



Transnet Freight Rail, a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ]

RFQ NUMBER: CRAC KGG 22722

FOR THE SUPPLY/PROVISION OF: CUTTING OF INVASIVE TREES AND BUSHES TO A MAXIMUM HEIGHT OF 300MM AND THE TREATMENT OF TREES STUMP WITH AN APPROVED HERBICIDES FROM RANDFONTEIN TO KLERKSDORP WITHIN THE RAIL RESERVED UNDER THE DEPOT ENGINEER, KRUGERSDORP

DELIVERY TO: RANDFONTEIN TO KLERKSDORP

ISSUE DATE	:	01 December 2016
COMPULSORY BRIEFING SESSION	:	07 December 2016
CLOSING DATE	:	13 December 2016
CLOSING TIME	:	10h00
Briefing Session (Compulsory)	:	Venue & Time
		Transnet Freight Rail, Infra Building
		No.1 Station Street, Millsite Depot
		Krugersdorp
		(Time: 10h00) AM

For directions to the briefing session contact: Mr. Matsheni Fakude on 0839988167 or Ms Sonto Yende on 0835017534

**BRING YOUR SAFETY BOOTS, REFLECTOR VEST & A VALID TENDER DOCUMENT
FAILURE TO FOLLOW REQUIREMENT WILL LEAD TO BIDDER NOT ALLOWED TO BID**

As a general rule, Transnet may also not award business to any bidder not registered on the CSD. All prospective supplier wanting to conduct business with organs of state are required to register on the CDS by accessing www.csd.go.za



Section 1
NOTICE TO BIDDERS

1 Invitation to bid

DESCRIPTION	Cutting of invasive trees and bushes to a maximum height of 300mm and the treatment of trees stump with an approved herbicides from Randfontein to Klerksdorp within the rail reserved under the depot engineer, Krugersdorp.
BID FEE AND BANKING DETAILS	R250.00 [inclusive of VAT] per set. Payment is to be made as follows: Account Name : Transnet Freight Rail Account : Standard Bank Account number : 203158598 Branch code : 004805 NOTE – This amount is not refundable. A receipt for such payment made must be presented when collecting the RFP documents and submitted thereafter with your Proposal.
INSPECT / COLLECT DOCUMENTS FROM	This bid may be downloaded free of charge directly from the Transnet Freight Rail tender website at; http://www.transnetfreightrail-tfr.net/Supplier/Pages/Tenders.aspx Alternatively, this RFQ may be purchased at R250 [inclusive of VAT] per set for those Bidders that require a copy from Transnet rather than downloading from the website. If a copy of the tender document is required, prior arrangements must be made one (1) day in advance and the tender document may be collected between 09:00 and 15:00 from 01 December 2016 until 06 December 2016 This RFQ may be picked up from the following address: RECEPTION, TENDER ADVICE CENTRE, INYANDA HOUSE 1, GROUND FLOOR, 21 WELLINGTON ROAD, PARKTOWN, JOHANNESBURG
COMPULSORY	A compulsory/ site meeting and RFQ briefing will be conducted at TFR, Infra Building, Millsite Depot, Krugersdorp on the 07th December 2016 , at 10H00 for a period of ± 2hours. [Respondents to provide own transportation and accommodation]. The briefing session will start punctually and information will not be repeated for the benefit of Respondents arriving late. 1.1 <i>A Certificate of Attendance set out in Section 4 hereto must be completed and submitted with your Proposal as proof of attendance is required for a compulsory site meeting and/or RFP briefing.</i> 1.2 Respondents failing to attend the compulsory site meeting and/or RFP briefing will be disqualified.
CLOSING DATE	12:00 on Tuesday 13 December 2016 This tender shall close punctually at the following address: The Chairperson, Transnet Freight Rail Acquisition Council, Inyanda House 1, 21 Wellington Rd, Parktown, JOHANNESBURG, 2001. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.



VALIDITY PERIOD	<p>90 Business Days from Closing Date. End of validity period: 07 March 2016 Bidders are to note that they may be requested to extend the validity period of their bid, on the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.</p>
SPECIAL CONDITIONS	<p>Bidders are to note that this bid may also be downloaded directly from the Transnet Freight Rail tender website free of charge. If Bidders intend to download the bid off the Portal, they are required to indicate their intention to respond to this bid by 06 December 2016 by sending an email with their contact details to the following address: Anthonie.Erasmus@transnet.net. This is to ensure that any required communication (e.g. addenda to the bid) in relation to this bid reaches those intending to respond.</p> <p>Transnet will not be held liable if Bidders do not respond by this date and do not receive the latest information regarding this Bid as a result thereof.</p>

METHOD: [email / post and/or courier]

CLOSING VENUE: The Secretary Acquisition Council
 Transnet Freight Rail , Ground Floor
 Tender Box, Inyanda House 1
 21 Wellington Road, Parktown, Johannesburg, 2001

2 Responses to RFQ

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

3 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. As explained in more detail in the B-BBEE Claim Form (Section 6), Transnet will award preference points to companies who provide proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

The value of this bid is estimated to be below R1 000 000 (all applicable taxes included) and therefore the **80/20** system shall be applicable.

Respondents are required to complete Section 6 and submit it together with valid proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

Respondents are required at all times to comply with the latest B-BBEE legislation and/or instruction notes as issued from time to time by the DTI.

 Respondent's Signature

 Date & Company Stamp



Note: Failure to submit valid and original (or certified copy of) proof of the Respondent's compliance with the B-BBEE requirements stipulated in Section 6 of this RFQ (the B-BBEE Preference Points Claim Form) at the Closing Date of this RFQ, will result in a score of zero being allocated for B-BBEE.

4 Communication

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

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

Name: Samantha Mgwatyu Email: Samantha.mgwatyu@transnet.net
Telephone: 011 584 0738

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

Telephone 011-584-0821 Email: lolo.sokhela@transnet.net or
Thuli.mathebula@transnet.net

5 Legal Compliance

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

6 Changes to Quotations

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

7 Pricing

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

8 Prices Subject to Confirmation

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

9 Binding Offer

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



10 Disclaimers

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

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation or an alternative bid;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- make no award at all;
- validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- request audited financial statements or other documentation for the purposes of a due diligence exercise; and/or

not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provides for it.

Should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract and/or place the Respondent on Transnet's list of Restricted Suppliers.

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

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 RFQ document. In the event of any Respondent being notified of such short-listed/preferred bidder status, his bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.

Should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so, Transnet reserves the right to award the business to the next highest ranked bidder, provided that he/she is still prepared to provide the required goods at the quoted price.



Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to advise whether they would still be prepared to provide the required goods at their quoted price, even after they have been issued with a Letter of Regret.

Respondent's Signature

Date & Company Stamp



Section 2

**TRANSNET FREIGHT RAIL
A DIVISION OF TRANSNET**

SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATION

CUTTING OF INVASIVE TREES AND BUSHES TO A MAXIMUM HEIGHT OF 300MM AND THE TREATMENT OF TREE STUMP WITH AN APPROVED HERBICIDES FROM KRUGERSDORP TO KOSTER WITHIN THE RAIL RESERVED UNDER THE DEPOT ENGINEER KRUGERSDORP

PART A – GENERAL

PART B – PROJECT SPECIFICATION

Respondent's Signature

Date & Company Stamp



11 SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS

12 A. GENERAL

13 A1 SCOPE OF WORK

This contract covers the cutting of invasive trees and bushes to a maximum height of 300 mm and the treatment of tree stump with approved herbicides from Krugersdorp to Koster within the rail reserved by means of portable and/or other approved equipment or methods on Transnet property. This work is to be done at Krugersdorp lines in the geographical area controlled by the Depot Engineer, Krugersdorp, to the extent that vegetation treated chemically or otherwise in terms of this contract is kept under control, as defined, for the period specified herein.

The performance due by the Contractor shall include any work arising from or incidental to the above or required of the Contractor for the proper completion of the contract in accordance with the true meaning and intent of the contract documents.

The Contractor shall obtain his/her own information regarding species, occurrence and extent of vegetation to be controlled in order to comply with the required standards.

14 A2 SUFFICIENCY OF TENDER

A2.1 The contract will only be awarded to a tenderer who **has experience in the fields of vegetation control, industrial herbicide application, and the felling of tall and problematic trees in Southern Africa**. Documentation supporting claims of competency must be provided and will be used in the evaluation of the tender. A statement of similar works successfully carried out by the tenderer (E.4C) is to be included in the tender documents.

A2.2 Consideration will also only be given to tenderers who have suitable and sufficient equipment for this type of work and expertise in the use thereof. Such equipment should, inter alia, at least include extension ladders (extendable to 10.7 metre), block and tackles, cherry picker (or access thereto), Brush cutters, Chain saws, etc.

A2.3 A Site Inspection Certificate (E4A) signed by the Technical Officer or his/her deputy (compulsory) must be submitted with the tender. The submission thereof will be deemed to indicate the Contractor's acquaintance with the occurrence and extent of species of vegetation to be controlled and all aspects that will and/or may affect such control and costs thereof.

