

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR INFORMATION [RFI]

Information is required to enable Transnet to;

- establish those parties interested in continued participation in this procurement process
- review and evaluate Switch Rail Lubrication Systems for use on the heavy haul lines
- use the received information to update the user requirement specification [URS]

THEREAFTER

THROUGH A SEPARATE "CLOSED TENDER" [RFP] PROCESS

- to appoint Service Providers to supply Switch Rail Lubrication System to be Tested by Transnet Freight Rail's Technology Management Department

RFI NUMBER : HOAC-HO-18724
ISSUE DATE : 13th October 2015
CLOSING DATE: 12th November 2015
CLOSING TIME: 10:00

NON-COMPULSORY BRIEFING SESSION:

A NON- COMPULSORY BRIEFING SESSION WILL BE HELD AT THE FOLLOWING VENUE:

TIME : 12:00
DATE : 29 October 2015
VENUE : TRANSNET FREIGHT RAIL
INYANDA HOUSE 2
15 GIRTON ROAD
BOMBELA BOARDROOM, Ground FLOOR, INYANDA 2,
PARKTOWN
JOHANNESBURG

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"PREVIEW COPY ONLY"

**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL**

Section 1: NOTICE TO RESPONDENTS

1. INFORMATION REQUEST

Information is requested from interested persons, companies, close corporations or enterprises [hereinafter referred to as the **Respondent(s)**] to supply the aforementioned information to Transnet.

DESCRIPTION	RFI for Provision of Switch Rail Lubrication System for Transnet SOC Ltd operating as Transnet Freight Rail.
BID FEE AND BANKING DETAILS	This RFI is issued free of charge.
COLLECT DOCUMENTS FROM	The office of the Secretariat Ground Floor Inyanda House 1 Wellington Road Parktown, 2193
ISSUE DATE AND COLLECTION DATE DEADLINE	Between 09:00 and 15:00 from 13 th October 2015 until 29 October 2015.
NON COMPULSORY BRIEFING SESSION	Yes. Refer to paragraph 2 below and cover page for details.
CLOSING DATE	10:00 on Tuesday, 12 th November 2015 Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.

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

2. FORMAL BRIEFING

A non-compulsory RFI briefing will be conducted at Bombela Boardroom, Ground floor, Inyanda House 2, 15 Girton Road, on the **29 October 2015**, at 12:00 pm for a period of ± 2 hours. [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.

2.1 Despite the briefing session being non-compulsory, Transnet nevertheless encourages all respondents to attend. Transnet will not be held responsible if any respondents who did not attend the non-compulsory session subsequently feel disadvantaged as a result thereof.

3. RESPONSE SUBMISSION

Proposals must be submitted in a sealed envelope addressed as follows:

The Secretariat, Transnet Acquisition Council
RFI No: HOAC-HO-18724
Description: RFI for the provision of Switch Rail Lubrication System
for Transnet SOC Ltd operating as Transnet Freight Rail

Closing date and time: 12th November 2015 at 10:00 am
Closing address: 21 Wellington Road, Inyanda house 1

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

4. DELIVERY INSTRUCTIONS FOR RFI

Delivery by hand

If delivered by hand, the envelope must be deposited in the Transnet tender box which is located at Ground Floor Inyanda House 1, Wellington Road, Parktown, and must be addressed as follows:

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
INYANDA HOUSE 2
GROUND FLOOR, TENDER BOX
21 WELLINGTON ROAD
PARKTOWN 2193

4.1 The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.

4.2 It should also be noted that the above tender box is located at the Ground floor inside the main entrance on Wellington Road and is accessible to the public from 9:00 am until 15:30 pm, Mondays to Fridays.

Dispatch by courier

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

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
INYANDA HOUSE 1
GROUND FLOOR, TENDER BOX
21 WELLINGTON ROAD
PARKTOWN 2193

If responses are not delivered as stipulated herein, such responses will not be considered.

No email or faxed responses will be considered, unless otherwise stated herein.

The responses to this RFI will be opened as soon as possible after the closing date and time.

Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. technical compliance, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.

Envelopes must not contain documents relating to any RFI other than that shown on the envelope.

