

To To all tenderers
From Nonhlanhla Mafoko
Date 31 January 2022
Subject Addendum 3
Pages 29

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TENDER NO: TPT/2021/12/2/RFP

DESCRIPTION OF WORKS: FOR THE PROVISION OF OFFICES FOR TRANSNET PORT TERMINALS AT 202 ANTON LEMBEDE STREET, DURBAN FOR TRANSNET SOC LTD (REG NO. 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS (HEREINAFTER REFERRED AS "TPT").

1.Reference to iCLM HQ 635 TPT: Tenderers should change all references to tender number iCLM HQ 635 TPT and change the tender number to TPT/2021/12/2/RFP throughout the tender document.

2.Contract Data:

2.1 Delay Damages

Bidders are to note that there was an error and X7 Delay damages was omitted in the issued RFP. The Contract data has been updated to include the X7 Delay Damages on page 7 of the addendum 3 Contract data.

2.2 Z3.1 Defects Correction Bond (Retention Bond)

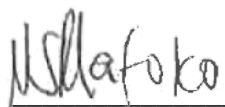
Bidders are to note that there was an error and Defects correction bond is 10% of the contract value and not 5% of as previously stated on the issued RFP. (Page 10 of addendum 3 Contract data).

Attached for your attention is a copy of Addendum 3 dated 31 January 2022

Endorsement should be made on the tender that Addendum 1 dated 31 January 2022 has been received and taken into account in submitting your tender.

*Please acknowledge receipt of this Addendum before the closing date of tender.

Regards

A handwritten signature in black ink, appearing to read 'Nonhlanhla Mafoko'.

Nonhlanhla Mafoko
Sourcing Specialist

TRANSNET SOC LTD

TENDER NO: TPT/2021/12/2/RFP

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ADDENDUM 3

Date: 31 January 2022

The following information is furnished in addition to, in amplification and substitution of, matters contained in the tender documents issued in respect of the above-mentioned work.

TRANSNET SOC LTD

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ADDENDUM 3

Date: 31 January 2022

This is to certify that we _____
have received Addendum 3 dated 31 January 2022

TENDERER

DATE: _____

WITNESSES:1. _____



TRANSNET PORT TERMINALS

CONTRACT NUMBER: TPT/2021/12/2/RFP

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C1.2 Contract Data

Part one - Data provided by the Employer

Clause	Statement	Data
1	General	
	The conditions of contract are the core clauses and the clauses for main Option	
		B: Priced contract with bill of quantities
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X2: Changes in the law
		X7: Delay damages
		X13: Performance Bond
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Engineering and Construction Contract June 2005 (amended June 2006 and April 2013)	
10.1	The Employer is:	Transnet SOC Ltd (Registration No. 1990/000900/30)
	Address	Registered address: Transnet Corporate Centre 138 Eloff Street Braamfontein JOHANNESBURG 2000
	Having elected its Contractual Address for the purposes of this contract as:	Transnet Port Terminals Transnet Port Terminals South Tower Building Kingsmead Office Park Stalwart Simelane Street Durban 4001



TRANSNET PORT TERMINALS

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10.1	The Project Manager is: (Name)	
	Address	Transnet Port Terminals Transnet Port Terminals South Tower Building Kingsmead Office Park Stalwart Simelane Street Durban 4001
	Tel	
	e-mail	
11.2(13)	The works are	The provision of offices for Transnet Port Terminals at 202 Anton Lembede Street for Transnet SOC Ltd (Reg no. 1990/000900/30) operating as Transnet Port Terminals (Hereinafter referred as "TPT").
11.2(14)	The following matters will be included in the Risk Register	None
11.2(15)	The boundaries of the site are	As stated in Part C4.1. "Description of the Site and it surroundings"
11.2(16)	The Site Information is in	Part C4
11.2(19)	The Works Information is in	Part C3
12.2	The law of the contract is the law of	the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The language of this contract is	English
13.3	The period for reply is	TBC
2	The Contractor's main responsibilities	No additional data is required for this section of the conditions of contract.
3	Time	
11.2(3)	The completion date for the whole of the works is	TBC
11.2(9)	The key dates and the conditions to be met are:	Condition to be met key date
		1 TBC



