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**TRANSNET FREIGHT RAIL**, a division of

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

[Hereinafter referred to as **Transnet**]

**REQUEST FOR QUOTATION [RFQ] No CRAC-STQ-22304**

**FOR THE SUPPLY AND DELIVERY OF FOOD PARCELS AS AND  
WHEN REQUIRED IN SENTRARAND, SPRINGS AND GERMISTON FOR A PERIOD OF  
3 YEARS**

**Issue Date** : 22 August 2016  
**CLOSING DATE** : 30 August 2016  
**CLOSING TIME** : 10H00 AM  
**VALIDITY DATE** : 15 FEBRUARY 2017

**ON CLOSING DATE PLEASE SUBMIT TWO (2) DOCUMENTS ORIGINAL & COPY IN ONE  
ENVELOPE IT MUST BE INSCRIBED ON THE OUTSIDE WITH THE TENDER NUMBER AND  
THE CLOSING DATE.**

**As a general, Transnet may also not award business to any bidders not registered on  
the CSD. All prospective suppliers wanting to conduct business with organs of state  
are to register on the CSD by accessing [www.csd.gov.za](http://www.csd.gov.za)**

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## SECTION 1 NOTICE TO BIDDERS

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

**METHOD:** Hand deliver or courier  
**CLOSING VENUE:** The Secretary Acquisition Council, Ground Floor, Tender box. Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg, 2001

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### 1 Responses to RFQ

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

### 2 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. As described in more detail in the attached B-BBEE Claim Form Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

The value of this bid is estimated to be above R1 000 000 (all applicable taxes included); and therefore the **90/10** system shall be applicable.

Respondents are required to complete Annexure A [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

**Note: Failure to submit a valid and original B-BBEE certificate or a certified copy thereof at the Closing Date of this RFQ will result in a score of zero being allocated for B-BBEE.**

#### 2.1 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: Mpho Sito                      Email: mpho.sito@transnet.net  
Telephone: 011 584 1068

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Respondents may also, at any time after the closing date of the RFQ, communicate the following individuals on any matter relating to its RFQ response:

<b>Name</b>	<b>Email address</b>	<b>Telephone</b>	<b>Fax</b>
Lolo Sokhela	<a href="mailto:Lolo.sokhela@transnet.net">Lolo.sokhela@transnet.net</a>	011 544 9494	011 774 9189
Thuli Mathebula	<a href="mailto:Thuli.mathebula@transnet.net">Thuli.mathebula@transnet.net</a>	011 544 9497	011 774 9129

**3 Legal Compliance**

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

**4 Changes to Quotations**

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

**5 Pricing**

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

**6 Prices Subject to Confirmation**

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

**7 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.

**8 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 ;
- or
- make no award at all.

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.



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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 conduct Post Tender Negotiations (PTN) with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's discretion, any evaluation criteria listed in the RFQ document.

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.

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## 9 Specification/Scope of Work

### Food packs for Train crew personnel Sentrarand, Spring And Germiston

#### Food Pack must consist of

- 1X Canned meat 190G
- 1X Baked beans 225G
- 1X fruit cocktail 225G
- 1X 100%fruit Juice 200MI
- 1X biscuit's with filling in between125G

#### General notes and specifications:

1. Packs to be delivered in stackable crates.
  - a. The crates must be clearly marked with the name of the Supplier and numbered.
  - b. The crates remain the property of the supplier.
  - c. The number of the crate(s) must be reflected on the delivery note.
  - d. Empty crates must be collected from point of delivery when the next consignment is delivered.
  - e. Damaged packs will be returned and must be replaced without extra cost if damage is as a result of packaging and handling by the supplier.
2. Minimum order for all three depots.
3. Value per pack must be clearly stipulated.
4. Supplier must be prepared to bring sample of the pack.
5. Supplier must be willing to accept changes in accordance to the customers' requirements.

