHER YEAR**  
Section 1: NOTICE TO BIDDERS

**1 PROPOSAL REQUEST**

Responses to this RFP [hereinafter referred to as a **Proposal** or **Proposals**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **Entity** or **Respondent**] to supply the aforementioned requirement(s) to Transnet.

On or after 22 August 2012, the RFP documents may be inspected at, and are obtainable from the office of the Secretariat (Tender Advice Centre), Inyanda No 1, Ground Floor, 21 Wellington Road, Parktown, Johannesburg, on payment of an amount of **R1,000.00** [One thousand Rand][inclusive of VAT]. Payment is to be made as follows:

Bank:	Standard Bank
Account Number:	203158598
Branch code:	004805
Account Name:	Transnet Freight Rail
Reference:	HOAC_HO_5872

**NOTES –**

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

RFP documents will only be available until 15h00 Monday **11 September 2012**.

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

**2 FORMAL BRIEFING**

A non-compulsory RFP briefing will be conducted from **10:00 on Tuesday 04 SEPTEMBER 2012**, at Inyanda 2, 15 Girton Road, Parktown, Johannesburg, for a period of ± 2 hours.

- 2.1 A Certificate of Attendance in the form set out in Section 14 hereto must be completed and submitted with your Proposal.
- 2.2 Respondents without a valid RFP document in their possession will not be allowed to attend the RFP briefing.
- 2.3 The briefing session will start punctually at 10:00 and information will not be repeated for the benefit of Respondents arriving late.
- 2.4 All clarifications should be sent through e-mail to [Buyisiwe.hlatshwayo@transnet.net](mailto:Buyisiwe.hlatshwayo@transnet.net) not later than 10h00 on Tuesday 04 September.

### 3 PROPOSAL SUBMISSION

Proposals **in duplicate plus a CD copy** must reach the Secretary, Transnet Freight Rail 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:	<b>HOAC_HO_5872</b>
Description	SUPPLY OF LEVEL CROSSING BLOCKS
Closing date and time:	11 September 2012 at 10h00
Closing address	<i>[Refer options in paragraph 4 below]</i>

### 4 DELIVERY INSTRUCTIONS FOR RFP

#### 4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at Inyanda no 1, Ground Floor, 21 Wellington Road Parktown, and should be addressed as follows:

THE SECRETARY  
TRANSNET FREIGHT RAIL  
ACQUISITION COUNCIL  
GROUND FLOOR  
TENDER BOX  
INYANDA HOUSE NO 1  
21 WELLINGTON ROAD  
PARKTOWN  
JOHANNESBURG

- a) The measurements of the "tender slot" are 500mm wide x 100mm high, and Respondents must please ensure that response documents or files are not larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- b) It should also be noted that the above tender box is located at the ground floor inside the main entrance at 21 Wellington Road and is accessible to the public 24 hours a day, 7 days a week.

#### 4.2 Dispatch by courier

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

THE SECRETARY  
TRANSNET FREIGHT RAIL  
ACQUISITION COUNCIL  
GROUND FLOOR  
INYANDA HOUSE NO 1  
21 WELLINGTON ROAD  
PARKTOWN  
JOHANNESBURG

- 4.3 Please note that this RFP closes punctually at **10:00 on Tuesday 11 September 2012**.
- 4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
- 4.5 No email or facsimile responses will be considered, unless otherwise stated herein.
- 4.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
- 4.7 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
- 4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 23 [*Alterations made by the Respondent to Tendered Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

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

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

Transnet would therefore prefer to do business with local business 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. Transnet will accordingly allow "preference" points to companies who provide a B-BBEE Accreditation Certificate. All procurement transactions will be evaluated accordingly.

Consequently, when Transnet invites prospective suppliers to submit Proposals for its various expenditure programmes, it urges Respondents [*Large Enterprises and QSE's - see below*] to have themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 **valid** B-BBEE Accreditation 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 valid 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.

### 5.1 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]:
- EMEs are not exempted from B-BBEE accreditation, however a certificate / letter is required from the following (entities Auditors/Accountants, IRBA & Verification Agencies).
  - Automatic rating of Level 4 B-BBEE irrespective of race or ownership
  - Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE
  - EME's should provide documentary proof of annual turnover [i.e. annual financials signed off by an accounting officer] plus proof of Black ownership if Black ownership is greater than 50% and/or Black Women ownership is greater than 50%

Respondents will be 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 proof of turnover in respect of EMEs].

*N.B. Failure to submit a valid BBEE will result in a score of zero being allocated for B-BBEE.*

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

R \_\_\_\_\_

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

## 5.2 Joint Ventures and Subcontractors

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

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 signed Memorandum of Understanding between the JV partners / sub-contractors must be submitted with the RFP indicating that the parties acknowledge that an agreement exists and will be honoured should they be successful and awarded the business.

## 5.3 B-BBEE Registration

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

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

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

#### 5.4 Further Recognition Criteria [FRC]

##### Definitions:

**Further Recognition Criteria [Current]** A mechanism used to evaluate preference based on the extent to which a bidder's current B-BBEE status in terms of ownership, management control and employment equity meets or exceeds a stipulated minimum target.

**Further Recognition Criteria [Future]** A mechanism used to evaluate preference based on the extent to which an enterprise commits to improving or sustaining its B-BBEE performance over the contract period in excess of stipulated minimum targets. These criteria focus on ownership, management control, employment equity, preferential procurement and enterprise development.

Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 5.1 above, in addition to such scoring, **5% [five per cent]** will be allocated to a Respondent's score based on the "Further Recognition Criteria [Future]" and **5% [five per cent]** on the "Further Recognition Criteria [Current]" on an ascending scale. This will be calculated based on the extent to which the Respondent commits to meet, sustain and/or exceed the minimum compliance targets with its proposed target score to be achieved during the contract period.

Respondents are required to submit their Further Recognition Criteria [Current] and [Future] with their Proposals. *[Refer Section 17 for further instructions]*

#### 5.5 Supplier Development Initiatives

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

Transnet fully endorses and supports Government's New Growth Path policy through its facilitation of Supplier Development **[SD]** initiatives. Hence Supplier Development Initiatives are a prerequisite for this RFP and are included in the Evaluation Criteria. *[Refer Section 18 for instructions]*



## 6 COMMUNICATION

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

- 6.1 For specific queries relating to this RFP, a Bid Clarification Request Form as set out in Section 12 hereto, should be submitted to [Buyisiwe.hlatshwayo@transnet.net](mailto:Buyisiwe.hlatshwayo@transnet.net) before **10:00 on Tuesday 11 September 2012**. 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.
- 6.2 After the closing date of the RFP, a Respondent may communicate with the Secretary of the TFR Acquisition Council, at telephone number +27 11 584 9486, email [Prudence.nkabinde@transnet.net](mailto:Prudence.nkabinde@transnet.net) or facsimile number +27 11 774 9760 on any matter relating to its RFP Proposal.

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

## 7 INSTRUCTIONS FOR COMPLETING THE RFP

- 7.1 Sign one set of 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 can be a copy of the original signed Proposal.
- 7.2 Both sets of documents to be submitted to the address specified in paragraph 4 above.
- 7.3 A CD copy of the RFP Proposal must be submitted. Please provide in MS Word / Excel format, not PDF versions, noting that the signed original set will be legally binding [paragraph 7.1 above].
- 7.4 All returnable documents listed in the Proposal Form [Section 4] must be returned with your Proposal.

## 8 COMPLIANCE

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

## 9 ADDITIONAL NOTES

- 9.1 All returnable documents as indicated in the Proposal Form [Section 4] must be returned with the response. Tick returnable documents [✓] and provide reference if applicable.
- 9.2 Changes by the Respondent to its submission will not be considered after the closing date.
- 9.3 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 your behalf [if not the authorised signatories] must also be submitted along with the Proposal together with their contact details.
- 9.4 Transnet would prefer not to do business with any agents ["middlemen"] who do not add significant value to the supply chain. In such instances Transnet will endeavour to contract directly with the overseas and / or local OEMs [Original Equipment Manufacturers].
- 9.5 Transnet may wish to visit the Respondent's place of manufacture/workshop/premises during this RFP process.