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30.1	The access dates are	Part of the Site	Date
		1 The whole of site	TBC
31.1	The Contractor is to submit a first programme for acceptance within	2 weeks of the Contract Date.	
31.2	The starting date is	TBC	
32.2	The Contractor submits revised programmes at intervals no longer than	4 weeks.	
35.1	The Employer is not willing to take over the works before the Completion Date.		
4	Testing and Defects		
42.2	The defects date is	52 (fifty two) weeks after Completion of the whole of the works.	
43.2	The defect correction period is	2 weeks	
5	Payment		
50.1	The assessment interval is monthly on the	25th (twenty fifth) day of each successive month.	
51.1	The currency of this contract is the	South African Rand.	
51.2	The period within which payments are made is	Payment will be effected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.	
51.4	The interest rate is	the prime lending rate of Standard Bank of South Africa.	
6	Compensation events		
60.1(13)	The weather measurements to be recorded for each calendar month are,	the cumulative rainfall (mm)	
		the number of days with rainfall more than 10 mm	
		the number of days with minimum air temperature less than 0 degrees Celsius	



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		the number of days with snow lying at 08:00 hours South African Time
		and these measurements: :
	The place where weather is to be recorded (on the Site) is:	The Contractor's Site establishment area
	The weather data are the records of past weather measurements for each calendar month which were recorded at:	Durban
	and which are available from:	South African Weather Service 012 367 6023 or info3@weathersa.co.za.
7	Title	No additional data is required for this section of the conditions of contract.
8	Risks and insurance	
80.1	These are additional Employer's risks	None
84.1	The Employer provides these insurances from the Insurance Table	
	1 Contract Works Cover:	Covering physical loss of or damage to the works, temporary works and material for incorporation into the works whilst in transit, temporary storage and whilst in the course of erection at the contract site within the Republic of South African.
	Cover / indemnity:	to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are:	as stated in the insurance policy for Contract Works / Public Liability
	2 Contractors Public Liability Cover:	Covering legal for loss of or damage to property (except the works, Plant and Materials & Equipment) and liability for bodily injury to or death of a third party persons (not an employee of the Contractor) arising out of or in connection with the performance of the works on the contract site or sites designated for purpose of the performance of the contract.
	Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability



TRANSNET PORT TERMINALS

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The deductibles are	as stated in the insurance policy for Contract Works / Public Liability
4 Riot/ Strike / Terrorism Cover :	Provided by South Africa Special Risks Insurance Association (SASRIA) in respect of risks within the Republic of South Africa, insurance subject to the terms, exceptions and conditions of the SASRIA coupon
Cover / indemnity	Cover / indemnity is to the extent provided by the SASRIA coupon
The deductibles are	As stated in the insurance policy of contract works.
Note:	The deductibles for the insurance as stated above are listed in the document titled "Certificate of Insurance: Transnet (SOC) Limited Principal Controlled Insurance."
<p>84.1 The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is</p> <p>The Contractor provides these additional Insurances</p>	<p>The Contractor must comply at a minimum with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.</p> <p>1 Where the contract requires that the design of any part of the works shall be provided by the Contractor the Contractor shall satisfy the Employer that professional indemnity insurance cover in connection therewith has been affected</p>
	<p>2 Where the contract involves manufacture, and/or fabrication of Plant & Materials, components or other goods to be incorporated into the works at premises other than the site, the Contractor shall satisfy the Employer that such plant & materials, components or other goods for incorporation in the works are adequately insured during manufacture and/or fabrication and transportation to the site.</p>



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		<p>3 Should the Employer have an insurable interest in such items during manufacture, and/or fabrication, such interest shall be noted by endorsement to the Contractor's policies of insurance as well as those of any sub-contractor</p> <p>4 Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R 5 000 000.</p> <p>5 The insurance coverage referred to in 1, 2, 3, and 4 above shall be obtained from an insurer(s) in terms of an insurance policy approved by the Employer. The Contractor shall arrange with the insurer to submit to the Project Manager the original and the duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the Contractor.</p>
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract for any one event is	Whatever the Contractor requires with minimum limit of R10m per occurrence.
84.2	The insurance against loss of or damage to the works, Plant and Materials as stated in the insurance policy for contract works and public liability selected from:	Principal Controlled Insurance policy- Contract works cover
9	Termination	There is no additional Contract Data required for this section of the conditions of contract.
10	Data for main Option clause	



