



C1.2 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<p>G: Term Contract</p> <p>W1: Dispute resolution procedure</p> <p>X1 Price Adjustment for Inflation</p> <p>X2 Changes in the law</p> <p>X7: Delay damages</p> <p>X9: Transfer of rights</p> <p>X10 <i>Employer’s Agent</i></p> <p>X18: Limitation of liability</p> <p>Z: <i>Additional conditions of contract</i></p> <p>Z1: Obligations in respect of Joint Venture Agreements</p> <p>Z2: Additional obligations in respect of Termination</p> <p>Z3: Additional clause relating to Penalties</p> <p>Z4: Additional Clause Relating to the Employer’s rights to take appropriate action</p> <p>Z5: Protection of Personal Information Act</p> <p>Z6: Time</p> <p>Z7: Compensation Events</p> <p>Z8: Limitation of liability</p> <p>Z9: Additional clauses relating to cession of rights</p> <p>Z10: Additional clauses relating to interpretation of the law</p> <p>Z11: Employer’s Step in rights</p> <p>Z12: Issuing of Task Order</p>



Transnet Pipelines

Tender Number: TPL/2024/01/0004/54190/RFP

Description of The Services: Provision of Advanced Support for OASYS Control System for Transnet Pipelines Network on an "as and when required basis" for a period of five (5) years.

of the NEC3 Professional Services Contract (June 2005) (amended June 2006 and April 2013)

10.1	The <i>Employer</i> is (Name): Address	Transnet SOC Ltd Registered address: Transnet Corporate Centre 138 Eloff Street Braamfontein Johannesburg 2000
	Having elected its Contractual Address for the purposes of this contract as:	Transnet Pipelines (TPL) 202 Anton Lembede Street Durban 4001
11.2(9)	The <i>services</i> are	ADVANCED SUPPORT CONTRACT FOR OASYS CONTROL SYSTEM WITHIN TRANSNET PIPELINES NETWORK ON AN "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF FIVE (5) YEARS INCLUDING OEM PREMIUM CUSTOMER FIRST AGREEMENT
11.2(10)	The following matters will be included in the Risk Register	None
11.2(11)	The Scope is in	Part C3.1: Employers Works Information
12.2	The <i>law of the contract</i> is the law of	The Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 (two) weeks
13.6	The <i>period for retention</i> is	5 (five) years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things.	access to	access date
the		<ol style="list-style-type: none"> 1 MCC, SCC and Station- access to be determined at actual event 2 Remote login access to the system will be provided at the actual event 	To be determined at the actual time of the event

3 Time

31.2	The <i>starting date</i> is	1 December 2023	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	30 November 2028	
4	Quality		
40.2	The quality policy statement and quality plan are provided within	2 (two) weeks of the Contract Date.	
41.1	The <i>defects date</i> is	4 weeks after Completion of the whole of the <i>services</i> .	
5	Payment		
50.1	The <i>assessment interval</i> is on the	18 th day of each successive month.	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
		Economy air fares	Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.
		Car hire not exceeding group B	Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.
		Accommodation	Charged at proven costs strictly on limits as set out in National Treasury Instructions as amended from time to time.
51.1	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.	
51.2	The <i>currency of this contract</i> is the	South African Rand (ZAR).	
51.5	The <i>interest rate</i> is	The Prime lending rate of the Rand Merchant Bank of South Africa.	
6	Compensation events	No additional data required for this section of the <i>conditions of contract</i> .	
7	Rights to material	No additional data required for this section of the <i>conditions of contract</i> .	
8	Indemnity, insurance and liability		
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are		



Transnet Pipelines

Tender Number: TPL/2024/01/0004/54190/RFP

Description of The Services: Provision of Advanced Support for OASYS Control System for Transnet Pipelines Network on an "as and when required basis" for a period of five (5) years.

Event	Cover	Period following Completion of the whole of the services or earlier termination
failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Professional Indemnity insurance for not less than R10 000 000.00 (Ten Million Rand) in respect of each claim, without limit to the number of claims	52 Weeks
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	General Third Party Liability Insurance for all amounts falling within the excess of the policy, currently R50 000.00 (Fifty Thousand Rand) each and every claim, and/or for all amounts in excess of the policy limits as detailed in the policy document or whatever the <i>Consultant</i> deems desirable in respect of each claim, without limit to the number of claims	0 Weeks
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Consultant</i> arising out of and in connection with this contract for any one event is that which is prescribed by the Compensation for Occupation Injuries and Diseases Act No. 130 of 1993 as amended.	0 Weeks
Motor Vehicle Liability Insurance	Comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity for an amount of not less than R 10 000 000.00	