- 9.6 Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.
- 9.7 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated. Transnet reserves the right to reject any or all offers.

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

## 10 DISCLAIMERS

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

- 10.1 modify the RFP's Goods and request Respondents to re-bid on any changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline;
- 10.4 not necessarily accept the lowest priced Proposal;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.8 award a contract for only a portion of the proposed Goods which are reflected in the scope of this RFP;
- 10.9 split the award of the contract between more than one Supplier; or
- 10.10 make no award of a contract.
- 10.11 the right to limit period of contract
- 10.12 Does the supplier warrant that it has the right to sub-license the material to Transnet Freight Rail  
Refer to Annexure D with regard to intellectual Property
- 10.13 Suppliers to confirm if Sole Supplier/Distributor of goods
- 10.14 This RFP is subject to Transnet Board and PFMA approval.
- 10.15 The volumes provided are indicative and do not represent any legal commitment from  
Transnet

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.

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

#### **11 LEGAL REVIEW**

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

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

**“PREVIEW COPY ONLY”**

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS  
FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

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

**1 BACKGROUND**

Transnet Freight Rail [TFR] is the Transnet Operating Division responsible for the operation and maintenance of South Africa's rail network for the transportation of commodities and general freight throughout the country. TFR has an on-going maintenance commitment in respect of the rail infra-structure network. To enable TFR to continue to provide an efficient rail service for the market it serves, it requires a stable supplier base for certain key commodities which requires Goods and Services to be procured through the RFP process.

**2 EXECUTIVE OVERVIEW**

Transnet is seeking a partner(s) to provide Goods and associated services to its infra-structure maintenance depots nationally. It also seeks to improve its current processes for the provision of these Goods and associated services to its end user community.

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

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

### 3 SCOPE OF REQUIREMENTS

Transnet's objective is to source Crossing Blocks, through a preferred supplier(s) capable of servicing TFR requirements in locations around the country for a period of 1 Year with an option to extend for a further year. Other key considerations include:

- 100% compliance with specifications of the Goods
- Local transportation and delivery of the Goods
- Supplier development

3.1 Detailed, itemised requirements for the Goods and associated services are set out in Section 3 [Pricing and Delivery Schedule] and Section 15 [Specifications and Drawings]. In summary TFR's requirements are as follows:

3.2 Respondents must address and give written responses to the following requirements:

a) Machinery and equipment to produce value-add product. Indicate your capability to do all value-adding processes in-house, to TFR specifications; adequately trained personnel to operate plant and equipment. See paragraph 3.1(c) above.

b) Implemented and maintained SHEQ systems in terms of auditing, incoming inspection from production, independently SHEQ compliance and performance, improved plans and planned targets.

**Your response to this sub-paragraph 3.2 will contribute to determine whether your entity meets the minimum technical threshold of 100%.**

c) Green Economy / carbon footprint commitment [Give details of your entity's approach]

### 4 GENERAL INFORMATION

4.1 The Supplier(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

4.2 The Supplier(s) must provide the information requested and comply with the requirements stated in this RFP.

### 5 "AS AND WHEN REQUIRED" CONTRACTS

5.1 Purchase orders will be placed on the Supplier(s) from time to time as and when Goods are required.

5.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected within the delivery period / lead time specified beyond the expiry date of the contract under the same terms and conditions as agreed upon.

5.3 Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents

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

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

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

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## 6 MANUFACTURERS

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

### 6.1 Local Manufacturer(s):

RFP ITEM NO.	NAME	ADDRESS [IN FULL]

### 6.2 Foreign Manufacturer(s):

RFP ITEM NO.	NAME	ADDRESS [IN FULL]

## 7 INSPECTION DETAILS

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

### 7.1 Local Manufacturer(s):

RFP ITEM NO.	NAME	ADDRESS [IN FULL]



**7.2 Foreign Manufacturer(s):**

RFP ITEM NO.	NAME	ADDRESS [IN FULL]

**8 IMPORTED CONTENT**

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

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

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

**9 EXCHANGE AND REMITTANCE**

The attention of the Respondents is directed to clause 8 [Exchange and Remittance] of the General Bid Conditions appended hereto. The Respondent is also to note that the particulars of the exchange rate on which the Respondent has based its tendered price(s), is/are to be stipulated hereunder, *only if Transnet is requested by the Respondent to effect payment overseas direct to the Respondent's principal or supplier, which is not a registered South African Company.*

9.1 ZAR 1.00 [South African currency] being equal to \_\_\_\_\_ [foreign currency]

9.2 \_\_\_\_\_ % in relation to tendered price(s) to be remitted overseas by Transnet

9.3 \_\_\_\_\_ [Name of country to which payment is to be made]

9.4 Beneficiary details:

Name [Account holder] \_\_\_\_\_

Bank [Name and branch code] \_\_\_\_\_

Swift code \_\_\_\_\_

Country \_\_\_\_\_

9.5 \_\_\_\_\_ [Applicable base date of Exchange Rate used]

**Note:** Respondents are advised that should a contract be awarded for deliveries on an "as and when required" basis, Transnet's preferred form of remittance will be in South African Rands (ZAR). Prices quoted will be fixed for a period of 12 months from date of award of business.

**EXPORT CREDIT AGENCY SUPPORTED FINANCE:**

In order to finance its payment obligations under a future contract where foreign transactions are involved, Transnet would consider raising debt financing [an "ECA Facility"] from one or more banks and financial institutions, with the benefit of export credit agency [ECA] credit support to be provided by an Export Credit Agency.

Under such circumstances the successful Respondent will agree to undertake:

- a) to provide (and/or cause the Parent to provide, as applicable) to Transnet and the banks and financial institutions that may participate in the ECA Facility all such assistance as an importer of Goods and services, which are eligible for ECA credit supported finance by an Export Credit Agency, is generally required to provide for the purposes of obtaining ECA support;
- b) not to do or (as Supplier of the relevant eligible Goods or services) omit to do anything, which may adversely affect Transnet's prospects of qualifying for or, once obtained, maintaining ECA credit support by an Export Credit Agency in respect of an ECA Facility.

All cost, expenses, charges and liabilities incurred by Transnet in establishing an ECA Facility with credit support from an Export Credit Agency, would be for the account of Transnet.

## 10 NATIONAL RAILWAY SAFETY REGULATOR ACT

In compliance with the National Railway Safety Regulator Act, 16 of 2002, the successful Respondent (**the Supplier**) shall ensure that the Goods to be supplied to Transnet, under the terms and conditions of a contract between the parties, comply fully with the specifications as set forth in Section 15 [*Specifications and Drawings*] of this RFP, and shall thereby adhere to railway safety requirements and/or regulations [as applicable]. Permission for the engagement of a subcontractor by the Supplier, as applicable, both initially and during the course of a contract, shall be subject to a review of the capability of the proposed subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its subcontractor shall grant Transnet access, during the term of the contract, to review any safety-related activities, including the coordination of such activities across all parts of the organisation.

**Accepted:**

<b>YES</b>		<b>NO</b>	
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## 11 SERVICE LEVELS

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

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

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

11.4 The Supplier guarantees that it will achieve a percentage on service level on the following measures. If the Supplier does not achieve this level as an average over each quarter, Transnet will receive a 1.5% rebate on quarterly sales payable in the next quarter:

- a) Random quality checks/quantity/specifications 100%
- b) On-time delivery

However Transnet will not only be limited to the above mentioned activities to evaluate the performance of the successful supplier.

- 11.5 Supplier must provide a telephone number for customer service calls and provide technical assistance when required.
- 11.6 Failure of the Supplier to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] days' notice to the Supplier.