A3 DURATION OF CONTRACT

The work provides for the control of vegetation for a period of 3 Months commencing on the date of notification of acceptance of tender with Transnet Freight rail.



A4 COMPLIANCE WITH STATUTES

A4.1 The Contractor shall comply with all applicable legislation, Codes of Practice and Local, Regional or Provincial Authority regulations. The Contractor shall in particular, comply with the following Acts;

- a) The Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act 36 of 1947) as amended.
- b) The Hazardous Substance Act (Act 15 of 1973) as amended.
- c) The Water Act (Act 54 of 1956) and the Water Amendment Act (Act 96 of 1984)(where applicable).
- d) The Environmental Conservation Act (Act 73 of 1989).
- e) SABS Code of Practice No. 0206-1985 "Safety procedures for the disposal of surplus pesticide and associated toxic waste".
- f) Conservation of Agricultural resources Act (Act 43 of 1983) as amended.
- g) Common law of nuisance.
- h) Mountain Catchment Area Act (Act 63 of 1970).
- i) The compensation for Occupational Injuries and Diseases Act (Act 130 of 1993).
- j) The Occupational Health and Safety Act (Act 85 of 1993)
- k) The National Veld and Fire Act, Act 101 of 1998

A4.2 Where herbicide is to be used the Contractor shall ensure that this work be done in the presence and under the supervision of a **Pest Control Operator**, specialising in the field of industrial weed control. The Pest Control Operator must be registered in terms of the Farm Feeds Agricultural and Stock Remedies Act, Act 36 of 1947, as amended.

A5 RETENTION MONEY

Retention money (see clauses 27.2 and 27.3 of the E.5 (MW)) will not be deducted from payments.

A6 TO BE PROVIDED BY TRANSNET FREIGHT RAIL

The following material, equipment and services will be provided free of charge by Transnet freight rail where required:

- A6.1.1 Water as required from Transnet's existing points of supply; such water may be untreated, chemically treated or borehole water. The Contractor shall be responsible for all work and equipment needed to fill the water trucks or spray units from the water point provided and to ensure that the water is suitable for its intended use.
- A6.1.2 Inspections of the areas of work by motor trolley may be arranged with the Technical Officer or his/her deputy, but will have to coincide with normal track inspections carried out by the inspection/technical staff of the Depot. The Technical Officer or his/her deputy shall be given timeous notice (4 calendar weeks) of the Contractor's intention to inspect.

A7 TO BE PROVIDED BY THE CONTRACTOR

A7.1 In addition to all labour materials, plant, equipment and incidentals needed to complete the work, the Contractor shall provide all accommodation and toilet facilities for his/her employees.



- A7.2 The Contractor shall provide safe and secure storage facilities for all herbicides or chemicals brought onto and in use on the site. Such facilities shall be capable of ensuring that unauthorised persons or animals cannot gain access to such chemicals.

The Contractor shall provide at his/her own cost any security measures he/she may deem necessary for safe and effective execution of the work within the contract area.

- A7.3 The Contractor shall appoint at each work site personnel whose sole task shall be to be on the lookout for approaching rail traffic. These employees shall operate an audible warning device or flag man to timeously warn all people on the work site of approaching rail traffic.

An effective safety procedure to be followed by all personnel on any work site in the case of approaching rail traffic shall be compiled by the Contractor and implemented before any work commences. The procedure shall be updated whenever the need arises and any changes shall be communicated to all employees on a work site before work proceeds.

The personnel of the contractor shall at all time during bush and tree felling operations wear reflective safety jackets. These reflective jackets must either be yellow or light green or preferably bear the name of the contractor's company. Should the contractor wish to use another colour this must first be clear with the Technical Officer or his/her deputy?

The Contractor shall make available employees to be trained, certificated and used as lookouts when required. The training shall be done at no charge to the Contractor.

A8 SCHEDULE OF QUANTITIES AND PRICES

- A8.1 The quantities in the Schedule of Prices are estimated and may be more or less than stated. The Contractor shall submit with his/her tender a complete and detailed priced Schedule (prepared in ink) for the Works.
- A8.2 The Tenderer shall price each item. If the Contractor has omitted to price any items in the Schedule, the cost of the work included in such items will be held to be spread over and included in the prices given in the other items of work.

The absence of stated quantities in the Schedule is no guarantee that none will be required. Reasonable prices should therefore be inserted for every item as these prices may be considered in adjudication of tenders.

- A8.3 The short descriptions of the items in the Schedule are for identification purposes only. The Transnet E5 (MW) General Conditions of Contract together with the Special Conditions of Contract and Specifications shall be read in conjunction with the Schedule. In so far as these documents have any bearing, they shall be referred to for details of the description, quality, and test of plant and material used, and the workmanship, conditions, obligations, liabilities and instructions generally which shall be complied with in carrying out the Contract. The cost of complying with all conditions, obligations and liabilities described in the contract documents including profit, shall be deemed to be included in the rates quoted by the Contractor in the Schedule of Prices.

**A9 CONTRACT PRICE AND ADJUSTMENT FACTOR**

No contract price adjustment will be applicable in this contract. Any price increase due to escalation will be for the Contractor's account and any price decrease will be to his/her benefit.

A10 VALUE-ADDED TAX

Value-added tax in terms of the Value-added Tax Act No. 89 of 1991 should not be included in the tendered rates. Provision is made in the Schedule of Prices for the lump addition of Value-added Tax.

A11 SITE MEETINGS

The Contractor shall attend site meetings when required. These meetings will be held under the chairmanship of the Technical Officer or his/her deputy. When sub-contractors are required to attend, the Contractor shall ensure their attendance.

A12 SITE BOOKS

A12.1 The Contractor shall provide a site instruction book and a daily diary at the site as directed by the Technical Officer for the duration of the contract.

A12.2 The site instruction book shall only be used by the Technical Officer or his/her deputy and will be used for the issuing of instructions to the Contractor.

A12.3 The Contractor shall complete the daily diary and a detailed description of the work done shall be recorded on a daily basis. Neither of the books shall be removed from the site without the permission of the Technical Officer or his/her deputy.

A13 INFORMATION TO BE PROVIDED WITH TENDER

The Tenderer shall submit the following information at the time of tendering:

A13.1 Full description of the plant and methods of control to be used by him/her for all aspects of the work required to ensure performance as specified.

A13.2 Whether the tenderer intends to work on Saturdays, Sundays or statutory holidays or is prepared to work on such days if required to do so by Transnet Freight Rail.

A13.3 Proof of inspection of all sites on the enclosed Site Inspection Certificate.

A13.4 The Schedule of Prices must be completed in full.

A13.5 A completed Schedule of Plant (E.4D) and an undertaking that all equipment will be ready for operation and that the work can commence timeously, to comply with requirements of the contract.



- A13.6 A list of registered herbicides to be used in the work, supported by specimen labels, indicating:
Trade name
Generic name
Registration Number
Ingredients (type and content) as shown on the label
Application rates

Where herbicides are to be used for stump treatment it is required that a suitable colourant be added to the herbicide or that a herbicide containing a colourant be used. Detail of the colourants, and with which products they are to be used, must be provided.

The Technical Officer or his/her deputy's approval shall first be obtained for use of other herbicides.

- A13.7 A description of the methods to be used for controlling the vegetation must be provided. Where herbicides are to be used the description and rate of application of chemicals, design mixtures, the precautions to be taken to prevent damage of adjacent vegetation, and any other relevant information must be given.

The methods of vegetation control, description and rates of herbicidal application submitted shall serve as the minimum basis for estimating performance and vegetation control by the Contractor.

The Contractor shall not depart from the methods of vegetation control or minimum herbicide usage tendered, without approval from the Technical Officer or his/her deputy.

- A13.8 **A copy of the certificate issued by the Department of Agriculture to certify that the tenderer or his/her representative is a pest control operator in terms of Act 36 of 1947, as stipulated under clause A4.2, must be submitted.**

- A13.9 The contractor must indicate whether he/she intends using sub-contractors. No sub-contractors will be allowed on site without the prior permission of the Technical Officer (see clause para 2.1 and 2.2 of E5 (MW))

15 A14 PENALTIES FOR LATE COMPLETION

The provisions pertaining to "penalties for late completion" stipulated in the Transnet E5 (MW) General Conditions of Contract shall not apply to this contract.



B. PROJECT SPECIFICATION

B1 SCOPE

B1.1 B1.1 This contract covers the cutting of Invasive trees and bushes to a maximum height of 300 mm and the treatment of tree stump with an approved herbicides from Krugersdorp to Koster within the rail reserved by means of portable and/or other approved equipment or methods on Transnet property. This work is to be done at Krugersdorp lines in the geographical area controlled by the Depot Engineer, Krugersdorp, to the extent that vegetation treated chemically or otherwise in terms of this contract is kept under control, as defined, for the period specified herein.

B1.2 **Certain protected plant species and desirable plants are not to be controlled or removed and this plant material will be identified by the Technical Officer or his/her deputy) prior to the start of the Contractor's program.**

B1.3 This part covers the techniques, types and use of spraying equipment, required standards of workmanship, inspections, measurement, payment, and acceptability of the works in respect of the control of vegetation required in terms of the contract.