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B	Priced contract with Bill of Quantities	No additional data is required for this Option.
60.6	The method of measurement is	The Bill of Quantities have been measured in accordance with SANS 1200 unless indicated otherwise.
11	Data for Option W1	
W1.1	The Adjudicator is	Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the Adjudicator, the Chairman of the Association of Arbitrators will appoint an Adjudicator.
W1.2(3)	The Adjudicator nominating body is:	The Chairman of the Association of Arbitrators (Southern Africa)
	If no Adjudicator nominating body is entered, it is:	the Association of Arbitrators (Southern Africa)
W1.4(2)	The tribunal is:	Arbitration
W1.4(5)	The arbitration procedure is	The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	Durban, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	The Chairman of the Association of Arbitrators (Southern Africa)
	- if the arbitration procedure does not state who selects an arbitrator, is	
12	Data for secondary Option clauses	
X2	Changes in the law	No additional data is required for this Option
X7	Delay damages	
X7.1	Delay damages for Completion of the whole of the works are	0.1% of the contract value per day capped at 7.5%
X13	Performance bond	
X13.1	The amount of the performance bond is	5% of the total of the Prices



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X16	Retention	
X16.1	The retention free amount is	Nil
	The retention percentage is	10% on all payments certified.
X18	Limitation of liability	
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to:	Nil
X18.2	For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to:	The deductible of the relevant insurance policy
X18.3	The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited to:	The cost of correcting the Defect
X18.4	The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	The Total of the Prices
X18.5		
	The end of liability date is	5 years after Completion of the whole of the works
Z	Additional conditions of contract	
	The additional conditions of contract are:	
Z1	Local Production and Content Obligations	



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Z1.1	<p>In terms of Local Production and Content (SBD 6.2), Annexure A and Annexure C of the Returnable Schedule T2.2-02 Eligibility Criteria Schedule: Declaration Certificate of Local Production and Content, the Contractor has undertaken to fulfil its obligations of the Local Production and Content for the following designated sectors:</p> <ul style="list-style-type: none"> • 100% for Steel Products and Components for Construction • 90% for Electrical cables • 70% for Valve Products and Actuators • 100% for Cement • 100% for Plastic Pipes
Z1.2	<p>The Contractor is required to note that the Employer, the Department of Trade and Industry [DTI] and/or the body appointed by the DTI as the verification authority for local content may conduct compliance audits with regard to the Local Production and Content requirements as prescribed in Regulation 8 of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act no. 5 of 2000.</p>
Z1.3	<p>The Contractor is required to continuously update Declarations C, D and E of the Local Production and Content Declaration commitments with the actual local content values for the duration of the contract.</p> <p>The Contractor shall report to the Employer on a monthly basis during the term of the Contract, the amounts spend on Local Production and Content for the designated sectors for the duration of the contract.</p>
Z1.4	<p>The Contractor must refer to Schedule A attached to the Returnable Schedule T2.2-03 Eligibility Criteria Schedule: Declaration Certificate of Local Production and Content concerning non-compliance penalties applicable to Local Production and Content.</p>



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Z3	Defects Correction (Retention Bond)	Bond
Z3.1	The Supplier gives the Employer a Defects correction bond, provided by a bank with a minimum long term credit rating of A – (Fitch rating or equivalent) which the Project Manager has accepted, to the value of 10% of the Contract value and in the form set out in document C1.3 Sureties in Part 1 Agreements and Contract Data. The bond will be given to the Employer prior to the final delivery, commissioning, testing and handover of the.	
Z4	Additional clause relating to Performance Bonds and/or Guarantees	
Z4.1	The Performance Guarantee under X13 above shall be an irrevocable, on-demand performance guarantee, to be issued exactly in the form of the Pro Forma documents provided for this purpose under C1.3 (Forms of Securities), in favour of the Employer by a financial institution reasonably acceptable to the Employer.	