**Acceptance of Service Levels:**

<b>YES</b>		<b>NO</b>	
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**12 CONTINUOUS IMPROVEMENT INITIATIVES**

- 12.1 Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with Transnet in its continuous improvement initiatives to reduce the overall cost of transportation services and related logistics provided by Transnet's operating divisions within South Africa, to the ultimate benefit of all end-users.

**Accepted:**

<b>YES</b>		<b>NO</b>	
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If "yes", please specify details in paragraph 12.2 below.

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

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**13 RISK**

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

- 13.1 **Quality and specification of Goods delivered:**

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**13.2 Continuity of supply** [refer clause 10.3 of Form ST&C]:

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**13.3 Compliance with the Occupational Health and Safety Act, 85 of 1993** [refer clause 7.1(f) of Form ST&C]:

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**13.4 Compliance with the National Railway Safety Regulator Act, 16 of 2002** [refer paragraph 10 above]:

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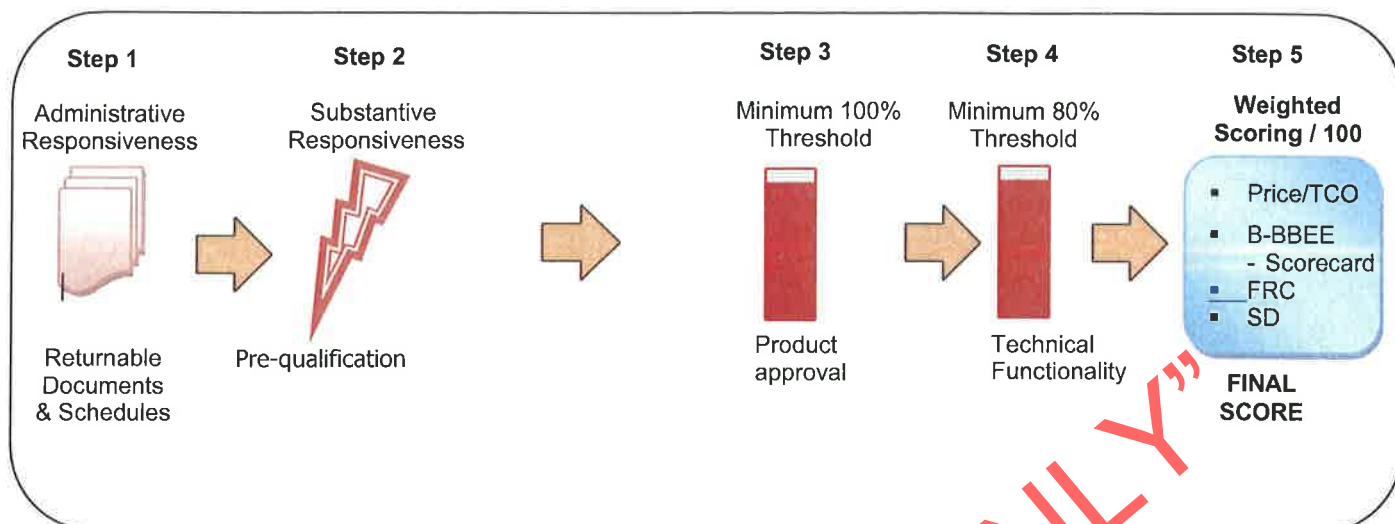
**14 REFERENCES**

Please indicate below the company names and contact details of existing customers whom Transnet may contact to seek third party evaluations of your current service levels:

NAME OF COMPANY	SCOPE OF SUPPLY (YEARS IN CONTRACT)	CONTACT PERSON	TELEPHONE

## 15. VALUATION METHODOLOGY AND CRITERIA

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



### 14.1 STEP ONE – Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

EVALUATION CRITERIA	RFP REFERENCE
• whether the bid has been lodged on time	<i>Section 1 paragraph 3</i>
• whether all returnable documents and/or schedules [where applicable] were completed and returned by the closing date and time	<i>Section 4</i>
• whether the bid documentation has been duly signed by the Respondent.	<i>Section 1 paragraph 7.1</i>

***The test for administrative responsiveness [Step One] must be passed for a Respondent's proposal to qualify for further evaluation.***

### 14.2 STEP TWO – Test for Substantive Responsiveness to RFP

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

EVALUATION CRITERIA	RFP REFERENCE
• whether any pre-qualification criteria set by Transnet, have been met	<i>Section 1 paragraphs 2.2, 6.1, 10.3</i> <i>Section 4 – validity period</i> <i>Section 8, General Bid Conditions clause 25</i> <i>Section 10</i>
• whether the bid contains a priced offer	<i>Section 3</i>
• whether the bid materially complies with the scope and/or specification given	<i>Section 2</i>

- whether all material terms and conditions stated in the bid document have been met

*All Sections***STEP THREE: Product approval**

EVALUATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> <li>• 100% compliance with Specifications for Goods (Product Approval)</li> </ul>	<i>Section 15 &amp; Section 2, paragraph 3.3</i>

***The minimum threshold of 100% for Step Three evaluation criteria must be met for a Respondent's proposal to progress to Four***

**15.5 STEP FOUR Minimum Threshold of 100% for Technical & Functionality****Technical and Functional Criteria:**

EVALUATION CRITERIA	RFP REFERENCE
Delivery schedule Technical skills Process evaluation Process functionality References/previous record	

***The minimum threshold of 80% for Step Four evaluation criteria must be met for a Respondent's proposal to progress to Step five for final evaluation***

**14.3 STEP FIVE: Final Weighted Scoring****a) Price Criteria:**

EVALUATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> <li>• Commercial offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>• Financial Capacity</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>• Entity's financial stability (provide at least 3 years financial audited results)</li> </ul>	<i>Financial Statements – returnable document</i>



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

- **B-BBEE - current scorecard** [Refer paragraph 15.3(i) above]
- **Further Recognition Criteria – future targets** [Refer paragraph 15.3(ii) above]

14.4 **SUMMARY: Evaluation Thresholds and Weightings**

EVALUATION CRITERIA	MINIMUM THRESHOLD [%]
Product Approval	100%
Technical / functionality	80%

EVALUATION CRITERIA	FINAL WEIGHTED SCORES
Price and TCO	60%
B-BBEE - Scorecard	20%
- FRC	10%
Supplier Development Initiatives	10%
<b>TOTAL SCORE:</b>	<b>100%</b>

**Note:** Transnet reserves the right to conduct post-tender negotiations with the preferred Respondent(s)

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS  
FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**Section 3 : PRICING AND DELIVERY SCHEDULE**

*Respondents are to complete the pricing and delivery tables Attached:*

**Notes to Pricing:**

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) Prices to be quoted must be final cost from facility ready to be dispatched "free on rail/road vehicle. Please advise location of RSA manufacturing works
- c) Provide cost per KM in the event of road transport being required
- d) Prices quoted must be held valid for a period of 90 days
- e) Currency rate of exchange utilised to be indicated, if applicable
- f) Respondents are requested to fix pricing period of 12 months, and indicate proposed adjustment factor(s) for the following 12 months that would be utilised. (Based upon contract extension)



**RFP FOR THE SUPPLY OF  
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**Section 4 : PROPOSAL FORM**

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

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

of *[full address]*

carrying on business under style or title of *[trading as]* \_\_\_\_\_

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

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

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

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

- 17.4.1.1 Standard Terms and Conditions of Contract [Form ST&C – Goods];
- 17.4.1.2 General Bid Conditions – Goods; and
- 17.4.1.3 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, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Goods within 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 24 MONTHS only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty [details to be negotiated] against us should the delivery of the Goods be delayed due to non-performance by ourselves.