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

As described in more detail in the attached BBEE Claim Form and as prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that during the subsequent RFP stage, Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

Note: Should a JV be envisaged the principal Respondent is required to submit the required responses as indicated above.

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

5.1 B-BBEE Joint Ventures or Consortiums

Bidders may choose during the subsequent RFP process to enter into a Joint Venture with B-BBEE companies. RFP Bidders will also be required to submit a signed JV agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. Alternatively, if such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through the RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

Please indicate below whether your entity has an existing JV, and if so, provide details, including details of the percentage split of business, or whether your entity intends to create a JV relationship for RFP purposes:

5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting during the subsequent RFP process, Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by

Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators¹.

If contemplating subcontracting, please note that a Respondent will not be awarded points for B-BBEE if it is indicated in its RFP Proposal that such Respondent intends subcontracting more than 25% [twenty-five percent] of the value of the contract to an entity/entities that do not qualify for at least the same points that the Respondent qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

A person awarded a contract may not subcontract more than 25% [twenty-five percent] 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.

Please indicate below whether your entity has an existing subcontractor(s), and if so, provide details, including details of the percentage of the contract that will be sub-contracted as well as the B-BBEE status of the sub-contractor/s, or whether your entity intends to create a subcontracting relationship for RFP purposes:

5.3 B-BBEE Improvement Plan

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating. As such, Transnet requests that Respondents to the subsequent RFP submit a B-BBEE improvement plan. Respondents will be requested to indicate the extent to which they will maintain or improve their B-BBEE status over the contract period.

5.4 Supplier Development Initiatives

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

Transnet fully endorses and supports Government's economic policies through its facilitation of Supplier Development [SD] initiatives. Hence Respondents will be required to submit their commitments with regard to Supplier Development Initiatives over the duration of any subsequent contract.

As an indication of the significance which Transnet places on economic development, in the forthcoming RFP, it is envisaged that Supplier Development will be incorporated into the RFP.

¹ The Minister of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.

6. COMMUNICATION

6.1 For specific queries relating to this RFI, an RFI Clarification Request Form should be submitted to Khayakazi Magopheni before **12:00 on 05th November 2015**, substantially in the form set out in Section 7 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFI documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

7. CONFIDENTIALITY

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

8. INSTRUCTIONS FOR COMPLETION OF RFI

- 8.1 RFI proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 8.2 All returnable documents listed in the expression of interest [section 4] in this RFI must be returned with your submission.
- 8.3 The person or persons signing the submission must be legally authorised by the respondent to do so.

9. STATUS OF THIS RFI AND SUBSEQUENT PROCESS

- 9.1 It is envisaged that Supplier/Service Provider will be appointed, through a separate RFP process, to supply or provide Switch Rail Lubrication System.
- 9.2 This RFI is not an offer to purchase and Transnet is under no obligation to accept any proposals in this process and/or the subsequent RFP which may be issued hereafter.
- 9.3 As this is a Request for Information only, no business will be awarded through this process.

10. DISCLAIMERS

- 10.1 Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFI and/or its receipt of submissions in response to it. In particular, please note that Transnet reserves the right and at its sole and full discretion to:
- utilise any information provided to it in response to this RFI to draft the scope of requirements for inclusion in an RFP;
 - take no further action whatsoever, if it so decides
 - withdraw from this process and the provisions of this project at any time;
 - select the RFI and RFP participants based on Transnet's criteria;
 - change the dates of adjudication and submission;

- f) not invite RFI respondents for further participation in the RFP process;
- g) not bind itself to accept any or all of the RFIs; or
- h) increase or decrease the quantities/scope as indicated in the RFI.

10.2 Transnet's decisions will be final and no correspondence will be entered into after the selection process. You will be formally notified of your result.

10.3 An RFI will only be deemed accepted once written notice is given by Transnet to the successful Respondent(s) and after any amendments have been documented and agreed to.

10.4 Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with this submission.