TRANSNET PORT TERMINALS

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Z5 Additional clauses relating to Joint Venture

Z5.1

27.5. In the instance that the Contractor is a joint venture, the Contractor shall provide the Employer with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract Date.

The Joint Venture agreement shall contain but not be limited to the following:

- **A brief description of the Contract and the Deliverables;**
- **The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;**
- **The constituent's interests;**
- **A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;**
- **Details of an internal dispute resolution procedure;**
- **Written confirmation by all of the constituents:**
 - i. **of their joint and several liabilities to the Employer to Provide the Works;**
 - ii. **identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the Contractor's representative;**
 - iii. **Identification of the roles and responsibilities of the constituents to provide the Works.**
- **Financial requirements for the Joint Venture:**
 - iv. **the working capital requirements for the Joint Venture and the**



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		<p>extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time;</p> <p>v. the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.</p>
Z5.2		27.6. The Contractor shall not alter its composition or legal status of the Joint Venture without the prior approval of the Employer.
Z6	Additional obligations in respect of Termination	
Z6.1		<p>The following will be included under core clause 91.1:</p> <p>In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and</p> <p>Under the second main bullet, insert the following additional bullets after the last sub-bullet:</p> <ul style="list-style-type: none"> • commenced business rescue proceedings (R22) • repudiated this Contract (R23)
Z6.2	Termination Table	<p>The following will be included under core clause 90.2 Termination Table as follows:</p> <p>Amend "A reason other than R1 – R21" to "A reason other than R1 – R23"</p>
Z6.3		Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."
Z7	Right Reserved by the Employer to Conduct Vetting through SSA	



TRANSNET PORT TERMINALS

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Z7.1	<p>The Employer reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any Contractor who has access to National Key Points for the following without limitations:</p> <ol style="list-style-type: none"> 1. Confidential – this clearance is based on any information which may be used by malicious, opposing or hostile elements to harm the objectives and functions of an organ of state. 2. Secret – clearance is based on any information which may be used by malicious, opposing or hostile elements to disrupt the objectives and functions of an organ of state. 3. Top Secret – this clearance is based on information which may be used by malicious, opposing or hostile elements to neutralise the objectives and functions of an organ of state.
Z8	<p>Additional Clause Relating to Collusion in the Construction Industry</p>
Z8.1	<p>The contract award is made without prejudice to any rights the Employer may have to take appropriate action later with regard to any declared tender rigging including blacklisting.</p>
Z9	<p>Protection of Personal Information Act</p>
Z9.1	<p>The Employer and the Contractor are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act.</p>



TRANSNET PORT TERMINALS

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Z11 Anti-corruption, TPT Indemnity

Z11.1 Anti - Corruption

In the event that the Contractor is alleged to be, or found by any competent court or Tribunal to be involved in any corrupt, unlawful or illegal activities, or is being investigated for any alleged corrupt, unlawful or illegal activity in relation to Transnet or any other party with whom Contractor does business, or if Transnet learns that:

a. Improper payments are being or have been made or offered to Transnet officials or any other person by Contractor or those acting on behalf of Contractor with respect to the Services; or

b. Contractor or those acting on behalf of Contractor has accepted any payment or benefit, regardless of value, as an improper inducement to award, obtain or retain business or otherwise gain or grant an improper business advantage from or to any other person or entity.

Transnet reserves the right to terminate the aforementioned awarded contract, by giving immediate written notice to the effect that, all or any Agreements it may have with Contractor or any and all Awards made Contractor for breach of this clause.

Further in the event of such termination, Contractor shall not be entitled to any further payment, regardless of any activities undertaken or agreements with additional third parties entered into by Contractor prior to such termination; and further.

Contractor shall be liable to Transnet for any actual damages or remedies as provided either in the Agreements that are to be signed or in law.