B1.4 The essence of the contract is that Transnet requires vegetation to be brought under control and maintained at a certain standard as specified, for the duration of the contract period.

NB. Please note that the areas are estimated, they can be more or less than stated.

B1.5 The ways and means by which the above-mentioned results are obtained are the responsibility of the Contractor. Transnet Freight Rail, however, shall have the right to monitor the materials and activities of the Contractor to ascertain that all procedures and herbicidal applications are in accordance with his/her tender, the relevant legislation and are conducive to the achievement of long term control of vegetation. Such right of monitoring shall be entirely without prejudice to Transnet Freight Rail and shall in no way relieve the Contractor of his/her responsibility for satisfactory control of vegetation.

B1.6 Failure to comply with the minimum performance proposed by the Contractor in his/her tender may form the basis for non-payment for work done, pending the achievement of control as defined and/or termination or cancellation of the contract.

B2 DEFINITIONS

B2.1 CONTROL

Control is achieved when;

- Woody and certain plant material, i.e. trees, bush, declared weed, declared invader plants and reeds, has been cut back to a height of 0.3 meter and that the
-
- remaining stumps and growth cease to exist as living organisms or entities (killed),
- No new growth, such as seedlings or saplings, of woody plant material and reeds, of any height, occur,
- Plant material, other than woody plant material and reeds stipulated above, remains alive,



- All cut, dead or dry remains of any vegetation within the treated area and on cuttings are completely removed from Transnet property, to sites designated for dumping,
- All branches of plants, outside the area to be controlled, which protrude or hang over into the area to be controlled, are removed.

B2.1.1 Control constitutes a process or situation where the control of vegetation on treated areas occurs on an ***on-going basis*** and not only at the time of measurement and payment inspections.

B2.1.2 Declared weeds means category 1 plants and declared invader plants means category 2 and 3 plants proclaimed under the Conservation of Agricultural Resources Act, Act No. 43 of 1983, including amendments (GN Regulation 1048 of 25/05/1984 amended by GN Regulation 280 of 30/03/2001) thereto.

B 2.2 WORK AREA

The area to be controlled consists of a strip of 5 meter wide along sections on either side of the railway line(s) specified in paragraph B1.1 unless otherwise stipulated by the Technical Officer or his/her deputy. These strips will run parallel to the railway line(s). The starting distance of the inner dimensions of these strips, i.e. closest to the railway line, will be 3 meter measured from the center of the closest railway line. See sketch (Annexure 1). On yards it is the area parallel to the outermost rail and measured 8 meter from the centerline of the outermost rail, or as otherwise stipulated by the Technical Officer.

The contractor must cut 5 meter on both sides or one side of the lines starting From the end of the ballast, e.g. see on the schedule of quantities (L-Means on the left And R –Means on the right of the railway line).

For the purpose of this contract the work will be measured either in square metre or individually as stipulated in the Schedule of Prices. The work to be done will be subdivided into sections as stipulated in the Schedule of Prices.

Transnet Freight Rail may conclude one or more contracts as a result of this tender.

B 2.3 MODERATE TO DENSELY POPULATED GROWTH (GROUP A)

Group "A" is vegetation growth that is moderate to heavily dense and is not practical to count the individual trees or bushes for the purpose of this tender.

This Group (A) will be measured in square meters (m²) as indicated in the schedule of quantities.

B 2.4 INDIVIDUAL TREES (GROUP B)

Individual trees which for this contract are quantifiable into individual trees and classified according to girth in into classes, indicated in the schedule of quantities.

B 2.5 TECHNICAL OFFICER OR HIS/HER DEPUTY

The Technical Officer pertaining to this tender will be the Junior Manager (Technical Support) of the Infrastructure Maintenance Depot, Nelspruit, and his/her deputy would be a person he/she has delegated the responsibility to in his/her absence.

**B 2.6 ELECTRICAL OFFICER OR HIS/HER DEPUTY**

The Electrical Officer pertaining to this tender will be the Engineering Technician (Electrical department) of the Infrastructure Maintenance Depot, Nelspruit.

B3 METHOD OF VEGETATION CONTROL

B3.1 The Contractor's methods and program shall provide rapid and effective control in all areas. Techniques, programming and chemicals employed shall therefore be directed at this aim.

The Contractor shall carry out immediate action to control growth in all instances where rapid and effective control is not achieved during any period of the contract.

B3.2 Plant material, other than woody material and reeds stipulated in clause B2.1, such as grasses and herbaceous plants are to remain alive to prevent soil erosion.

B3.3 Burning and hoeing ("Scaffing"), of plant material will not be allowed as a method of control. Herbicides, which act as a scorching agent (e.g. with Paraquat or similar active ingredients) shall not be used.

B3.4 Any deviation from the method of work submitted as per clause A13.1 by the Contractor shall be subject to the approval of the Technical Officer.

B3.5 Where plant material, stipulated in clause B1.2 and B3.2, is severely damaged or destroyed due to negligence on the part of the Contractor, the Contractor shall be held responsible for the full reinstatement thereof.

B4 STANDARDS OF WORKMANSHIP

B4.1 Plant material, other than woody plant material and reeds, must be alive.

B4.1.2 Cut woody plant material, i.e. trees, bush, declared weed and plant invaders, as well as reeds must cease to exist.

B4.1.3 There must be no cut, dead, or dry remains of any vegetation within the treated area. In instances where the Contractor is allowed to stack vegetative material elsewhere in the rail reserve, this material will be neatly stacked according to the requirements of the Technical Officer or his/her deputy. Branches of bushes and trees must be cut in sections of one meter or less before stacking.

B4.2 OVERALL CONTROL

B4.2.1 The overall standard of control to be achieved by the Contractor over the contract area, defined as "Overall Control" and expressed as a percentage, will be determined by application of the following formula;



$$\text{Overall Control} = \frac{(\text{SquareMetre} / \text{Trees controlled} - \text{SquareMetre} / \text{Trees rejected})}{\text{SquareMetre} / \text{Trees controlled}} \times 100$$

B4.2.2 The minimum percentage of the total work that shall comply with the standard of control, shall be 80%. This measurement will be applicable for each inspection carried out during the term of the contract.

B4.2.3 Failure by the Contractor to achieve the standard of "Overall Control" shall enable the Project Manager to terminate the Contract in terms of Clause 33 of the Transnet E5 (MW) General Conditions of Contract.

B5 PROGRAMME OF WORK

B5.1 The Contractor shall undertake the planning and programming of the entire vegetation control operation and shall submit to the Technical Officer for approval full particulars thereof within 1 week from the date of notification by Transnet Freight Rail.

B5.1.1 Transnet Freight Rail requires that the initial works be completed within **1 month** from the date of notification by Transnet Freight Rail.

B5.2 The particulars to be provided in respect of the Contractor's vegetation control program shall include but not be limited to the following:

B5.2.1 An assessment, based on a proper site investigation of the nature and types of vegetation to be controlled in the contract area,

B5.2.2 The appropriate methods and procedures to be implemented by him/her to achieve the standards of vegetation control required in terms of the contract,

B5.2.3 The chemicals to be applied, design mixes, rates of application and the timing and number of applications.

B5.2.4 The methods and procedures to be implemented in mixing of chemicals pertaining to health and safety, quality control, protection of third parties and security,

B5.3 The Contractor shall conduct regular site investigations and monitoring procedures for the purpose of:

- ascertaining factors that could influence the work;
- monitoring the standard of vegetation control achieved;
- identifying any damage or hazards which may have been caused by the vegetation control operation, and
- planning of timeous execution of remedial work where control is not being achieved.



B5.4 In addition to the annual program provided for in terms of B5.1, the Contractor shall submit daily working programs to the Technical Officer, 7 days in advance of the next working week, indicating the specific areas where the Contractor will be working each day of the week. Failure by the Contractor to submit a daily program and/or deviating from it without notifying the Technical Officer, preventing him/her from monitoring the Contractor's performance, may result in payment for such work being withheld.

B6 PERFORMANCE MONITORING AND EVALUATION

B6.1 The Contractor shall at all times be responsible for supervision of the work and for follow-up inspections to monitor the successful control achieved over areas of completed application. He/she shall immediately take appropriate remedial action in areas where the specified standards of control are not achieved.

B6.2 The Technical Officer or his/her deputy shall at any time during the operation carry out inspections of the Contractor's performance methods and procedures. He/she may at any time take samples of the chemicals applied and arrange for the testing thereof. Where test-samples fail to conform to the specifications the costs of testing will be recovered from the Contractor. The Technical Officer may order the Contractor to retreat entire sections where such chemicals were applied.

B6.3 The Technical Officer or his/her deputy shall, during the contract period, carry out two official inspections of the work for the purpose of measuring progress and evaluating whether control, as defined, has been achieved.

The Technical Officer or his/her deputy will inform the Contractor 5 days in advance of the program of these inspections and will arrange the transport such, that adequate space and time is available for the purpose of the inspection.

The inspections shall be performed visually and the Contractor shall be present or forfeit his/her right to dispute the measurements and evaluation of the Technical Officer or his/her deputy.