#### Pack will consist of

Sentrarand	500 packs quarterly
Springs	50 packs quarterly
Germiston	500 packs quarterly

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**10 Respondent's Samples**

In this RFQ, Respondents are required to submit samples of the Goods tendered for. The samples must be endorsed with the RFQ number, description of tender, Company name and contact number and forwarded on or before the closing date to the following addressee:

**TENDER ADVICE CENTRE**

**INYANDA HOUSE 1, 21 WELLINGTON ROAD**

**PARKTOWN, JOHANNESBURG**

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**ANNEXURE B**  
**CLAUSE BY CLAUSE COMPLIANCE DECLARATION FORM**  
**FOR THE SUPPLY AND DELIVERY OF FOOD PARCELS AS AND**  
**WHEN REQUIRED IN SENTRARAND, SPRINGS AND GERMISTON FOR A PERIOD OF**  
**3 YEARS**

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

Noted is to be applied against statements and either of the other responses for other clauses. Where either Compliance or Do not comply is applied, remarks as to the reason for the deviation from the requirement are required.

**FAILURE TO COMPLETE THIS FORM WILL AUTOMATICALLY RESULT IN YOUR OFFER BEING DISQUALIFIED.**

Description	Comply or Do not comply	Reason for Deviation
1 x Canned meat 190G 1x Baked beans 225G 1 Fruit cocktail 225G 1 x 100% fruit juice 200ML 1x Biscuits with filling in between 125G		
<b>General notes and specifications.</b>  1. Packs to be delivered in stackable crates. a. The crates must be clearly marked with the name of the Supplier and numbered. b. The crates remain the property of the Supplier. c. The number of the crate(s) must be reflected on the delivery note. d. Empty crates must be collected from point of delivery when the next consignment is delivered. e. Damaged packs will be returned and must be replaced without extra cost if damage is as a result of packaging and handling by the supplier. 2. Minimum order for all three depots. 3. Value per pack must be clearly stipulated. 4. Supplier must be prepared to bring sample of the pack. 5. Supplier must be willing to accept changes in accordance to the customers' requirements.		



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<p>Pack will consist of</p> <p>Sentrarand: 500 packs quarterly</p> <p>Springs: 50 packs quarterly</p> <p>Germiston: 500 packs quarterlymonth.</p> <p>3. Minimum order for all three depots.</p> <p>4.Value per pack must be clearly stipulated.</p> <p>5. Supplier must be prepared to bring sample of the pack.</p> <p>6. Supplier must be willing to accept changes in accordance to the customers' requirements.</p>		
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Company Name: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_ Signature: \_\_\_\_\_

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

**TIP-OFFS ANONYMOUS: 0800 003 056**

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**RFQ FOR THE PROVISION OF: SUPPLY AND DELIVERY OF FOOD PARCELS AS AND WHEN  
REQUIRED IN SENTRARAND, SPRINGS AND GERMISTON FOR A PERIOD OF 3 YEARS**

**CLOSING VENUE: THE SECRETARY ACQUISITION COUNCIL, GROUND FLOOR, TENDER BOX, INYANDA  
HOUSE 1, 21 WELLINGTON RAOD, PARKTOWN, JOHANNESBURG, 2001**

**CLOSING DATE & TIME: 30 August 2016**

**VALIDITY PERIOD: 90 Business Days**

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**SECTION 2  
 EVALUATION CRITERIA AND RETURNABLE DOCUMENTS**

**11 EVALUATION CRITERIA**

**TRANSNET WILL UTILISE THE FOLLOWING CRITERIA [NOT NECESSARILY IN THIS ORDER] IN CHOOSING A SUPPLIER/SERVICE PROVIDER, IF SO REQUIRED:**

Criterion/Criteria	Explanation
<b>Administrative responsiveness</b>	Completeness of response and returnable documents <ul style="list-style-type: none"> <li>Letter of Good Standing</li> </ul>
<b>Substantive Responsive Test (Mandatory)</b>	<ul style="list-style-type: none"> <li>Sample Pack</li> <li>Compliance to specification declaration clause by clause</li> <li>Valid certificate of acceptability (COA) from the department of health (R962)</li> <li>Valid post control certificate from SANAS accredited body. Certificate must be addressed on the premises where food is stored and delivered from.</li> </ul>
<b>Technical Pre Qualifying Criteria</b>	<ul style="list-style-type: none"> <li>Provide delivery turnaround time</li> </ul>
<b>Final weighted evaluation based on 90/10 preference point</b>	<ul style="list-style-type: none"> <li>Pricing and price basis [firm]</li> <li>B-BBEE status of company - Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Annexure A: B-BBEE Claim Form.</li> </ul>