Z11.2

Indemnity

- 1) **Contractor irrevocably and unconditionally undertakes to indemnify and does hereby keep TPT indemnified and hold TPT harmless against, and, in respect of, all and any loss or damage incurred by itself or any other third-Party as a result of, arising out of or connected with any failure, act or omission or breach of this Agreement by Contractor or any of its employees, security officers, servants, agents, assigns, contractors or sub-contractors, or occurring during or as a result of the provision by the Contractor of the Security Service. Such absolute obligation of Contractor to indemnify TPT on a full indemnity basis against all claims shall including, but not be limited to:**
 - a) **liability in respect of any loss or damage to property, whether movable or immovable, belonging to third parties; or other**
 - b) **liability in respect of lost property belonging to third parties;**
 - c) **liability arising out of any unlawful act committed by or Contractor or its employees, security officers, servants, agents, contractors and sub-contractors during the process of rendering a Security Service; or at any other time when a claim has been and could be made against the TPT arising out of the acts of or omissions of one or more of such persons;**
 - d) **liability in respect of the death, unlawful arrest, injury, illness or disease of any person, or entity should the damage, loss, unlawful arrest, death, injury, illness or disease referred to above be attributable to or arise out of the Security Services that are being or have been rendered by the Contractor, its agents, contractors, sub-contractors in terms of this Agreement.**
- 2) **Contractor shall at its own expense and with effect from the date of signature hereof, take reasonable precautions for the protection of life and or property that is in any way connected with in whole or any part of this agreement and shall hold TPT harmless against**

all claims for any loss, demands, proceedings, damages, costs, charges, expenses whatsoever, arising out of this agreement.

3) Contractor agrees that it shall intervene in any claim arising and to indemnify and hold TPT harmless from any claim, damage, loss, cost, expense, legal expenses, arising from or attributable to Contractor provision of services, its acts, or omissions or those of its agents, employees, sub-contractors, representative/s or other for whom TPT may be / may not be deemed responsible for in terms of the agreement.

Z11.3

Protection of Personal Information

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 of 2013.("POPIA"):

consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

2. Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:

Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.

3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is "Transnet" and the Data subject is the "Respondent". Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.

4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this



TRANSNET PORT TERMINALS

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DESCRIPTION OF THE WORKS: FOR THE PROVISION OF OFFICES FOR TRANSNET PORT TERMINALS AT 202 ANTON LEMBEDE STREET FOR TRANSNET SOC LTD (REG NO.

1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS (HEREINAFTER REFERRED AS "TPT").

RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.

5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
 6. Transnet further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
 7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.
 8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFP (physically, through a computer or any other form of electronic communication).
 9. Transnet shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary
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remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Respondents are required to provide consent below:

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative:



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Should a Respondent have any complaints or objections to processing of its personal information, by Transnet, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

TRANSNET PORT TERMINALS
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C1.2 Contract Data

Part two - Data provided by the Contractor

The tendering Contractor is advised to read both the NEC3 Engineering and Construction Contract - June 2005 (with amendments June 2006 and April 2013) and the relevant parts of its Guidance Notes (ECC3-GN) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 Guidance Notes.

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data
10.1	The Contractor is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The direct fee percentage is%
	The subcontracted fee percentage is%
11.2(18)	The working areas are the Site and%
24.1	The Contractor's key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
		CV's (and further key persons data including CVs) are appended to Tender Schedule entitled



TRANSNET PORT TERMINALS

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11.2(14)	The following matters will be included in the Risk Register	
31.1	The programme identified in the Contract Data is	
B	Priced contract with bill of quantities	
11.2(21)	The bill of quantities is in	Part C2.1
11.2(31)	The tendered total of the Prices is	(in figures) (in words), excluding VAT
	Data for Schedules of Cost Components	Note "SCC" means Schedule of Cost Components starting on page 60 of ECC, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC.

B	Priced contract with bill of quantities	Data for the Shorter Schedule of Cost Components		
41 in SSCC	The percentage for people overheads is:%		
21 in SSCC	The published list of Equipment is the last edition of the list published by			
	The percentage for adjustment for Equipment in the published list is% (state plus or minus)		
22 in SSCC	The rates of other Equipment are:	Equipment	Size or capacity	Rate
61 in SSCC	The hourly rates for Defined Cost of design outside the Working Areas are	Category of employee		Hourly rate



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62 in SCCC	The percentage for design overheads is%	
63 in SCCC	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:		

Schedule A – Non-compliance Penalties for Local Content



TRANSNET PORT TERMINALS

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Non-compliance Penalties for Local Content:

- a) If for any reason the Contractor is unable to achieve the local content undertaking, the Contractor must approach the Department of Trade and Industry ("DTI") to obtain exemption in order to supply the goods at a lower local content threshold. The Contractor is obliged to approach DTI for exemption within 10 (ten) days of determining that it is unable to achieve any milestone target or local content threshold.
- b) Should the DTI provide exemption, the Contractor shall be entitled to provide the goods at the lower local content threshold set by DTI. In such event, the Parties shall in good faith renegotiate the milestone targets or local content undertaking to ensure that the lowered local content thresholds are achieved.
- c) Should DTI not provide the necessary exemption, the Contractor shall be obliged to meet each milestone target as stated in the Local Content Plan or the local content undertaking.
- d) Should the Contractor fail to meet any milestone target or the local content undertaking, the following remedies shall apply without limiting any of the Employer's other rights in law:
 - i. The Employer shall afford the Contractor a period of thirty (30) days to remedy its non-compliance.
 - ii. Should the Contractor fail to meet its obligations within the further 30 day period, the Contractor shall pay a Non-Compliance penalty ("Non-compliance Penalty") to the Employer in respect of such Non-compliance as set out in clause iv below. The penalties shall be imposed per milestone measurement for non-delivery of committed values in the case of a Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately.
 - iii. To the extent that the Actual Local Content Spend¹ is lower than the Required Local Content Spend² (or the Adjusted Required Local Content Spend³, as the case may be), the Contractor shall be liable for Penalties which is the difference in value between the Actual Local Content Spend and the Required Local Content Spend (or the Adjusted Required Local Content Spend, as the case may be) plus an additional percentage of such difference. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Local Content Plan or shall be

¹ Actual Local Content Spend means the monetary value of local content initiatives actually delivered by the Supplier during the period under review.

² Required Local Content Spend means the monetary value of local content obligations that the Supplier has agreed to deliver during the period under review.

³ Adjusted Required Local Content Spend means any adjustment to the Required Local Content Spend as prescribed by DTI through the process of exemption referred to in clause c) above and as agreed to between the parties, reduced to writing and signed by the parties.



TRANSNET PORT TERMINALS

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1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS (HEREINAFTER REFERRED AS "TPT").

imposed against the non-delivery of committed values where local content undertakings must be met immediately, in accordance with clause iv below.

- iv. Non-compliance penalties shall apply at the following rate: the difference in value between the Required Local Content Spend and the Actual Local Content Spend, plus 5% of such difference.
- v. In order to guarantee that the Contractor meets its obligations in terms of the Local Content Plan or its committed local content undertaking, the Employer shall be entitled to retain a Non-compliance Penalty at the rate of 1% of every monthly payment due by the Employer to the Contractor over the contract period ("the Local Content Retention Amount"). The Local Content Retention Amount shall be set off against any penalties payable by the Contractor at any milestone assessment.
- e) Should no penalties be imposed during the duration of the contract, the Employer shall refund the full value of the Local Content Retention Amount to the Contractor at the end of the contract period.
- f) Should any unpaid penalties remain at the end of the contract period, then without limiting other rights that the Employer may have in law, the Contractor shall forfeit the Local Content Retention Amount and shall have no further claim against the Employer for the repayment of such amount.

Non-compliance Penalty Certificate:

- a) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- b) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Contractor disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - the dispute shall be resolved in accordance with the provisions of the Contract; and
 - if pursuant to that referral, it is determined that the Contractor owes any amount to the Employer pursuant to the Non-compliance Penalty Certificate, then the Contractor shall pay such amount to the Employer within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- c) Subject to Clause i) above, the Contractor shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of the Employer



TRANSNET PORT TERMINALS

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issuing a valid Tax Invoice to the Contractor for the amount set out in that certificate. If the Employer does not issue a valid Tax Invoice to the Contractor for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.

- d) The Contractor shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from the Employer, failing which Transnet shall, without prejudice to any other rights of the Employer under this Agreement, be entitled to call for payment which may be in any form the Employer deems reasonable and appropriate.
- e) It is agreed that the Employer, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the Contractor's compliance with its obligations under the Local Content Plan. To this end, the Contractor shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.

The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Contractor.