B6.3.1 The first inspection will take place at or within **1 week** after completion of the Contractor's initial program and at which time control as described in B2.1 shall have been achieved.

B6.3.2 The second and final inspection will take place at or within 3 weeks after from the date of completion the initial cut, and will be evaluated on the specified level of control as described in B2.1.

B6.3.3 **They will be only two official inspections and one payment.**

B6.3.4 During each of these inspections the area treated will be measured and evaluated. Any area, measured in square meter, which does not comply with the specified level of control, will be recorded as rejected work.

B6.4 The rejection of work that does not comply with the standard of control will be final and valid for that inspection.

The Contractor may contest the rejection by the Technical Officer or his/her deputy **only** at the time and place of rejection.



The rejection of work at a particular inspection shall remain final for that inspection for payment purposes, notwithstanding the fact that the Contractor may execute further remedial work in order to achieve control at further and final inspections.

- B6.5 In the case where the Technical Officer or his/her deputy and the Contractor fail to agree on rejected work, the rejected work shall be recorded as a "disputed work". The Contractor shall prepare an appropriate record of all disputed work in order that such disputes may be resolved by way of the disputes resolution procedures stipulated in the General Conditions of Contract for Maintenance Works, E5 (MW).
- B6.6 The Project Manager reserves the right to forego any inspection by giving the Contractor written notice of his/her intention to do so. Should the Project Manager decide to forego any inspection, he/she would thereby indicate that he/she is satisfied with the standard of workmanship required for that specific inspection only. He/she would then make full payment to the Contractor to the value associated with that inspection.

The fact that the Project Manager may decide to forego any inspection at his/her discretion does not imply that further inspections would not be carried out. It only implies that for that inspection, the Project Manager is satisfied with the control achieved and will not penalize the Contractor for that inspection.

16 B7 REMEDIAL WORK

- B7.1 The Contractor shall carry out remedial work to all work where control has not been achieved, prior to the official inspections in terms of clause B6 taking place. Such remedial work shall include the removal of cut, dry or dead growth from the controlled work area.
- B7.2 The Technical Officer may, at any time after the first measurement order the Contractor to carry out remedial action, to commence within 2 weeks after being so ordered. Prior to the commencement of this proposed remedial action an envisaged remedial work program must be submitted to the Technical Officer for his/her approval. Failing to do so the Technical Officer may arrange for such action to be carried out by others at the cost of the Contractor.

B8 DAMAGE TO FAUNA AND FLORA

- B8.1 The Contractor shall ensure that his/her employees at all times exercise care and consideration for the fauna and flora within and adjacent to the area to be sprayed. The Contractor shall take the presence of drainage works within yards or depots into account and shall ensure that no water-borne movement of herbicides is possible.
- B8.2 The Contractor shall not apply any chemicals of an explosive, inflammable, highly volatile or corrosive nature, which may damage crop vegetation or property, or be hazardous to humans or animals. The Contractor shall assume full responsibility for the efficiency and safety of whatever chemicals are used.
- B8.3 Dumping or polluting of any kind will not be permitted. This stipulation is also applicable to the washing out of tanks and equipment containing harmful chemicals and pollutants.



The Contractor shall institute and maintain procedures for the safe disposal of all chemicals and residual materials originating from the execution of the works.

Containers and residual material shall not be disposed of on Transnet property or as part of Transnet refuse.

B8.4 The Contractor shall take particular note of environmentally sensitive areas and shall plan and execute his/her work with the utmost care and responsibility.

B8.5 **Burning will not be allowed under any circumstances as a means of control. The making of fires, for whatever purpose, on Transnet Freight Rail property is also strictly prohibited.**

B9 MEASUREMENT AND PAYMENT

B9.1 Payment will be based on the numbers of individual trees treated as instructed by the Technical Officer and to which the Contractor successfully applied the vegetation control measures and has achieved the standard of control defined in clause B2.1.

B9.2 No payment will be made for rejected work where control achieved does not meet the standards of control specified.

B9.3 Measurement and payment for the work completed will be made in 1 stage as follows:

B9.3.1 After completion of the 100% of the entire contract area the Technical Officer or his/her deputy and the Contractor will measure and evaluate the work performed in terms of clause B6.3.1 (number of square meter treated). The Contractor will thereafter receive payment at **100%** of the rates tendered for all work where control as specified has been achieved.

B9.4 The rates and prices tendered in the Schedule of Prices are composite and shall be fully inclusive of all the Contractor costs in respect of establishment on site, labour, materials consumables, Head Office overhead costs, the Contractor's profit, for all delay and consequential costs and for everything of whatever nature required of the Contractor for completion of the work included in the Contract.



SECTION 3

CLAUSE BY CLAUSE COMPLIANCE SCHEDULE

The compliance response is to contain ONLY the following statements, "Comply", or "Do not comply".

Where "Do not comply" is applied, remarks as to the reason for the deviation from the requirement are required.

• **Job Specification compliance declaration sheet**

DESCRIPTION	Comply/N ot Comply	Explanation/Deviation/Reason
A1 Scope of contract		
A 2 Sufficiency of tender		
A2.1 to A2.3		
A.3. Duration of contract		
A.4 Compliance with statutes.		
A4.1(A-K)		
A4.2		
A7 To be provided by contractor		
A7.1 to A7.3		
A. 8 Schedule of quantities and price		
A8.1 to A8.3		
A9. Contractor Price & adjustments		
A10 Value added tax		
A11 Site meeting..		
A12. Site Books		
A12.1 to A12.3		
A13. Information to be submitted. With tender		
A13.1 to A13.9y		

Respondent's Signature

Date & Company Stamp



A14. Penalties for late payment		
B1 Project specification		
B1.1 to B1.6		
B2. Definition		
B2.1 to B2..2.12		
B2.2 Work Area		
B2.3		
B2.4		
B2.5		
B2.6		
B3 Method of vegetation		
B3.1 to B3.5		
B4 Standards of workman's		
B4 to B4.2.3		
B5 Programme of work		
B5.1 to B5.2.4 to B5.4		
B6 Performance Monitoring and Evaluation		
B6.1 to B6.3.4 to B6 4 to B6.6		
B7 Remedial work		
B7.1 to B7.2		
B8 Damage to Fauna and Flora		
B8.1 to B8.5		
B9 Measurement & Payment		
B9.1 to B9.4		

 Respondent's Signature

 Date & Company Stamp



SECTION 4

RFQ SITE MEETING

A COMPULSORY INFORMATION MEETING WILL BE HELD AT THE FOLLOWING VENUE:

Venue : Transnet Frieght Rail, Infra Depot
No. 1 Station Street
Millsite depot, Krugersdorp

Time : 10H00

Date : 07 November 2016

The briefing session and site inspection meeting are compulsory and companies not attending **will be overlooked** during the tender awarding process.

2.1 ATTENDANCE CERTIFICATE

This is to certify that.....

Representative/s of

Has/have today attended the Tender briefing in respect of the proposed:

•
TRANSNET’S REPRESENTATIVE	TENDERER’S REPRESENTATIVE
DATE :	DATE :

Company Email address:-----

Telephone Number :-----



SECTION 5

RFQ CLARIFICATION REQUEST FORM

RFQ No: CRAC-KGG-22722

RFQ deadline for questions or Clarifications: Before 12:00 on 10 December 2016

TO: Transnet SOC Ltd

ATTENTION: Samantha Mgwatyu

EMAIL [Samantha.mgwatyu@transnet.net/](mailto:Samantha.mgwatyu@transnet.net) Elijah.manana@transnet.net

DATE: _____

FROM: _____

RFQ Clarification No *[to be inserted by Transnet]*

REQUEST FOR RFQ CLARIFICATION

Respondent's Signature

Date & Company Stamp



Tenderer SHE Management System Questionnaire

This questionnaire is part of the TFR tender evaluation process and is to be completed by all Tenderer's and submitted with their tender offer. The objective of the questionnaire is to provide an overview of the status of the Tenderer's SHE management system. Tenderer's will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters. The tender warrants that the information provided below is accurate and correct. The tenderer shall advise TFR of any changes.

TFR may verify the accuracy of this information (where necessary) during the physical visit as part of the tender evaluation.