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

TIP-OFFS ANONYMOUS: 08 00 003 056

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RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL

Section 2: RFI SCOPE OF REQUIREMENTS

1. BACKGROUND

Transnet issues this RFI to obtain information on the Switch Rail Lubrication Systems available in the market. All successful respondents to this RFI will be subject to a subsequent RFP issue. There are currently three common turnouts installed on the TFR network namely 1:20 (no.20), 1:12 (no.12) and 1:9 (no.9) tangential turnouts all without a 1:20 rail inclination. The use of 1:20 turnouts are mainly restricted to the heavy haul lines (>22 tons/axle) while the 1:12 (no.12) and 1:9 (no.9) are used on both heavy haul and general freight lines.

In recent years high wear rates have been observed on the turnout on the heavy haul lines, specifically on the gauge face of the switch rail (between the tip of the blade to approximately 1/4 of the blade length) in both the straight and the divergent line. The wear on the gauge face is the resultant of severe wheel flange contact during the transition of the wheel from the stock rail to the switch rail (vice versa) and the lateral movement.

Respondents are invited to propose a Switch Lubrication System that is aligned with world's best practice, a design that will ensure mitigation of side wear or a significant reduction in side wear on the switch area by means of lubrication. The new design should comply with geometric standards in respect to clearances according to the standards outline in the Manual for Track Maintenance and the URS.

The product offered must be a system and not loose components. Tenderers must, as part of their bid, address all the practical and technical aspects mentioned and also include the necessary drawings and documentation that show the systems in practice. Respondents must consider the fact that the products may be installed in areas which is prone to vandalism and theft. Transnet may also require training for the safety, operation and maintenance of the supplied switch rail lubrication system

Submissions should include a detailed proposed methodology and preliminary program for expected activities.

2. KEY OBJECTIVES OF THIS RFI PROCESS

Subsequent to this RFI process, Transnet's intention is to issue an RFP for a Switch Rail Lubrication System that will be able to lubricate the switch rail area of a turnout. This system should provide a technological alternative to the current grease pots being used in curves. This system should be aligned with world's best practice and demonstrated mitigation or reduction of side wear on the heavy haul turnouts.

Through this RFI process, Transnet's aims to:

- Establish those parties interested in continued participation in this procurement process
- Review and evaluate designs for various Switch Rail Lubrication
- Use the received information to update Transnet's User Requirement Specification (URS) for Switch Rail Lubrication Systems

Thereafter, through a separate closed RFP process:

- Issue a tender to respondents who participated in this RFI
- Evaluate the bids against the updated URS
- Award a testing opportunity to complying products
- Test and approve the complying products

Transnet requests all Respondents to assist with the achievement of these objectives by submitting the requested information as indicated in the attached URS (User Requirement Specification) document. This will be finalised in the RFP documents following this RFI process.

3. GENERAL RESPONDENT OBLIGATIONS

- 3.1 The Respondent(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 3.2 The following information is required from the Respondents:
 - The technical proposal offered
 - Price for product
 - Lead times for delivery of product once an order has been placed
 - Transportation requirements for components
 - Skills level required for installation/repair
 - Minimum maintenance required
 - Indicate if the product comply or do not comply with the specification

4. CONFIDENTIALITY AND COMPLIANCE

This RFI and information contained herein or provided for purposes thereof, remain the property of Transnet and may not be reproduced, sold or otherwise disposed of. All recipients of this document (whether a RFI is submitted or not) shall treat the details of this document as strictly private and confidential.

Information disclosed in this RFI is given in good faith and only for the purposes of providing sufficient information to the Respondent to enable submission of a well-informed and realistic RFI.

5. UNDERTAKINGS BY RESPONDENT

It will be accepted that the Respondent, on submitting the RFI response, has read, understood and accepted all the terms and conditions of the document. The submission of an RFI by any Respondent shall presume complete acceptance of the terms and conditions of the document. All qualifications and or exceptions should be noted in the RFI response document.

6. COSTS TO RESPOND TO THE RFI

All Respondents wishing to submit an RFI response must be in possession of this document, the RFI. Transnet will not be responsible for or pay any expense or losses which may be incurred by any Respondent in the preparation and submission of the RFI and the costs of the RFI at all stages of the RFI process. Costs, if any, will be for each Respondent's own account.