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

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

Name of Entity: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### NOTIFICATION OF AWARD OF RFP

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

#### VALIDITY PERIOD

Transnet requires a validity period of 120 [hundred and twenty] 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 a subsequent contract, both during and after completion, is to be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Goods, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

**DISCLOSURE OF PRICES TENDERED**

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

<b>YES</b>		<b>NO</b>	
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**PRICE REVIEW**

The successful Respondent(s) 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 Respondent's price(s) is/are found to be higher than the benchmarked price(s), then the Respondent 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 item(s) or service(s) purchased outside the contract.

**RETURNABLE DOCUMENTS AND SCHEDULES**

Respondents are required to all submit the following returnable documents and schedules with their responses . All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent:

	Tick	Reference
SECTION 1 : Notice to Bidders		
- ANNEXURE A : B-BBEE Preference Points Claim Form		
- Declaration Certificate for Local Production and Content [Form SBD 6.2]		
SECTION 2 : Background, Overview and Scope of Requirements		
SECTION 3 : Pricing & Delivery Schedule		
SECTION 4 : Proposal Form		
SECTION 5 : Vendor Application Form		
- Original cancelled cheque or bank verification of banking details		
- Certified copies of IDs of shareholder/directors/members [as applicable]		
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]		
- Certified copy of share certificates [CK1/CK2 if CC]		
- Entity's letterhead		
- Original Tax Clearance Certificate		
- Certified copy of VAT Registration Certificate		
- Certified copy of Company Registration Certificate		
- Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]		
- Annual financials signed off by an accounting officer [EMEs]		
- Audited Financials for previous 3 years		
- A signed Memorandum Of Understanding between the JV partners / sub-contractors		



SECTION 6 : Signing Power - Resolution of Board of Directors		
SECTION 7 : Certificate of Acquaintance with RFP Documents		
SECTION 8 : General Bid Conditions – Goods		
SECTION 9 : Standard Terms and Conditions of Contract		
SECTION 10 : RFP Declaration Form		
SECTION 11 : Breach of Law		
SECTION 12 : Bid Clarification Request Form		
SECTION 13 : Supplier Code of Conduct		
SECTION 14 : Certificate of attendance of RFP Briefing Meeting		
SECTION 15 : Specifications and Drawings		
SECTION 16 : Non-Disclosure Agreement		
SECTION 17 : Further Recognition Criteria		
SECTION 18 : Supplier Development Initiatives		
- Supplier Development Bid Document		
- Annexure C : Supplier Development Value Summary		

**Failure to provide all the above-referenced returnable documents will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.**

#### **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 B-BBEE Accreditation 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 the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

**By signing the 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 \_\_\_\_\_ 2012

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_  
Name \_\_\_\_\_

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

2 \_\_\_\_\_  
Name \_\_\_\_\_

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

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

\_\_\_\_\_

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

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

**RFP FOR THE SUPPLY OF  
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**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. A letter on the entity's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate and **certified copy** of VAT Registration Certificate
7. A signed letter from your auditor or accountant confirming most recent annual turnover figures

**Note: No contract shall be awarded to any 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 [✓] ☐ CC ☐ Trust ☐ Pty Ltd ☐ Limited ☐ Partnership ☐ Sole Proprietor

How many years has your entity been in business?

VAT number [if registered]

Entity's telephone number

Entity's fax number

Entity's email address

Entity's website address

Bank name  Branch & Branch code

Account holder  Bank account number

Postal address  Code

Physical address

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

*Complete B-BBEE Ownership Details:*

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

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

Transnet contact person	
Contact number	
Transnet Operating Division	

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

Name		Designation	
Signature		Date	

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**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 Proposals and/or Agreements for the supply of Goods.

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

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

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

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

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

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

NAME OF ENTITY:

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I/We

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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 response.

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.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

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

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



**RFP FOR THE SUPPLY OF  
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**Section 8 : GENERAL BID CONDITIONS - GOODS**

**Refer General Bid Conditions attached hereto**

**“PREVIEW COPY ONLY”**

**GENERAL BID CONDITIONS - GOODS**

**[March 2012]**

“PREVIEW COPY ONLY”

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## 1 DEFINITIONS

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

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

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following procedures as laid down by Transnet and are to be strictly adhered to by any person or enterprise or company responding to this RFX.

## 3 LODGING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be lodged with Transnet no later than the closing date and time specified for the receipt thereof, in accordance with the directions issued with Bid Documents.
- 3.2 Bids shall be transmitted in a sealed envelope and placed in the tender box at a venue stipulated in the Bid Documents with the Bid number and subject endorsed on the left hand bottom corner of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4 USE OF BID FORMS

- 4.1 Where special forms 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 on office stationery bearing their own terms and conditions of contract; non-compliance with this conditions may result in the rejection of a Bid.
- 4.2 Respondents must note that the original bid forms must be completed for submission and not a reprocessed facsimile thereof. Only if insufficient space has been allocated to a particular response

may a Respondent submit additional information under separate cover using the Company's letterhead and duly cross-referenced in the RFX.

## 5 RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS AND BID FORMS

- 5.1 A non-refundable charge may be raised for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document.
- 5.2 If any of the drawings or specifications referred to in Bid Documents is the official publication of a recognised standardising body, copies of such drawings and specifications shall be acquired by Respondents at their own expense.

## 6 DEFAULTS BY RESPONDENTS

- 6.1 If the Respondent, after it has been notified of the acceptance of its Bid fails to:
- a) enter into a formal contract when called upon to do so in terms of clause 15 *[Contract Documents]*, within such period as Transnet may specify; or
  - b) accept an order in terms of the Bid; or
  - c) when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 16 *[Securities]*,

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

- 6.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as **the Supplier**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:
- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
  - b) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or
  - c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
  - d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
  - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
  - f) has made any incorrect statement in the affidavit or certificate referred to in clause 12 *[Formal Notification Regarding Name of Successful Respondent]* and is unable to prove to the satisfaction of Transnet that
    - (i) it made the statement in good faith honestly believing it to be correct; and

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

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

then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 6.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

6.3 Any person or enterprise or company against whom a decision has been given under the provisions of clauses 6.2b), 6.2d) or 6.2e) above, may make representations to the Chief Operating Officer of Transnet Group, whose decision shall be final.

6.4 Any disqualification [**Blacklisting**] imposed upon any person or enterprise or company, may also apply to any other enterprise under the same or different names of disqualified persons or enterprise or company [or associates thereof] and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise or company concerned.

## 7 CURRENCY

Prices must be quoted in the currency of the Republic of South Africa [**ZAR**] in respect of local Goods. Prices in any other currency may be rejected by Transnet save where such price is quoted by a foreign Respondent.

## 8 EXCHANGE AND REMITTANCE

The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet SOC Ltd shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents. In instances where an overall Rand agreement cannot be concluded Transnet's preference is to enter into Rand based agreements and would therefore request the Respondent to give favourable consideration to:

8.1 Obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet SOC Ltd to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order. Transnet will NOT accept any fluctuations in the rate of exchange at the time when payments are made if a Rand agreement is concluded.

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

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

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause **Error! Reference source not found.** above, if the increase in price arises after the date on which the Goods were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

## **9 ACCEPTANCE OF BID**

- 9.1 Transnet does not bind itself to accept the lowest or any Bid.
- 9.2 Transnet reserves the right to accept any Bid in whole or in part.
- 9.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and the Standard Terms and Conditions of Contract [Form ST&C – Goods] and any schedule of “Special Conditions” or otherwise which form part of the Bid Documents.
- 9.4 Where the Respondent has been informed by Transnet per facsimile message or email of the acceptance of its Bid, the acknowledgement of the receipt transmitted shall be regarded as proof of delivery to the Respondent.

## **10 LAW GOVERNING CONTRACT**

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

## **11 IDENTIFICATION**

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

## **12 FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT**

In the case of Bids submitted to the Secretary of an Acquisition Council, unsuccessful Respondents will be formally notified of the names of successful Respondent(s) as soon as possible after the closing date for receipt of the Bid in question.