The information provided in this questionnaire is an accurate summary of the company's SHE management system.		
Company Name:		
Signed:	Name:	
Position:	Date:	
Tender Description:		
Tender Number:		
Tenderer SHE Management System Questionnaire	Yes	No
1. SHE Policy and Management		
- <i>Is there a written company SHE policy?</i> - If yes provide a copy of the policy (ANNEXURE #)		
- <i>Does the company have an SHE Management system e.g NOSA, OHSAS, IRCA System etc</i> - If yes provide details		
- <i>Is there a company SHE Management System, procedures manual or plan?</i> - If yes provide a copy of the content page(s)		
- <i>Are the SHE responsibilities clearly identified for all levels of Management and employees?</i> - If yes provide details		
2. Safe Work Practices and Procedures		
- Are safe operating procedures or specific safety instructions		

Respondent's Signature

Date & Company Stamp



<p>relevant to its operations available?</p> <p>- If yes provide a summary listing of procedures or instructions</p>		
<p>- Is there a SHE incident register? If yes provide a copy</p>		
<p>- Are Risk Assessments conducted and appropriate techniques used?</p> <p>- If yes provide details</p>		
3. SHE Training		
<p>Describe briefly how health and safety training is conducted in your company:</p>		
<p>- Is a record maintained of all training and induction programs undertaken for employees in your company?</p> <p>- If yes provide examples of safety training records</p>		
4. SHE Workplace Inspection		
<p>- Are regular health and safety inspections at worksites undertaken?</p> <p>-If yes provide details</p>		
<p>- Is there a procedure by which employees can report hazards at workplaces?</p> <p>- If yes provide details</p>		
5. SHE Consultation		
<p>- Is there a workplace SHE committee?</p>		
<p>- Are employees involved in decision making over SHE matters?</p> <p>- If yes provide details</p>		
<p>- Are there appointed SHE representatives?</p> <p>- Comments</p>		

Respondent's Signature

Date & Company Stamp



6. SHE Performance Monitoring		
- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents? - If yes provide details		
- Are employees regularly provided with information on company health and safety performance? - If yes provide details		
Is company registered with workmen’s compensation and up to date? - If yes provide proof of letter of good standing		
- Has the company been fined or convicted of an occupational health and safety offence? - If yes provide details		

**Safety Performance Report
Monthly DIFR for previous months**

Previous Year	No of Disabling Injuries	Total Number of employees	DIFR per month
Jan			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			

DIFR = Number of Disabling injuries x 200000 divided by number of man-hours worked for the period

=====
Signed
(Tenderer)

Respondent’s Signature

Date & Company Stamp



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.

17 Security clearance

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the goods and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of CONFIDENTIAL/ SECRET/TOP SECRET. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

18 National Treasury's Central Supplier Database

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Transnet is required to ensure that price quotations are invited and accepted from prospective bidders listed on the CSD. Business may not be awarded to a Respondent who has failed to register on the CSD. The CSD can be accessed at <https://secure.csd.gov.za/>. Respondents are required to provide the following to Transnet in order to enable it to verify information on the CSD:

Supplier Number: _____ unique registration reference number: _____.

19 Tax Compliance

Regulation 14 of the Preferential Procurement Regulations, 2011 issued in terms of the Preferential Procurement Policy Framework Act (PPPFA) states that no tender may be awarded to any person whose tax matters have not been declared by the South African Revenue Services (SARS) to be in order.

19.1 New Tax Compliance Status (TCS) System

SARS has implemented a new Tax Compliance Status (TCS) system in terms of which a taxpayer is now able to authorize any 3rd party to verify its compliance status in one of two ways: either through the use of an electronic access PIN, or through the use of a Tax Clearance Certificate obtained from the new TCS system.

Respondents are required to provide the following to Transnet in order to enable it to verify their tax compliance status:

Tax reference number: _____

Tax Clearance Certificate & TCC Number: _____ and PIN: _____.



19.2 Tax Compliance Requirements for Foreign Entities

Tax compliance requirements are not applicable to foreign bidders/individuals with no South African tax obligations. Where foreign bidders seek to be exempted from the requirement to submit a tax clearance certificate / tax clearance PIN issued by SARS, such entities are required to complete a sworn affidavit on their tax obligation categorization. The affidavit must confirm an answer of "No" to **all** questions below in order for a Respondent to be regarded as being exempt from submitting a tax clearance certificate or tax clearance PIN:

- a) Is the entity a tax resident of the Republic of South Africa (RSA)?
- b) Does the entity have a branch/locally registered entity in the RSA?
- c) Does the entity have a permanent establishment in the RSA?
- d) Does the entity have any source of income (income is defined as per the Income Tax Act 58 of 1962 as the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II of the Act) in the RSA in the current tax year?
- e) Is the entity liable in the RSA for any form of taxation in the current tax year?

If a Respondent's answers to any one (or more) of the questions above changes to a "Yes" at any time during the bid process and/or after award of the contract (should a particular Respondent be successful), then the Respondent undertakes to comply with its tax obligations and to report to Transnet accordingly with either a tax clearance certificate / tax clearance PIN issued by SARS.

20 Protection of Personal Data

In responding to this bid, Transnet acknowledges that it may obtain and have access to personal data of the Respondents. Transnet agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, Transnet requires Respondents to process any personal information disclosed by Transnet in the bidding process in the same manner. The detailed mutual duties of Transnet and the Respondents to protect personal information are contained in paragraph 37 of the General Bid Conditions.



Transnet urges its clients, suppliers and the general public to report any fraud corruption to

TIP-OFFS ANONYMOUS: 0800 003 056

Respondent's Signature

Date & Company Stamp



SECTION 6

RFQ FOR THE PROVISION/SUPPLY OF: CUTTING OF INVASIVE TREES AND BUSHES TO A MAXIMUM HEIGHT OF 300MM AND THE TREATMENT OF TREES STUMP WITH APPROVED HERBICIDES FROM RANDFONTEIN TO KLERKSORP, FOR A PERIOD OF THREE MONTHS.

CLOSING VENUE: TRANSNET FREIGHT RAIL, RECEPTION TENDER BOX, INYANDA HOUSE 1, No.: 21 WELLINGTON ROAD, PARKTOWN

CLOSING DATE & TIME: 13 DECEMBER 2016.

VALIDITY PERIOD® 90 Ninety).Business Days

EVALUATION CRITERIA AND RETURNABLE DOCUMENTS

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

Criterion/Criteria	Explanation
Administrative responsiveness	<ul style="list-style-type: none"> • Completeness of response and returnable documents. • Whether the bids are lodged on time. • Whether all returnable documents and / or schedules were completed and returned by closing date. • Proof of registration with national treasury database • Proof copy of a valid letter of Good standing I.R.O compensation for Occupational injuries and diseases act 85 of 1995
Substantive responsiveness	<ul style="list-style-type: none"> • Compliance to job specification – clause by clause statement of compliance declaration sheet- must be fully completed • Safety Plan • Pest Control Certificate for industrial weed control. • Valid Chain Saw Certificates, accredited certificate for chain saw operation • List of herbicides to be used must be approved by SABS (provide chemical Safety data sheet) from the supplier of the chemical to be used. • List of Proper PPE and Equipment for the cutting of trees (minimum equipment from clauseA7.1) <p>Failure to provide the above requirements & to complete the above-mentioned sheets will result in your bid being disqualified</p>
Functionality Threshold 70%	<ul style="list-style-type: none"> • Delivery turnaround time (work program) • Experience relevant to the type of work with traceable reference) • Risk assessment in relation to the scope of work <p>Bidders must achieve minimum threshold of 70 % in order to proceed to next stage.</p>
Final weighted evaluation based on 80/20 reference point	<ul style="list-style-type: none"> • Pricing and price basis (Firm) <p>B-BBEE Status of company –preference points will be awarded to a bidder for attaining the B-BBEE status level contribution in</p>



	accordance with the table indicated an Annexure A:B-BBEE Claim Form.
--	--

21 Validity Period

Transnet desires a validity period of 90(Ninety) Business Days from the closing date of this RFQ.

Bidders are to note that they may be requested to extend the validity period of their bid, on the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.

With regard to the validity period of short-listed bidders, please refer to Section 1, paragraph 9.

This RFQ is valid until -5 March 2017.

22 Disclosure of Prices Quoted

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices and preferences claimed of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note 01 of 2015/2016.

23 Returnable Documents

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below.

All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.

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

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

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



Mandatory Returnable Documents	Submitted [Yes or No]
SECTION 3: Compliance to job specification – clause by clause statement of compliance declaration sheet- must be fully completed	
SECTION 7 : Quotation Form	
SECTION 6: Evaluation criteria <ul style="list-style-type: none"> - Safety Plan - Pest Control Certificate for industrial weed control. - Valid Chain Saw Certificates, accredited certificate for chain saw operation - List of herbicides to be used must be approved by SABS (provide Certificate or Safety data sheet). - List of Proper PPE and Equipment for the cutting of trees (minimum equipment from clauseA7.1) 	

c) **Essential Returnable Documents**

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

Essential Returnable Documents required for evaluation purposes:

Failure to provide all essential Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

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

ESSENTIAL RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
- Valid and original (or a certified copy) proof of Respondent's compliance to B-BBEE requirements stipulated in Section 6 of this RFQ:	
- Proof of supplier registration with the National Treasury	
- Letter of good standing	
- Section 4: Briefing session attendance certificate	

Other Essential Returnable Documents:

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



Please confirm submission of these essential Returnable Documents by indicating Yes or No in the table below:

OTHER ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Tax Clearance Certificate or electronic access PIN obtained from SARS's new Tax Compliance Status (TCS) system [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
SECTION 8: Certificate of Acquaintance with RFQ Documents	
SECTION 9: RFQ Declaration and Breach of Law Form	
SECTION 10: B-BBEE Preference Claim Form	

24 CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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



SECTION 7

QUOTATION FORM AND CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENT

I/We _____

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

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

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; **OR** Master Agreement; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

I/We accept that unless Transnet should otherwise decide and so inform me/us, this Quotation [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us. I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.