Transnet reserves the right to invite certain Respondents to present or otherwise demonstrate their proposed solution as per their RFI, at the Respondent's own cost.

7. AUTHORITY OF SIGNATORY

- 7.1 If the RFI Respondent is a company, a certified copy of the resolution of the Board of Directors (i.e. personally signed by the Chairman or Secretary of the Board) authorising the person who signs this RFI to do so and any other documents and correspondence in connection with this RFI and/or agreement on behalf of the company, must be submitted with their RFI.

7.2 If the RFI Respondent is a partnership, a certified copy of the resolution of the partners (personally signed by all the partners) authorising the person who signs this RFI to do so and any other documents and correspondence in connection with this RFI and/or agreement on behalf of the partnership, must be submitted with this RFI.

7.3 If the RFI Respondent constitutes a "one-man business", certified proof must be submitted that the person signing this RFI and any other documents and correspondence in connection with this RFI and/or agreement is the sole owner of the one-man business.

Failure to comply with this clause may result in rejection of the RFI response.

8. OFFERING OF COMMISSION OR GRATUITY.

If a Respondent, or any person employed by him, is found to have either directly or indirectly offered, promised or given to any person in the employ of Transnet, any commission, gratuity, gift or other consideration, Transnet shall have the right and without prejudice to any other legal remedy which it may have in regard to any loss or additional cost or expenses, to disqualify the RFI Respondent from further participation in this process and any other subsequent processes in this regard. The RFI Respondent will be responsible for all and any loss that Transnet may suffer as a result thereof. In addition, Transnet reserves the right to exclude such a Respondent from future business with Transnet.

9. UNDERTAKING BY TRANSNET

In responding to this RFI, Transnet encourages all RFI Respondents to put their best effort into the construction and development of the proposal.

10. RFI RESPONSE REQUIREMENTS

Specific detailed items that are important for the Respondent to consider in the response preparation process include:

- Quality of presentation, reply to the RFI and attention to required detail.
- Compliance with the terms and conditions of the RFI documents.
- Satisfaction of the project objectives.

**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL**

Section 3: TRANSNET'S RFI/ INFORMATION

1. REQUIREMENTS FOR RFI

Respondents expressing an interest to participate in this RFI stage must qualify in terms of the minimum predetermined requirements and have the capability to supply / provide the full range of Products/ Services, as set out below:

2. TECHNICAL CAPABILITY

Note: The extent to which you are able to provide all or any of the Technical Criteria indicated above will not necessarily penalise you from further participation in an RFP process. Responses to this RFI will permit Transnet to consider and formulate various options in terms of the proposed allocation of its supply requirements and/or allied Services.

3. EVALUATION METHODOLOGY AND CRITERIA

During this RFI process there will be no technical evaluation. The evaluation of responses will only be applicable at the RFP stage.

4. FINANCIAL REQUIREMENTS FOR FUTURE AWARD OF BUSINESS

In the event of a RFP following this RFI process, it will be a condition precedent prior to the award of business in terms of that RFP that the successful Respondent demonstrates its ability to fund Transnet's requirements.

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**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL**

Section 4: EXPRESSION OF INTEREST

I/We _____

[name of company, close corporation or partnership]

of [full address] _____

_____ carrying on business under style or title of [trading as]

represented by _____

in my capacity as _____ being

duly authorised, hereby lodge an **Expression of Interest** in the provision of **Switch Rail Lubrication System**, as follows:

ADDRESS FOR NOTICES

Respondent to indicate its *domicilium citandi et executandi* hereunder:

Name of entity: _____

Facsimile: _____

Address: _____

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

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

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

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

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

.....

.....

.....

.....

.....

Respondent's Signature

Date and Company Stamp

.....

CONFIDENTIALITY

All information related to a subsequent contract, both during and after completion, is to be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to Transnet’s business, written approval to divulge such information must be obtained from Transnet.

RETURNABLE DOCUMENTS

a) Respondents must submit with their responses to this RFI, **as a minimum requirement**, all the returnable documents indicated below with a [√]. All Sections must be signed and dated by the Respondent.