81.1	The <i>Employer</i> provides the following insurances	<p>Professional Indemnity insurance in respect of failure of the <i>Consultant</i> to use the skill and care normally used by Professionals providing services similar to the <i>services</i></p> <p>General Third Party Liability cover in respect of death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i></p>
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p><i>For all matters covered under the Employer's Professional Indemnity (PI) and General Third Party Liability policies, the Consultant's liability will be limited to the excesses applicable under the Employer's Professional Indemnity and General Third Party Liability policies as detailed in the policy wordings. The current excesses amounts to R5 000 000.00 (Five Million Rand) PI and R50 000.00 (Fifty Thousand Rand) General Third Party Liability, respectively, each and every claim. For all matters not covered under the Employer's Professional Indemnity and General Third Party Liability policies the Consultants liability will be limited to the final total of the Prices.</i></p>
9	Termination	<p>No additional data required for this section of the <i>conditions of contract</i>.</p>
10	Data for main Option clause	
G	Term contract :	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	<p>Both parties will agree to an <i>Adjudicator</i> as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i>, the Chairman of the Association of Arbitrators (Southern Africa) will appoint an <i>Adjudicator</i>.</p>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Association of Arbitrators (Southern Africa)
W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	<p>The latest addition of the South African Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)</p>
	The place where arbitration is to be held is	Durban

The person or organisation who will choose an arbitrator

- if the Parties cannot agree a choice or
- if the *arbitration procedure* does not state who selects an arbitrator, is

The Chairman of the Association of Arbitrators (Southern Africa)

12	Data for secondary Option clauses	
X1	Price adjustment for inflation	This is only applicable to the Advanced Support Contract For OASYS Control System Within Transnet Pipelines Network <u>excluding</u> OEM Customer First Agreement.
X1.1	The <i>index</i> is	The Index published in the Table 1 for all expenditure groups in the Consumer Price Index (CPI) published by Statistics South Africa.
X2	Changes in the law	
X2.1	The <i>law of the project</i> is	The law of South Africa.
X7	Delay damages	
X7.3	The <i>Consultant</i> pays delay damages at the rate stated in the Task Order for each day from the Task Completion Date until Task Completion.	<p>The rand value per day for the OEM Customer First Agreement Task Schedule 1 and 2 shall be calculated at 0.1% capped at 20% of the total of the relevant Task Order.</p> <p>The parties agree that this constitutes a genuine pre-estimate of the damages.</p>
X9	Transfer of rights	The <i>Employer</i> owns the <i>Consultant</i> rights over any of the material whatsoever prepared for the Services of this Contract by the <i>Consultant</i> . The <i>Consultant</i> provides on request by the <i>Employer's Agent</i> , all documentation in whatever form as required (native's, PDF's, CD's, etc) and all other material items which transfer these rights to the <i>Employer</i> .
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	TBA
	Address	Transnet Pipelines (TPL) 202 Anton Lembede Street Durban 4001
	The authority of the <i>Employer's Agent</i> is	Fully empowered to act on behalf of the <i>Employer</i> for the services covered by the contract.
X18	Limitation of liability	

X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	Nil
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	The cost of correcting the defect (The Total of the Prices)
X18.3	The <i>end of liability date</i> is	2 (Two) years after Completion of the whole of the services.

Z Additional conditions of contract

The *additional conditions of contract* are

Z1 Obligations in respect of Joint Venture Agreements

Z1.1	<p>Insert the additional core clause 21.5</p> <p>21.5.1 In the instance that the <i>Consultant</i> is a joint venture, the <i>Consultant</i> shall provide the <i>Employer</i> 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 <i>starting date</i>. The Joint Venture agreement shall contain but not be limited to the following:</p> <ul style="list-style-type: none"> • 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 constituents' 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 liability to the *Employer* to Provide the *services*;
 - ii. proof of separate bank account/s in the name of the joint venture;
 - iii. identification of the leader in the joint venture confirming the authority of the leader to bind the joint venture through the *Consultant's* representative;
 - iv. Identification of the roles and responsibilities of the constituents to provide the *services*.
- Financial requirements for the Joint Venture:
 - i. the working capital requirements for the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time;
 - ii. the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture

Z1.2	<p>Insert additional core clause 21.6</p> <p>21.6. The <i>Consultant</i> shall not alter its composition or legal status of the Joint Venture without the prior approval of the <i>Employer</i>.</p>
------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Z2	Additional obligations in respect of Termination
-----------	---------------------------------------------------------

Z2.1	<p>The following will be included under core clause 90.1: 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 • repudiated this Contract
------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Z2.2	<p><i>Clause 90.5 is added as an additional clause</i></p> <p>Where all or part of the Services are suspended for a period of six months or more either party may terminate the Contract by notifying the other.</p>
------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Z3	Additional clause relating to Penalties
	<p>This is only applicable to the Advanced Support Contract For OASYS Control System Within Transnet Pipelines Network Task Schedule No.3</p>



- Failure to respond to phone calls and discuss the situation with relevant TPL Staff within One (1) hour: **5% per Invoice**
- Failure to remote log-in and troubleshoot for emergency situation regarding system malfunction within Fours (4) hours. **10% per Invoice**
- Failure to get to site and resolve malfunction for emergency situation regarding system malfunction within seventy-two (72) hours: **15% per Invoice**