Price Schedule

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

Contract No.

SCHEDULE OF QUANTITY AND PRICES FOR THE CONTROL OF INVASIVE TREES AND BUSHES WITHIN THE RAIL RESERVE IN THE GEOGRAPHICAL AREA CONTROLLED BY THE DEPOT ENGINEER				
SECTION: RANDFONTEIN TO KLERKSDORP				
DESCRIPTION	Estimated QTY	UNI T	RATE	AMOUNT
SCHEDULE OF QUANTITIES / APPROXIMATE M²				
Cleaning of vegetation per square meter in Dense to moderately populated growth (Group A)	20 000	M ²	R	R
25 SCHEDULE OF QUANTITIES / APPROXIMATE DIAMATER				
1. Felling of trees (1-200mm) (Small trees)	45	EA	R	R
2. Felling of trees (201-500mm) (Medium trees)	80	EA	R	R
3. Felling of trees (501-800mm) Large trees)	60	EA	R	R
4. Big trees that need to be trimmed	22	EA	R	R
* The quantities listed above are approximate				
	GROSS TOTAL R _____ VAT (14%) R _____ AMOUNT DUE R _____			

Respondent's Signature

Date & Company Stamp



Delivery Lead-Time from date of purchase order: _____
[days/weeks]

Notes to Pricing:

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



SECTION 8

CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFQ. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Transnet 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 in calculating tendered prices or any other purpose:

1. Transnet's General Bid Conditions*
2. Standard RFQ Terms and Conditions for the supply of Goods or Services to Transnet
3. Transnet's Supplier Integrity Pact*
4. Non-disclosure Agreement*
5. Vendor Application Form* and all supporting documents (first time vendors only). Alternatively, for all existing vendors, please complete the table below under the heading "Existing vendors".
Respondents are to note that the documents marked with a "*" are available on request or at the Transnet website (www.transnet.net). Please click on "Business with Us", proceed to the tab "Tenders" and then click on "Standard Bid Documents".

Existing vendors: existing vendors are required to confirm whether all the information (e.g. company address, contact details, banking details, etc.) relating to the existing vendor number is still correct at the time of submission of this bid or update their information in the table below:

Transnet Operating Division [e.g. TFR, TE, etc]	Vendor Number	Information still current [tick if applicable]	Information change [indicate detail of change/s & attach appropriate proof]

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFQ unacceptable, it should indicate which conditions are unacceptable and offer alternatives by

Respondent's Signature

Date & Company Stamp



written submission on its company letterhead, attached to its submitted Bid. 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. A material deviation from the Standard terms or conditions could result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFQ was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if this Certificate of Acquaintance with RFQ documents included in the RFQ as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this ____ day of _____
20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____
Name _____

2 _____
Name _____

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

Respondent’s Signature

Date & Company Stamp



SECTION 9

RFQ DECLARATION AND BREACH OF LAW 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 RFQ Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Quotation [**RFQ**];
3. we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. at no stage have we received additional information relating to the subject matter of this RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;
5. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner; and
6. 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 including any person who may be involved in the evaluation and/or adjudication of this Bid.
7. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet Group.

Respondent's Signature

Date & Company Stamp



- 8. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

- 9. 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.

BREACH OF LAW

- 10. We further hereby certify that *I/we have/have not been* [delete as applicable] 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. This includes the imposition of an administrative fine or penalty.

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____

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC _____
Place:	Registration Name of Company/CC _____

Respondent's Signature

Date & Company Stamp



SECTION 10

B-BBEE PREFERENCE POINTS CLAIM FORM

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
- 1.2 The value of this bid is estimated to **not exceed** R1 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [SANAS], or a Registered Auditor approved by the Independent Regulatory Board of Auditors [IRBA] or a sworn affidavit confirming annual turnover and level of black ownership in case of all EMEs and QSEs with 51% black ownership or more together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.



2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity

- (d) based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (e) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

- (f) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"CIPC"** means the Companies and Intellectual Property Commission, formerly known as CIPRO, the Companies and Intellectual Property Registration Office.
- (h) **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (i) **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (j) **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
- (k) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (l) **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (m) **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;



- (n) **"non-firm prices"** means all prices other than "firm" prices;
- (o) **"person"** includes a juristic person;
- (p) **"QSE"** means a Qualifying Small Enterprise as defined by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (q) **"rand value"** means the total estimated value of a contract in South African currency, calculated
- (r) at the time of bid invitations, and includes all applicable taxes and excise duties;
- (s) **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (t) **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (u) **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (v) **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored
- 3.6 equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.7 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20



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

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

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

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

6.

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

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 6.3 A bidder who qualifies as a EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership. Furthermore EMEs may also obtain a sworn affidavit from CIPC (formerly CIPRO) Self Service Terminals when registering a business or filing annual returns. In these instances Transnet would require proof of turnover as well as proof of ownership. Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp.
- 6.4 QSEs that are at least 51% Black owned or higher are only required to obtain a sworn affidavit on an annual basis confirming that the entity has an Annual Total Revenue of R50 million or less and the entity's Level of Black ownership.
- 6.5 A Bidder other than EME or a QSE that is at least 51% Black owned must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 6.6 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.



- 6.7 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 6.8 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 6.9 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other.
- 6.10 enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract
- 6.11 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 6.12 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder’s responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

7. BID DECLARATION

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

8. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

8.1 B-BBEE Status Level of Contribution: . =(maximum of 10 or 20 points)
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

9. SUB-CONTRACTING

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

(Tick applicable box)

YES		NO	
-----	--	----	--

9.1.1 If yes, indicate:

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



(Tick applicable box)

YES		NO	
-----	--	----	--

10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1 Name of company/firm:.....

10.2 VAT registration number:.....

10.3 Company registration number:.....

10.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company

- (Pty) Limited
- [TICK APPLICABLE BOX]

10.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

10.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

10.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;



- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES
1.
2.

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

Appendix III

Example of an Affidavit or Solemn Declaration as to EME B-BBEE Status

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

Hereby declare under oath as follows:

- The contents of this statement are to the best of my knowledge a true reflection of the facts.
- I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:

- The enterprise is _____ % black owned;
- The enterprise is _____ % black woman owned;
- The enterprise is _____ % black youth owned;
- The enterprise is _____ % black disabled owned;
- Based on the management accounts and other information available for the _____ financial year, the income did not exceed R10, 000,000.00 (ten million rand).

Please confirm on the table below the B-BBEE level contributor, by ticking the applicable box.

100% black owned	Level One (135% B-BBEE procurement recognition) More than 51% black	
More than 51% black owned	Level Two (125% B-BBEE procurement recognition) Less than 51% black	
Less than 51% black owned	Level Four (100% B-BBEE procurement recognition)	

- The entity is an empowering supplier in terms of the dti Codes of Good Practice.
- I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
- The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: _____

Date: _____

**Commissioner of Oaths
 Signature & stamp**



Appendix IV

Example of an Affidavit or Solemn Declaration as to QSE B-BBEE Status

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

Hereby declare under oath as follows:

- The contents of this statement are to the best of my knowledge a true reflection of the facts.
- I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:

- The enterprise is _____ % black owned;
- The enterprise is _____ % black woman owned;
- The enterprise is _____ % black youth owned;
- The enterprise is _____ % black disabled owned;
- Based on the management accounts and other information available for the _____ financial year, the income did not exceed R50,000,000.00 (fifty million rand);
- The entity is an empowering supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) or as amended 3.3 (e) of the dti Codes of Good Practice. (Tick appropriate box in table below).

(a) At least 25% of cost of sales, (excluding labour costs and depreciation) must be procurement from local producers or suppliers in South Africa; for the services industry include labour costs but capped at 15%		(b) Job Creation – 50% of jobs created are for black people, provided that the number of black employees in the immediate prior verified B-BBEE measurement is maintained	
(c) At least 25% transformation of raw material / beneficiation which include local manufacturing, production and /or assembly, and / or packaging		(d) At least 12 days per annum of productivity deployed in assisting QSE and EME beneficiaries to increase their operation or financial capacity	
(e) At least 85% of labour costs should be paid to South African employees by service industry entities			

Please confirm on the table below the B-BBEE level contributor, by ticking the applicable box.