Minimum Requirements - Returnable Documents	Submitted [√]
SECTION 2 : RFI Scope of Requirements	
SECTION 4 : Expression of Interest	
ANNEXURE A : Signed Non-Disclosure Agreement	

b) In addition to the requirements of section (a) above, Respondents are further requested to submit with their responses the following **Additional Returnable Documents** as detailed below.

Additional Returnable Documents	Submitted [√]
SECTION 1 : Notice to Respondents	
- Valid B-BBEE Verification Certificate [RSA Large Enterprises and QSEs]	
- Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMEs]	
SECTION 3 : Transnet’s Statistical Information and RFP Particulars	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Entity’s letterhead	
- Certified copy of valid Company Registration Certificate [if applicable]	

By signing these RFI documents, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFI, including those contained in any printed form stated to form part hereof and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition.

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: _____

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Respondent's contact details:

Name.....
Designation.....
Address.....
Telephone.....
Cell Phone.....
Facsimile.....
Email.....
Website.....

Respondent's Signature

Date and Company Stamp

**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
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Section 5: GENERAL DEFINITIONS

- 2.1 **"all applicable taxes"** include value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **"B-BBEE status of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, works or services;
- 2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];
- 2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;
- 2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;
- 2.8 **"contract"** means the agreement that results from the acceptance of a bid by Transnet;
- 2.9 **"EME"** means any enterprise with an annual total revenue of R5 [five] million or less as per the 2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of R10 [ten] million or less as per the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928;
- 2.10 **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **"non-firm prices"** means all prices other than "firm" prices;
- 2.13 **"person"** includes reference to a juristic person;
- 2.14 **"QSE"** means any enterprise with an annual total revenue between R5 [five] million and R35 [thirty five] million as per the 2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of between R10 [ten] million and R50 [fifty] million as per

the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928

- 2.15 **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.16 **"subcontract"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.17 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
- 2.18 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.19 **"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. Subcontracting

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

If YES, indicate:

- (i) What percentage of the contract will be subcontracted?
- (ii) The name of the subcontractor
- (iii) The B-BBEE status level of the subcontractor
- (iv) Is the subcontractor an EME? YES/NO

3.2 Declaration with regard to Company/Firm

- (i) Name of Company/Firm.....
- (ii) VAT registration number.....
- (iii) Company registration number.....
- (iv) Type of Company / Firm [TICK APPLICABLE BOX]

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

(v) Describe Principal Business Activities

(vi) Company Classification [TICK APPLICABLE BOX]

- Manufacturer
- Supplier
- Professional Service Provider

- Other Service Providers, e.g Transporter, etc
- (vii) Total number of years the company/firm has been in business.....

BID DECLARATION

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

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

WITNESSES:

- 1.
- 2.

SIGNATURE OF BIDDER

DATE:.....

COMPANY NAME:

ADDRESS:.....

**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL**

Section 6: NON-DISCLOSURE AGREEMENT [NDA]

Complete and sign the Non-Disclosure Agreement appended hereto as Annexure A

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Respondent's Signature

Date and Company Stamp

**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL**

Section 7: RFI CLARIFICATION REQUEST FORM

RFI No: HOAC-HO-18724

Deadline for RFI clarification submissions: Before **12:00** on 05th November 2015

TO: Transnet SOC Ltd
ATTENTION: Khayakazi Magopheni
EMAIL: Khayakazi.magopheni@transnet.net
DATE:
FROM:

RFI Clarification No [to be inserted by Transnet]

REQUEST FOR RFI CLARIFICATION:

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**RFI FOR THE PROVISION OF SWITCH RAIL LUBRICATION SYSTEM
FOR TRANSNET SOC LTD OPERATING AS TRANSNET FREIGHT RAIL**

Section 8: CERTIFICATE OF ATTENDANCE OF NON- COMPULSORY SITE MEETING / RFP BRIEFING

It is hereby certified that –

1. _____

2. _____

Representative(s) of _____ [name of entity]
attended the site meeting / RFP briefing in respect of the proposed Goods to be supplied in terms
of this RFP on _____ 2015

TRANSNET'S REPRESENTATIVE

RESPONDENT'S REPRESENTATIVE

DATE _____

DATE _____

EMAIL _____

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NON DISCLOSURE AGREEMENT – RFI

Annexure A

"PREVIEW COPY ONLY"

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 as indicated in the RFI/EOI bid response hereto

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

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

- c) following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

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

1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

2. CONFIDENTIAL INFORMATION

2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.