**12 Validity Period**

Transnet desires a validity period of 90 [Ninety] Business Days from the closing date of this RFQ.  
 This RFQ is valid until **15 FEBRUARY 2017**

**13 Disclosure of Prices Quoted**

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

YES  NO

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**14 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.

*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 : Quotation Form	
SECTION 2: Evaluation criteria and returnable documents <ul style="list-style-type: none"> <li>- Sample Pack</li> <li>- Compliance to specification, declaration clause by clause</li> <li>- Valid certificate of acceptability (COA) from the department of health (R962)</li> <li>- Valid pest control certificate from SANAS accredited body. Certificate must be addressed on the premises where food is stored and delivered from.</li> </ul>	

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

*Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Quotations.*

Essential Returnable Documents	Submitted [Yes or No]
- SECTION 4 : RFQ Declaration and Breach of Law Form	
- Valid and original, or a certified copy, of your entity's B-BBEE Verification Certification as per the requirements stipulated in Annexure A: B-BBEE Claims Form Note: failure to provide these required documents at the closing date and time of the RFQ will result in an automatic score of zero being allocated for preference	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a	



**Returnable Document**

<b>Essential Returnable Documents</b>	<b>Submitted [Yes or No]</b>
separate Tax Clearance Certificate for each party]	
ANNEXURE A – B-BBEE Preference Points Claim Form	

**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.

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### SECTION 3 QUOTATION FORM

I/We \_\_\_\_\_  
hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

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

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; 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.

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## Price Schedule

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

Item number	Description and Location	Quantity	Frequency	Price per Pack	Price per quarter	Total price for 3 years (12 quarters)
1	<b>SENTRARRAND</b> Pack will contain (1xcanned meat 190g 1x baked beans 225g 1xfruit cocktail 225g 1x 100% fruit juice 1x biscuit with fillings in between 125g)	500 Packs per quarter	quarterly	R	R	R
2	<b>GERMISTON</b> Pack will contain (1xcanned meat 190g 1x baked beans 225g 1xfruit cocktail 225g 1x 100% fruit juice 1x biscuit with fillings in between 125g)	50 packs per quarter	quarterly	R	R	R
3	<b>SPRINGS</b> Pack will contain (1xcanned meat 190g 1x baked beans 225g 1xfruit cocktail 225g 1x 100% fruit juice 1x biscuit with fillings in between 125g)	500 packs per quarter	quarterly	R	R	R



Total price for 1st year excluding VAT (4 quarter) R \_\_\_\_\_

Total price for 1st year including VAT (4 quarter) R \_\_\_\_\_

Total price for 2<sup>nd</sup> year excluding VAT (4 quarter) R \_\_\_\_\_

Total price for 2nd year including VAT (4 quarter) R \_\_\_\_\_

Total price for 3<sup>rd</sup> year excluding VAT (4 quarter) R \_\_\_\_\_

Total price for 3<sup>rd</sup> year including VAT (4 quarter) R \_\_\_\_\_

Total price for Three years excluding VAT R \_\_\_\_\_

Total price for Three years including VAT R \_\_\_\_\_

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.

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.

**By signing this Quotation Form the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar, and agrees, with all the conditions governing this RFQ, including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise:**

1. Specifications and drawings included in this RFQ - if applicable; and
2. The following documents all of which are available on Transnet's website or upon request:
  - 2.1. General Bid Conditions;
  - 2.2. Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet;





- 2.3. Supplier Integrity Pact;
  - 2.4. Non-disclosure Agreement; and
  - 2.5. Vendor Application Form and all supporting documents (first time vendors only)
- Alternatively, for all existing vendors, please provide vendor number(s) here:

<b>Transnet Operating Division</b>	<b>Unique Vendor Number</b>	<b>Yes / No</b>
Transnet Group		
TFR, etc.		