Z4	Additional Clause Relating to the Employer’s rights to take appropriate action
Z4.1	The contract award is made without prejudice to any rights the Employer may have to take appropriate action later with regard to:
	Any declared, exposed or confirmed tender rigging.
Z4.1.1	The <i>Consultant</i> further undertakes: not to give or cause any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract.
Z 4.1.2	To comply with all laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering to which it or the <i>Employer</i> is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
Z4.1.3	The <i>Consultant’s</i> breach of this clause constitutes grounds for terminating the <i>Consultant’s</i> obligation to Provide the Services or taking any other action as appropriate against the <i>Consultant</i> (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.
Z4.1.4	If the <i>Consultant</i> is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices, including but not limited to the making of offers (directly or indirectly), payments, gifts, gratuity, commission or benefits of any kind, which are in any way whatsoever in connection with the contract with the <i>Employer</i> , the <i>Employer</i> shall be entitled to terminate the contract forthwith and take any other action as appropriate against the <i>Consultant</i> (including civil or criminal action).

Z4.2	The contract award is made without prejudice to any rights the <i>Employer</i> may have to take appropriate action later with regard to:	Politically Exposed Persons including any allegations with regards to State Capture.
Z4.3	The contract award is made without prejudice to any rights the <i>Employer</i> may have to take appropriate action later with regard to:	Blacklisting by any State Entity on the National Treasury database.
Z5 Protection of Personal Information Act		
Z5.1	The <i>Employer</i> and the <i>Consultant</i> are required to process information obtained for the duration of the Contract in a manner that is aligned to the Protection of Personal Information Act.	
Z6 Time		
Z6.1	<i>Clause 33.2. is added as an additional clause.</i> The <i>Employer</i> may at any time suspend part or all of the <i>services</i> . As a consequence, if the <i>Consultant</i> is required to demobilise and then remobilise its staff and equipment, the <i>Consultant</i> will be reimbursed at cost. The <i>Consultant</i> will be required to reduce and mitigate all its costs during the period of suspension and will be entitled to compensation only to the extent that it can demonstrate it has incurred costs which were not capable of being mitigated.	
Z7 Compensation Events		
Z7.1	Clause 61.4: The first bullet point is amended to read as follows: arises from the fault, error, negligence or default of the <i>Consultant</i> .	
Z8 Limitation of liability		
Z8.1	Add to core clause 82.1 and X18 For the avoidance of doubt the parties expressly agree that the total liability of the <i>Consultant</i> to the <i>Employer</i> applies jointly and severally across all organisations comprising of the <i>Consultant</i> .	
Z9 Additional clauses relating to cession of rights		
Z9.1	The <i>Consultant</i> shall not cede any rights under this contract without the approval of the <i>Employer</i> .	

Z9.2	The <i>Employer</i> may on written notice to the <i>Consultant</i> cede and assign its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the <i>Employer</i> .
Z10 Additional clauses relating to Interpretation of the law	
Z10.1	Add to core clause 12.3 Any extension, concession, waiver or relaxation of any action by the Parties, the <i>Employers’ Agent</i> or <i>Adjudicator</i> does not constitute a waiver of rights and does not give rise to an Estoppel or Lien, unless the Parties agree otherwise and confirm such an agreement in writing.
Z11 Employer’s Step in rights	
Z11.1	If the <i>Consultant</i> defaults by failing to comply with his obligations and fails to remedy such default within 2 weeks of the notification of the default by the <i>Employer’s Agent</i> , the <i>Employer</i> , without prejudice to his other rights, powers and remedies under the contract, may remedy the default either himself or procure a third party (including any <i>sub-consultant</i> or supplier of the <i>Consultant</i>) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the <i>Consultant</i> .
Z11.2	The <i>Consultant</i> co-operates with the <i>Employer</i> and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the <i>Consultant</i> under the contract or otherwise for and/or in connection with any subsequent <i>works</i>) and generally does all things required by the <i>Employers’ Agent</i> to achieve this end.
Z12 Issuing of Task Order/s	
Z12.1	The <i>Employer</i> reserves the right, in its sole discretion, not to issue any or all Task Order(s) against any or all of the Tasks in the Task Schedule without having to provide reasons thereof. The <i>Employer</i> makes no representations in this regard, and the <i>Consultant</i> will have no claim against the <i>Employer</i> in this regard.



C1.2 Contract Data

Part two - Data provided by the *Consultant*

The tendering *consultant* is advised to read both the NEC3 Professional Services Contract (April 2013) and the relevant parts of its Guidance Notes (PSC3-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 151 to 159 of the PSC3 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 <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>Consultant's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
Info.		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.....
11.2(10)	The following matters will be included in the Risk Register	
11.2(13)	The <i>staff rates</i> are:	name/designation rate
	Refer to Part C2.3	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item amount
	Refer to Part C2.3	



Transnet Pipelines

Tender Number: TPL/2024/01/0004/54190/RFP

Description of The Services: Provision of Advanced Support for OASYS Control System for Transnet Pipelines Network on an "as and when required basis" for a period of five (5) years.

G	Term contract
11.2(25)	The <i>task schedule</i> is in Refer to Part C2.2