2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:

- a) to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

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2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

3. RECORDS AND RETURN OF INFORMATION

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

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

5. DURATION

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

6. PRINCIPAL

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

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

9. GENERAL

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

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A Division of Transnet SOC Limited

TECHNOLOGY MANAGEMENT, Track technology

Specification

BBG3166

User requirement specification for Switch rail lubricators

Author:	Engineer Track Technology	W. Swart	
Authorized & approved	Senior engineer Track Technology	J. Meyer	
Authorized	Principal Engineer Track Technology	K. Mistry	
Date:			3 December 2014

Circulation Restricted To: Transnet Freight Rail
 Transnet and Relevant Third Parties
 Unrestricted

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1 Document version

Amendment number	Section amended	Summary of amendments	Date issued
0	/	Original specification	2014/12/03

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2 Document scope

This specification covers all the technical requirements that are expected of switch rail lubricator and its components for use on the switch rail of tangent and secant design turnouts in the Transnet Freight Rail network.

This specification is for the procurement of switch rail lubricators, and also prescribes the minimum requirements for the installation and operation of the switch rail lubricator.

3 Related documentation

The following documents are to be used in conjunction with this specification:

- Manual for track maintenance, BBB0481, version 2, 2012
- Specification for trackside lubrication, BBF9327, version 2, 2013

4 Background

Transnet Freight Rail has a vast number of turnouts on their lines, ranging from heavy haul to general freight. There are currently three common turnouts installed on the TFR network namely 1:20 (no.20), 1:12 (no.12) and 1:9 (no.9) tangential turnouts all without a 1:20 rail inclination. The use of 1:20 turnouts are mainly restricted to the heavy haul lines (>22 tons/axle) while the 1:12 (no.12) and 1:9 (no.9) are used on both heavy haul and general freight lines.

In recent years, high wear rates have been observed on the turnout on the heavy haul lines, specifically on the gauge face of the switch rail (between the tip of the blade to approximately 1/3rd of the blade length) in both the straight and the divergent line. The wear on the gauge face is the resultant of severe wheel flange contact during the transition of the wheel from the stock rail to the switch rail (vice versa) and the lateral movement.

5 General requirements for the supply, installation and operation of switch rail lubricators

The supply, installation and operation of switch rail lubricator will be governed by certain general requirements as listed below:

- 5.1 The supply installation and operation of a system to lubricate turnout switch rails in an attempt to manage and reduce the development of gauge corner wear.

- 5.2 The product offered must be a system and not individual components.
- 5.3 All systems and parts of the system offered must comply with this specification.
- 5.4 The system must include all the components necessary for the system to be installed and function correctly.
- 5.5 The system must have a cost effective life cycle, inclusive of unit cost, maintenance and consumables such as grease.
- 5.6 The switch rail lubricator must lubricate the straight and curved switch rail.

6 Minimum expected environmental and dynamic conditions

The system offered must be able to operate in the environmental and dynamic conditions as outlined below:

- 6.1 The system must perform equally well in rail temperatures between -15 and 70°C (degrees Celsius)
- 6.2 The system must be fully operational in harsh environments and be able to function in severe weather conditions including rain, snow, cold and heat.
- 6.3 The system must be able to function in areas with high and low humidity.
- 6.4 The system must be fully operational for extended periods without maintenance interventions.
- 6.5 The switch rail lubricator must be able to function correctly with train speeds ranging between 0 and 70 km/h. (Preference is given to speed independent systems)
- 6.6 Bi-directional traffic on both the straight and curved switch blade (main and branch line) is anticipated and must be catered for.
- 6.7 The switch rail lubricator must work equally well irrespective of traffic being predominant. (Facing – trailing – Main –divergent)
- 6.8 Train axle loads ranging from 22-30 tons per axle must be accommodated.