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s). Alternatively, Respondents are required to provide the updated information with their bid submission.

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

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

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

\_\_\_\_\_

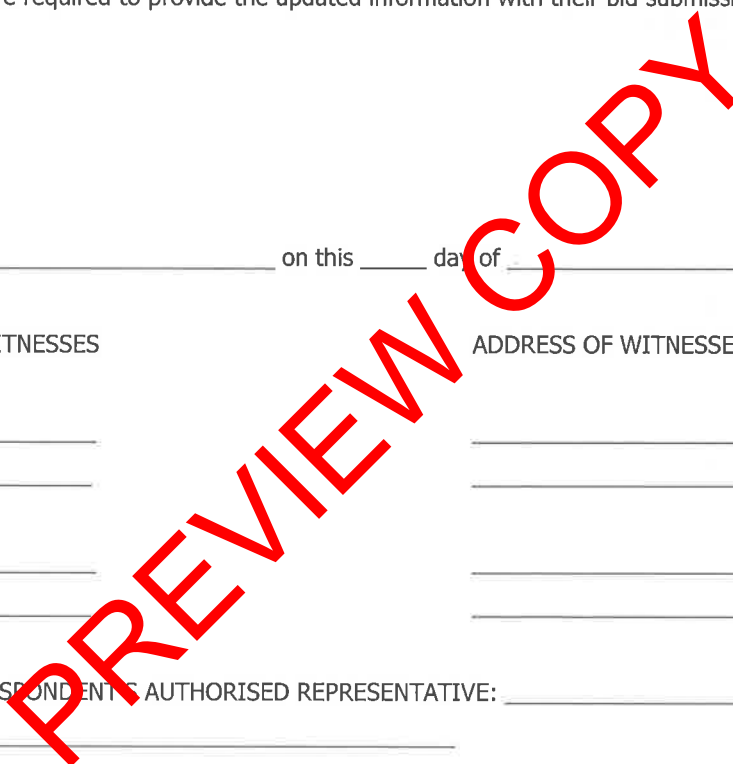
2 \_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

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

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





SECTION 4

**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.
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:

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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.

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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 _____

COMPANY EMAIL ADDRESS: \_\_\_\_\_

CONTACT NUMBER: \_\_\_\_\_

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## ANNEXURE A: B-BBEE PREFERENCE POINTS CLAIM FORM

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

### INTRODUCTION

A total of 20 preference points shall be awarded for B-BBEE Status Level of Contribution.

Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [SANAS] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [IRBA] or an Accounting Officer as contemplated in the Close Corporation Act [CCA] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.

Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

### GENERAL DEFINITIONS

**"all applicable taxes"** include value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

**"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**"B-BBEE status of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, work or services;

**"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];

**"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can utilised have been taken into consideration;

**"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;

**"contract"** means the agreement that results from the acceptance of a bid by Transnet;

**"EME"** means any enterprise with an annual total revenue of R5 [five] million or less;

**"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;



**"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;

**"non-firm prices"** means all prices other than "firm" prices;

**"person"** includes reference to a juristic person;

**"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

**"subcontract"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;

**"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;

**"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

**"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.

#### **ADJUDICATION USING A POINT SYSTEM**

The Bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFP will be awarded the contract, unless objective criteria justifies the award to another bidder.

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.

Points scored will be rounded off to 2 [two] decimal places.

In the event of equal points scored, the Bid will be awarded to the Bidder scoring the highest number of preference points for B-BBEE.

However, when functionality is part of the evaluation process and two or more Bids have scored equal points including equal preference points for B-BBEE, the successful Bid will be the one scoring the highest score for functionality.

Should two or more Bids be equal in all respect, the award shall be decided by the drawing of lots.



### POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

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

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

Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EME's with B-BBEE Status Level Certificates.

Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.

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.

Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

A person will not be awarded points for B-BBEE status level if it is indicated in the Bid documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.