## **13 UNAUTHORISED COMMUNICATION ABOUT BIDS**

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



#### 14 RESPONDENT'S SAMPLES

- 14.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 14.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 14.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods delivered in execution of a contract.
- 14.4 If unsuccessful Respondent's samples are retained and Respondents require payment therefor, Transnet will make payment at the tendered price of the Goods. If it is not desired to retain such samples and Respondents require their return, Transnet will accept responsibility for their return to the Respondent's nearest station or siding in South Africa.
- 14.5 Transnet will not accept liability for samples furnished by Respondents on their own initiative. If Respondents desire such samples returned it will be at their own risk and cost.
- 14.6 Should it be necessary to submit a pre-production sample for approval by Transnet prior to the commencement of delivery of the Goods against any resulting contract, Respondents are to note that for the purpose of calculating penalties for late delivery [if applicable] in terms of a contractual provision, the actual contractual delivery date will be considered to be -
- a) the period offered by the successful Respondent to submit the pre-production sample calculated as from the 7th [seventh] day after the date of the letter of acceptance;  
PLUS
  - b) the period required by Transnet to approve the pre-production sample calculated as from the date of receipt thereof;  
PLUS
  - c) the period offered to effect delivery of the Goods calculated as from the date of approval of the pre-production sample by Transnet.

Suppliers will not be held responsible for late delivery of the Goods resulting from delays on the part of Transnet to approve the pre-production sample.

#### 15 CONTRACT DOCUMENTS

- 15.1 The contract documents will comprise these General Bid Conditions, the Standard Terms and Conditions of Contract [Form ST&C – Goods] and any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 15.2 These contract documents will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

## 16 SECURITIES

- 16.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a deed of suretyship [**Deed of Suretyship**] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 16.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 16.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 16.4 For the purpose of clause 16.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.
- 16.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 16 will be for the account of the Supplier.

## 17 PRICE AND DELIVERY BASIS FOR GOODS

- 17.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a delivered price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.
- 17.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:
- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
  - b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a DDP, delivered end destination RSA basis [Delivered, Duty Paid to named destination, ICC Incoterms 2010], unless otherwise specified in the Bid Price Schedule.
- 17.3 The Respondent must indicate that the quoted prices for imported supplies include costs for, *inter alia*, the following:
- handling and transport to port of export
  - forwarding charges
  - ocean freight

- marine insurance
- landing charges
- dock dues
- surcharges
- customs clearance including duties, agency and finance charges
- railage, where possible, otherwise road transportation from RSA port of discharge to final destination

Such rates are to be based on weights and dimensions calculated by the Respondent. In the event of such rates being exceeded by an increase in the actual weights and dimensions, Transnet shall not be liable to pay the Supplier the associated increase in costs.

- 17.4 The attention of Respondents is drawn to the fact that should Transnet's departmental railage account numbers be used in respect of "Delivered Prices", Transnet reserves the right to cancel such contract/order with immediate effect and enforce the conditions of clause 15 *[Rights on Cancellation]* of Form ST&C - Goods.

## **18 SHIPMENT OF IMPORTED GOODS BY TRANSNET**

- 18.1 Where the Bid's stipulated purchase terms indicate that shipping is to be arranged by the forwarding agent appointed by Transnet, shipping arrangements by Transnet's nominated forwarding agent shall be made direct with a shipping company to allow the Ocean Bill of Lading to be drawn in favour of Transnet, as consignee, or its designated official at a port of entry -

- a) it will be a condition that all Goods collected by or delivered to Transnet's nominated forwarding agent against any resulting contract/order must be accompanied by the foreign manufacturer's / supplier's commercial invoices [which must clearly reflect Transnet's contract / order number] and packing lists/specifications which are to be handed to Transnet's forwarding agent not later than 3 [three] days prior to the vessel's scheduled date of departure.

It is imperative that the above be strictly adhered to as Goods cannot be cleared by Transnet at a port of entry in South Africa without the required documentation. Any demurrage charges applicable to the Goods which may become payable due to late or non-submission of the aforementioned documentation will be for the Supplier's account.

## **19 EXPORT LICENCE**

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

## **20 QUALITY OF MATERIAL**

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

## **21 PRICES SUBJECT TO CONFIRMATION**

- 21.1 A Bid with prices which are subject to confirmation will not be considered.
- 21.2 Bids where firm prices are quoted for the duration of any resulting order and or contract will receive precedence over prices which are subject to adjustment.

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

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

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

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

## **24 VALUE-ADDED TAX**

- 24.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.
- 24.2 In respect of imported supplies, i.e. Goods to be imported from all sources where Transnet is responsible for the clearance of the supplies at the port of entry, VAT will be paid by Transnet upon arrival of the Goods in the Republic of South Africa.
- a) The invoicing by the Supplier on behalf of its foreign principal represents a supply made by the principal.
  - b) The Supplier's Tax Invoice(s) for the local portion only [i.e. the "commission" for the services rendered locally] must show the VAT separately.

## **25 TERMS AND CONDITIONS OF BID**

- 25.1 The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form ST&C - Goods, a copy of which is issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 25.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

## 26 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

### 26.1 Method of Payment

- a) The attention of the Respondent is directed to clause 8 [*Invoices and Payment*] of Form ST&C – Goods, which sets out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 26.1a) above. Failure to comply with clause 26.1a) above may preclude a Bid from further consideration.

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

### 26.2 Conditional Discount

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

## 27 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

### 27.1 Contract Quantities

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

## 27.2 Delivery Period

### a) Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of clause 13 [*Defective Goods*], 14 [*Total or Partial Failure to Perform the Scope of Supply*] and 15 [*Rights on Cancellation*] of Form ST&C – Goods.

### b) Progress Reports

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

### c) Emergency Demands as and when required

If, due to breakdowns, derailments, storm damage or similar unforeseen circumstances, supplies of the material covered by the Bid are required at short notice for immediate delivery, the Supplier will be given first right of refusal of such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. Clause 14 of Form ST&C – Goods [*Total or Partial Failure to Perform the Scope of Supply*] will not be applicable in these circumstances.

## 28 PACKING AND MARKING

### 28.1 Timber used for crating, packing and dunnage

Attention is directed to the Forest Act, 1968 [Act 72 of 1968], or any amendments thereto, or regulations promulgated in terms thereof.

### 28.2 Printing on container and packaging

Printing ["marks"] appearing on all containers and packaging of Goods shall be in English.

## 29 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

### 29.1 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier for the purpose of contract work shall be governed by the terms and conditions detailed in clause 22 of Form ST&T - Goods [*Intellectual Property Rights*].

### 29.2 Drawings and specifications

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

### 29.3 Respondent's drawings

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



#### 29.4 Foreign specifications

The Respondent quoting for Goods in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. If this condition is not complied with by the Respondent, the Bid may be disqualified.

### 30 VISITS TO FOREIGN COUNTRIES

- 30.1 Respondents must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or witness any tests on Goods at the premises of the preferred Respondent or its subcontractors overseas for the purpose of a product demonstration and/or final acceptance or for any other reason.
- 30.2 If the Respondent considers overseas visits to be necessary it must provide the following information in a covering letter in respect of each proposed visit:
- a) countries and places to be visited;
  - b) number of employees and disciplines involved;
  - c) number of man-days involved; and
  - d) motivation for the visit.
- 30.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.
- 30.4 Before a visit is undertaken, such as envisage in this clause 30, Transnet and the Respondent will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

### 31 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

- 31.1 Bids submitted by foreign principals may be forwarded direct by the principals to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents, or may be so forwarded on the principal's behalf by its South African representative or agent provided that written proof is submitted 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.
- 31.2 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.
- 31.3 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to



Transnet by the South African representative or agents authorising them to enter into and sign such contract.