7 Mechanism of lubricator operation

The mechanism of lubricator must conform to the requirements as indicated below:

- 7.1 The operation of the lubricator will be left to the discretion of the supplier and may be of plunger type, auger type or any other relevant design. All proposals will be considered
- 7.2 The power source will be left to the discretion of the supplier (i.e. the lubricator may be mechanically powered (train movement) or electrically powered)

- 7.3 If applicable, it is up to the supplier to make sure the proposed system offered can integrate into the existing Transnet electrical system.
- 7.4 The lubricator must be able to be adjusted manually to regulate the application of grease.
- 7.5 The lubricator must only apply grease to the gauge face of the switch rail on both the straight and curved blade.
- 7.6 Grease dispensing and application must remain constant with changes in train speed.
- 7.7 Grease has to be applied optimally to provide adequate lubrication of the rail surface without excessive spillage and wastage of grease.
- 7.8 The grease application must be confined to the switch rail area (switch rails) and application should be regulated to provide sufficient lubrication over an approximate distance of up to 15 meters.
- 7.9 Due to the bi-directional traffic the lubricator must apply grease only when trains are moving towards the switch rail.
- 7.10 All metal components of the system must be corrosion-proof with a Transnet approved product.

8 Installation of switch rail lubricators

The installation of the switch rail lubricator should conform to the requirements as listed below:

- 8.1 The installation of rail switch lubricators must be relatively simple and fast by the track personnel.
- 8.2 Switch rail lubricators must be installed on the rail using a Transnet Freight Rail approved method.
- 8.3 It must be possible to install the switch rail lubricator on the following rail types UIC60, 60E1 and SAR57.
- 8.4 The optimum locations of the lubricator must be specified by the supplier.
- 8.5 The lubricator must function equally well on new and worn stock and switch rails. (wear on crown and gauge corner).
- 8.6 TFR crown and side wear limits to be designed for as listed in Manual for Track Maintenance, Annexure 15, sheet 2
- 8.7 If the lubrication system must be insulated if it will interfere with the track signalling systems

9 Maintenance

Maintenance requirements of the switch rail lubricator must be as given below:

- 9.1 The portion of the lubricator that is fixed to, or in close proximity of the rail should take into account the influence on track maintenance activities including, but not limited to ballast replacement, ballast tamping sleeper replacement and rail grinding. The effect that these maintenance activities will have on the equipment should also be considered.
- 9.2 Maintenance guidelines should be provided by the supplier/ manufacturer to TFR and the field technician.
- 9.3 The supplier must supply a maintenance schedule for the system that would indicate the frequency and type of maintenance that would be required on the system to give the expected life.
- 9.4 Replenishment of grease in the lubricator should be simple and fast during routine maintenance.

10 Ease and speed of maintenance and installation

- 10.1 A high premium is placed on on-track maintenance time and thus all components should be designed to reduce on track time required for installation and maintenance

11 Safety

- 11.1 The system must be vandal-proof and fixed to the rail in such a manner to mitigate theft.
- 11.2 The lubricator must not obstruct train movement or protrude more than 50 mm above the head of the rail excluding areas where the wheel flange will run.
- 11.3 The lubricator must not limit or prevent the movement of the switch rail, points machine or inhibit the correct functioning of signalling equipment.
- 11.4 The lubricator system must not restrict on-track movement by personnel during inspections.

12 Lubricant

The grease type to be used in conjunction with switch rail lubricator must conform to the minimum specifications as listed below:

- 12.1 Grease designed for specific lubricator must be defined and specified.
- 12.2 Grease product must be readily available and easy to handle.

- 12.3 Grease must be have sufficient lubricating properties in specified temperature ranges and be able to work in dry and wet conditions. The prescribed working conditions of the lubricant has to be in the range of -30 to 140°C. (degrees Celsius)
- 12.4 The dropping point must be greater than 180°C. (degrees Celsius)
- 12.5 Working penetration at 77°F must be 310-340.
- 12.6 Grease structure must be smooth.
- 12.7 Grease must be clearly visible.
- 12.8 Base oil viscosity SUS at 100°F must be 500.
- 12.9 A typical grease base component used by Transnet will have lubricant content as stipulated below:

Table 1 Grease base components

Lubricant (grease) components	Percentage (%)
Oil	91
Thickener	5 to 7
Molybdenum Disulfide	3

The supplier must indicate what the lubricant content of the proposed grease should be.