100% black owned	Level One (135% B-BBEE procurement recognition)	
More than 51% black owned	Level Two (125% B-BBEE procurement recognition)	

- I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
- The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: _____

Date: _____

Commissioner of Oaths
Signature & stamp_____
Respondent's Signature_____
Date & Company Stamp



NON-DISCLOSURE AGREEMENT

entered into by and between

TRANSNET FREIGHT RAIL a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

and

Registration Number _____

TABLE OF CONTENTS

1 RESPONSES TO RFQ3

2 BROAD-BASED BLACK ECONOMIC EMPOWERMENT [B-BBEE]3

3 COMMUNICATION.....4

4 LEGAL COMPLIANCE.....4

5 CHANGES TO QUOTATIONS.....4

6 PRICING.....4

7 PRICES SUBJECT TO CONFIRMATION4

8 BINDING OFFER4

9 DISCLAIMERS5

10 SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS8

RFQ CLARIFICATION REQUEST FORM.....23

16 SECURITY CLEARANCE27

17 NATIONAL TREASURY’S CENTRAL SUPPLIER DATABASE27

18 TAX COMPLIANCE.....27

19 PROTECTION OF PERSONAL DATA28

20 VALIDITY PERIOD.....31

21 DISCLOSURE OF PRICES QUOTED.....31

22 RETURNABLE DOCUMENTS.....31

23 CONTINUED VALIDITY OF RETURNABLE DOCUMENTS.....33

24 SCHEDULE OF QUANTITIES / APPROXIMATE DIAMATER35

AMOUNT DUE R_____35

SECTION 939

RFQ DECLARATION AND BREACH OF LAW FORM39

B-BBEE PREFERENCE POINTS CLAIM FORM42

80/20.....44

25 INTERPRETATION55

26 CONFIDENTIAL INFORMATION56

27 RECORDS AND RETURN OF INFORMATION57

28 ANNOUNCEMENTS.....57

29 DURATION58

30 PRINCIPAL.....58

31 ADEQUACY OF DAMAGES58

32 PRIVACY AND DATA PROTECTION58

33 GENERAL.....58

1 SOLE AGREEMENT60

2 CONFORMITY WITH ORDER60

3 DELIVERY AND TITLE 60

4 PRICE AND PAYMENT 61

5 PROPRIETARY RIGHTS LIABILITY 61

6 PROPRIETARY INFORMATION 62

7 DEVELOPMENT WORK IN THE PRODUCTION OF GOODS 62

8 PUBLICITY 62

9 AFTER SALES SERVICE 62

10 TERMINATION OF ORDER 62

11 ACCESS 63

12 WARRANTY 63

13 INSOLVENCY 64

14 ASSIGNMENT 64

15 NOTICES 64

16 LAW 64

17 GENERAL 64

18 COUNTERPARTS 65

19 DATABASE OF RESTRICTED SUPPLIERS 65

1. DEFINITIONS 70

2 GENERAL 70

3 SUBMITTING OF BID DOCUMENTS 70

4 USE OF BID FORMS 71

5 BID FEES 71

6 VALIDITY PERIOD 71

7 SITE VISITS / BRIEFING SESSIONS 71

8 CLARIFICATION BEFORE THE CLOSING DATE 71

9 COMMUNICATION AFTER THE CLOSING DATE 71

10 UNAUTHORISED COMMUNICATION ABOUT BIDS 72

11 POST TENDER NEGOTIATIONS 72

12 RETURNABLE DOCUMENTS 72

13 DEFAULTS BY RESPONDENTS 72

14 CURRENCY 72

15 PRICES SUBJECT TO CONFIRMATION 72

16 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES 73

17 EXCHANGE AND REMITTANCE 73

18 ACCEPTANCE OF BID 73

19 NOTICE TO UNSUCCESSFUL RESPONDENTS 73

20 TERMS AND CONDITIONS OF CONTRACT 74

21 CONTRACT DOCUMENTS 74

4 LAW GOVERNING CONTRACT 74

5 IDENTIFICATION.....74

6 RESPONDENT'S SAMPLES75

3.9 SECURITIES.....75

49 PRICE AND DELIVERY BASIS FOR GOODS76

4 EXPORT LICENCE.....76

5 QUALITY OF MATERIAL.....76

6 DELETION OF ITEMS EXCLUDED FROM BID76

7 VALUE-ADDED TAX.....76

8 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT.....77

9 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS.....77

10 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS.....78

11 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS.....78

12 CONFLICT WITH ISSUED RFX DOCUMENT79

13 DATABASE OF RESTRICTED SUPPLIERS (BLACKLISTING).....80

14 PROTECTION OF PERSONAL DATA82

THIS AGREEMENT is made between

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

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

and

_____ **[the Company]** [Registration No

_____ whose registered office is at

WHEREAS

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

IT IS HEREBY AGREED**26 INTERPRETATION**

In this Agreement:

- 26.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 26.2 **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;
- 26.3 **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:

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

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

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;

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

26.5 **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.

27 CONFIDENTIAL INFORMATION

27.1 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.

27.2 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.

27.3 Notwithstanding clause 27.1 above, the Receiving Party may disclose Confidential Information:

to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 27.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or

to the extent required by law or the rules of any applicable regulatory authority, subject to clause 27.4 below.

- 27.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 0 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 27.5 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
- 27.6 Proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.
- 27.7 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.

28 RECORDS AND RETURN OF INFORMATION

- 28.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 28.2 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.
- 28.3 The Company shall, within 7 (seven) days of receipt of a written demand from Transnet: return all written Confidential Information (including all copies); and expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 28.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 0 above.

29 ANNOUNCEMENTS

- 29.1 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.
- 29.2 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.

30 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.

31 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.

32 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.

33 PRIVACY AND DATA PROTECTION

33.1 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.

33.2 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.

34 GENERAL

34.1 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.

34.2 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.

34.3 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.

34.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

34.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

34.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

oooOOOooo

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

A Supplier/Service Provider shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business. A material deviation from the Standard Terms and Conditions could result in disqualification of a Quotation.

1 SOLE AGREEMENT

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

2 CONFORMITY WITH ORDER

An Order shall only be valid if it is reduced to writing and issued by a duly delegated official. Goods/Services shall conform strictly with the Order. The Supplier/Service Provider shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Supplier/Service Provider warrants that the Goods/Services shall be fit for their purpose and of satisfactory quality.

3 DELIVERY AND TITLE

- 3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier's/Service Provider's obligations under the Order.
- 3.2 The Supplier/Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier/Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier/Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.
- 3.3 Risk of loss or damage to Goods shall pass to Transnet on delivery, and title shall pass to Transnet when payment to the Supplier for the Goods has been effected.

- 3.4 If on delivery, the Goods/Services do not conform to the Order, Transnet may reject the Goods/Services and the Supplier/Service Provider shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Goods/Services at the Supplier's/Service Provider's expense
- 3.5 within the specified delivery times, without any liability due by Transnet. Goods shall be subject to such testing and/or inspection as Transnet may consider necessary.

4 PRICE AND PAYMENT

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

5 PROPRIETARY RIGHTS LIABILITY

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

- a) procure for Transnet the right to continue using the infringing Goods; or
- b) modify or replace the Goods/Services so that they become non-infringing,

provided that in both cases the Goods/Services shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier/Service Provider may remove, with Transnet's prior written consent, such Goods/Services and will pay to

Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier/Service Provider shall have no liability in respect of any continued use of the infringing Goods/Services after Supplier's/Service Provider's prior written request to remove the same.

6 PROPRIETARY INFORMATION

All information which Transnet has divulged or may divulge to the Supplier/Service Provider and any information relating to Transnet's business which may have come into the Supplier's/Service Provider's

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

7 DEVELOPMENT WORK IN THE PRODUCTION OF GOODS

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

8 PUBLICITY

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

9 AFTER SALES SERVICE

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

10 TERMINATION OF ORDER

10.1 Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier/Service Provider, or when there is a change in control of the Supplier/Service Provider or the Supplier/Service Provider commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or

Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier/Service Provider when such work on the Order shall stop.

- 10.2 Transnet shall pay the Supplier/Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier/Service Provider, at the time of termination, and the Supplier/Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier/Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier/Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Supplier/Service Provider had the Order not been terminated.
- 10.3 In the event of termination the Supplier/Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 10.4 If the Goods or Services are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier/Service Provider shall compensate Transnet for any costs incurred in obtaining substitute Goods or any damage caused due to the failure or delay in the delivery.

11 ACCESS

The Supplier/Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's/Service Provider's employees. The Supplier/Service Provider shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

12 WARRANTY

The Supplier/Service Provider warrants that it is competent to supply the Goods/Services in accordance with these Terms to the reasonable satisfaction of Transnet and that all Goods/Services delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to

[inter alia] the supply, manufacture and use of the Goods/Services in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of any kind. The Supplier/Service Provider hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

13 INSOLVENCY

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

14 ASSIGNMENT

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

15 NOTICES

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

16 LAW

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South

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

17 GENERAL

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 5, 6, 7, 8, 9, 12 and 6. Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

18 COUNTERPARTS

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

19 DATABASE OF RESTRICTED SUPPLIERS

- 19.1 All the stipulations on Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 19.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet and other organs of state for a specified period. On completion of the blacklisting process, the blacklisted entity's details will be placed on National Treasury's Database of Restricted Suppliers for the specified period of exclusion.
- 19.3 The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 19.4 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 19.5 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 19.6 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
 - b) has, after being notified of the acceptance of his 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;
 - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
 - d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
 - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

- f) has made any incorrect statement in a certificate or other communication with regard to the Goods or Services or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
 - g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
 - h) has litigated against Transnet in bad faith.
- 19.7 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
 - b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;
 - c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
 - d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.
- 19.8 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.
- 19.9 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's Register of Tender Defaulters.