- a) Such Power of Attorney must comply with Government Notice No. 1160 of 27 June 1930 [and any amendments thereto] - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic."
- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) On arrival within the Republic of South Africa this Power of Attorney is to be completed in terms of Section 8(2) of the Stamp Duties Act No. 77 of 1968, or any amendment thereof.
- d) 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.
- e) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in clause 26 [Addresses for Notices] of the Standard Conditions of Contract, Form ST&C - Goods.

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

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

31.5 The attention of the Respondent is directed to clause 16 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

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**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**Section 9 : STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE SUPPLY OF GOODS TO TRANSNET**

**Refer Form ST&C attached hereto.**

**Respondents should note the obligations as set out in  
clause 25 [Terms and Conditions of Bid]  
of the General Bid Conditions [RFP Section 8] which reads as follows:**

*"The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form ST&C – Goods, a copy of which is attached hereto. Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer alternatives. 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."*



**STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE SUPPLY OF GOODS TO TRANSNET**

**FORM ST&C - GOODS [March 2012]**

“PREVIEW COPY ONLY”

## 1 INTRODUCTION

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

## 2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements, the technical specifications for the Goods and such special conditions as shall apply to the Agreement, together with the General Bid Conditions and any additional provisions in the associated bid documents tendered by the Supplier [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
  - a) information relating to methods of operation, data and plans of the disclosing Party;
  - b) the contents of the Agreement;
  - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
  - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
  - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

terms] for the Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;

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

## 5 AUTHORITY OF PARTIES

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

## 6 DURATION AND CANCELLATION

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

## 7 GENERAL OBLIGATIONS OF THE SUPPLIER

- 7.1 The Supplier shall:
- a) respond promptly to all complaints and enquiries from Transnet;
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
  - c) conduct its business in a professional manner which will reflect positively upon the Supplier and the Supplier's products;
  - d) keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Goods and keep such records for at least 5 [five] years from the date of each such transaction;
  - e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods and ancillary Services and the conduct of the business and activities of the Supplier;
  - f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;

- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods or ancillary Services to Transnet.

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

## 8 INVOICES AND PAYMENT

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



and shall provide all information that Transnet reasonably requests in order to verify such compliance.

## **10 WARRANTIES**

The Supplier warrants that:

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

## **11 THIRD PARTY INDEMNITY**

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

## **12 INSPECTION**

- 12.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.
- 12.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of the Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- 12.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of the Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- 12.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of the Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- 12.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of the Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 12.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).

- 13.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

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

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

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

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

- 14.2 The Supplier shall thereupon, as soon as possible after such date, deliver to Transnet the Goods [if any] already completed, and payment for the part performance shall be made on a *pro rata* basis, provided the uncompleted part is not an integral or essential part of the completed Goods. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier will be calculated on the basis of Transnet's enrichment. The Supplier shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.

- 14.3 Whenever, in any case not covered by clause 14.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods as required by the terms of the Agreement or Purchase Order, or if any Goods are rejected on any of the grounds mentioned in clause 13 [Defective Goods], Transnet may cancel the Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

#### **15 RIGHTS ON CANCELLATION**

- 15.1 If the Agreement or Purchase Order is cancelled in whole or in part in terms of clause 14 [Total or Partial Failure to Perform the Scope of Supply], Transnet may execute or complete the Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's default.

- 15.2 Any amount which may be recoverable from the Supplier in terms of clause 15.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier.

hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended.

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

## 19 CONFIDENTIALITY

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

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information

insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier.

- 20.2 The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on request.
- 20.3 Notwithstanding clause 20.1 above, should Transnet require specific insurance cover(s) in respect of the Goods purchased, such further requirements shall be set out in the Schedule of Requirements, appended hereto as Schedule 1.

## 21 LIMITATION OF LIABILITY

- 21.1 The Supplier's liability under this clause 21 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to the Agreement.
- 21.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
  - b) fraud.
- 21.3 Neither Party accepts liability for damages and claims of a special, indirect or consequential nature arising as a result of the performance or non-performance of the Agreement, provided that such loss, damages or claims are not the direct result of the wilful acts or omissions and/or negligence or of any event which could reasonably have been foreseen and avoided on the part of the other Party. The phrase, "special, indirect or consequential" is deemed to include economic loss, loss of opportunity, loss of profit or revenue, and loss or damage in connection with claims against the principal by third parties.
- 21.4 Nothing in this clause 21 shall be taken as limiting the liability of the Parties in respect of clauses 19 [Confidentiality] and 22 [Intellectual Property Rights].

## 22 INTELLECTUAL PROPERTY RIGHTS

### 22.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Supplier's Background Intellectual Property shall remain vested in the Supplier.
- b) Transnet shall grant to the Supplier an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier to sub-license to other parties.
- c) The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.

attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

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

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

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

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

### **23 NON-WAIVER**

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

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

### **24 PARTIAL INVALIDITY**

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

### **25 DISPUTE RESOLUTION**

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



registered post on the date of dispatch of such facsimile, or, should no postal facilities be available on that date, on the next Business Day.

## **27 WHOLE AND ONLY AGREEMENT**

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

## **28 AMENDMENT AND CHANGE CONTROL**

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

## **29 GENERAL**

### **29.1 Governing Law**

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

### **29.2 Change of Law**

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

### **29.3 Counterparts**

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

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**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**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 bid 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.

*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 may lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]*



6. 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.
7. 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].*
8. 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 \_\_\_\_\_ 2012

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

**IMPORTANT NOTICE TO RESPONDENTS**

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

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**Section 11 : BREACH OF LAW**

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

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

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

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

NATURE OF BREACH:

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

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

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

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

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

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

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

## Section 12 : BID CLARIFICATION REQUEST FORM

RFP No: HOAC\_HO\_5872

RFP deadline for questions / bid clarifications: **Before 10:00 on 11 September 2012**

TO: Transnet Freight Rail SOC

ATTENTION: The Secretary, Transnet Freight Rail Acquisition Council

EMAIL [prudence.nkibindel@transnet.net](mailto:prudence.nkibindel@transnet.net) or [Buyisiwe.hlatshwayo@transnet.net](mailto:Buyisiwe.hlatshwayo@transnet.net)

DATE: \_\_\_\_\_

FROM: \_\_\_\_\_

RFP Bid Clarification No HOAC\_HO\_5872

## REQUEST FOR BID CLARIFICATION

ATTENTION: The Secretary, Transnet Freight Rail Acquisition Council

EMAIL: [prudence.nkibindel@transnet.net](mailto:prudence.nkibindel@transnet.net) or Buyisiwe.hlatshwayo@transnet.net

DATE: \_\_\_\_\_

FROM: \_\_\_\_\_

RFP Bid Clarification No HOAC\_HO\_5872

**REQUEST FOR BID CLARIFICATION**

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

Respondent's Signature

Date & Company Stamp

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND.**

**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 Procurement Procedures Manual [**PPM**];
- Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act [**PFMA**];
- The Broad Based Black Economic Empowerment Act [**B-BBEE**]; and
- The Prevention and Combating of Corrupt Activities Act.

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

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

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

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

- Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with and payments to our Suppliers.
- Employees must not accept or request money or anything of value, directly or indirectly, to:
  - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
  - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
  - gain an improper advantage.
- There may be times when a Supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].

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

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

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

- Generally, Suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our Suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
  - misrepresentation of their product [e.g. origin of manufacture, specifications, intellectual property rights];
  - collusion;
  - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
  - corrupt activities listed above; and
  - harassment, intimidation or other aggressive actions towards Transnet employees.
- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the Supplier is expected to participate in an honest and straight forward manner.
- Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

**Conflicts of Interest**

A conflict of interest arises when personal interests or activities influence [or appear to influence] the ability to act in the best interests of Transnet.