13 Environmental consideration

Environmental factors to be considered are listed below:

- 13.1 The biodegradability of the grease must be greater than 90% in accordance with CEC-L-33-T-94.
- 13.2 The proposed grease may not contain lead or any other toxic product that is harmful to the environment or that could cause corrosion.
- 13.3 The grease lubricator must apply optimum quantities of grease without over greasing and contamination of the surrounding area.
- 13.4 Where possible the supplier must recommend ways of preventing the grease from contaminating the ballast and surrounding areas

14 System pre-approval

- 14.1 Pre-approval of products must be obtained from Technology Management (Track Technology) before the purchasing of any material for use on TFR lines will be considered.

14.2 The products will be subjected to laboratory and field testing. The supplier must supply all the necessary jigs, material, components, documentation, certificates, quality assurance tests, technical information and drawings necessary to TFR free of charge for all the tests required.

14.3 The final product offered will be evaluated and tested as outlined below:

- Concept approval (Check if system offered meets the requirements of this specification)
- Approval of design (Will be done as part of the test phase)
- Approval of product and system through laboratory and field testing
- Quality of workmanship

15 Quality Assurance

15.1 Quality Plans

The supplier shall provide Transnet with a quality plan covering material specification, reference documents for manufacturing, inspection frequencies, measurement techniques and availability of component. (Lead times and production rates)

15.2 Quality Accreditation

The supplier shall be accredited with BS EN ISO 9001 or equivalent.

15.3 Certificates

The manufacturer shall issue certificates of conformance stating that the components meet the requirements of this specification.

15.4 Traceability

All products and packaging must be marked to allow for the tracing of problems back to the manufacturing date/ batch.

15.5 Testing by the manufacturer

The supplier/ manufacturer must indicate the type and frequency of inspections and testing that will be done on raw materials as well as on the final components and products.

15.6 Test and Inspection Documentation

The manufacturer shall carry out the inspection and testing internally in accordance with the submitted specifications and this specification and shall keep the records of test results methodically for a period of at least 5 years.

15.7 Further Testing

TFR reserves the right to arrange further testing of any components at the Track Testing Laboratory. The jigs and components must be supplied to TFR at the manufacturer's expense.

15.8 Experimental components

The manufacturer must indicate if the product offered is still in an experimental phase. If the product is not in experimental phase and has been implemented, further detail to be provided on status and in-track performance.

All products offered will go through a laboratory testing phase before installing it in track.

The testing of components will be at the discretion of TFR.

15.9 Technical support

The supplier must have a technical support team and equipment that can assist with any technical aspect required by TFR from time to time. This team must meet and inspect some lines with Technology Management (Track Technology) at least once a year to familiarize themselves with the conditions and problems. Proof of competency must be supplied.

15.10 Research and development

The supplier must indicate if they have an active R&D program in place to improve their products or to reduce costs.

15.11 Component condition

The general condition of the components must be good without any visual defects that are detrimental to the performance of the final product.

16 Information to be supplied by the supplier

The following information must be supplied:

- Drawings of each component and system offered
- Technical properties of the system
- Detail on where the component and system comply and do not comply with the specification
- Details and specification of the components and consumables to be used
- Proposed packaging
- Evidence of where the product is used in other railway lines
- All other relevant information as asked for in this specification
- Product testing details

The proposal must be submitted in a paper and electronic format

The supplier must

- Supply a maintenance schedule for the system as part of the proposal that would indicate the frequency and type of maintenance that would be required on the system to give the expected life
- Include the expected life of the various components in the system
- Include all assumptions that were made based on insufficient information in tender documents

End



NON DISCLOSURE AGREEMENT – RFI

Annexure A

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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 as indicated in the RFI/EOI bid response hereto

WHEREAS

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9. GENERAL

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

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"PREVIEW COPY ONLY"