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

**B-BBEE STATUS AND SUBCONTRACTING**

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

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

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

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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,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

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,

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

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 in the table below the B-BBEE level contributor, by ticking the applicable box.

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



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

**SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE**

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

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.

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

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% of information 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 25% 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	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (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



**GENERAL BID CONDITIONS - SERVICES**

**[March 2015]**

**PREVIEW COPY**



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## 15 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:

- 15.1 Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 15.2 Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 15.3 Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 15.4 Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 15.5 RFP** shall mean Request for Proposal;
- 15.6 RFQ** shall mean Request for Quotation;
- 15.7 RFX** shall mean RFP or RFQ, as the case may be;
- 15.8 Services** shall mean the services required by Transnet as specified in its Bid Document;
- 15.9 Service Provider** shall mean the successful Respondent;
- 15.10 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;
- 15.11 Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 15.12 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.

## 16 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.

## 17 SUBMISSION OF BID DOCUMENTS

- 17.1** A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 17.2** 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.
- 17.3** The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 18 USE OF BID FORMS

- 18.1** Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms



and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

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

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

## **19 BID FEES**

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

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

## **20 VALIDITY PERIOD**

**20.1** 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.

**20.2** Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

## **21 SITE VISIT / BRIEFING SESSION**

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

## **22 CLARIFICATION BEFORE THE CLOSING DATE**

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

## **23 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 Secretary of the relevant Acquisition Council.

## **24 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.

## **25 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 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).

## **26 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.

## **27 DEFAULTS BY RESPONDENTS**

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

- 27.1** enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 27.2** accept an order in terms of the Bid;
- 27.3** furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 27.4** comply with any condition imposed by Transnet,

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

## **28 CURRENCY**

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

## **29 PRICES SUBJECT TO CONFIRMATION**

- 29.1** Prices which are quoted subject to confirmation will not be considered.
- 29.2** 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.





### **30 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.

### **31 EXCHANGE AND REMITTANCE**

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

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

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

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

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

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

### **32 ACCEPTANCE OF BID**

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

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

**32.3** 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.

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





### **33 NOTICE TO UNSUCCESSFUL RESPONDENTS**

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

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

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

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

### **35 CONTRACT DOCUMENTS**

**35.1** 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.

**35.2** 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 award / intent, subject to any additional amendments and/or special conditions thereto as agreed to by the parties.

**35.3** 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.

### **36 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.

### **37 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.

### **38 CONTRACTUAL SECURITIES**

- 38.1** 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 an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 38.2** 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.
- 38.3** Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 38.4** The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- 38.5** Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 38 will be for the account of the Service Provider.

### **39 DELETION OF ITEMS TO BE 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.

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

- 40.1** In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.
- 40.2** In respect of foreign Services rendered:  
the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and  
the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

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

#### **41.1 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 41.10 above. Failure to comply with clause 41.10 above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 38 above [*Contractual Securities*].

#### 41.2 Conditional Discount

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

## 42 DELIVERY REQUIREMENTS

### 42.1 Period Contract

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

### 42.2 Progress Reports

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

### 42.3 Emergency Demands as and when required

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



### 43 SPECIFICATIONS AND COPYRIGHT

#### 43.1 Specifications

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

#### 43.2 Copyright

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

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

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

**44.2** 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.

**44.3** 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.

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

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

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

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

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



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

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

Funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

**45 CONFLICT WITH BID DOCUMENT**

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

**46 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)**

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

**46.2** Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. 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.

**46.3** 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.

**46.4** A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

**46.5** 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 Service 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.

**46.6** 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.

**46.7** 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.

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





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

**46.10** 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.

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With effect from **1 May 2016**, Transnet must implement the following:

**National Treasury's Central Supplier Database (CSD)**

The CSD has been established as the single source of all supplier information for all organs of state. Only the CSD must be used for the purpose of soliciting price quotations and the verification of certain key information (e.g. tax compliance status, CIPC information, etc.) of prospective bidders.

As a general rule, Transnet may also not award business to any bidders not registered on the CSD. All prospective suppliers wanting to conduct business with organs of state are required to register on the CSD by accessing [www.csd.gov.za](http://www.csd.gov.za).

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