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

**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**Section 14 : CERTIFICATE OF ATTENDANCE AT THE RFP BRIEFING**

It is hereby certified that –

1. \_\_\_\_\_

2. \_\_\_\_\_

Representative(s) of \_\_\_\_\_ [name of entity]

attended the RFP briefing in respect of the proposed Goods to be supplied in terms of this RFP on  
\_\_\_\_\_ 2012

\_\_\_\_\_  
TRANSNET'S REPRESENTATIVE

\_\_\_\_\_  
RESPONDENT'S REPRESENTATIVE

DATE \_\_\_\_\_

DATE \_\_\_\_\_



**RFP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**SECTION 15: SPECIFICATIONS AND DRAWINGS**

**“PREVIEW COPY ONLY”**

# **Transnet**

## **Specification for precast level crossing blocks/ slab systems**

**07/06/2012**

**Compiled by**  
TRANSNET TRACK TECHNOLOGY  
(TTC)

This specification is the property of Transnet - Technology Management and may not be modified or altered in any way without prior authorization.

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“PREVIEW COPY ONLY”

## **1 Scope of document**

- 1.1 This specification covers the manufacturing and supply of reinforced concrete blocks/ slabs for use at level crossings.

## **2 Design and approval of level crossing blocks/ slabs**

- 2.1 This tenderer must design their own level crossing blocks/ slabs and level crossing layout from the typical level crossing setup. (Transnet drawing E849)
- 2.2 These blocks/ slabs must be designed to fit comfortably between rails and concrete sleepers. The blocks/ slabs must be able to fit on a track with sleepers that have a spacing of 650, 700 or 800 mm with 30, 48, 57 and 60 kg/m rail profiles. This may require the use of separate blocks for each type.
- 2.3 The level crossing blocks/ slabs must be of a size that will provide a stable surface for vehicles to drive over yet be small enough for easy handling. Any specialized handling/installation instructions must be clearly detailed in the drawings.
- 2.4 The blocks/ slabs between the two rails must be isolated and the isolation method and material must be clearly indicated and all details supplied in the drawings.
- 2.5 The concrete blocks/ slabs must be designed for a road wheel load of 40 kN with a 10% impact load.
- 2.6 If the size of the block/ slab is such that more than one wheel can be on the same block/ slab the design must allow for these additional wheels.
- 2.6 Tenderers must supply Transnet with the detailed design calculations of the concrete block/ slab and system upon submission of their tenders in order to be evaluated by Transnet.
- 2.7 All calculations and designs must be done in accordance of SABS 0100-1 the structural use of concrete, Part 1: Design.
- 2.8 All other elements to complete the design of the system (foundation blocks/ slabs, corner blocks etc.) must be clearly specified on the drawings.
- 2.9 All level crossing blocks/ slab systems that are not currently approved will have to undergo laboratory testing before installation of a test site in track. Due to the safety requirements and lengthy test period non approved systems will not be considered for the current contract.

## **3 Manufacturing**

- 3.1 The total and detailed measurements of each block/ slab must be within  $\pm 3$  mm of the measurements on the detailed drawings of the successful tenderer.
- 3.2 The top surface of the concrete must be brushed while concrete is still setting to provide a skid free surface for vehicles to drive over. Other methods of providing a skid free surface may also be used including patterns in the concrete (Corrugations etc.).

- 3.3 Any deforms or cracks in the blocks will result in the rejection of that block/ slab by Transnet's officials.

## **4 Concrete specification**

- 4.1 The concrete used for the manufacture of the level crossing blocks/ slabs must have a minimum compressive strength of 60 MPa after 28 days.
- 4.2 Tenderers must present a curing process which must be approved by Transnet's officials before manufacturing may commence.
- 4.3 Two sets of three 150 mm cubes must be cast for each day of production regardless of the number of blocks cast for that day. These sets must be taken at reasonable intervals during the manufacturing process.
- 4.4 The test result will be taken as the average between the compressive strength of the three cubes which has to be more than the minimum specified compressive strength of 60 MPa after 28 days with no cube strength less than 50 MPa.
- 4.5 If the average compressive strength of the three cubes is less than 60 MPa, a minimum of two blocks over and above than specified in clause 5.1 will be randomly selected and tested in accordance with the testing procedure in clause 5.2. The blocks for that day will then be approved or rejected based on the outcome of these tests.
- 4.6 The results of these cube tests must be available to Transnet to inspect.

## **5 Testing and quality assurance of level crossing blocks**

- 5.1 One block/ slab must be randomly chosen from each batch of 300 or part of a batch and tested by the contractor as specified in clause 5.2. The results from the testing must be sent to Transnet on a monthly basis for quality control. The test method for the quality control must be approved by Transnet and Transnet has the right to be present and select the blocks/ slabs for these tests.
- 5.2 Level crossing blocks/ slabs must be subjected to twice the design load of 44 kN over a surface area of 100 mm by 300 mm, which will be chosen by Transnet's officials, for a duration of 15 minutes without exceeding the maximum deflection of 1/40 of the unloaded span or cracking of the block/ slab. The specification of the support conditions must be provided along with the tender documents by the tenderer. More than one point load must be used if it is possible for more than one wheel to be on the block/ slab. The position of these multiple loads will be chosen by Transnet.
- 5.3 If any of these blocks/ slab fail the test as described in clause 5.2 two additional blocks/ slabs must be selected from the same batch and subjected to the identical test as performed on the initial block/ slab. If any one of these two blocks/ slabs also fails the test the Transnet official has the authority to reject the entire batch.
- 5.4 Transnet has the authority to select level crossing blocks/ slabs for additional testing at the Track Testing Centre (TTC) George Goch according to the method set out in 5.2. The tenderer must supply and delivery the blocks/ slabs selected by Transnet free of charge to the Track Testing Centre (TTC) in George Goch (Johannesburg).

The frequency and quantity is as follow:

- One of each type of block/ slab when the contract is awarded. (Start-up of manufacturing)
- One of each type of block/ slab for each period of six months that the contract is in place.

- 5.5 If a new level crossing system that is currently not approved is offered the following process will have to be followed by the tenderer to get approval before tendering on such a system. The supplier needs to submit all the relevant information as outline above including the design. Once the design is approved laboratory tests will be conducted on the first off samples. If the samples pass the laboratory tests this new system must be in track for a minimum of one year without and defects. The practicality and maintenance inputs on this level crossing will also be considered when making the final approval.

## **6 Packaging and delivery**

- 6.1 The blocks/ slabs must be stacked in layers and placed on the railway wagons. Each layer must be secured to the lower layer and placed on wooden supports appropriate for the weight but with a minimum cross sectional area of 40 mm by 20 mm. Adequate packaging material must be placed vertically between bocks/ slabs to prevent damage during transport

## **7 Warranty**

- 7.1 The manufacturer must provide a warranty on the blocks/ slabs against any defects as the result of faulty manufacturing, workmanship and the quality of material used for a period of 12 months after they have been supplied. If any defects are noted within the warranty period the defective blocks/ slabs must be replaced free of charge.

## **8 Branding**

- 8.1 All level crossing blocks/ slabs must be branded as listed below which must also be indicated on the tenderers drawings for approval by Transnet.

The following marks must be placed on the blocks:

- i. The name Transnet
- ii. The Transnet logo
- iii. The year and month of manufacturing
- iv. Manufacturer identification marks

- 8.2 These marks must all be recessed

**FP FOR THE SUPPLY OF  
CROSSING BLOCKS FOR A PERIOD OF 1 YEAR WITH AN OPTION TO EXTEND**

**Section 16 : NON-DISCLOSURE AGREEMENT [NDA]**

**Complete and sign the Non-Disclosure Agreement attached hereto**

**“PREVIEW COPY ONLY”**

Respondent's Signature

Date & Company Stamp



**NON-DISCLOSURE AGREEMENT**

entered into by and between

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

and

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

**RFX Number HOAC-H0-5872**

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Respondent's Signature

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Date & Company Stamp

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“PREVIEW COPY ONLY”

**THIS AGREEMENT is made between**

**Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/06]

whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

**and**

\_\_\_\_\_ **[the Company]** [Registration No \_\_\_\_\_]

whose registered office is at \_\_\_\_\_

**WHEREAS**

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

**IT IS HEREBY AGREED**

**1 INTERPRETATION**

In this Agreement:

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

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

## 2 CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement (the **Disclosing Party**) to the other party (the **Receiving Party**) will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- 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 2.3b) 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 3.3b) above.