- 19.10 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.
- 19.11 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

oooOOOooo

GENERAL BID CONDITIONS

[September 2016]

TABLE OF CONTENTS

[1](#) [DEFINITIONS](#)70

[2](#) [GENERAL](#)70

[3](#) [SUBMITTING OF BID DOCUMENTS](#).....70

[4](#) [USE OF BID FORMS](#)71

[5](#) [BID FEES](#)71

[6](#) [VALIDITY PERIOD](#).....71

[7](#) [SITE VISITS / BRIEFING SESSIONS](#).....71

[8](#) [CLARIFICATION BEFORE THE CLOSING DATE](#)71

[9](#) [COMMUNICATION AFTER THE CLOSING DATE](#)71

[10](#) [UNAUTHORISED COMMUNICATION ABOUT BIDS](#).....72

[11](#) [POST TENDER NEGOTIATIONS](#).....72

[12](#) [RETURNABLE DOCUMENTS](#)72

[13](#) [DEFAULTS BY RESPONDENTS](#)72

[14](#) [CURRENCY](#)72

[15](#) [PRICES SUBJECT TO CONFIRMATION](#)72

[16](#) [ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES](#).....73

[17](#) [EXCHANGE AND REMITTANCE](#).....73

[18](#) [ACCEPTANCE OF BID](#).....73

[19](#) [NOTICE TO UNSUCCESSFUL RESPONDENTS](#).....73

[20](#) [TERMS AND CONDITIONS OF CONTRACT](#)74

[21](#) [CONTRACT DOCUMENTS](#)74

[22](#) [LAW GOVERNING CONTRACT](#).....74

[23](#) [IDENTIFICATION](#)74

[24](#) [RESPONDENT'S SAMPLES](#)75

[25](#) [SECURITIES](#).....75

[26](#) [PRICE AND DELIVERY BASIS FOR GOODS](#).....76

[27](#) [EXPORT LICENCE](#).....76

[28](#) [QUALITY OF MATERIAL](#)76

[29](#) [DELETION OF ITEMS EXCLUDED FROM BID](#)76

[30](#) [VALUE-ADDED TAX](#)76

[31](#) [IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT](#)77

[32](#) [CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS](#)77

[33](#) [PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS](#)78

[34](#) [BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS](#).....78

[35](#) [CONFLICT WITH ISSUED RFX DOCUMENT](#)79

[36](#) [DATABASE OF RESTRICTED SUPPLIERS \(BLACKLISTING\)](#).....80

[37](#) [PROTECTION OF PERSONAL DATA](#)82

Returnable Document

1. DEFINITIONS

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

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

2 GENERAL

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

3 SUBMITTING OF BID DOCUMENTS

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

Returnable Document

4 USE OF BID FORMS

- 4.9 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.10 Respondents must note that the original Bid forms and/or formats must be completed for submission and not a reprocessed copy or other format thereof.
- 4.11 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

5 BID FEES

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

6 VALIDITY PERIOD

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

7 SITE VISITS / BRIEFING SESSIONS

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

8 CLARIFICATION BEFORE THE CLOSING DATE

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

9 COMMUNICATION AFTER THE CLOSING DATE

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

Returnable Document

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

11 POST TENDER NEGOTIATIONS

Transnet reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Transnet decide to conduct post tender negotiations, bidders will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).

12 RETURNABLE DOCUMENTS

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

13 DEFAULTS BY RESPONDENTS

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

13.9 enter into a formal contract when called upon to do so within such period as Transnet may specify;
or accept an order in terms of the Bid;

34.7 furnish satisfactory security when called upon to do so for the fulfilment of the c
Contract; or

34.8 comply with any condition imposed by Transnet,

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

14 CURRENCY

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

15 PRICES SUBJECT TO CONFIRMATION

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

15.10 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

Returnable Document

16 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.

17 EXCHANGE AND REMITTANCE

17.9 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

17.10 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.

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

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

17.13 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

17.14 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

18 ACCEPTANCE OF BID

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

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

18.11 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

18.12 Where the Respondent has been informed by Transnet of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

19 NOTICE TO UNSUCCESSFUL RESPONDENTS

19.9 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the

Returnable Document

successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

20 TERMS AND CONDITIONS OF CONTRACT

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

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

21 CONTRACT DOCUMENTS

3.5.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.

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

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

4 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.

5 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.

Returnable Document

6 RESPONDENT'S SAMPLES

- 3.8.1 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.
- 3.8.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 3.8.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.
- 3.8.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

3.9 SECURITIES

- 3.9.1 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.
- 3.9.2 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.
- 3.9.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 3.9.4 For the purpose of clause 3.9.13.9.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.
- 3.10 . Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 3.9 will be for the account of the Supplier/Service Provider.

Returnable Document

49 PRICE AND DELIVERY BASIS FOR GOODS

3.10.1.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [ICC Incoterms 2010] 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.

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

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.

Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [ICC Incoterms 2010] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

4 EXPORT LICENCE

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

5 QUALITY OF MATERIAL

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

6 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.

7 VALUE-ADDED TAX

7.9 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.

7.10 In respect of foreign Services rendered:

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

Returnable Document

8 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

8.9 Method of Payment

The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

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

The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 8.9 (a) above. Failure to comply with clause 8.9 (0 above may preclude a Bid from further consideration.

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

8.10 Conditional Discount

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

9 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

9.9 Contract Quantities

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.

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.

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.

9.10 Delivery Period

Period Contracts and Fixed Quantity Requirements

Returnable Document

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

Progress Reports

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

Emergency Demands as and when required

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

10 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

10.9 Copyright

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

10.10 Drawings and specifications

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

10.11 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.

10.12 Foreign specifications

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

11 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

11.9.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a

Returnable Document

designated official of Transnet according to whichever officer is specified in the Bid Documents.

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

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

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

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

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

If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.

The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.

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

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

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.

11.12 The attention of the Respondent is directed to clause 3.9 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.

12 CONFLICT WITH ISSUED RFX DOCUMENT

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

Returnable Document

13 DATABASE OF RESTRICTED SUPPLIERS (BLACKLISTING)

- 1.3** All the stipulations on Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

Blacklisting is a mechanism used to exclude a company/person from future business with Transnet and other organs of state for a specified period. On completion of the blacklisting process, the blacklisted entity's details will be placed on National Treasury's Database of Restricted Suppliers for the specified period of exclusion.

- 1.4** The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 1.5** Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 1.6** A supplier/service provider or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 1.7** Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

13.9.1.1 Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

13.9.1.2 has, after being notified of the acceptance of his 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;

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

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

13.9.1.5 has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

13.9.1.6 has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

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

Returnable Document

(iv) before making such statement he took all reasonable steps to satisfy himself of its correctness;

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

13.9.1.8 has litigated against Transnet in bad faith.

1.8 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers/service providers. When a dispute arises between Transnet and its supplier/service provider, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- e) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
- f) Perjury. Where a supplier/service provider commits perjury either in giving evidence or on affidavit;
- g) Scurrilous allegations. Where a supplier/service provider makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
- h) Abuse of court process. When a supplier/service provider abuses the court process in order to gain a competitive advantage during a bid process.

1.9 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

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

13.10 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

Returnable Document

13.11 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

14 PROTECTION OF PERSONAL DATA

14.9 Both Parties agree that they may obtain and have access to personal data as a result of the Bid process. The Parties shall at all times ensure that:

- a) they process data only for the express purpose for which it was obtained;
- b) once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
- c) data is provided only to authorised personnel who strictly require the personal data to carry out the Parties' respective obligations in terms of the Bid process;
- d) they do not disclose personal data of the other Party, other than as agreed in paragraph 37.3 below;
- e) they have all reasonable technical and organisational measures in place to protect all personal data from unauthorised access and/or use;
- f) they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all data in its possession or under its control as a result of the Bid process;
- g) such personal data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

14.10 The Parties agree that if personal data will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to further processing.

14.11 Should it be necessary for either Party to disclose or otherwise make available the personal data to any third party (including sub-contractors and employees), it may do so only with the prior written permission of the other Party. The Party requiring such permission shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this paragraph 37, and dealing with that third party's obligations in respect of its processing of the personal data. Following approval by the other Party, the Party requiring permission agrees that the provisions of this clause 37 shall *mutatis mutandis* apply to all authorised third parties who process personal data.

14.12 The Parties shall ensure that any persons authorized to process data on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all data. Where necessary to meet this requirement, the Parties shall keep all personal data and any analyses, profiles, or documents derived therefrom logically separated from all other data and documentation held by it.

14.13 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal data in its possession or under its control. The Parties

Returnable Document

shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place has been effectively implemented.

14.14 The Parties agree that they will promptly return or destroy any personal data in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to the Bid process, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal data. The information will be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.

14.15 Personal Information security breach: Respondent's Obligations

- a) The Respondent is required to notify the Information Officer of Transnet, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal data and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal data as quickly as is possible. The Respondent shall also be required to provide Transnet with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal data.
- b) The Respondent shall provide on-going updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Respondent may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Respondent undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of Transnet including providing any information or material in its possession or control and implementing new security measures.

oooOOOooo