### **4 ANNOUNCEMENTS**

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

### **5 DURATION**

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

### **6 PRINCIPAL**

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

## **7 ADEQUACY OF DAMAGES**

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

## **8 PRIVACY AND DATA PROTECTION**

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

## **9 GENERAL**

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

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**RFP FOR THE SUPPLY OF  
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**Section 17: FURTHER RECOGNITION CRITERIA [FRC]**

Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in Section 1, paragraph 5.1, in addition to such scoring, a further 10% [ten per cent] will be allocated to Respondents score based on the following "Further Recognition Criteria" on an ascending scale. This will be calculated based on the extent to which the Respondent commits to meet, sustain and/or exceed the minimum compliance targets with its proposed target score to be achieved during the contract period.

*Respondents are to insert their Further Recognition Criteria current and target compliance scores [i.e. not the % change but the end-state quantum expressed as a percentage] in the table below. This will indicate how you would intend to sustain or improve your FRC compliance rating over the contract period, which will represent a binding commitment to the successful Respondent.*

Further Recognition Criteria				
Ownership Indicator	Required Responses	Compliance Target	Current Scores (%)	Future Scores (%)
<b>A Ownership :</b>				
1. The percentage of the business owned by Black <sup>1</sup> persons.	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation will be sustained or increased over the contract period.</i>	Points will be allocated for any score >50% to 100%, on a sliding scale		
2. The percentage of your business owned by Black women.	<i>Provide a commitment based on the extent to which ownership in the hands of black women as a percentage of total ownership of the organisation will be sustained or increased over the contract period.</i>	Points will be allocated for any score >30% to 100%, on a sliding scale		
Management Control Indicator	Required Responses	Compliance Target	Current Scores (%)	Future Scores (%)
<b>B Board Participation :</b>				
1. The percentage of Black Board members in relation to the total number of Board members.	<i>Provide a commitment based on the extent to which the number of Black Board members, as a percentage of the total Board, will be sustained or increased over the contract period.</i>	Points will be allocated for any score >50% to 100%, on a sliding scale		

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



<b>C Management :</b>				
1. The percentage of Black Senior Top Management involved in day to day management of the organisation, in relation to the total Top Management cadre.	<i>Provide the percentage of Blacks that will be appointed or retained by the Board and will be operationally involved in the day to day <b>Top management</b> of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of <b>overall strategy</b>, over the contract period.</i>	Points will be allocated for any score >40% to 100%, on a sliding scale		
2. The percentage of Black Middle Management involved in day to day management of the organisation, in relation to the total Middle Management cadre.	<i>Provide the percentage of Blacks that will be retained or appointed by the organisation in the middle management cadre and will be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation, over the contract period.</i>	Points will be allocated for any score >63% to 100%, on a sliding scale		
3. The percentage of Black Junior Management involved in day to day management of the organisation, in relation to the total Junior Management cadre.	<i>Provide the percentage of Blacks that will be retained or appointed by the organisation in the junior management cadre and will be operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a supervisory role with regards to the day to day management of the organisation, over the contract period.</i>	Points will be allocated for any score >68% to 100%, on a sliding scale		
<b>Employment Equity Indicator</b>	<b>Required Responses</b>	<b>Compliance Target</b>	<b>Current Scores (%)</b>	<b>Future Scores (%)</b>
<b>D. Employment Equity :</b>				
1. The percentage of Black disabled employees in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all employees in the organisation, will be sustained or increased over the contract period.</i>	Points will be allocated for any score >2% to 10%, on a sliding scale		
2. The percentage of Black employees as a percentage of the total workforce i.e. of all employees in the organisation.	<i>Provide a commitment based on the extent to which the number of Black employees will be sustained or increased as a percentage of the organisation's total workforce, over the contract period.</i>	Points will be allocated for any score >65% to 100%, on a sliding scale		
3. The percentage of Black women employees as a percentage of the total workforce.	<i>Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, or sustained over the contract period.</i>	Points will be allocated for any score >40% to 100%, on a sliding scale		
<b>Enterprise Development Indicator</b>	<b>Required Responses</b>	<b>Compliance Target</b>	<b>Current Scores (%)</b>	<b>Future Scores (%)</b>
<b>E. Enterprise Development :</b>				
1. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax [NPAT]	<i>Provide a commitment based on the retention or increase in your organisation's annual spend on Enterprise Development initiatives as a percentage of its Net Profit after Tax, over the contract period.</i>	Points will be allocated for any score >3% of NPAT, on a sliding scale		

Preferential Procurement Indicator	Required Responses	Compliance Target	Current Scores (%)	Future Scores (%)
<b>F. Preferential Procurement:</b>				
1. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend will be sustained or increased over the contract period.</i>	Score will be allocated for any score >50% to 100%, on a sliding scale		

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**RFP FOR THE SUPPLY OF  
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**Section 18 : SUPPLIER DEVELOPMENT INITIATIVES**

**1.1 Aim and Objectives**

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

The key focuses of the NGP include:

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

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

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

**1.2 Supplier Development [SD]**

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

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

[**IC<sup>3</sup> Matrix**]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC<sup>3</sup> Matrix. This RFP has been identified as **strategic**, involving high commercial leverage and high value. Transnet's expectation is that a minimum SD target of 40% [sixty per cent] of the Respondent's tendered value is offered as part of its SD initiatives to be submitted [the SD Bid Document].

Accordingly, Transnet requests all Respondents to submit a **Supplier Development Bid Document** demonstrating their commitment and support for the New Growth Path Policy and how an appointment in terms of this RFP would assist in achieving the NGP objectives.

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

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

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

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

Notes for completion of SD Bid Document:

- (i) Respondents are urged to pay careful attention to the compilation of the SD Bid Document [including Annexures C and D] since this will form an essential component of the evaluation of your Proposal.

- (ii) Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.
- (iii) Please provide detailed calculations to illustrate how your estimated Rand values provided in Annexures C and D have been derived.
- (iv) Respondents are required to provide an electronic copy [CD] of the completed Annexures C and D as part of the SD Bid Document submission.

### 1.3 Additional contractual requirements

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

- a) The Supplier will be required to submit a Supplier Development Plan within 45 [forty-five] days from the signature date of a Letter of Intent [LOI]. This SD Plan represents additional detail in relation to the SD Bid Document providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the SD Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.
- b) The SD Plan may require certain additions or updates to the initial SD Bid Document in order to ensure that Transnet is satisfied that development objectives will be met.
- c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.
- d) The Supplier will be required to provide:
  - (i) monthly status updates to Transnet for each SD initiative. [Detailed requirements will be provided by Transnet];
  - (ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and
  - (iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.
- e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.
- f) The Supplier will be required to submit this SD Plan to Transnet in writing, within 45 [forty-five] days after signature of a Letter of Intent [LOI], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its SD Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.
- g) The contract will be conditional on agreement being reached by the parties on the SD Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the SD Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.

- h) Failure to adhere to the milestones and targets defined in an SD Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, which shall equate to the monetary value of any such SD initiative which the Supplier fails to deliver, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

#### 1.4 Supplier Development Documentation

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

Attached herewith is the following documentation:

- **SD Guideline Document – Annexure B**

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

- **SD Value Summary – Annexure C**

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

***Failure to submit, or to submit an incomplete Supplier Development Bid Document, which includes all the required Annexures as indicated in this Section, will potentially result in disqualification of your Proposal.***